

No. \_\_\_\_\_

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**FLORIDA FAMILY POLICY COUNCIL, INC,**

*Plaintiff– Appellant*

v.

**THOMAS B. FREEMAN**, member of the Florida Judicial Qualifications Commission; **PEGGY GEHN**, member of the Florida Judicial Qualifications Commission; **PAUL L. BACKMAN**, member of the Florida Judicial Qualifications Commission; **DAVID H. YOUNG**, member of the Florida Judicial Qualifications Commission; **MORRIS SILBERMAN**, member of the Florida Judicial Qualifications Commission; **JAMES R. WOLF**, member of the Florida Judicial Qualifications Commission; **JOHN P. CARDILLO**, member of the Florida Judicial Qualifications Commission; **MILES A. MCGRANE III**, member of the Florida Judicial Qualifications Commission; **HOWARD C. COKER**, member of the Florida Judicial Qualifications Commission; **MARTIN L. GARCIA**, member of the Florida Judicial Qualifications Commission; **SHIRLEE P. BOWNE**, member of the Florida Judicial Qualifications Commission; **LEONARD HABER**, member of the Florida Judicial Qualifications Commission; **STANLEY G. TATE**, member of the Florida Judicial Qualifications Commission; **RANDOLPH BRACY**, member of the Florida Judicial Qualifications Commission; **RICK MORALES**, member of the Florida Judicial Qualifications Commission; **DONALD M. SPANGLER**, Chief Bar Counsel for the Florida Bar, Tallahassee; **SUSAN V. BLOEMENDAAL**, Chief Bar Counsel for the Florida Bar, Tampa; **JAN K. WICHROWSKI**, Chief Bar Counsel for the Florida Bar, Orlando; **ADRIA QUINTELA**, Chief Bar Counsel for the Florida Bar, Ft. Lauderdale; and **ARELENE K. SANKEL**, Chief Bar Counsel for the Florida Bar, Miami;

*Defendants – Appellees*

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**On Appeal from the United States District Court  
for the Northern District of Florida  
*Docket No. 4:06cv395-RH/WCS***

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**EMERGENCY TIME-SENSITIVE MOTION  
APPEALING DENIAL OF PRELIMINARY INJUNCTION**

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Family Policy Council, Inc.*

Pursuant to Eleventh Circuit Rule 27-1(b), Plaintiff-Appellant Florida Family Policy Council (“FFPC”) respectfully requests this Court grant their *Emergency (Time Sensitive) Motion Appealing Denial of Preliminary Injunction*. In support of its Motion, Plaintiff-Appellant assert the following:

1. On October 11, 2006, FFPC timely filed its notice of appeal of the District Court’s “Order Denying Plaintiff’s Motion for Preliminary Injunction” (Doc. 33) entered on October 10, 2006.

2. Under 11th Cir. R. 27-1(b)(1), an Emergency Motion will be treated as such only when both the motion will be moot unless ruled on within seven calendar days and the motion is being filed within seven days of the district court order. This Motion has been filed within seven days of the Order appealed from, which was issued on October 10, 2006. It will not be technically moot within seven days, but this case involves contacting candidates for responses before the November 7, 2006, election and any opportunity to recontact judicial candidates in a renewed effort to secure responses that would subsequently be reported to Florida voters in time for the election will be severely diminished with any delay, so it should at least be treated as a “time sensitive” motion in accord with this Circuit Rule.

3. In satisfaction of Cir. R. 27-1(b)(2), this Motion has been labeled an “Emergency Motion,” it is hereby stated that review of this matter is urgently necessary to preserve the rights of Plaintiff-Appellant FFPC to secure and publish the answers to its Questionnaire that it seeks before the November 7, 2006 election.

4. Discussion of the following criteria of Cir. R. 27-1(b)(2)(i)-(iv) is the subject matter of FFPC's *Memorandum in Support of Appellant's Emergency Time Sensitive Motion Appealing Denial of Preliminary Injunction*, filed at the same time as this Memorandum: (i) the likelihood the moving party will prevail on the merits; (ii) the prospect of irreparable injury to the moving party if relief is withheld; (iii) the possibility of harm to other parties if relief is granted; and (iv) the public interest.

5. Counsel warrant that both this *Emergency Motion* and the *Memorandum* have been served today on counsel for the Defendant-Appellees, either in person or by email and overnight mail.

6. As set out fully in its *Memorandum*, the Florida Canon of Judicial Conduct 3E(1)(f) and Canons 3E(1) on their face and as applied to FFPC violate its rights under the First and Fourteenth Amendments of the United States Constitution. Specifically, judicial candidates cannot be constitutionally subjected to these provisions – which subject judges to discipline for failing to recuse when they have previously indicated an opinion on issues in a case – without depriving FFPC of its rights of free speech and association. FFPC has a right to receive any information judicial candidates wish to provide.

7. FFPC has established the likelihood that they will succeed on the merits, that they will be immediately and irreparably to Plaintiff if an injunction is not granted, that a preliminary injunction will not substantially harm Defendants-

Appellees, and that a preliminary injunction is in the public interest.

8. FFPC's Motion qualifies as a "time sensitive" motion under Local Rule 27-1(b)(1). FFPC's motion will be moot unless it obtains relief before November 7, 2006, with enough time to re-send and publish online the results of a questionnaire for judicial candidates.

9. For the Court's convenience, FFPC has attached a copy of the Transcript of the Preliminary Injunction Hearing as an Exhibit to its *Memorandum in Support of Appellant's Emergency Time-Sensitive Motion*. However, per conversations with the Clerk of the Court, FFPC has not attached copies of the pleadings, briefs, memoranda, and other papers filed in the district court relating to the instant appeal, as such document can be obtained electronically at the Pacer site for the Northern District of Florida at 4:06CV00395. The documents in question are: FFPC's Verified Complaint for Injunctive and Declaratory Relief (Doc. 1); FFPC's Motion for Preliminary Injunction (Doc. 3); Defendants' Motions to Dismiss (Docs. 22 & 25); Defendants' Response Opposing Plaintiff's Motion for Preliminary Injunction (Docs. 23 & 26), FFPC's Reply in Support of its Motion for Preliminary Injunction, and the Order Denying FFPC's Motion for Preliminary Injunction (Doc. 33).

**WHEREFORE**, FFPC prays this Court reverse the district court's denial of Plaintiff-Appellant FFPC's Motion for Preliminary Injunction, and remand with instructions to issue a preliminary injunction enjoining Defendants-Appellees from

initiating disciplinary proceedings under Canon 3E(1) or 3E(1)(f) against judicial candidates who have announced their views on disputed legal and political issues, and in particular, have answered FFPC's 2006 Questionnaire.

Dated: October 12, 2006

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on Oct. 12, 2006, I caused the forgoing document to be electronically served upon and sent to by overnight mail, next day delivery to:

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and, on October 12, 2006, caused the foregoing document to be personally served upon:

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