
WilmerHale Achieves Significant Supreme Court Victory in Key Election Law Case

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On June 29, 2015, WilmerHale achieved a complete victory on behalf of the Arizona Independent Redistricting Commission (AIRC) in a key election law case before the United States Supreme Court. The Court's decision upholds the constitutionality of the AIRC, which was created by the People of Arizona in 2000 using their initiative power under the Arizona Constitution. In doing so, the decision affirms the constitutionality of similar commissions created in California and other states, and acknowledges that the People of the States may reform the political process through direct popular lawmaking. A team of WilmerHale attorneys represented the AIRC before the Court at the merits stage.

"The Court's decision is a win for the AIRC, for the People of Arizona and for American democracy," said Partner [Seth Waxman](#), who argued the case for the AIRC in March. "We are proud to have helped secure this result for our client, and we are immensely pleased that the power to reform our election laws remains where it belongs: in the hands of the People."

In 2000, the People of Arizona adopted Proposition 106, which created the AIRC in order to eliminate gerrymandering by elected officials. In 2012, the Arizona State Legislature (ASL) sued the AIRC in federal district court, arguing that the Elections Clause of the United States Constitution barred the AIRC from drawing congressional districts. The Elections Clause provides that "The Times, Places and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." The ASL argued that "the Legislature" meant only the body of elected representatives, and that the People of Arizona therefore could not act directly to reform redistricting by creating and vesting redistricting power in the AIRC.

After a divided three-judge district court panel found for the AIRC, the ASL took their argument to the Supreme Court, again asserting that Proposition 106 was unconstitutional.

After acknowledging Arizona's long history of popular lawmaking, the Court upheld the constitutionality of the AIRC based on prior precedent, a key federal statute, and the text, history, and function of the Elections Clause—all arguments advanced by WilmerHale in its representation of the AIRC.

The Court first explained that, under its prior precedents, redistricting “is a legislative function, to be performed in accordance with the State’s prescriptions for lawmaking,” including, where the State Constitution provides for it, by popular lawmaking processes like the initiative. The Court next explained that Congress—which the Constitution’s Elections Clause vests with ultimate authority over federal elections—had adopted that view in federal legislation allowing states to redistrict in whatever manner provided for by state law.

Finally, the Court addressed the constitutional arguments head on, resolving them squarely for the AIRC. The Court explained that, in addition to the Elections Clause’s text, “[t]he history and purpose of the Clause weigh heavily against” precluding the People of Arizona from creating the AIRC, “as does the animating principle of our Constitution that the people themselves are the originating source of all the powers of government.” In an extensive discussion of the history and nature of American democracy, the Court drew on John Locke, James Madison and the Declaration of Independence, among many sources.

The Court also acknowledged the broad impact of case, noting that, if the ASL’s view of the Constitution were correct, it would “cast doubt on numerous other election laws adopted by the initiative method of legislating.” The Court’s review of the numerous state laws potentially impacted by its decision highlighted in turn “[t]he importance of direct democracy as a means to control election regulations.”

The Court concluded that the Elections Clause is consistent “with the fundamental premise that all political power flows from the people,” and that the Clause in fact “doubly empowers the people” to regulate the election of their representatives. In acting to curb gerrymandering in Proposition 106, the Court explained, “Arizona voters sought to restore ‘the core principle of republican government,’ namely, ‘that the voters should choose their representatives, not the other way around.’”

Along with Waxman, the WilmerHale team included Partner [Paul Wolfson](#), Counsel [Jason Hirsch](#), Senior Associate [Ari Savitzky](#), and Associates Thomas Sprankling and [Joshua Koppel](#).

The WilmerHale team worked extensively with the AIRC’s local counsel, Mary O’Grady and Joseph Roth of Osborne Maledon, P.A., and Beau Roysden and Joseph Kanefield of Ballard Spahr LLP.