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ARIZONA SUPERIOR COURT
MARICOPA COUNTY

10 CHARLENE FERNANDEZ, Minority leader
11 of the Arizona House of Representatives, in her
12 official capacity; and DAVID BRADLEY,
13 Minority leader of the Arizona Senate, in his
14 official capacity,

Plaintiffs,

15 v.

16 COMMISSION ON APPELLATE COURT
17 APPOINTMENTS, et al.,

18 Defendants.
19

Case No.:

**MOTION FOR TEMPORARY
RESTRAINING ORDER (WITH
NOTICE) AND APPLICATION FOR
ORDER TO SHOW CAUSE**

(Expedited consideration requested)

20 Plaintiffs by and through undersigned counsel, move for a Temporary Restraining Order
21 pursuant to Ariz. R. Civ. P. 65 staying the appointment of Commissioners to the Arizona
22 Independent Redistricting Commission until such time as this Court may hear the
23 Plaintiffs' objections to the composition of the pool presented by the Commission on
24 Appellate Court Appointments. Furthermore, Plaintiffs move for an order for defendants
25 to appear and show cause why this motion for a temporary restraining order should not be
26 granted.
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1 Despite the Constitutional requirement that “[b]y February 28 of each year that *ends*
2 *in one*, an independent redistricting commission shall be established,” and despite
3 constitutional requirements that appointments to the commission be made “[n]o later than
4 January 31 of years *ending in one*,” Ariz. Const. Art. 4 Pt. 1 § 1(3), (4), Arizona Speaker of
5 the House Rusty Bowers made his appointment to the Arizona Independent Redistricting
6 Commission (the “AIRC”) today, October 22, in a year ending in zero. Arizona House of
7 Representative, “Speaker Rusty Bowers Selects David Mehl for Redistricting Commission,”
8 (Oct. 22, 2020) *available at*

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11 <https://www.azleg.gov/press/house/54LEG/2R/201022BOWERSIRCSELECTION.pdf>

12 Absent action by this court, the Speaker’s premature appointment triggers the requirement
13 for Plaintiff Charlene Fernandez, House Minority Leader, to make her appointment by
14 October 29, 2020 or “forfeit the appointment privilege.” Ariz. Const. art. 4, pt. 1 §1(6).
15 Unfortunately, while the Commission on Appellate Court Appointments (the “CACA”) is
16 mandated to “establish a pool of persons who are willing to serve on and are qualified for
17 appointment to the independent redistricting commission,” it has provided a pool of only 23
18 persons qualified for appointment and in its rush, has short circuited required procedures in
19 creating the pool. Thus, as is spelled out more fully below, Plaintiffs must be given an
20 opportunity to urge this Court to direct the CACA to establish a full pool of 25 eligible
21 applicants from which Plaintiffs may select commissioners, which in turn requires a
22 temporary restraining order staying the seven-day clock for Plaintiff Fernandez to make her
23 appointment.

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28 Charlene Fernandez, Minority Leader of the Arizona House of Representatives, and

1 David Bradley, Minority Leader of the Arizona Senate, (collectively “Plaintiffs”) have
2 filed contemporaneously with this motion a Special Action Complaint for violations of
3 Paragraph 5 of Article IV, Part 2, Section 1 of the Arizona Constitution related to the
4 CACA’s obligation to present Plaintiffs with a list of 25 nominees who are “qualified to
5 serve” on the AIRC.
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7 In that complaint, Plaintiffs respectfully ask this Court to determine that the CACA
8 has failed to present a full list of nominees who are “qualified for appointment” as required
9 under the Arizona Constitution. The current list contains one individual who is disqualified
10 from service on the AIRC because he is a paid registered lobbyist within the meaning of
11 Paragraph 3 of Article IV, Part 2, Section 1 of the Arizona Constitution and a second
12 individual who has claimed to be an Independent but is for all purposes and effects a
13 Republican. Plaintiffs will suffer irreparable harm if this temporary restraining order is not
14 granted because, after selecting their appointees from a defective pool, it will be too late
15 for any court to intervene to require a pool that complies with the Arizona Constitution.
16 Furthermore, Plaintiffs are likely to prevail on the merits of the Special Action. For these
17 reasons, the Court should grant this motion for a TRO.
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21 **A. STANDARD FOR GRANTING TRO**

22 Arizona law recognizes two standards for granting preliminary relief, including a
23 temporary restraining order. *Apache Produce Imports, LLC v. Malena Produce, Inc.*, 247
24 Ariz. 160, 164, ¶ 10, 447 P.3d 341, 345 (App. 2019). “The critical element in this analysis
25 is the relative hardship to the parties. To meet this burden, the moving party may establish
26 either 1) probable success on the merits and the possibility of irreparable injury; or 2) the
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1 presence of serious questions and “the balance of hardships tip sharply” in his favor.”
2 *Shoen v. Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App. 1990) (citation omitted).

3 **B. LIKELIHOOD OF SUCCESS ON THE MERITS**

4 The Constitution requires that the CACA present a list of 25 nominees who are
5 both “willing to serve” and “qualified for appointment” to the AIRC. Ariz. const. art. IV,
6 pt. 2, § 1, ¶ 5. Instead the CACA has forwarded a list of 23 nominees who are “qualified
7 for appointment.”
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10 **1. The Application of Thomas Loquvam**

11 The Constitution establishes qualifications for appointment, including that
12 “[w]ithin the three years previous to appointment, members . . . shall not have served as
13 an officer of a political party, or served as a registered paid lobbyist or as an officer of a
14 candidate’s campaign committee.” Ariz. const. art. IV , pt. 2, § 1(3).
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16 Mr. Thomas Loquvam is among 38 applicants who applied to serve on the IRC as
17 an Independent. *See* Application of Thomas Loquvam, *available at*
18 <https://www.azcourts.gov/LinkClick.aspx?fileticket=My6qs9ypbto%3d&portalid=75>. In
19 his application, Mr. Loquvam indicated that he is not a paid lobbyist because he is not
20 “compensated for the primary purpose of lobbying on behalf of a principal.” Mr.
21 Loquvam is indeed registered as an active lobbyist with the Arizona Corporation
22 Commission. Lobbyist 163; Registration Date October 25, 2019. *See*
23 [https://efiling.azcc.gov/public-records/lobbyist/detail?id=4f00d132-19d0-42e8-b749-
24 9d4bf2612d58;firstName=Thomas;lastName=Loquvam](https://efiling.azcc.gov/public-records/lobbyist/detail?id=4f00d132-19d0-42e8-b749-9d4bf2612d58;firstName=Thomas;lastName=Loquvam). He also admits that he is
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1 required to register by virtue of his employment, thus conceding he is a paid lobbyist.
2 His claim that lobbying is not the “primary purpose” for his compensation is irrelevant.

3 **2. The Application of Robert Wilson**

4 The Constitution also establishes that “[t]he pool of candidates shall consist of
5 twenty-five nominees, with ten nominees from each of the two largest political parties in
6 Arizona based on party registration, and five who are not registered with either of the two
7 largest political parties in Arizona.” Ariz. const. art. 4, pt. 2 § 1(5).
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10 Mr. Robert Wilson is also among the 39 applicants who applied to serve on the IRC
11 as the chair. *See* Application of Robert Wilson,
12 <https://www.azcourts.gov/LinkClick.aspx?fileticket=wwjfllyrSLI%3d&portalid=75>. In
13 his application, Mr. Wilson claims to be registered as an Independent Arizona voter.
14 Although Mr. Wilson is and has been registered as an Independent, his voting history and
15 actions clearly show he is not in fact an independent voter with no party affiliation.
16 Actually, Mr. Wilson has voted Republican in all the past primary elections before
17 completing his 2020 AIRC application. After drawing a Republican ballot in 2010, 2014,
18 and 2018, he drew a Democratic Party ballot in 2020. Mr. Wilson, however, is not a person
19 without party affiliation. As will be demonstrated at trial, he hosted rallies at his gun shop
20 in support of the Republican Presidential candidate. He has held meet and greets for
21 Republican candidates Walt Blackman and John Saline. He again held meet and greets for
22 Republican Governor Doug Ducey, and Republican candidates Walk Blackman, and
23 Wendy Rogers. He also donated to Republican Senator John McCain in 2010. This
24 information was available to, but ignored by, the CACA.
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1 **C. BALANCE OF HARDSHIP TIPS SHARPLY IN FAVOR OF TRO**

2 The CACA has dramatically rushed the process of selecting the pool of nominees
3 such as it is. The Constitution would allow the CACA over two months from today to send
4 over a pool of nominees that complies with the constitutional requirements. Ariz. const.
5 art. 4, pt. 2, § 1(5); cf. *Adams v. Comm’n on Appellate Court Appointments*, 227 Ariz. 128,
6 131, ¶ 7, 254 P.3d 367, 370 (2011) (noting that the 2010 CACA did not transmit its pool
7 of twenty-five nominees until December 29, 2010). The government will suffer no harm
8 by temporarily delaying the appointment process while the Court reviews the CACA’s
9 work regarding the two ineligible candidates. By contrast, Plaintiffs will be irreparably
10 harmed by being compelled to select a nominee from an incomplete pool. *Id.* at 131 ¶9,
11 254 P.3d at 370 (identifying Constitutionally identified elected official as being entitled to
12 make their selection for a valid list of nominees).

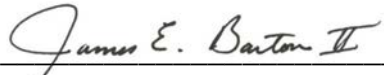
13 **D. PUBLIC POLICY SUPPORTS THE TRO**

14 Although public policy has no bearing on the courts analysis if it holds, as Plaintiffs
15 believe it should, that the balance of hardship tip sharply in favor of granting the TRO,
16 public policy nevertheless supports granting the TRO. The AIRC will set the voting
17 districts for the next decade. The voters of Arizona have established strict criteria for
18 selecting the members of that commission. Public policy plainly supports respecting these
19 criteria and that is only possible if the court grants Plaintiffs’ motion.
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1 For the above reasons, the Court should grant Plaintiffs' Motion for a Temporary
2 Restraining Order.

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5 DONE this 22nd day of October, 2020.

6 TORRES LAW GROUP, PLLC

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9 _____
10 James E. Barton, II
11 Jacqueline Mendez Soto
12 *Attorneys for Petitioners*