



May 16, 2023

U.S. & Electronic Mail

The Honorable Katie Hobbs
Office of the Arizona Governor
1700 West Washington Street
Phoenix, Arizona 85007

Re: HB 2757 – Judicial Retention Elections for Judges on the Arizona Court of Appeals

Dear Governor Hobbs:

We write to ask you to sign HB 2757. This bill secures the right of all Arizonans to vote on the retention of the judges that sit on the Arizona Court of Appeals. It is good policy and corrects an existing statute that is unconstitutional.

The right to vote in judicial elections goes to the founding of our state. President Taft vetoed Arizona’s admission to the United States because our proposed state constitution allowed for the recall of judges. Arizonans removed the offending provision to gain statehood. But then, in true independent fashion, the First Legislature placed an amendment restoring the provision before the voters, and they approved it.

Unfortunately, when it comes to judges sitting on the Arizona Court of Appeals, existing law does not protect another important constitutional right: that of all Arizonans to have a say in whether those judges are retained.

Under the Arizona Constitution, the judicial power of the state is vested in an integrated judicial department consisting of a superior court, a supreme court, and “such intermediate appellate courts as may be provided by law.” Ariz. Const. art. VI, § 1. Arizona law establishes the Court of Appeals as that intermediate appellate court. A.R.S. § 12-120(A).

The Court of Appeals is comprised of 28 judges and decides appeals in panels of three-judges called “departments.” These departments are administratively divided into two divisions, with six in division one and three in division two. A.R.S. § 12-120(B). Nevertheless, the Court of Appeals acts as a “single court.” A.R.S. § 12-120(A). That means when a department of the Court of Appeals renders an opinion, that decision is binding legal precedent that affects the

entire state and all its voters, irrespective of which department or division issued it. *Scappaticci v. Sw. Sav. & Loan Ass'n*, 135 Ariz. 456, 461 (1983) (“A decision by the Arizona Court of Appeals has statewide application.”). Importantly, because the Arizona Supreme Court accepts review in only a small number of cases, the Court of Appeals is the court of last resort for the majority of Arizona litigants.

The unitary nature of the Court of Appeals is exemplified in other ways. For example, the Court of Appeals can, and regularly does, transfer cases between the two divisions “to equalize caseloads and for the best use of judicial resources.” A.R.S. § 12-120(E). Judges may participate in matters pending before either division. *Id.* The composition of departments can change. *See generally* Administrative Orders of the Court of Appeals. And the Commission on Appellate Court Appointments, a statewide commission that nominates judges to the Arizona Supreme Court and Court of Appeals, vets and nominates the applicants for the Court of Appeals.

Despite its statewide character, existing law does not afford all Arizona voters the right to vote on the retention of all the judges on the Court of Appeals. A.R.S. § 12-120.02. This is unlike the statewide retention elections for justices of the Arizona Supreme Court. Instead, the voter’s residency limits the voter’s choices to only those judges sitting for retention in a corresponding geographic area. That is not only unfair to Arizona voters, who are bound by the decisions of these judges, it also raises serious constitutional questions.

Specifically, Arizona’s Constitution requires that “[a]ll elections shall be free and equal....” Ariz. Const., art. II, § 21 (emphasis added). That means that the vote of each voter must be “equal in its influence.” *Chavez v. Brewer*, 222 Ariz. 309, 319 (App. 2009) (citation omitted). And that “each vote is given the same weight as every other ballot.” *Id.* Existing law does not allow for “equal influence” from voters on the retention of appellate judges. Arizona voters in each county get no vote on several members of the statewide court.

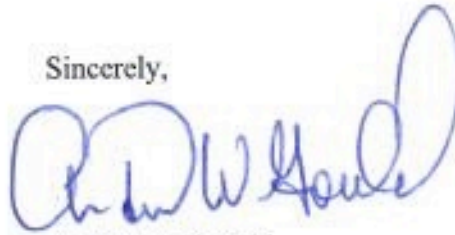
HB 2757 corrects this problem by ensuring all voters in this state get a vote on and an equal say in the retention of judges to the Court of Appeals. That is the proper policy to protect Arizona voters. And that is the proper constitutional course.

Consequently, as a legal and policy matter, we urge you to sign HB 2757.

Thank you for your consideration of this important measure, and, if you should have any questions regarding this matter, please do not hesitate to contact us directly.

Hon. Katie Hobbs
May 16, 2023
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Sincerely,



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