



March 22, 2023

House of Representatives  
State Capitol  
200 E. Colfax Ave.  
Denver, CO 80203

Re: Judicial Discipline: NO on HCR 23-1001  
YES on amendment to HB 23-1019  
NO on HB 23-1205

Dear Representative,

This letter follows up on these measures after the hearing in House Judiciary. An important amendment was made to one measure. Your constituents would benefit from that amendment. Your constituents will not, however, benefit from the other proposals.

**HCR 23-1001 – Please vote NO.**

Conflicts of interest. That's what HCR 23-1001 is all about. It inserts even more conflicts of interest into the judicial discipline process. Multiple conflicts of interest are also what has brought the proposed amendment into existence. Although Colorado's judicial discipline process desperately needs to be changed, HCR 23-1001 is not the judicial discipline process your constituents want or deserve.

The Judiciary Committees have, for a long time, spent way too much time and energy appeasing a judicial branch over which they're supposed to provide a check and balance. HCR 23-1001 is no exception. The main proponent behind the rearranging sought by the resolution is the current Commission on Judicial Discipline. **Your constituents would certainly expect a new judicial discipline commission in a constitutional amendment regarding judicial discipline, but HCR 23-1001 keeps the currently ineffective discipline commission in place.**

**HCR 23-1001 benefits district court judges.**

David Prince, a district court judge in the 4th Judicial District who is also on the discipline commission, has become the primary voice behind the requested revisions. So it should be no surprise that the proposal will not hold district court judges any more accountable

than they currently are. Indeed, it will give district judges more power because six of them will sit on a panel with one Court of Appeals judge to determine whether a Supreme Court justice should be disciplined.

While Prince claims to be an advocate for reform, his proposed reforms keep most of the currently troubled judicial discipline system in place. **Except for the rulemaking committee, HCR 23-1001 will affect less than 1% of cases filed with the discipline commission. Is that really worth a constitutional amendment?**

Prince was the impetus behind the bill that proposed the interim committee on judicial discipline from which this measure grew. He worked with former state senator Pete Lee. From the beginning, they were predisposed toward keeping the current commission and adding a second tier in the discipline process. A former state representative, Terri Carver, shared in their predisposition.

### **The adjudicative panels are unnecessary.**

Lee put together an agenda for each meeting of the interim committee that would support the predisposition of adding a second tier. Although members of the committee will tell you they listened to a lot of testimony and worked on the issue, they don't seem to realize how the agenda they heard was constructed in a manner to support the predisposition of Lee, Prince, and Carver.

The vast majority of states have one discipline commission that both investigates and adjudicates. Thirty-three states have such a system. HCR 23-1001 proposes going the direction of 17 states who are in the minority. And it's an unnecessary minority. **Based on the U.S. Supreme Court's decision in *Withrow v. Larkin*, 421 U.S. 35 (1975), the argument that a second adjudicative tier is required in judicial discipline has been rejected by every state supreme court that has considered it for over 50 years, including as recently as 2022.**

It is undeniable that the adjudicative panels proposed in HCR 23-1001 are unnecessary. So why is it before you? The judicial scandal involving the state court administrator and chief justice offering a \$2.5 million contract to a former employee allegedly to keep her quiet was the impetus for the interim committee and this resolution for a constitutional amendment. So the scandal is the reason this proposed constitutional amendment is before you.

### **HCR 23-1001 rewards the judicial branch for the judicial scandal.**

Nothing in HCR 23-1001, however, would prevent that scandal from happening again. Indeed, the resolution rewards the judicial branch for the scandal by making it harder to discipline a judge. Instead of getting a complaint through one commission that includes four judges, a complaint will now have to go through an additional adjudicatory panel that includes judges.

As you recall, the state court administrator acted improperly in awarding the contract and resigned. HCR 23-1001 rewards the unaccountable state court administrator position by giving it even more power. Under the measure the administrator would select the judges who hear a

discipline case regarding his bosses – Supreme Court justices. The administrator would also select who hears discipline cases against lower court judges.

**So when you're seeking re-election in the 2024 election, when this measure would be on the ballot, you may be asked: Why should your constituents reward the state court administrator with more power when the position has been used improperly? Why did you vote for this?**

HCR 23-1001 is irresponsible, unnecessary, and a danger to us all. Yet another conflict of interest occurred during the House Judiciary Committee hearing on this measure. Rep. Stephanie Luck is on House Judiciary, but she was replaced by House Minority Leader Rep. Mike Lynch who is a sponsor of this measure. Lynch's brother is a county court judge in Larimer County. HCR 23-1001 is beneficial to Lynch's brother because just like district court judges, county court judges will benefit from the measure because it makes it harder to discipline them.

Although transparency would be increased a minimal amount (in less than 1% of cases), HCR 23-1001 fails to bring sunshine to the judicial discipline process. We can do so much better. The procedure in a discipline case should be outlined in the constitution so a rulemaking committee cannot further destroy the process by acting on conflicts of interest.

**It is ineffective to have more judges judging judges and making rules for judges.**

The rulemaking committee proposed by HCR 23-1001 can be completely comprised of judges. How do you think that's going to work out? To avoid the exploitation of conflicts of interest, the constitution needs to set forth the general procedure as follows:

The commission must investigate a complaint if the facts alleged, if true, would support a violation of the Code of Judicial Conduct. If the commission determines to investigate, then the matter becomes public.

If after investigation the commission determines that there is probable cause to believe a violation of the Code of Judicial Conduct occurred, then the commission must file a formal complaint.

At a hearing on a formal complaint, the commission bears the burden to prove a violation by a preponderance of the evidence.

This follows the procedure in most states, and the burden of proof in the most ethical states is preponderance of the evidence.

The purpose of judicial discipline is not to punish judges, but to protect the public, preserve the integrity of the judicial process, maintain public confidence in the judiciary, and create a greater awareness of proper judicial behavior on the part of judges themselves. HCR 23-1001 will not meet this objective.

HCR 23-1001 contains a lot of unnecessary and ineffective bureaucracy that does not benefit your constituents. It does not benefit justice. It is a measure pursued by a district court judge that would benefit district court judges while giving them power over whether a Supreme Court justice should be disciplined. It goes as far as to make it easier for a judge to sue a newspaper for defamation. HCR 23-1001 is nothing more than a special interest measure on behalf of district court judges. Please vote NO on this measure.

**HB 23-1019 – YES to the removal of the criminal penalty.**

House Judiciary amended this provision to include the elimination of the criminal penalty, a misdemeanor, for someone who disclosed the proceedings before the discipline commission. The testimony before the committee was that the criminal penalty had an inappropriate, chilling effect on speech. The penalty was never appropriate.

What is incongruous regarding House Judiciary's actions, however, is that it proceeded to adopt measures amending the current judicial discipline process without allowing voices to be heard who may come forward once the criminal penalty is removed.

The remainder of HB 23-1019 does truly little. We encourage the adoption of the amendment eradicating the criminal penalty on speech.

**HB 23-1205 – Please vote NO.**

Nothing screams the current Commission on Judicial Discipline is ineffective as much as this bill. The commission is so bad that a go-between, or ombudsman, is necessary to help people navigate the process. Only judicial branch employees would have access to the ombudsman. Attorneys and litigants would not have access to the ombudsman although they have the same justifiable fears regarding retaliation as do judicial branch employees.

If Colorado had a judicial discipline commission that was effective, an ombudsman would not be necessary. We need to correct the discipline commission and not add even more bureaucracy to the process. Colorado needs a citizen-based judicial discipline commission where a judge serves in only an advisory capacity. Such a commission would be more approachable, more trustworthy, and more effective.

We oppose HB 23-1205. If it is adopted, the ombudsman should be available to the public including attorneys and litigants. Thank you for your time and attention to this matter. If you have any questions or concerns, please feel free to contact me.

Sincerely,



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