

APPLICATION (INCLUDING ATTACHMENTS) FOR
INDEPENDENT REDISTRICTING COMMISSION

Answer all items in print or type. Attach additional sheets as needed to answer completely.

FULL NAME Paul Bender

SPOUSE'S NAME (if applicable) Margaret T. Bender

HOME ADDRESS 2222 N. Alvarado Rd.

CITY Phoenix STATE Arizona

ZIP 85004

COUNTY OF RESIDENCE Maricopa RESIDENT OF ARIZONA
SINCE 1984

EMPLOYER Arizona State University TITLE
Professor of Law

OFFICE ADDRESS College of Law, Arizona State University
OFFICE PHONE 480 965 2556

CITY Tempe STATE Arizona ZIP 85287

EDUCATION: Include name(s) of institution(s) and year diploma(s) or degree(s) received.

Harvard College, A.B., 1954

Harvard Law School, LL.B., 1957

List all political activities for at least the past ten years. Include dates of service and indicate all offices held in any organization. (Use attachment if necessary.)

None

List all professional and occupational memberships for at least the past ten years. Include dates of service and indicate all offices held in any organization. Please include honors, awards and other forms of recognition. (Use attachment if necessary.)

American Law Institute, Life Member. Member since 1985.

Public Interest Award, Arizona Center for Law in the Public Interest, 2010.

American Bar Association, Gavel Award, c1970 (for article in Harpers Magazine reviewing the work of the U.S. Supreme Court).

List all civic and community service activities for at least the past ten years. Include dates of service and indicate all offices held in any organization. Please include honors, awards and other forms of recognition. (Use attachment if necessary.)

Board of Trustees, the Heard Museum, 1988-1998; Chairman of the Collections Committee, 1990-1993

ATTACH A RESUME OR BIOGRAPHICAL STATEMENT. Applications that do not include a resume or biographical statement will be considered incomplete and will NOT be considered for nomination.

BIOGRAPHICAL STATEMENT

I was born in 1933 in Brooklyn, New York, and attended public elementary and secondary school there. I received my B.A., cum laude, from Harvard College in Physics in 1954. I received an LL.B, magna cum laude, from Harvard Law School in 1957. I ranked third in my class, and was a member and officer (Development and Supreme Court Note Editor) of the Harvard Law Review.

After graduation from law school, I was briefly an Associate at the New York law firm of Paul, Weiss, Rifkind, Wharton and Garrison before taking a leave to accept a Sheldon Travelling Fellowship from Harvard University. After the Fellowship, I served as law clerk to Judge Learned Hand, of the United States Court of Appeals for the Second Circuit (1958-1959), and as law clerk to Justice Felix Frankfurter, of the Supreme Court of the United States (1959-1960).

In 1960, I was appointed Assistant Professor of Law at the University of Pennsylvania Law School, and was subsequently promoted to Associate and full Professor. I taught at the University of Pennsylvania Law School from 1960 to 1984, specializing in Constitutional Law, intellectual property law and federal civil procedure. During that time I was a visiting professor at Stanford Law School, and also took leaves or worked part time at several state and federal government and public interest positions. These included service as Assistant to Solicitors General of the United States Archibald Cox and Thurgood Marshall in 1965 and 1966, service as General Counsel to the United States Commission on Obscenity and Pornography from 1968 to 1970, service during the late 1970s as Reporter for the United Nations Association of the United States Report to the President of the United States on Human Rights and American Foreign Policy, and service as a consultant to Philadelphia District Attorney Arlen Specter in addressing unconstitutional delays in post-arrest arraignment and hearing procedures in Philadelphia state courts. During the 1980s, I was Chair of the Faculty Senate of the University of Pennsylvania, Chairman of the University Council (the University-wide governing body, composed of the President, Provost, and elected students and members of the faculty), served as a member of the University's Search Committee to choose a University President, and was chairman of the law school admissions committee that designed the school's affirmative-action program. While at Penn, I published articles on constitutional and intellectual property law, and was co-author of the two-volume treatise, "Political and Civil Rights in the United States."

My wife and I came to Arizona in 1984 when I accepted appointment as Dean of the College of Law at Arizona State University. I served as Dean until 1989, and have been a tenured law school faculty member since then, primarily teaching U.S. Constitutional Law as well as a course in Arizona Constitutional Law. Among my civic activities since coming to Arizona, I have served as an ex-officio member of the State Bar Board of Governors, chairman of the Governor's Task Force on Medical Malpractice Insurance, chairman of the Arizona Supreme Court Commission on Minorities in the Judiciary, and chairman of the committee appointed by the Supreme Court to implement the adoption of the Victims' Rights Amendment to the Arizona Constitution. I have written background papers on Arizona Constitutional Law for two Arizona Town Halls, lecture frequently on state and federal constitutional law at judicial conferences, bar association meetings, continuing

education programs for lawyers and judges, and meetings of civic groups, and have testified regarding constitutional, intellectual property and federal Indian Law issues before U.S. Senate and House of Representatives committees and committees of the Arizona Legislature. I was chairman of a national task force, composed of representatives of Indian tribes, museums, anthropologists and archeologists, established by the Heard Museum at the request of the U.S. Senate subcommittee on Indian affairs, to make recommendations to Congress regarding the repatriation of Indian human remains and funerary and cultural patrimonial materials in the possession of state and federal governments and museums and universities receiving federal financial assistance. The task force report was the basis for comprehensive and so far successful federal and Arizona legislation on that subject. I serve regularly as legal commentator for Channel 8's Horizon program, and frequently am asked to comment in the media on state and federal legal and constitutional issues.

In the early 1990s, I took a leave from the ASU law school faculty to serve as Principal Deputy Solicitor-General of the United States, where I supervised federal government appellate litigation concerning civil and constitutional rights, tort claims against the United States and other subjects. In that capacity, I wrote briefs and argued cases in the U.S. Supreme Court on behalf of the United States in litigation concerning legislative redistricting and the federal Voting Rights Act, desegregation of public schools, racial discrimination in employment, housing, and federally funded programs, implementation of federal laws prohibiting discrimination on grounds of disability and age, state gender discrimination in higher education, and First Amendment religion and free speech issues. I have argued more than twenty cases in the U.S. Supreme Court, as well as cases in the Arizona Supreme Court, the U.S. Court of Appeals for the Ninth Circuit and other federal courts of appeal. I am currently Of Counsel to Meyer, Klipper and Mohr, a small Washington, D.C. law firm specializing in intellectual property and free expression issues.

ATTACH A STATEMENT OF INTEREST EXPLAINING WHY YOU ARE INTERESTED IN SERVING ON THE INDEPENDENT REDISTRICTING COMMISSION. Applications that do not include a statement of interest will be considered incomplete and will NOT be considered for nomination.

STATEMENT OF INTEREST

I strongly believe in the importance of the Commission's constitutionally assigned tasks of reducing the role of partisan politics in the redistricting process and favoring competitive election districts, while complying with federal law and respecting communities of interest and other traditional redistricting criteria. I was disappointed by the inability of the first Redistricting Commission to be able to increase the number of competitive election districts in Arizona. That was and is a difficult task to accomplish within the Arizona Constitution's complex parameters, especially when attempted for the first time. My background and experience might be useful as part of a second attempt to

formulate effective Commission procedures and standards, in order to further the important non-partisan objectives the Commission was established to serve.

COMPLETELY ANSWER ALL OF THE FOLLOWING QUESTIONS:

1. Are you committed to applying the provisions of the Arizona Constitution, Article IV, Part 2, Section 1 in an honest, independent and impartial fashion, and to upholding public confidence in the integrity of the redistricting process? Yes (X) No ()
2. Will your employment and/or personal circumstances permit you to attend meetings of the Independent Redistricting Commission in their entirety? Yes (X) No ()
3. Are you a registered Arizona voter? Yes (X) No ()
4. Have you been continuously registered for at least the past three years with the same political party or as unaffiliated with a political party? Yes (X) No () If no, attach explanation.

Indicate political registration for the past three years: Independent

5. During the past three years, have you:
 - a. been appointed to, elected to, or a candidate for any other public office, including precinct committeeman or committeewoman, but not including school board member or officer? Yes () No (X)
 - b. served as an officer of a political party or as an officer of a candidate's campaign committee? Yes () No (X)
 - c. served as a registered paid lobbyist? Yes () No (X)

If your answer to any part of this question is "Yes," attach an explanation.

6. Is there any possible conflict of interest or other matter that would create problems or prevent you from fairly and impartially discharging your duties as an appointee to the Independent Redistricting Commission? Yes () No (X) If your answer is "Yes," attach an explanation.
7. Are you now an officer, director, or majority stockholder, or otherwise engaged in the management, of any business enterprise? Yes () No (X)
If your answer is "Yes," give details by attachment, including the name of the enterprise, the nature of the business, the title and description of your position, the nature of your duties, and the term of your service.
8. If your parents, siblings, spouse, or children are employed or engaged in any business or profession, state (by attachment) their names and the name and address of their employer or the business in which they are engaged. Not Applicable.

9. Have you filed your state or federal income tax returns for all years you were legally required to file them? Yes (X) No () If your answer is "No," explain by attachment.
10. Have you paid all state, federal and local taxes when due? Yes (X) No () If your answer is "No," explain by attachment.
11. Have you ever violated a court order including but not limited to an order for payment of child or spousal support? Yes () No (X) If your answer is "Yes," explain by attachment.
12. Have you ever been expelled, terminated, or suspended from any employment or school or course of learning on account of plagiarism, cheating, or any other "cause" that might reflect in any way on your integrity? Yes () No (X) If your answer is "Yes," explain by attachment.
13. Are you, in any jurisdiction, currently charged with or have you ever been arrested for, convicted of, or pleaded guilty to any felony, misdemeanor (excluding civil traffic violations), or violation of the Uniform Code of Military Justice? Yes () No (X) If your answer is "Yes," explain by attachment.
14. If you performed military service, please indicate the date and type of discharge. If other than honorable discharge, explain by attachment. Not applicable.
15. List and describe by attachment any litigation involving an allegation of fraud in which you are or were a defendant. Not applicable.
16. In the past year, have you ever been reprimanded, demoted, disciplined, placed on probation, suspended, or terminated by an employer as a result of your alleged consumption of alcohol, prescription drugs, or use of illegal drugs? Yes () No (X) If your answer is "Yes," explain by attachment the circumstances under which such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.
17. Have you failed to vote in any general election held during the past eight years? Yes () No (X) If your answer is "Yes," explain by attachment.
18. Have you ever refused to submit to a test to determine whether you had consumed and/or were under the influence of alcohol or drugs? Yes () No (X) If your answer is "Yes," state the date you were requested to submit to such a test, type of test requested, the name of the entity requesting that you submit to the test, the outcome of your refusal and the reason you refused to submit to such a test.
19. Within the last five years, have you ever been formally reprimanded, demoted, disciplined, placed on probation, suspended or terminated by an employer? Yes () No (X) If your answer is "Yes," state the circumstances under which such action was taken, the date(s) such action was taken, the name(s) of any persons who took such action, and the background and resolution of such action.
20. Has a judgment or finding that you failed to comply with the substantive requirements of any business or contractual arrangement, including but not limited to bankruptcy proceedings, ever been entered against you? Yes () No (X) If your answer is "Yes," explain by attachment.

GENDER: MALE FEMALE

APPLICATIONS MUST BE RECEIVED AT THE ADDRESS BELOW BY 5:00 P.M. ON OCTOBER 15, 2010. LATE APPLICATIONS WILL NOT BE CONSIDERED.

RETURN TO: Commission on Appellate Court Appointments
 Attn: Annette Corallo
 1501 West Washington, Suite 221
 Phoenix, Arizona 85007

21. List by attachment all elected or appointed offices that you have held and/or for which you have been a candidate, and the dates.

I have never held elective governmental office. However, I have been appointed and reappointed Chief Judge of two Arizona tribal courts within the past 10 years. I also served as an appointed judge of the Hopi Tribe's Court of Appeals during the 1980s and early 1990s. These were appointments made either by the tribal council, or by the tribal chairman or president with the approval of the council.

Once appointed, judges of these tribal courts are completely independent of the tribal government, have tenure, and play no role in tribal affairs or tribal governmental affairs except to decide cases pursuant to applicable tribal law. During the term of appointment (4 or 6 years) my role as a tribal judge with respect to tribal government and tribal affairs is essentially the same as the role of federal judges with respect to the federal government; the tribal courts on which I sit are a completely independent branch of tribal government.

I have either served pro bono as a tribal judge or been compensated at an hourly rate set by the tribe. Tribal appellate judges are ordinarily independent contractors, rather than tribal employees. None of the judges on the tribal courts on which I now serve are members of the tribes where we sit - they are American Indian members of other tribes. Having non-member judges is common in tribal courts, especially in tribal appellate courts. Tribal constitutions ordinarily require that tribal appellate court judges have law degrees. Some tribes have no members with law degrees; in many tribes that have members with law degrees, those tribal members are often young and relatively inexperienced. It is common for state court judges and law professors to be asked to serve as members of tribal appellate courts in order to permit those courts to function effectively.

22. Provide any additional information relative to your application or qualifications you would like to bring to our attention at this time.

BY SIGNATURE OF THIS APPLICATION:

If appointed to the Independent Redistricting Commission I understand I will be ineligible for Arizona public office or for registration as a paid lobbyist during my term on the Independent Redistricting Commission and for three years thereafter, pursuant to the Arizona Constitution, Article IV, Part 2, Section 1.

I have reviewed the constitutional requirements governing the Independent Redistricting Commission and attest that I meet those requirements.

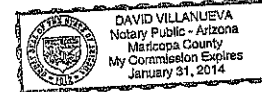
I authorize investigation of all of my responses to this application and further authorize the references listed in the confidential section of this Application to give you any and all information concerning my qualifications they may have, personal or otherwise, and release all parties from all liability for any damages that may result from furnishing information to you.

I understand that the Commission which reviews my application may or may not conduct an interview, and may make its decision based on my responses to this Application and any due diligence.

The statements contained in this application are true and correct to the best of my knowledge.

SIGNATURE Paul Bender DATE 10/12/10

State of Arizona }
County of Maverick } ss.



Subscribed and sworn to before me this 12 day of October, 2010, by
Paul Bender

Notary Public

My Commission Expires:
1/31/14

OPTIONAL SECTION

The Commission on Appellate Court Appointments strives for diversity in its appointments. Therefore, in this optional section, we ask you to consider providing us with information that will help us evaluate our progress in achieving this goal.

RACE/ETHNICITY: WHITE (Not Hispanic) NATIVE AMERICAN
 HISPANIC ASIAN/PACIFIC ISLANDER
 BLACK

November 15, 2010

Commission on Appellate Court Appointments
Attention: Vanessa Haney
1501 West Washington Street
Suite 221
Phoenix, AZ 85007

RE: Application of Paul Bender for the Independent Redistricting Commission

Dear Commission Members:

Clint Bolick has sent me a copy of his November 10 letter to you, written on behalf of the Goldwater Institute, stating his opinion that I am not eligible to be a member of the Independent Redistricting Commission because of my part-time service on two Indian tribal appellate courts. I believe his conclusion is based on an incorrect reading of the Arizona Constitution.

The Constitution provides that Independent Redistricting Commission members "shall not have been appointed to, elected to, or a candidate for any other public office" in the three years prior to their appointment to the commission. Ariz. Const., Article IV, Part 2, § 1(3). The phrase "any other public office," I think, means to refer to those who hold public office in Arizona's *state* government, or in the government of Arizona's counties, cities, towns or other governmental units. The phrase does not, I think, intend to refer to officials of American Indian tribes, which are separate sovereign entities that are not in any respect part of Arizona's state or local government systems. In all events, I think that the language certainly does not mean to disqualify law school faculty members, like myself, who, as part of our academic community service activity, serve as part-time judges for tribes whose constitutions require their appellate courts to be staffed by persons holding law degrees.

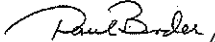
That conclusion seems to me to be supported by the language of subsection (13) of section one, which makes members of the Redistricting Commission, after their appointment, "ineligible for *Arizona* public office" during their service on the Commission. Similar language is present in section 5 of Article IV, Part 2 of the Constitution, which makes members of the state Legislature ineligible for "other public offices." Section 5 defines "other public offices" as offices of "*the State of Arizona or, any county or incorporated city or town thereof.*" The Arizona Supreme Court has recently confirmed that the Redistricting Commission "acts as a legislative body." *Arizona Minority Coalition v. Arizona Independent Redistricting Commission*, 220 Ariz. 587, 595 (2009).

The Commission on Appellate Court Appointments' statement of "Information for Applicants for Independent Redistricting Commission," which applicants are asked to read before applying, is to the same effect. It provides that, in determining what is a "public office" for purposes

of the disqualification provision on which Mr. Bolick relies, the Appellate Court Commission will ask whether the position is "created by the Arizona Constitution or a statute." Tribal appellate-court judgeships obviously do not fall within this description, nor are any tribally-related positions contained in the statement's list of 30 "public offices" to which the disqualification provision applies. That list is not exhaustive. The statement, however, asks applicants to indicate whether they "have held or run for any government position or served on any governmental board or commission, *at the federal, state or local level.*"

Although they are thus not automatically disqualified from serving on the Independent Redistricting Commission, tribal government officials, like others who represent communities of interest within Arizona, should not be selected to be members of the Commission if their service as Commissioners would create, or appear to create, any conflict of interest. I have described my tribal court work in detail in my answer to Application Question 21. I would not have applied for the Commission if I thought that my part-time, non-employee participation as a non-Indian in a small number of tribal court appeals each year, in tribal-law cases that have no connection with redistricting issues, would create such a conflict.

Sincerely,


Paul Bender
Professor of Law

PB:smg

cc: Clint Bolick

December 23, 2010

Russell Pearce
1700 West Washington, Suite 8
Phoenix, AZ 85007-2844

Kirk D. Adams
1700 West Washington, Suite H
Phoenix, AZ 85007-2844

By Mail and Electronic Mail

Dear Senator Pearce and Representative Adams:

This is in response to your letter of December 17, 2010, requesting that I withdraw my application to serve on the Independent Redistricting Commission. Thank you for letting me know of your concerns.

Before submitting my application for Commission membership, I reviewed the relevant language of the Arizona Constitution, considered the definition of "public office" contained in the information provided to applicants by the Commission on Appellate Court Appointments, and consulted with others familiar with the purpose and text of the constitutional amendment that created the Commission. I concluded that I was constitutionally qualified for Commission membership. The reasons for my conclusion are contained in my November 15 letter to the Commission on Appellate Court Appointments that has, I think, been made part of my application.

Since I believe that I am constitutionally qualified to serve on the Commission, I do not think that I should withdraw my application.

Sincerely yours,



Paul Bender

cc: The Commission on Appellate Court Appointments
Mark E. Schnepf
Stephen J. Sossaman