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8 **IN THE SUPREME COURT**  
9 **STATE OF ARIZONA**

10 In the Matter of:

Supreme Court No. R-21-0048

11 **PETITION TO AMEND CANON 4,**  
12 **ARIZONA CODE OF JUDICIAL**  
13 **CONDUCT**

**Comment of the Arizona**  
**Commission on Judicial Conduct**

14 The Arizona Commission on Judicial Conduct (“Commission”) files this  
15 comment in opposition to the petition filed by multiple justices of the peace to  
16 amend Canon 4 of the Arizona Code of Judicial Conduct by adding a new Rule 4.6  
17 to allow certain political activities by candidates seeking judicial positions in  
18 partisan primaries and general elections.  
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21 Currently, all judicial candidates, whether seeking appointment or through  
22 election, must comply with the applicable provisions of Canon 4 of the Arizona  
23 Code of Judicial Conduct. The petition seeks to add a new provision to Canon 4  
24 that would allow candidates for judicial positions filled by partisan elections to  
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1 engage in certain political activities not otherwise allowed by the existing  
2 provisions of Canon 4.

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4 Proposed new Rule 4.6 would allow judges who are elected to (a) serve as  
5 precinct committeemen; (b) coordinate petition signatures with other candidates;  
6 and (c) participate in voter education efforts and in get out the vote drives on  
7 behalf of a political party.

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9 **PETITIONERS' RATIONALE FOR**  
10 **THE PROPOSED CHANGES IS FLAWED**

11 The petitioners' rationale, in part, for the foregoing proposed new rule is that  
12 already elected judges are at a disadvantage in seeking reelection against  
13 candidates who are not judges. An individual who is not already a judge can, the  
14 argument goes, engage in extensive political activity to get elected while an  
15 existing judge seeking reelection must comply with the applicable provisions of  
16 existing Canon 4 which prevents that level of political activity.

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18 While it is true that a judicial candidate who is not an Arizona lawyer cannot  
19 be held to the same standards as an elected judge seeking reelection unless that  
20 candidate is elected, the same sanctions for noncompliance with Canon 4 can be  
21 imposed on that candidate if elected, as can be imposed on an existing judge who  
22 violates Canon 4 during a reelection campaign. *See* Comment 2, Canon 4. Judicial  
23 candidates are constrained to act in compliance with Canon 4 knowing that if they  
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1 violate the rules and are elected, they are subject to discipline in the same manner  
2 and to the same extent as a sitting judge who violates the rules in seeking  
3 reelection.  
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5         The rationale for allowing elected judges to serve as precinct committeemen  
6 is not apparent. Precinct committeemen are comprised of very active members of  
7 each party, helping to steer the party’s mission and leadership. These individuals  
8 are tasked with going door-to-door in their precinct to get candidates elected, and if  
9 there is a vacant office within their precinct, they assist in identifying suitable  
10 candidates to the Board of Supervisors to fill the vacancy.<sup>1</sup> These duties are in  
11 direct conflict with the ethical obligations of elected or appointed judges. *See*  
12 *Canon 4.1(A)(1) and Comment 3, Canon 4.* Judges may not endorse or oppose  
13 other candidates for office, nor personally solicit for any political fundraising.  
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16         The coordination of signature gathering is also listed as an objective of this  
17 rule change petition, but nothing is included in the petition to substantiate how the  
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20 <sup>1</sup> The Republican Party of Arizona, Precinct Committeeman Handbook (2019) lists  
21 the following duties for a precinct committeeman in election years: 1) Distribute  
22 campaign literature in the precinct; 2) Walk door-to-door with candidates; 3) Find  
23 yard sign locations in the precinct; 4) Assist local candidates with signature  
24 gathering, mailings, and phone calls; 5) Hold meet and greets for neighbors in your  
25 precincts to meet the candidates; 6) Recruit volunteers to assist in the precinct or  
for local candidates; 7) Inform voters of the party’s position on issues and  
candidates; 8) Motivate members to go to the polls and provide them with reasons  
why to vote for Republican candidates; 9) Participate in meetings, special events  
and fund-raisers; and 10) Get informed voters to the polls.

1 current rules seriously impede judges from obtaining sufficient signatures on their  
2 nominating petitions. It can certainly be argued that it would be easier on judicial  
3 candidates if they could assist each other in gathering nominating petition  
4 signatures, but Rule 4.1(A)(5) clearly prevents a judge or a judicial candidate from  
5 “actively taking part in any political campaign other than his or her own campaign  
6 for election, reelection or retention in office.” A great deal more than convenience  
7  
8 is needed to justify the modification of this long-standing restriction.  
9

10 Finally, the petition seeks to amend the Code of Judicial Conduct to allow  
11 judges who are elected to “participate in voter education efforts and in get out the  
12 vote drives on behalf of a political party.” Comment 3 to this proposed new rule  
13 states, in part, that “[e]lected judges may participate in voter registration drives, in  
14 efforts to explain the platforms of political parties, and in efforts to encourage  
15 registered voters to vote.” Notably, allowing elected judges to explain the  
16 platforms of political parties would inevitably raise a multitude of reasonable  
17 concerns about judicial impartiality and independence in court proceedings. Party  
18 platforms often contain specific positions on controversial, even divisive societal  
19 issues. It is difficult to imagine how a judge’s public statements about his or her  
20 party’s platform could conform to the requirements of Rule 4.1(A)(9) (a judge  
21 shall not “make any statement that would reasonably be expected to affect the  
22 outcome or impair the fairness of a matter pending or impending in any court”) and  
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1 (10) (a judge shall not, “in connection with cases, controversies, or issues that are  
2 likely to come before the court, make pledges, promises, or commitments that are  
3 inconsistent with the impartial performance of the adjudicative duties of judicial  
4 office.”). *See also* Rules 2.10(A) & (B) of the Code. Nothing in the petition  
5 explains how proposed new Rule 4.6(C) and Comment 3 are to be harmonized  
6 with these existing rules.  
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9 Further, Rule 4.5 of the Code currently requires a judge to resign from office  
10 upon becoming a candidate for a nonjudicial elective office, other than a candidate  
11 to a constitutional convention. Comment 1 to Rule 4.5 states:

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13 In campaigns for nonjudicial elective public office, candidates may  
14 make pledges, promises, or commitments related to positions they  
15 would take and ways they would act if elected to office. Although  
16 appropriate in nonjudicial campaigns, this manner of campaigning is  
17 inconsistent with the role of a judge, who must remain fair and  
18 impartial to all who come before him or her. The potential for misuse  
of the judicial office, and the political promises that the judge would  
be compelled to make in the course of campaigning for nonjudicial  
elective office, together dictate that a judge who wishes to run for  
such an office must resign upon becoming a candidate.

19 The petition does not explain how the proposed new Rule 4.6 allowing certain  
20 judges to serve as a precinct committeeman, a nonjudicial elective office, would be  
21 harmonized with the prohibition under Rule 4.5.  
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24 ...  
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1           **THE PROPOSED RULE CONFLICTS WITH JUDICIAL DUTIES AND**  
2           **THE ARIZONA CONSTITUTION**

3           Additionally, the petition does not reconcile how a judge would serve two  
4 masters – their judicial duties and their duties to a particular political party,  
5 particularly considering Rule 2.1 of the Code which requires that “the judicial  
6 duties of a judge take precedence over all of a judge’s other activities.” The  
7 proposed rule also runs afoul of the Constitution. While the petitioners are all  
8 justices of the peace, the scope of the proposed new rule is not limited to justices of  
9 the peace, but applies to any judge in a partisan election. This would include  
10 superior court judges in counties with less than two hundred fifty thousand in  
11 population. Article 6, Section 28 of the Arizona Constitution states, in part:

14           Justices and judges of courts of record shall not be eligible for any  
15 other public office or for any other public employment during their  
16 term of office, except that they may assume another judicial office,  
17 and upon qualifying therefor, the office formerly held shall become  
18 vacant. No justice or judge of any court of record shall practice law  
19 during his continuance in office, **nor shall he hold any office in a**  
20 **political party or actively take part in any political campaign**  
21 **other than his own for his reelection or retention in office.** Any  
22 justice or judge who files nomination papers for an elective office,  
23 other than for judge of the superior court or a court of record inferior  
24 to the superior court in a county having a population of less than two  
25 hundred fifty thousand persons according to the most recent United  
States census, forfeits his judicial office. (Emphasis added)

1 Precinct committeeman is an elected, political office. The proposed new rule  
2 would be in violation of this provision of the Arizona Constitution as applied to  
3 superior court judges in counties not subject to merit selection.  
4

5 **THE PROPOSED RULE RAISES DISQUALIFICATION CONCERNS AND**  
6 **CONCERNS ABOUT PUBLIC CONFIDENCE IN THE JUDICIARY**

7 A separate and equally serious concern relates to disqualification motions  
8 for bias and partiality based on a judge’s public explanation of his or her political  
9 party’s platforms as permitted by Comment 3 of proposed new Rule 4.6. Such  
10 conduct also appears to conflict with Rules 1.2 (Promoting Confidence in the  
11 Judiciary), 2.2 (Impartiality and Fairness), 2.3 (Bias, Prejudice, and Harassment) of  
12 the Code, and 4.5 (Activities of Judges Who Become Candidates for Nonjudicial  
13 Office). Our country’s political culture and climate have become extremely  
14 polarized in recent years. Public confidence in the courts is low, and most  
15 Americans believe that courts are too political.<sup>2</sup> This is particularly evident in the  
16 nomination hearings for Supreme Court justices, and the fact that most media  
17 outlets covering the federal courts deem it relevant to note for their readers which  
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23 <sup>2</sup> See Willow Research, “Do Americans Have Confidence in the Courts.”  
24 <https://willowresearch.com/american-confidence-courts/>. See also National Center  
25 for State Courts, 2021 State of the State Courts – National Survey Analysis.  
[Microsoft Word - NCSC State of the State Courts Analysis 1021.docx](#).

1 president appointed a particular judge. Allowing judges to engage in more political  
2 activity only serves to further weaken the public's confidence in the judiciary.

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4 **CONCLUSION**

5 For the foregoing reasons, the Commission on Judicial Conduct respectfully  
6 requests the Supreme Court deny this petition. Proposed new Rule 4.6 and the  
7 accompanying comments create special and disparate rules for elected judges that  
8 are inconsistent with many existing restrictions applicable to all judges, as well as  
9 the Arizona Constitution. The rationale and justification for them does not warrant  
10 their adoption.  
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12 SUBMITTED this 27<sup>th</sup> day of April, 2022.

13  
14 /s/ April P. Elliott  
15 Executive Director  
16 Commission on Judicial Conduct

17 Electronic copy filed this 27<sup>th</sup> day of April, 2022.

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19 By: April P. Elliott  
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