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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona State Legislature,

Plaintiff,

vs.

Arizona Independent Redistricting
Commission, et al.,

Defendants.

No. CV-12-01211-PHX-PGR

ORDER

Pending before the Court is the AIRC Defendants' Motion for Reconsideration of the Court's June 13, 2012 Order Granting Plaintiff's Motion to Convene a Three-Judge Statutory Court (Doc. 9), filed pursuant to LRCiv 7.2(g). Having considered the parties' memoranda in light of the allegations of the First Amended Complaint (Doc. 12), the Court finds that the motion should be denied.

In its First Amended Complaint ("FAC")¹, plaintiff Arizona State Legislature alleges that Arizona's method of redistricting congressional districts violates the

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While the reconsideration motion was initially directed at the original complaint, the FAC was filed contemporaneously with the plaintiff's response to the motion and the AIRC defendants' reply was directed at the FAC. The Court thus deems the FAC to be the applicable complaint for purposes of the motion's resolution.

1 Elections Clause of the United States Constitution, which provides in relevant part
2 that “[t]he Times, Places and Manner of Holding Elections for Senators and
3 Representatives, shall be prescribed in each State by the Legislature thereof[.]” U.S.
4 Const. art I, § 4, Cl. 1. The gist of the FAC’s constitutional claim is that the state’s
5 redistricting process, as added to the Arizona Constitution in 2000 through
6 Proposition 106, is unconstitutional because it removes from the state legislature
7 the authority to prescribe congressional district lines and reassigns that authority to
8 the Arizona Independent Redistricting Commission (“AIRC”). The FAC, which
9 names as defendants the AIRC and its five members and the Arizona Secretary of
10 State, requests the Court to

11 a) declare that Proposition 106 is unconstitutional to the extent that it removes
12 congressional-redistricting authority from the Legislature, b) declare that the
13 congressional district maps adopted by the IRC are unconstitutional, and c)
14 enjoin the Defendants from enforcing or implementing any congressional
15 redistricting plan from the IRC beginning the day after the 2012 congressional
16 election is held in Arizona.

17 The day after commencing this action the plaintiff filed a Motion to Convene
18 a Three-Judge Statutory Court pursuant to 28 U.S.C. § 2284(a). The Court, prior to
19 the defendants appearing in this action, granted the motion and notified Chief Judge
20 Kozinski of the Ninth Circuit Court of Appeals of its order so that a three-judge court
21 could be designated. The AIRC defendants shortly thereafter filed their pending
22 motion for reconsideration and the Court ordered the parties to fully brief the motion
23 and informed Chief Judge Kozinski of the filing of the reconsideration motion. As a
24 result of the pendency of the reconsideration motion, the requested three-judge court
25 has not yet been designated.

26 When an application to convene a three-judge court is made to a district
court, a single district judge has the authority to determine if three judges are

1 statutorily required, 28 U.S.C. § 2284(b)(1), which they are “when an action is filed
2 challenging the constitutionality of the apportionment of congressional districts[.]”
3 28 U.S.C. § 2284(a). In making this determination, the court’s inquiry is limited to
4 whether (1) the constitutional question sought to be raised is substantial, (2) whether
5 the complaint at least formally alleges a basis for equitable relief, and (3) whether
6 the case presented otherwise comes within the jurisdiction of the statute. Idlewild
7 Bon Voyage Liquor Corp. v. Epstein, 370 U.S. 713, 715 (1962); Sellers v. Regents
8 of Univ. of California, 432 F.2d 493, 498 (9th Cir.1970). The AIRC defendants argue
9 that a three-judge court is not required in this action on two grounds: first, because
10 the plaintiff has raised a constitutional challenge to a provision in the Arizona
11 Constitution, i.e., Proposition 106, and not to a specific apportionment plan as
12 required by § 2284(a); and second, because the plaintiff’s claim is “insubstantial” in
13 that injunctive relief is not available.

14 As to the first issue raised by the AIRC defendants, which goes to the third
15 Idlewild factor, the Court agrees with the plaintiff that the AIRC defendants’
16 argument, the gist of which is that § 2284(a) is not applicable because the plaintiff
17 “is only challenging ‘how’ congressional districts are apportioned in Arizona rather
18 than any specific apportionment[.]” in effect elevates form over substance. While
19 this may not be the typical § 2284(a) case, the Court is persuaded that § 2284(a),
20 narrowly construed, encompasses this action in that it is clear from the FAC that the
21 plaintiff is in fact challenging the legitimacy of Arizona’s apportionment scheme and
22 its existing congressional districts. As noted by the plaintiff, it is seeking a
23 declaratory judgment not only that the existing state apportionment process is
24 unconstitutional but also that the fruits of that process, i.e., the currently drawn
25 congressional districts, are also unconstitutional, as well as permanent injunctive
26

1 relief barring the enforcement of the challenged process and the congressional maps
2 resulting from that process. See Page v. Bartels, 248 F.3d 175, 190 (3rd Cir.2001)
3 (“[T]he legislative history of the 1976 revisions to 28 U.S.C. § 2284 clearly
4 demonstrates that Congress was concerned less with the *source* of the law on
5 which an apportionment challenge was based than on the unique importance of
6 apportionment cases generally. The Senate Report, for example, consistently states
7 that three-judge courts would be retained ... in any case involving congressional
8 reapportionment[.] ... Questions regarding the legitimacy of the ... apportionment
9 (and particularly its review by the federal courts) are highly sensitive matters, and
10 are regularly recognized as appropriate for resolution by a three-judge district
11 court.”) (Emphasis included in original; internal quotation marks omitted.)

12 As to the second issue, which goes to the first Idlewild factor, the AIRC
13 defendants argue that a three-judge court is not appropriate because the plaintiff’s
14 constitutional claim is insubstantial. The Supreme Court has described a
15 constitutionally insubstantial claim for three-judge court purposes as being
16 “essentially frivolous,” “wholly insubstantial,” “obviously frivolous,” and “obviously
17 without merit[.]” and has stated that

18 [t]he limiting words “wholly” and “obviously” have cogent legal
19 significance. In the context of the effect of prior decisions upon the
20 substantiality of constitutional claims, those words import that claims
21 are constitutionally insubstantial only if the prior decisions inescapably
22 render the claims frivolous; previous decisions that merely render
23 claims of doubtful or questionable merit do not render them
24 insubstantial for purposes [of the statutory three-judge court.] A claim
25 is insubstantial only if its unsoundness so clearly results from the
26 previous decisions of [the Supreme Court] as to foreclose the subject
and leave no room for the inference that the questions sought to be
raised can be the subject of controversy.

24 Goosby v. Osser, 409 U.S. 512, 518 (1973); *accord*, Connolly v. Pension Benefit
25 Guaranty Corp., 673 F.2d 1110, 1114 (9th Cir.1982); Lopez v. Butz, 535 F.2d 1170,

1 1171 (9th Cir.1976); see also, Kalson v. Paterson, 542 F.3d 281, 288 n.13 (2d
2 Cir.2008) (“Although the early cases establishing the ‘insubstantial claim’ exception
3 arose under the pre-1976 versions of the three-judge court requirement, there is no
4 reason to think that the 1976 amendment intended to alter the exception.”) The
5 contention of the AIRC defendants is that the plaintiff’s constitutional claim is
6 insubstantial based on their defense of laches, *i.e.*, that the plaintiff is not entitled to
7 injunctive relief because it unreasonably delayed in filing this action given that
8 Proposition 106 was enacted in 2000.

9 The Court cannot conclude that the plaintiff’s constitutional claim is clearly
10 without merit for the purpose of the three-judge court determination based on the
11 AIRC defendants’ laches defense. While such a defense may subsequently be
12 found to be meritorious, at this nascent stage of the litigation the Court’s focus is on
13 whether the plaintiff’s constitutional claim is so obviously foreclosed by the laches
14 defense that there can be no controversy on the issue as a matter of law, *i.e.*, that
15 the governing law leaves no room for any conclusion other than that the doctrine of
16 laches bars all relief sought by the plaintiff. The AIRC defendants have made no
17 such showing in light of the existence of such issues as whether the equitable
18 defense of laches is even applicable to this situation given that the plaintiff is a
19 governmental entity pursuing a constitutional claim as the representative of the
20 people of Arizona, and if the defense is applicable, whether this particular plaintiff’s
21 lack of diligence was responsible for the twelve-year delay in raising the
22 constitutional claim at issue, and whether the AIRC defendants suffered any legally
23 significant prejudice from the plaintiff’s delay.²

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25 ² While the sufficiency of the FAC is being challenged by the AIRC
26 defendants in their pending Motion to Dismiss, filed pursuant to Fed.R.Civ.P.

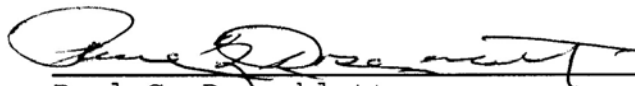
1 Because the Court finds that the constitutional claim in the FAC falls within the
2 purview of § 2284(a) and is substantial, the Court reaffirms its prior decision that the
3 convening of a three-judge court is required in this action. Therefore,

4 IT IS ORDERED that Plaintiff's Rule 1 Motion (Doc. 23) is denied as moot.

5 IT IS FURTHER ORDERED that the AIRC Defendants' Motion for
6 Reconsideration of the Court's June 13, 2012 Order Granting Plaintiff's Motion to
7 Convene a Three-Judge Statutory Court (Doc. 9) is denied.

8 IT IS FURTHER ORDERED that the Clerk of the Court shall notify the
9 Honorable Alex Kozinski, Chief Judge of the Ninth Circuit Court of Appeals, of this
10 Order so that he may designate the other two judges of the three-judge court
11 as required by 28 U.S.C. § 2284(b)(1).

12 DATED this 12th day of August, 2013.

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15 Paul G. Rosenblatt
16 United States District Judge
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24 12(b)(6), the resolution of that motion must be made by the statutory three-judge
25 court. See Lopez v. Butz, 535 F.2d at 1172 ("Because a three-judge court was
26 required, the single district judge was without authority to determine the merits of
[the plaintiff's] claims."); 28 U.S.C. § 2284(b)(3) ("A single district judge shall not ...
enter judgment on the merits [in any action required to be heard and determined by
a three-judge court.]")