

10/30/2020 @ 8:00am

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-095696

10/29/2020

HONORABLE JANICE CRAWFORD

CLERK OF THE COURT  
V. Felix  
Deputy

CHARLENE R FERNANDEZ, et al.

JAMES E BARTON II

v.

COMMISSION ON APPELLATE COURT  
APPOINTMENTS, et al.

MICHAEL S CATLETT

AMMON BARKER  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
THOMAS J. BASILE  
ROBERT BRUTINEL  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
JAIME CHAMBERLAIN  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
LAURA CISCOMANI  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
BUCHANAN DAVIS  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
WILLIAM GRESSER  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
TRACY MUNSIL  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
GERALD NABOURS  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-095696

10/29/2020

JONATHAN PATON  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
DANIEL SEIDEN  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
LARRY SUCIU  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
KEVIN TAYLOR  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
KATHRYN TOWNSEND  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
TINA VANNUCCI  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
LINLEY WILSON  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
JAMES ZIELER  
1501 W WASHINGTON STE 221  
PHOENIX AZ 85007  
JUDGE CRAWFORD

**MINUTE ENTRY**

Courtroom 205 – SEA

10:30 a.m. This is the time set for Return Hearing regarding Plaintiff's Motion for Temporary Restraining Order (With Notice) and Application for Order to Show Cause filed on October 23, 2020 and Defendant Commissioner on Appellate Court Appointments' Response In Opposition to Motion for Temporary Restraining Order filed on October 28, 2020. Plaintiffs, Charlene Fernandez and David Bradley, are represented by above-named counsel James Barton who is appearing virtually through GoToMeeting. Defendant, Commission on Appellate Court

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-095696

10/29/2020

Appointments, is represented by Joseph Kanefield, Brunn Roysden, Michael Catlett, and Kate Sawyer who are appearing virtually through GoToMeeting. Proposed Intervenors, Karen Fann and Russell Bowers, are represented by Kory Langhofer and Thomas Basile who are appearing virtually through GoToMeeting.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the Motion to Intervene filed on October 26, 2020.

**IT IS ORDERED** the Motion to Intervene filed by Arizona Senate President Karen Fann and Speaker of the Arizona House of Representatives Russell Bowers is granted as unopposed.

Further discussion is held.

Oral argument is presented.

**IT IS ORDERED** taking this matter under advisement.

11:14 a.m. Matter concludes.

**LATER:**

Plaintiffs have applied for a temporary restraining order to stay the seven-day clock for Plaintiff Fernandez to make her appointment to the independent redistricting commission. Plaintiffs argue that the pool of nominees created by the Commission on Appellate Court Appointments (“CACA”) includes 2 unqualified applicants. The Court has considered the Motion for Temporary Restraining Order (With Notice) and Application for Order to Show Cause, the Verified Complaint for Special Action, Defendant Commission on Appellate Court Appointments’ Response in Opposition to Motion for Temporary Restraining Order, along with arguments of counsel.

**Injunction Standards**

Injunctive relief is in order when “(1) there is a real threat of irreparable injury not remediable by damages; (2) the threatened harm to the [movants] weighs more heavily in the balance than the actual injury to the [opponents]; (3) the [movants] are likely to succeed in the trial on the merits; and (4) public policy favors the injunction.” *Burton v. Celantano*, 134 Ariz. 594, 595 (App. 1982). The balance of hardships is the crucial element and can be met by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury; or (2) the existence of serious questions going to the merits and the balance of hardships tips

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-095696

10/29/2020

sharply in the moving party's favor. *Shoen v. Shoen*, 167 Ariz. 58, 63 (App. 1990). This Court has the power to enjoin violations of the Arizona Constitution. *E.g., Williams v. Superior Court in and for Pima County*, 108 Ariz. 154, 157 (1972).

Plaintiffs' summary of facts is set forth in the Verified Complaint for Special Action. The CACA issued its list of 25 nominees on 10/8/2020. The list included 10 registered Republicans, 10 registered Democrats, and 5 nominees who were not registered with either party.

Plaintiffs allege that two of the non-party nominees are not qualified. Specifically, Plaintiffs allege Mr. Thomas Loquvam is not qualified because he is registered as an active lobbyist with the Arizona Corporation Commission ("ACC") and that Mr. Robert Wilson is not qualified because his political activities show that he is not an unbiased independent voter with no party affiliation.

It is undisputed that the CACA sought applicants for individuals interested in serving on the Arizona Independent Restricting Commission ("AIRC"), sought public comment on the applicants, conducted investigations on the applicants, and held public hearings on the applicants. It is also undisputed that Mr. Loquvam's application disclosed his registration as a lobbyist with the ACC. Plaintiffs admit that they opposed and questioned Mr. Loquvam's and Mr. Wilson's qualifications during the proceedings conducted by the CACA.

On 10/22/2020, Arizona Speaker of the House Rusty Bowers made his appointment to the AIRC. Plaintiffs contend the appointment was premature because it was made in a year ending in zero while the constitutional requirement requires appointments to the commission be made "[n]o later than January 31 of years ending in one." Ariz. Const. Art. 4 Pt. 1 § 1(3), (4). The Court does not find the argument persuasive. The constitutional requirement sets a deadline, it does not speak to the earliest time an appointment can be made.

### Irreparable Injury

Irreparable injury is harm not remediable by damages for which there is no adequate legal remedy. *See IB Prop. Holdings, LLC v. Rancho Del Mar Apartments, Ltd. Partnership*, 228 Ariz. 61, 65 (App. 2011). The Court has considered irreparable injury under the context in which the Motion for Temporary Restraining Order was filed.

Plaintiffs contend that they were caught off guard when the Speaker made his appointment so far in advance of the deadline. However, Plaintiffs have not offered any persuasive argument to show why the Motion for Temporary Restraining Order could not have been filed before the Speaker made his appointment to the AIRC. As set forth above, Plaintiffs had acted to oppose Mr. Loquvam's and Mr. Wilson's applications and, thus, knew the facts on which they contend

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-095696

10/29/2020

Mr. Loquvam and Mr. Wilson are unqualified. Any irreparable injury is caused by Plaintiffs waiting until after the Speaker made his appointment to seek the Court's intervention.

The Court finds persuasive the arguments made by Defendant that the claims are not redressable. Plaintiffs ask the Court to stop the process set forth in Ariz. Const. Art. 4 Pt. 1 § 1(6) to allow time for a court ordered recreation of the pool of nominees to replace Mr. Loquvam and Mr. Myers with two alternate non-registered candidates. Plaintiffs contend that the recreated pool of nominees need not impact the Speaker's appointment of Mr. Mehl to the AIRC. Plaintiffs' argument asks the Court to fundamentally rewrite the specific language set forth in Const. Art. 4 Pt. 1 § 1(6) by altering the time mandates and the language under which all appointments are made from a single pool of nominees sent by the CACA.

Probable Success on the Merits

As set forth above, Plaintiffs allege that Mr. Loquvam is not qualified because he is a paid registered lobbyist within the meaning of Paragraph 3 of Article IV, Part 2, Section 1 of the Arizona Constitution and that Mr. Wilson is not an unbiased independent voter or that Mr. Wilson is not, actually, an Independent. As set forth above, it is not disputed that the CACA invited public comment, did its own investigation into the applicants, and conducted interviews. Plaintiffs acknowledge that they opposed the nominations of Mr. Loquvam and Mr. Wilson before the CACA on the same grounds as they assert in this case.

It is undisputed that Mr. Wilson has been registered as an Independent for three or more years prior to the appointment. It is unlikely that the CACA was not fully apprised on the facts under which Plaintiffs contend Mr. Wilson is not unbiased. Thus, the Court finds that Plaintiffs are not likely to be successful on the merits as to Mr. Wilson.

It is undisputed that Mr. Loquvam disclosed that he was registered as a lobbyist with the ACC. While the Court, at this stage, may consider Plaintiffs' position to have some merit, the Court declines to substitute its opinion on the qualifications of a nominee who was fully vetted by the CACA. Furthermore, Plaintiffs are asking the Court to disqualify Mr. Loquvam from the pool of nominees without any verified allegation or persuasive argument that Plaintiffs will be deprived on making their selection or will have lost an opportunity to select a candidate that did not become part of the pool because of Mr. Loquvam's nomination.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2020-095696

10/29/2020

The Balance of Hardships and the Public Interest

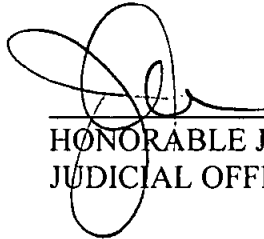
The public has a great interest in ensuring that the AIRC is composed of qualified individuals. That is accomplished through the CACA's process of seeking public comment and conducting public hearings. The public interest will not be furthered by the Court creating confusion into the constitutionally mandated deadlines or the possibility of removing a properly appointed member by restarting the process of submitting a pool of qualified applicants.

Conclusion

Based on the foregoing and for the reasons set forth in Defendant Commission on Appellate Court Appointments' Response in Opposition to Motion for Temporary Restraining Order,

**IT IS ORDERED** Plaintiffs' Motion for Temporary Restraining Order is denied.

DATED this 29<sup>th</sup> day of October 2020.



---

HONORABLE JANICE CRAWFORD  
JUDICIAL OFFICER OF THE SUPERIOR COURT