

## AZ Supreme Court opinion explains IRC decision on Bender

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The Arizona Supreme Court on Friday justified its reasoning in allowing ASU law professor Paul Bender to remain as a candidate for the Independent Redistricting Commission by saying no use of the terms "public office" or "public officers" in Arizona law includes tribal officers.

The opinion, which came in a rare split decision for the court, was issued seven months after their decision to allow Bender, a tribal judge in his spare time, to remain as an independent candidate for the commission while disqualifying two Republicans who held seats on water district boards.

Legislative leaders in December brought suit against the Commission on Appellate Court Appointments, the screening panel for the Independent Redistricting Commission, alleging that the panel failed to present them with a list of nominees who are qualified to serve.

Former House Speaker Kirk Adams and Senate President Russell Pearce contended that Republicans Mark Schnepf and Stephen Sossaman and Bender were ineligible to serve on the Redistricting Commission because they hold public office as it is defined by the state Constitution. Schnepf and Sossaman are East Valley farmers who serve on irrigation districts.

Adams and Pearce were banking on the language in the Constitution that says a person who has served "in any other public office" other than as a member of officer of a school board is disqualified from serving on the Redistricting Commission.

"Because (the Arizona Constitution) contains no language indicating that its proscription on commissioners holding 'other public office' extends to Indian Tribes, we hold that the position of tribal judge is not a 'public office,' . . ." Justice W. Scott Bales wrote on behalf of the majority.

Justices Andrew Hurwitz and Michael Ryan concurred.

Justices Robert Brutinel and John Pelander dissented.

They said that while they agree with the majority's decision on the two Republicans, they believed they should have afforded "the phrase 'any other public office' its unqualified, broad meaning."

Brutinel wrote that it is clear from the constitutions and bylaws of the San Carlos Apache Tribe and Fort McDowell Yavapai Tribe, where Bender serves as a judge, that they delegate judicial powers to their judges and that "the judicial powers of a tribal nation are governmental powers of a sovereign."

"As a judge, therefore, Bender exercises a portion of the governing power of these two sovereigns, making him a public official of these tribes," Brutinel wrote.

The screening panel eventually passed on Bender, whom Republicans claimed could be accurately described as a liberal, and chose Colleen Mathis as the Redistricting Commission's independent representative. As the independent, she serves as the chair, and she has been under fire from Republicans who have alleged recently that she too leans left and sides with the 5-member Commission's two Democrats almost exclusively on key votes.

The Supreme Court used far less ink on the 33-page opinion to explain their reasoning behind disqualifying Schnepf and Sossaman.

The justices said that since irrigation districts derive their powers from the Constitution and they are considered political subdivisions, Schnepf and Sossaman hold public office "just as officers of a city or a county hold public office."