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Regarding: R-20-0035 Petition to amend the procedures for nominations for the Independent Redistricting Commission

The Honorable Robert M. Brutinel has proposed amendments to the Procedures for Nominations for the Independent Redistricting Commission (IRC) which raise alarms for voters concerned about maintaining the integrity and transparency of the nomination and appointment process, and preserving the bipartisan and independent nature of the IRC.

In 2000, Arizona voters made it clear they could no longer trust the redistricting process - as then controlled by the State Legislature - to be fair and impartial, and to reflect the growing diversity of Arizona's electorate. The people spoke, and Proposition 106 was approved by an overwhelming margin, 56.1% in favor to 43.9% opposed. I voted in favor, and was overjoyed when Proposition 106 passed.

By creating the Independent Redistricting Commission, the voters of Arizona intended to protect their right to choose their own representatives, and end the practice of party insiders and legislators of drawing legislative boundaries, effectively selecting their own voters. In addition to creating the IRC, voters approved changes to the State Constitution which specified how candidates for the IRC would be nominated and appointed, entrusting those important processes to the Commission on Appellate Court Appointments (CACAA), which by law should be politically and geographically balanced to represent all of Arizona.

Judge Brutinel now proposes to eliminate some of the transparency voters have a right to expect in the nomination process. Under his proposed amendments, applicants could put some information in a new and undefined "confidential" section in their applications; any third party submitting information about a candidate could deem that information "confidential" - including the third party's identity; and members of CACA could get around public records laws by placing personal notes and procedural emails into a confidential category.

In each case, voters would potentially be deprived of the chance to learn vital information about candidates' qualifications, background, weaknesses, potential conflicts of interest and relationship to commenting third parties. Hiding any of this information would undermine public trust in both the nomination of candidates for the IRC, and in the redistricting process itself. Because the composition of CACA has over the last six years become less and less diverse, so that it no longer complies with the constitutional requirement for geographic and political diversity, the Commission's work in choosing candidates for the IRC may no longer be impartial and politically balanced.

Instead of making the nomination process more secretive, CACA should make every effort to keep the public informed through a completely open and transparent process. I believe the proposed amendments to Rule 132 should be rejected, and that the original language in Rule 132 (2010) should be retained.

One other matter raises a red flag for me. In Rule 131.a. Judge Brutinel proposes to replace the words "provide public notice" with "widely publicize." He calls this a non-substantive change mirroring rule 5.c. of the Uniform Rules of Procedure for Commissions on Appellate and Trial

Court Appointments. But that Rule 5.c. (unlike the proposed changes in Arizona Supreme Court R-20-0035) specifies:

“Each Commission shall widely publicize vacancies by issuing press releases, posting notices online, and/or emailing vacancy notices to interested parties and groups. When feasible, such notices shall be given thirty (30) days or more before the deadline for applications. The notice of vacancy shall state that a Commission may, at its discretion, use the applications filed for the vacancy that is the subject of the announcement to nominate candidates for any additional vacancy or vacancies known to the Commission before the screening for the announced vacancy is held.”

(Arizona Supreme Court No. R-16-0043, Page 6 of 11)

There is no such specific language in the proposed rule change. Without it, “widely publicize” could mean anything, whereas there is a long tradition of the meaning of “public notice.” Either the original language in Rule 131.a. should be retained, or the proposed rule change should specify the means of widely publicizing vacancies and notices that applications are being accepted.

I am deeply concerned that Judge Brutinel’s proposed rules changes for nominations for the IRC set a dangerous precedent of limiting transparency and opening the deliberations of CACA and other governmental commissions to improper influence and partisan bias. We cannot afford to start down that road. Societies come apart when people believe they can no longer trust one another or their leaders to act in good faith for the benefit of all.

I urge you to refuse permanent adoption of the proposed changes in Arizona Supreme Court No. R-20-0035 Petition to Amend the Procedures for Nominations for the Independent Redistricting Commission.

Sincerely,

Sarah Congdon