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April 20, 2021

Honorable Robert M. Brutinel  
Chief Justice  
Arizona Supreme Court  
1501 West Washington Street, #411  
Phoenix, Arizona 85007

**Re: Proposed Amendments to Rules 18.4 and 18.5 Ariz. R. Crim. Pro. and  
Rule 47(e) Ariz. R. Civ. Pro. – Petition R-21-0020**

Dear Chief Justice Brutinel:

The Arizona Chapter of the American College of Trial Lawyers strongly opposes the proposal to eliminate peremptory challenges of prospective jurors. No proposed rule change in memory has elicited such a strong and nearly unanimous negative reaction from our members who have expressed views on the proposal.

The premise underlying jury trials is that from a pool of citizen voters, one can draw a panel that enters the trial proceedings with an open mind and, like Lady Justice with her blindfold and scales, can render an impartial verdict based solely on the evidence. Trial lawyers know that this central premise is threatened by unpersuadable jurors, who not only are incapable of impartiality, but frequently hijack deliberations to expound on grievances and world views they bring into the process. With few exceptions, these people cannot be identified and excluded for cause, but experienced trial lawyers and jury consultants are pretty good at ferreting them out through peremptory challenges. Allowing unpersuadable persons on a jury, with no possible means of exclusion unless they blurt out something so disqualifying as to warrant a challenge for cause, is a very disturbing prospect.

The problem of unpersuadable jurors appears to be worsening. A significant and growing percentage of citizens appear to view events through a prism that supports a narrative they have adopted and apply to all events. Even distinctly non-political phenomena, like pandemics, result in polarization and evidence-bending to advance a preferred narrative. Finding jurors with an open mind, willing to go one way or the other based solely on the evidence, is surely harder today than in the past. For these reasons, eliminating peremptory challenges will undermine rather than enhance the administration of justice.

The authors of the proposal to eliminate peremptory challenges have provided a thoughtful analysis of an ongoing problem, but the occasional misuse of peremptory

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challenges cannot justify the prohibition of peremptory challenges altogether. Automobiles, prescription drugs, the internet, securities transactions, and government transfer programs -- indeed, virtually all important aspects of our society -- are subject to misuse. We adopt rules to penalize misuse of these valuable products, services, and practices; we do not ban them altogether. Peremptory juror challenges likewise serve a valuable function in the administration of justice and should be preserved.

Very truly yours,

  
Paul J. McGoldrick  
Chair, State Committee

### **About the American College of Trial Lawyers**

The American College of Trial Lawyers is composed of preeminent members of the trial bar from the United States and Canada and is recognized as the leading trial lawyer's organization in both countries. Membership is limited to not more than 1 percent of lawyers licensed to practice in Arizona. Founded in 1950, the College is an invitation only fellowship. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism, and collegiality. The College is dedicated to maintaining and seeking to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings. Fellows are trial lawyers. The fellowship is comprised of lawyers who represent plaintiffs and defendants in civil matters along with prosecutors and defense counsel in criminal matters.

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