

I.

IF JUDGES ARE ALLOWED TO SERVE AS A PRECINCT COMMITTEEMAN/COMMITTEE PERSON, LONG STANDING JUDICIAL ETHICS STANDARDS WILL STILL PROHIBIT THEM FROM PERFORMING AS A POLITICAL OPERATIVE

Allowing a justice of the peace to also serve as a precinct committeeman/committee person (PC) allows judges to have access to a political party and to a political party's resources. Although it is certainly possible for someone to be elected as a justice of the peace while completely ignoring their political party's structure, given that obtaining the nomination of a political party is a prerequisite to serving as a justice of the peace, allowing at least some minimal level of participation should be appropriate.

Serving as a PC is an entry-level position in a political party's organization. They are volunteers. Some do a great deal of political work. Some do much less. Due to well-established ethical standards, judges would be allowed to do almost nothing. Even so, it can be problematic to run for a political party's nomination when you are not a PC because there is a perception that you have not even met a minimum requirement.¹ But why do some justices of the peace from both major political parties really desire an option to also be PCs? There are two main reasons.

¹ On May 11, 2022, a candidate forum was held in Legislative District 28. The moderator asked each candidate how long they had been a precinct committeeman.

First, it literally gets you in the door. Many legislative district meetings, county meetings, and state meetings are essentially “PC only” events. If allowed inside, it is completely appropriate for elected judges to attend and to request to speak at legislative district meetings. Doing so gives judges an opportunity to provide judicial branch updates to an audience that is well informed concerning the executive and legislative branches, but is often either uninformed or misinformed concerning the judicial branch.² In fact, depending on the meeting, the audience may otherwise be openly hostile toward the judicial system in general.

Second, being a PC allows access to a political party. It is often difficult to obtain information on events and to obtain accurate voter data without also being a PC. Being a PC is a requirement to vote on who will hold offices (e.g. chair, secretary, etc.) for political parties at the legislative district, county, and state level. Currently, justices of the peace are the only elected officials in Arizona that must seek a political party’s nomination without being able to vote in a political party’s elections. We are not

² Providing accurate information on the judicial branch to people engaged in policymaking is consistent with the recommendations of the Task Force on Countering Disinformation. Administrative Office of the Court, Supreme Court of Arizona, Concluding Report, Task Force on Countering Disinformation (March 1, 2022). The Chief Justice created the task force in part to “Propose approaches to public education and communication that accurately reflect the roles and processes of courts.” Establishment of the Task Force on Countering Disinformation, Ariz. Supreme Ct. Admin. Order No. 2019-114, at 2 (September 18, 2019).

requesting the authority to *endorse* a candidate, we are requesting the ability to *vote for* a candidate.

II. JUDGES CAN COORDINATE SIGNATURE COLLECTION WITH NON-JUDICIAL CANDIDATES WITHOUT EITHER ENDORSING THOSE CANDIDATES OR ASSISTING IN THEIR CAMPAIGNS

Establishing clear guidance on signature collection that is both ethical and realistic is not merely a matter of convenience. Many justice of the peace candidates are required to collect substantially more signatures than legislative candidates;³ but unlike nearly every other candidate running for office in Arizona, we are not allowed to collect signatures on-line. The burdens associated with signature collection have the capacity to preoccupy and to engulf a justice court judge.⁴

The Commission is correct that additional explanation in this area is appropriate. The Commission’s comment states in part, “It can certainly be argued that it would be easier on judicial candidates if they could assist each other in gathering nominating petition signatures, ...” We are not seeking to coordinate signature collection with other judges. Every candidate for

³ By way of example, the minimum number of signatures required to qualify for the Republican nomination for Justice of the Peace in the McDowell Mountain Justice Court was 1,625. A Republican seeking the nomination for District 2 of the Maricopa County Board of Supervisors was required to submit at least 1,060 signatures. The highest minimum number any Arizona legislative candidate was required to file was 766.

⁴ One of the arguments against returning to the direct election of Superior Court judges was that merit selection eliminated the need for judges and for political parties to circulate petitions to collect signatures. John M. Roll, Merit Selection: The Arizona Experience, 22 Ariz. St. L. J. 837 n. 197 (1990).

justice of the peace must collect signatures from their own justice court precinct. Those precincts do not overlap each other and therefore there is no need to coordinate signature collection with each other. We are seeking clear rules governing the coordination of signature collection with candidates for other offices in districts that overlap our justice court precincts.

Several common campaign practices may or may not violate current judicial ethical standards in part because those standards were written for judges that have no need to collect signatures. May a justice of the peace collect their own signatures by going door-to-door with a constable? Does the answer change if, rather than a constable, the other person is a member of the state legislature? May a justice of the peace, who is required to seek the nomination of a political party, appear in that political party's booth at a county fair along with other candidates? May a justice of the peace collect their own signatures while going door-to-door with someone who is collecting signatures for three other candidates?

If Rule 4.6 is adopted, all of the other judicial ethics rules and canons would still apply. The recommend comments make it clear that a justice of the peace could not circulate any other candidate's petitions. By way of comparison, if a voter helps with a state senate campaign, it could trigger

additional access to a member of the legislature. In contrast, if a voter helps with a judge's campaign, it would trigger a recusal if that voter has a case before the judge.

III.

ANY OBJECTION TO POTENTIAL LANGUAGE IN A COMMENT CAN BE RESOLVED BY SIMPLY REMOVING THE PROPOSED LANGUAGE

Explaining portions of political platforms could be done in a manner consistent with every current judicial ethics requirement. Even so, we concede numerous potential problems could be generated in an attempt to do so. Accordingly, we do not object if that phrase⁵ is removed from consideration.

CONCLUSION

There are sound arguments in favor of a judicial selection system where candidates are screened, appointed, evaluated, and then face a yes or no retention election. Perhaps someday nearly all judges will serve in such a system. Until that time, judges required to collect signatures and to

⁵ The proposed comment language that could easily be omitted is: “in efforts to explain the platforms of political parties.” If that change does not resolve the concerns, then two additional changes are warranted. Proposed Rule 4.6(C) could be changed to “Elected judges may participate in voter registration efforts and in get out the vote drives on behalf of a political party.” The first sentence of comment paragraph 3 could be revised to: While elected judges may participate in efforts to register voters and in efforts to encourage registered voters to vote, elected judges cannot distribute materials on behalf of a campaign other than their own.

campaign as a member of a political party should not be treated identically to those who do not.

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