

PRESS RELEASE

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Federal Court Enjoins Kansas Canons Prohibiting Judicial Candidates' Speech

United States District Judge Julie Robinson ruled yesterday that the Kansas judicial canons that prevent judicial candidates from effectively announcing their views on disputed legal and political issues and from personally seeking public support and contributions are unconstitutional and enjoined Kansas officials from enforcing them.

The court held that the pledges and promises clause, which prohibits candidates from pledging or promising conduct in office other than the faithful and impartial performance of the duties of office, and the commits clause, which forbids candidates from making statements that commit or appear to commit them with respect to cases, controversies, or issues likely to come before the court, are overbroad because they sweep in legitimate speech, causing judicial candidates' speech to be chilled. The clauses fail to properly limit their prohibition to pledges, promises, and commitments to "decide an issue in a particular way." The court reasoned that the State has interpreted the clauses, through advisory opinions issued by its Ethics Advisory Panel, to "operate as a *de facto* announce clause," the clause held unconstitutional by the United States Supreme Court in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

The court also considered the constitutionality of the clauses as applied to a questionnaire sent to judicial candidates by Plaintiff Kansas Judicial Watch. The Questionnaire requested that the candidates state their views on policies and court decisions related to taxation, same-sex marriage, the death penalty, and various other issues. The court found the clauses were unconstitutional as applied to the Questionnaire because the questions "merely require the candidates to announce their views on disputed legal and political issues," speech protected by the Supreme Court's decision in *White*.

The court found that the entire solicitation clause provision, which prohibits candidates from personally soliciting or accepting campaign contributions or publicly stated support, is unconstitutional because it fails strict scrutiny. This clause, according to the court, "prohibits an entire class of speech relating to campaigns, which is intended to influence voters in the election." The court also found that the solicitation clause is unconstitutional as applied to the Questionnaire and as applied to prospective judicial candidates who desire to seek signatures from citizens so that they can qualify as candidates.

James Bopp, Jr., lead counsel for the plaintiffs, praised the court's decision. Bopp, who also successfully argued the U.S. Supreme Court case challenging the Minnesota judicial canon held unconstitutional in *White*, stated that "the free speech rights of judicial candidates and citizens in Kansas have been vindicated."

The case is *Kansas Judicial Watch, et al. v. Stout, et al.*, Civil Action Number 06-4056-JAR. The court's opinion is available in PDF format online at the James Madison Center's website, www.jamesmadisoncenter.org, under the "Judicial Accountability Project" link.

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