

March 11, 2022

Honorable Greg Chaney
Chair of Judiciary, Rules and Administration
700 W Jefferson St
Boise, Idaho 83706

Dear Senator Chaney:

The signatories of this letter are all retired Chief Justices of the Idaho Supreme Court. Our tenures have spanned decades of leadership in Idaho's courts. As Chief Justices we have all served as ex-officio chairs of the Idaho Judicial Council for at least four years and some up to eight years. During our time as chairs we have dealt with honorable, diligent members of the Judicial Council who were originally nominated by our Governor, Democrat or Republican, and then seated with consent by the Senate Judiciary and Rules Committee after a public hearing. Other members were nominated by the Idaho State Bar, but again with consent of the Senate Judiciary and Rules Committee.

We give this background to show intimate knowledge of the Council and our strong support and of the existing configuration of the Council processes and procedures.

We support the shared responsibility of the Governor and the Idaho State Bar in presenting citizens and lawyers of their choosing to the Idaho Senate for a public hearing. This feature assures input from all interested parties producing a knowledgeable independent, well-balanced membership who proceed not only with nominations to fill vacant judicial positions but also to deal with violations of the Idaho Judicial Canons. We have found those members serving on the Council to bring divergent views and all work very hard in fulfilling their duties.

We also support the existing system of sending vetted, qualified candidates to our Governor. To date six governors, two Democrats and four Republicans, have picked hundreds of Idaho district and appellate court judges from the Council's statutory list

We also note there have been times when the Council had to send lists of only 2 applicants or a list of up to four applicants which were weaker than other lists. The Council can only deal with those who apply. We note that salary, workload, and residence requirements, have been noted as impediments to other candidates applying.

We universally state the Council has done its work not to benefit any one group of lawyers or political party nor to further any social agenda, but to send qualified candidates for judicial positions. We have used the applicant's prior work experience, temperament, and public comments sent to the Council as well as the Council's public interviews to guide our decisions.

We have all reviewed Senator Lee's proposed bill amending the make-up and procedure for sending qualified candidates to the Governor for appointment. Those judges and justices then sit for election. We have all faced those elections.

As a group we feel there are some impacts of this bill which are unintended and may ultimately lead to a reduction of qualified candidates for the Governor's decision.

1-2101(2): Many of us practiced as lawyers in small towns where you represented people in real estate, divorces, assorted criminal cases, represented boards of all sorts (hospital, school, irrigations districts) and therefore were hard pressed to meet the requirements of hard percentages of criminal and civil work. Additionally, without meeting those percentages how could you even apply to serve. We don't think you will want to lose that portion of lawyers in counties other than those where there are enough folks to specialize in the law.

Secondly, the prohibition for any other "position of profit" may disqualify those lawyers or citizens who may serve as city attorneys, city council persons, board or members of hospitals, schools, and irrigations district boards.

1-2102(3): We know this section will lead to significant delays for our counties and increased costs for senior judges to cover that existing vacancy.

The procedure to fill a vacancy starts with an announcement to all citizens, judges, and the lawyers of a vacancy. There is a short deadline which requires lawyers to quickly make an evaluation of whether to make a life – altering decision to terminate a practice, which may have taken years to build, and then determine the impact of becoming a judge on family, personal life, clients or partners and employees. The application form then waives all information about taxes, health, Idaho State Bar, Judicial Council complaints, criminal background and credit analysis. The applications are sent including all information to the Council members for their review prior to the public interviews. The Idaho Supreme Court additionally holds public forums to review for the candidates and interested citizens what the job entails as well as salary, benefits in the county where the vacancy exists. Finally, the Executive Director coordinates the availability of Council members for the interviews. The interviews are announced to the lawyers and public and are completely open. The Council conducts the interviews and then sends a list and the complete application materials to the Governor on the same day or next morning. The Governor's office is extremely busy and try their hardest to then schedule interviews with the candidates prior to the appointment. This process is thorough and takes at least three to four months.

On numerous occasions the Council has reopened the vacancy to request more candidates to apply prior to the interviews. This bill would add significant time to the process and would be especially hard on rural counties. There would be a significant increase in the use of senior judge's time. Think Idaho Falls senior judges filling in for a Challis vacancy.

1-2102(6): This change will make sure the free flow of information to the Council from the persons who know the applicants best - stops. It is just that simple. Additionally, the complete packet of the bar survey scores and comments for a successful candidate goes to the

Governor along with all public comments and the application and any other reports in the applicant's council file.

Finally, the publication of bar surveys for the Governor's list will leave the Governor open for negative comments if he doesn't select the highest-rated candidate. Thus, impinging on the Governor's widest discretion.

We stand ready to appear before the legislature or others to talk about our experiences or thoughts on this project. We also encourage the Legislature and the Governor to participate in the Idaho Supreme Court Blue Ribbon Committee which will bring a broad spectrum of interested legislators, citizens, lawyers, Governor, staffers and jurists to the table to discuss their issues in depth.

Thank you,



Retired Chief Justice Roger S Burdick on behalf of
Retired Chief Justice Robert Bakes
Retired Chief Justice Linda Copple Trout
Retired Chief Justice Gerald Schroeder
Retired Chief Justice Jim J. Jones