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CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona Minority Coalition for Fair Redistricting, et al.
 Plaintiffs,
 vs.
 Arizona Independent Redistricting Commission, et al.
 Defendants.

No. CV-03-1036-PHX-ROS

ORDER

On May 30, 2003, Defendants removed this case, alleging a challenge to the legislative and Congressional districts drawn by the Defendant Arizona Independent Redistricting Commission ("the Commission"), from state court. Pending before the Court are the Plaintiff Arizona Minority Coalition's ("Coalition") Motion to Remand and Plaintiff-Intervenor Navajo Nation's Motion to Remand ("Motions"). The Motions to remand will be granted.

I. Background

On March 6, 2002, the Arizona Minority Coalition, together with a number of other Plaintiffs, filed a complaint in Maricopa County Superior Court in this action challenging the legality of the legislative districts drawn by the Arizona Independent Redistricting Commission. The complaint sought mandamus, declaratory, and injunctive relief under

(4)

1 Arizona law. On March 14, 2002, a number of other Plaintiffs (the "Ricarte Plaintiffs") filed
2 a separate action challenging the federal Congressional districts drawn by the Commission.
3 The two actions were consolidated in state court, and many parties, including the Navajo
4 Nation, intervened on both sides.

5 In May 2002, many of the same parties, including the Coalition, the Navajo Nation,
6 and the Commission, filed suit in federal court for a three-judge panel to establish an interim
7 Arizona legislative redistricting plan for the 2002 elections and that approved an interim
8 redistricting plan for the 2002 elections. Navajo Nation v. Arizona Independent Redistricting
9 Commission, 230 F.Supp.2d 998 (D.Ariz. 2002). The Commission then adopted a new
10 legislative map in August 2002 for elections from 2004 through 2010. The Coalition filed
11 an Amended Complaint on October 16, 2002 challenging the new maps, again seeking relief
12 only under state law. The matter was set for trial in state court beginning on July 8, 2003.
13 However, before trial, the parties filed a final round of cross-motions for summary judgment,
14 including, on May 15, 2003, a Motion for Summary Judgment (the "May 15 Motion") filed
15 by the Coalition expressly arguing that the Commission's August 2002 redistricting plan
16 "violates the equal protection and due process clauses of the United States Constitution and
17 the Arizona Constitution." Motion at 2.

18 On May 30, 2003, Defendants filed a Notice of Removal on the premise that the
19 Coalition had introduced a new federal claim in its May 15 Motion. On June 15, 2003, the
20 Coalition and the Ricarte Plaintiffs filed Arizona Minority Coalition and Ricarte Plaintiffs'
21 Motion to Remand, and Navajo Nation filed a Motion to Remand, or in the Alternative, for
22 Severance and Remand ("Remand Motions"). On July 23, 2003, the Court granted a Motion
23 to Transfer the case from Judge Broomfield to this Court in light of the Court's previous
24 involvement in the redistricting litigation in Navajo Nation. Before considering whether to
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1 convene a three-judge panel, the Court must determine if it possesses jurisdiction or must
2 remand the case to state court.¹

3 **II. Federal Jurisdiction**

4 **A. The law**

5 "A civil action filed in a state court may be removed to federal court if the claim is one
6 'arising under' federal law. [28 U.S.C.] § 1441. To determine whether the claim arises under
7 federal law, [courts] examine the 'well-pleaded' allegations of the complaint and ignore
8 potential defenses." Beneficial National Bank v. Anderson, 123 S.Ct. 2058, 2062 (2003).

9 "The plaintiff is the master of his or her complaint and many avoid federal jurisdiction by
10 exclusive reliance on state law." Easton v. Crossland Mortgage Corp., 114 F.3d 979, 982 (9th
11 Cir. 1997). However, "[a] plaintiff may not avoid federal jurisdiction by omitting from the
12 complaint federal law essential to his or her claim or by casting in state law terms a claim that
13 can be made only under federal law." Easton, 114 F.3d at 982. Further, "[e]ven though state
14 law creates appellant's causes of action, its case might still 'arise under' the laws of the United
15 States if a well-pleaded complaint established that its right to relief under state law requires
16 resolution of a substantial question of federal law in dispute between the parties." Franchise
17 Tax Board of State of Cal. v. Construction Laborers Vacation Trust for Southern Cal., 463
18 U.S. 1, 13 (1983).

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21 ¹The Commission filed a Request for Three Judges Pursuant to 28 U.S.C. § 2284.
22 However, the Court has the authority to decide a motion to remand before contacting the
23 Chief Judge of the United States Court of Appeals of the Ninth Circuit to designate two other
24 judges. See 28 U.S.C. § 2284(b)(3) ("A single judge may conduct all proceedings except the
25 trial, and enter all orders permitted by the rules of civil procedure except as provided in this
26 subsection."); Carrigan v. Sunland-Tujunga Telephone Co., 263 F.2d 568, 572 (9th Cir. 1959)
27 (under § 2284, "it is not required that the additional judges be summoned, when, as here, it
28 appears from the complaint itself that the case is not one within the jurisdiction of the
court"); Gonzalez v. Monterey County, 808 F.Supp. 727, 731 (N.D. Cal. 1992) (single judge
may make determination of whether complaint states a "substantial" claim before convening
of three-judge panel under § 2284). Because this Court has found that the case will be
remanded, the request for a three-judge panel will be denied.

1 The procedure for removal jurisdiction is governed by 28 U.S.C. § 1446. Section
2 1446(b) provides, "[t]he notice of removal of a civil action or proceeding shall be filed within
3 thirty days after the receipt by the defendant, through service or otherwise, of a copy of the
4 initial pleading setting forth the claim for relief upon which such action or proceeding is
5 based. . . ." Further, "[i]f the case stated by the initial pleading is not removable, a notice of
6 removal may be filed within thirty days after receipt by the defendant, through service or
7 otherwise, of a copy of an amended pleading, motion, order or other paper from which it first
8 be ascertained that the case is one which is or has become removable. . . ." Though the
9 Amended Complaint was filed on October 16, 2002, Defendants contend that the notice of
10 removal is timely filed on May 30 because the existence of a federal question was first
11 disclosed within the Coalition's motion for summary judgment filed May 15, 2003.

12 All parties concede that the Court shall exercise § 1441 removal jurisdiction only if
13 the Court finds federal question jurisdiction under 28 U.S.C. § 1331, which provides that
14 "district courts shall have original jurisdiction of all civil actions arising under the
15 Constitution, laws, or treaties of the United States." The Complaint itself does not state a
16 federal claim; the question presented is whether subsequent filings by the Coalition either
17 reveal or create a federal claim sufficient to support federal question jurisdiction.

18 **B. The evolution of Plaintiffs' legal arguments**

19 The potential jurisdictional questions in this case have arisen at a late stage of the state
20 proceedings because Plaintiffs' original Complaint and Amended Complaint present only
21 state claims, yet the Coalition's May 15 Motion asks for summary judgment on federal issues
22 that are *not* mentioned in the Amended Complaint. Plaintiffs have offered a number of
23 explanations for this apparent shift in legal theories, and in their Response to the Motion to
24 Remand, argue unconvincingly that the May 15 Motion did not address federal equal
25 protection and due process theories. To discern whether the Court has jurisdiction, the Court
26 must first discern the precise nature of Plaintiffs' claims.

1 The Amended Complaint, filed October 16, 2002 seeks mandamus, declaratory
2 relief, and injunctive relief for alleged violations of the Arizona Constitution. Specifically,
3 the Complaint alleges violations of the so-called "Competitive Redistricting Clause," Ariz.
4 Const. art. IV, part 2, § 1 ("the Clause"). Plaintiffs contend that the Commission did not
5 comply with the Arizona Constitution's mandate that "[t]o the extent practicable, competitive
6 districts should be favored where to do so would create no significant detriment to the other
7 goals." Am Compl. ¶ 18.²

8 As more fully explained in Navajo Nation, 230 F.Supp.2d at 1001-2, the Clause was
9 enacted pursuant to Proposition 106, passed by the Arizona voters in November 2000, and
10 requires the establishment of a "'clean slate' creating equally populous districts in a grid-like
11 pattern across the state." Id. These districts are then adjusted by the Commission "as
12 necessary" to accommodate six goals: compliance with the United States Constitution and
13 the Voting Rights Act, and, "to the extent practicable," equal population between districts,
14 geographically compact and contiguous districts, district boundaries that reflect communities
15 of interest, district lines using visible geographic features, city, town and county boundaries,
16 and undivided census tracts, and finally, competitive districts "where to do so would create
17 no significant detriment to the other goals." Ariz. Const. art. IV, part 2, § 1(15). Thus, the
18 Arizona Constitution mandates that the Commission favor competitive districts, though it
19 diminishes the significance of this goal below the importance of the five other goals listed
20 in the Clause.

21 In the Amended Complaint, Plaintiffs argue that the Commission ignored the goal of
22 competitive districts, and base their argument on the Commission's rejection of a number of
23 "test maps" created by Doug Johnson, a Commission redistricting consultant. Plaintiffs
24

25 ²Unless otherwise noted, in the following discussion of the motions to remand, the
26 Court's analysis of the Commission's proposed districts does not distinguish between the
27 Congressional and legislative districts. The case now includes challenges to both the
28 legislative and Congressional districts, and the parties make no attempt to distinguish
between them in the briefing on the Motion to Remand.

1 allege that "[t]hese test maps contain Legislative Districts that complied with all the
2 redistricting criteria set forth in Proposition 106 and significantly increased the
3 competitiveness of the legislative map adopted by the Commission on October 14, 2001."
4 Am. Compl. ¶ 32. Further, they allege that "[t]he Commission rejected all of these changes
5 to create more competitive Legislative Districts when it adopted its final legislative map for
6 the 2004 through 2010 elections on August 14, 2002." Am. Compl. ¶ 33. One of Plaintiffs'
7 contentions is that the Commission "fail[ed] to utilize new and contemporaneous
8 competitiveness data." Am. Compl. ¶ 36. Another contention directly relevant to Plaintiffs'
9 later summary judgment argument is that,

10 [t]hroughout the entire redistricting process, the Commission never defined the
11 term 'significant detriment.' Nor did the Commission establish or apply any
12 type of consistent standard to determine when a proposed competitive district
13 adjustment caused 'significant detriment' to the other redistricting criteria. By
14 failing to consistently define or utilize a significant detriment standard, the
15 Commission failed to favor competitiveness as required by the Arizona
16 Constitution.

17 Am Compl. ¶ 35.

18 Thus, one component of Plaintiffs' legal theory in the Amended Complaint is that the
19 Commission was required to use "consistent standard[s]" and define what constituted a
20 "significant detriment" to the goals specified in the Arizona Constitution when evaluating
21 competing legislative district plans. The lack of defined standards by the Commission is
22 critical to the Plaintiffs' argument because the Plaintiffs contend that "[t]he Commission
23 failed to favor competitiveness in drafting the boundaries for Legislative Districts, despite
24 the fact that it could do so without causing significant detriment to the other goals set forth
25 in the Competitive Redistricting Clause, as it was required to do by the Arizona
26 Constitution." Am. Compl. ¶ 44. Without consistent definitions of the standards and criteria,
27 Plaintiffs argue, the Commission ignored plans that *met all of the other criteria* while
28 increasing the number of competitive districts.

In its motion for summary judgment, Plaintiffs advance a similar argument, that the
Commission had an obligation to define the terms of the Arizona Constitutional goals before

1 evaluating them in the context of proposed plans, but characterize the argument in *federal*
2 terms. In fact, their argument goes further, arguing that the Commission was obligated to
3 define terms like "community of interest" in addition to the term "significant detriment."³
4 They argue that the Commission's plan "violates the equal protection and due process clauses
5 of the United States Constitution and the Arizona Constitution," that "[t]he equal protection
6 clauses required the Commission to create and utilize uniform rules to ensure uniform
7 treatment of [the votes of] all Arizona vote[rs] during the redistricting process," and that [t]he
8 Commission violated this obligation by failing or refusing to define key terms in Proposition
9 106 that govern the redistricting process." Mot. for Summ. Judg. at 2. Further, "the
10 Commission violated the equal protection and due process clauses of the Fourteenth
11 Amendment to the United States Constitution," "[v]oting is a fundamental right under both
12 the United States and Arizona Constitutions," "federal courts apply strict scrutiny to review
13 state action affecting the exercise of the right to vote," and "[t]he Equal Protection clauses
14 of both the U.S. and Arizona Constitutions prohibit arbitrary and disparate treatment of
15 Arizona voters during the redistricting process." *Id.* at 2, 7, 8. Additionally, Plaintiffs
16 repeatedly cite Bush v. Gore, 531 U.S. 98 (2000) (*per curiam*), a case that addresses federal
17 equal protection principles in the context of state electoral processes.

18 Thus, at the time of removal, Defendants were faced with an Amended Complaint
19 containing state claims for mandamus, declaratory, and injunctive relief for violations of the
20 Arizona Constitution, but a summary judgment motion relying in part on federal equal
21 protection and due process principles for its legal theory.⁴ On this basis, Defendants claim
22

23 ³Arguably, the new argument in the summary judgment motion is simply a necessary
24 extension of Plaintiffs' original argument. If the Commission was required to meaningfully
25 define "significant detriment," it would also need to define the other goals, such as
26 "community of interest," to determine how to measure a "significant detriment" to those
27 goals.

27 ⁴The nature of the alleged due process violations is not explained by Plaintiffs, whose
28 arguments (and cases) rely on the right to vote under federal equal protection. The Court's
analysis on jurisdiction is applicable to any due process claims as well, and the Court will

1 that Plaintiffs have interjected a federal question into the case, warranting removal.
2 Defendants argue that the May 15 Motion either revealed a previous federal question implicit
3 in the Amended Complaint or created a new federal question by stating a new claim. The
4 Court disagrees.

5 **C. Federal question jurisdiction**

6 Though the Court concludes that Plaintiffs have raised federal issues in their motions
7 for summary judgment, this alone does not create a federal question. The Supreme Court has
8 described the "long-settled understanding that the mere presence of a federal issue in a state
9 cause of action does not automatically confer federal question jurisdiction." Merrell Dow
10 Pharmaceuticals Inc. v. Thompson, 478 U.S. 804, 813 (1986). In Merrell Dow, the Supreme
11 Court concluded that "a complaint alleging a violation of a federal statute as an element of
12 a state cause of action, when Congress has determined that there should be no private, federal
13 cause of action for the violation" cannot form the basis for federal question jurisdiction. Id.
14 at 817. Similarly, in Wander v. Kaus, 304 F.3d 856 (9th Cir. 2002), the Ninth Circuit held
15 that a state statute that provided a cause of action for a violation of one section of the
16 American with Disabilities Act (ADA) did not create federal question jurisdiction where
17 Congress did not intend a remedy for damages under that section of the ADA. Id. at 857.⁵

18 The most closely analogous case interpreting Supreme Court precedent on this issue
19 in the Ninth Circuit is Rains v. Criterion Systems, Inc., 80 F.3d 339 (9th Cir. 1996). In Rains,
20 the plaintiff sued for wrongful termination in violation of public policy under California law,
21 claiming that he suffered religious discrimination. To state such a claim under California
22 law, the plaintiff must set forth as one element that a fundamental public policy exists in
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24 focus on the equal protection claims that predominate.

25 ⁵Neither Merrell Dow nor Wander control the Court's disposition of this case because
26 the intent of Congress to create a private cause of action is not at issue here. Rather, the
27 cases illustrate the principle that "the mere presence of a federal issue in a state cause of
28 action does not automatically confer federal question jurisdiction." Merrell Dow, 478 U.S.
at 813 (1986).

1 "constitutional or statutory provisions." Id. at 343 (citations omitted). The plaintiff alleged
2 a number of different policy foundations in his Complaint, including both Title VII and the
3 laws of California. The defendants removed on the basis that his Complaint contained a
4 federal question by relying on federal law under Title VII.⁶

5 The Ninth Circuit concluded that it lacked federal question jurisdiction. Noting that
6 "federal question jurisdiction may still lie if 'it appears that some substantial, disputed
7 question of federal law is a *necessary* element of one of the well-pleaded state claims,'" the
8 Court concluded that the violation of Title VII was not a necessary element of the plaintiff's
9 claims. Id. at 345 (quoting Franchise Tax Board, 463 U.S. at 13). The Court held that
10 "[w]hen a claim can be supported by alternative and independent theories – one of which is
11 a state law theory and one of which is a federal law theory – federal question jurisdiction
12 does not attach because federal law is not a necessary element of the claim." Id. at 346.

13 This case is analogous to Rains. The Amended Complaint alleges that the
14 Commission failed to properly interpret and apply the mandate of the Clause under the
15 Arizona Constitution. Specifically, the Amended Complaint asserts that the Commission
16 violated the Arizona Constitution by failing, in part, to define "significant detriment." Part
17 of Plaintiff's claim, as revealed in the summary judgment motion, is that the equal protection
18 clauses of *both* the federal and state constitutions require definitions of terms in order to
19 apply them consistently. However, no matter how Plaintiffs unstrategically framed the
20 argument in their motion for summary judgment, the equal protection argument is not a claim
21 asserted in the Amended Complaint; instead it is an element of the state law claim that the
22 Commission failed to properly apply Ariz. Const. art. IV, part 2, § 1. Moreover, equal
23 protection under the United States Constitution is an alternative argument, because the equal
24 protection clause of the Arizona Constitution is also asserted, and both clauses mandate the
25 same result. See Empress Adult Video & Bookstore v. City of Tucson, 204 Ariz. 50, 59 P.2d

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27 ⁶Although a Plaintiff may allege a Title VII claim in either state or federal court, the
28 presence of a Title VII claim in a complaint is sufficient to confer federal question
jurisdiction. Rains, 80 F.3d at 344.

1 814, 828 (Ariz. App. 2002) (Article II, § 13 of Arizona Constitution has the "same effect"
2 as the equal protection clause of United States Constitution). In this case, Plaintiffs may
3 argue and rely upon the state equal protection clause to assert their claims under Article IV,
4 part 2, § 1 of the Arizona Constitution, and may cite federal law to support their
5 interpretation of state equal protection principles. See Phoenix Newspapers, Inc. v. Purcell,
6 187 Ariz. 74, 79, 927 P.2d 340, 345 (Ariz. App. 1996) (holding Article II, § 13 of Arizona
7 Constitution has "same effect" as equal protection clause of Fourteenth Amendment and
8 applying federal equal protection cases to interpret Art. II, § 13). Because proof of a federal
9 equal protection argument is only one alternative theory of the state cause of action, under
10 Ninth Circuit precedent there is no federal question jurisdiction. See Rains, 80 F.3d at 347
11 ("[E]ven though Rains' action is supported by a federal theory, there is no substantial federal
12 question because his claim is also supported by an independent state theory."). See also
13 Easton, 114 F.3d at 981-2 (holding that "a complaint which reference federal theories, but
14 did not seek federal remedies" should have been remanded for lack of federal question
15 jurisdiction); Am. Compl. ¶¶ 46-57 (requesting only state remedies for violation of the
16 Arizona Constitution).

17 Indeed, despite Plaintiffs' repeated citations to Bush v. Gore in the May 15 Motion,
18 Plaintiffs' reliance on the principles of that case illustrates how their claims are founded on
19 state, not federal law. Notably, Plaintiffs are *not* presenting a claim under Bush v. Gore, but
20 rather are seeking to invoke its principles in a different context. Bush v. Gore involved a
21 challenge to Florida's use of inconsistent standards in its vote-counting process, directly
22 implicating whether any particular vote was treated in an arbitrary or inconsistent manner in
23 the course of the recount. In contrast, Plaintiffs here advance a different claim, which is that
24 the state must apply consistent standards in redistricting, a different but related aspect of the
25 states' regulation of the voting process. States are generally free to conduct redistricting
26 according to any standards they choose, unless they run afoul of certain constitutional or
27 statutory prohibitions. See, e.g., Georgia v. Ashcroft, 123 S. Ct. 2498 (2003) (discussing
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1 measurement of racial retrogression in redistricting prohibited under Voting Rights Act);
2 Shaw v. Reno, 509 U.S. 630 (1993) (allowing equal protection challenges to redistricting
3 based on racial classifications); Davis v. Bandemer, 478 U.S. 109 (1986) (holding justiciable
4 a challenge to process of redistricting based on partisan gerrymandering); cf. Vieth v.
5 Pennsylvania, 188 F.Supp.2d 532 (M.D. Pa. 2002) (dismissing partisan gerrymandering
6 claim for failure to state a claim), probable jurisdiction noted, Vieth v. Jubelirer, 123 S.Ct.
7 2652 (2003). Plaintiffs' equal protection argument is thus uniquely founded on the *Arizona*
8 *Constitution* that mandates certain factors be considered in the course of redistricting. The
9 claims for mandamus, declaratory, and injunctive relief are state remedies for a violation of
10 the Arizona Constitution, and the Arizona equal protection clause does not require reliance
11 upon federal law to determine if it has been violated..

12 Defendants make one additional argument for federal jurisdiction, which is that the
13 motion for summary judgment itself created a *new* cause of action based on equal protection,
14 thus allowing removal of the newly-created federal claim. In support of this theory,
15 Defendants point to one unique case, Eyak Native Village v. Exxon Corp., 25 F.3d 773 (9th
16 Cir. 1994). In Eyak Native Village, the Ninth Circuit held that a reply brief in a state
17 proceeding, interpreted by the district court as a Fed. R. Civ. P. 60(b) independent action for
18 relief from a consent decree, was an "other paper" under § 1446(b) which allowed the
19 defendants to timely remove the case to federal court. In that case, the state court litigation
20 was ongoing while in a federal court action, the district court approved a consent decree
21 between the defendants and the state which threatened to create *res judicata* that would bar
22 the plaintiffs' state claims. The plaintiffs filed a reply brief in state court asserting that there
23 was no *res judicata* barring the state claims because the State did not represent their interests
24 in the federal proceedings. The district court "concluded that the . . . reply brief raised a
25 federal claim in the form of an independent civil action in equity, or a Federal Rule of Civil
26 Procedure 60(b)(3) motion for relief from the consent decree." Id. at 777. Although the
27 Ninth Circuit noted that the reply brief could not be treated as a Rule 60(b) motion, it held

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1 that the "district court's treatment of the . . . plaintiffs' claims as an independent action for
2 relief from judgment recharacterized their claims as federal claims." Id. at 778.⁷

3 Eyak Native Village, however, is not applicable, because the basis of federal question
4 jurisdiction in that case, a collateral attack on a federal consent decree, does not even
5 resemble the issue in this case. The question of whether the motion for summary judgment
6 created a federal cause of action is preliminary to whether the motion is an "other paper"
7 under § 1446, and Defendants provide no authority for construing Plaintiffs' summary
8 judgment motion as a new cause of action. Indeed, in Eyak Native Village, the Court was
9 clear that the "district court's treatment of the . . . plaintiffs' claims as an independent action
10 for relief from judgment recharacterized their claims as federal claims." Id. at 778. See
11 Desmond v. BankAmerica Corp., 120 F.Supp.2d 1201, 1204 (N.D. Cal. 2000) (rejecting
12 removal jurisdiction based on Eyak Native Village and noting, "[t]he court *did not* hold that
13 intent to pursue a federal claim, expressed in a brief or motion, is grounds for removal. . . .
14 In Eyak, the filing of the reply brief was tantamount to the filing of a new action or amended
15 complaint"). Only once the case became removable by the interjection of a federal claim did
16 the Court analyze § 1446(b), and the "other paper" provision was only at issue because the
17 new federal claim was implied from a reply brief, not stated in a pleading.

18 Defendants' argument that the text of § 1446(b) supports their conclusion that the
19 motion for summary judgment may be treated as creating a federal issue is unavailing.
20 Section 1446(b) establishes only the *timing* of a notice of removal; it provides that "a notice
21 of removal may be filed within thirty days after receipt by the defendant, through service or
22 otherwise, of a copy of an amended pleading, motion, order or other paper from which it first
23

24 ⁷The federal district court in that case had a strong interest in interpreting the
25 plaintiffs' reply brief raising res judicata issues as a Rule 60 or similar equitable attack on the
26 consent decree, because the federal consent decree functioned as res judicata to bar the
27 plaintiffs' claims. See Gilmore v. California, 220 F.3d 987, 1001 n.17 (9th Cir. 2000)
28 (consent decrees act as final judgments and have res judicata effect); Hook v. Arizona Dep't
of Corrections, 972 F.2d 1012, 1016 (9th Cir. 1992) ("The proper procedure for seeking relief
from a consent decree is a Rule 60(b) motion.").

1 be ascertained that the case is one which is or has become removable." Section 1446(b) does
2 not purport to define *whether* a federal court has jurisdiction over a claim. The fact that a
3 subsequent paper may disclose the existence of federal jurisdiction is not a controversial
4 proposition, and often occurs in diversity cases, where the citizenship of the parties or the
5 amount in controversy changes. See 14C Wright, Miller, & Cooper, Federal Practice and
6 Procedure 3d § 3732, n. 24-4 (1998). The existence of a federal question is governed by §
7 1331 along with the cases interpreting it, including Merrell Dow and Rains.

8 **Conclusion**

9 Although a consideration of federal issues has a place in the complaint, Plaintiffs
10 present evidence involving state law claims which, although they may overlap some potential
11 federal causes of action, do not depend on the federal issues. The Court has no jurisdiction,
12 and the entire matter will be remanded to state court.

13 Plaintiffs seek attorneys' fees and costs incurred as a result of the removal. Although
14 Plaintiffs' explanations of their claim have been underrated by Defendants in their Response,
15 Plaintiffs' choice of language in its May 15 Motion in contrast to the carefully crafted
16 language of the Complaint and Amended Complaint created confusion requiring analysis of
17 applicable case law regarding the possible emergence of a federal cause of action in pleading
18 on the Motion for Summary Judgment. While a seeming strategic legal mishap did not vest
19 the Court with federal jurisdiction, it may disallow an entitlement to attorneys' fees and costs.

20 Accordingly,

21 **IT IS ORDERED** that Plaintiff Arizona Minority Coalition and Ricarte Plaintiffs'
22 Motion to Remand is **GRANTED**.

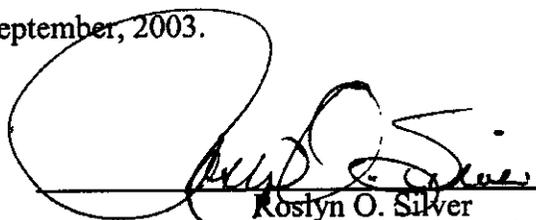
23 **IT IS FURTHER ORDERED** that Plaintiff-Intervenor Navajo Nation's Motion to
24 Remand is **GRANTED** and the Motion for Severance and Remand is **DENIED AS MOOT**.

25 **IT IS FURTHER ORDERED** that Arizona Independent Redistricting Commission's
26 Request for Three Judges is **DENIED**.

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IT IS FURTHER ORDERED REMANDING this case in its entirety to state court,
attorneys' fees and costs to be borne by each side.

DATED this 3rd day of September, 2003.



Roslyn O. Silver
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK

RICHARD H. WEARE
DISTRICT COURT EXECUTIVE / CLERK OF COURT
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TUCSON, ARIZONA 85701-5010

March 6, 2003

Michael Jeans, Clerk
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003-2205

ATTN: Supervisor, Lower Level File Room

RE: REMAND TO MARICOPA COUNTY SUPERIOR COURT

District Court Case Number: CIV-03-1036-PHX-ROS

Superior Court Case Number: CV2002-04882/CV2002-004380

Dear Mr. Jeans:

Enclosed is a certified copy of the Order entered in this Court on September 5, 2003 remanding the above case to Maricopa County Superior Court for the State of Arizona.

Sincerely,

RICHARD H. WEARE, DCE/CLERK OF COURT


Deputy Clerk

Enclosure

cc : All Counsel of Record

The staff of the Clerk's Office ensures the effective, efficient and professional delivery of clerical and administrative services, while fostering a customer-friendly and employee-friendly environment.