

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN
MADISON DIVISION

THE HONORABLE JOHN SIEFERT,)

Plaintiff,)

v.)

Civil Action No. _____

JAMES C. ALEXANDER, in his official capacity)
as the Executive Director of the Wisconsin Judicial)
Commission; LARRY BUSSAN, in his official)
capacity as administrative assistant for the Wisconsin)
Judicial Commission; GINGER ALDEN, in her official)
capacity as a Member of the Wisconsin Judicial)
Commission; DONALD LEO BACH, in his official)
capacity as a Member of the Wisconsin Judicial)
Commission; JENNIFER MORALES, in her official)
capacity as a Member of the Wisconsin Judicial)
Commission; JOHN R. DAWSON, in his official)
capacity as a Member of the Wisconsin Judicial)
Commission; DAVID A. HANSHER, in his official)
capacity as a Member of the Wisconsin Judicial)
Commission; GREGORY A. PETERSON, in his)
official capacity as a Member of the Wisconsin)
Judicial Commission; WILLIAM VANDER LOOP,)
in his official capacity as a Member of the Wisconsin)
Judicial Commission; MICHAEL R. MILLER, in)
his official capacity as a Member of the Wisconsin)
Judicial Commission; JAMES M. HANEY, in his)
official capacity as a Member of the Wisconsin)
Judicial Commission;)

**VERIFIED COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Defendants.)

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW Plaintiff, the Honorable John Siefert, and for his Complaint against the Defendants, states the following:

Introduction

1. This is a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the Constitution of the United States. It concerns the constitutionality of portions of Wisconsin Code of Judicial Conduct, found in Wisconsin Supreme Court Rules 60.06(2)(b)(1), 60.06(2)(b)(4), and 60.06(4).

2. Plaintiff complains that SCR 60.06(2)(b)(1), which prohibits a judge or judicial candidate from being a member of a political party, is unconstitutional both on its face and as applied to Plaintiff in violation of the First and Fourteenth Amendments. Plaintiff further complains that SCR 60.06(2)(b)(4), which prohibits judges and judicial candidates from endorsing or speaking on behalf of other candidates or political party platforms, is unconstitutional both on its face and as applied to Plaintiff. Finally, Plaintiff complains that SCR 60.06(4), which prohibits judges and judicial candidates from personally soliciting contributions for their own campaigns, is unconstitutional both on its face and as applied to Plaintiff.

Jurisdiction and Venue

3. This action arises under Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the Constitution of the United States.

4. The jurisdiction of this Court over the claims arising under 42 U.S.C. § 1983 is founded upon 28 U.S.C. § 1343(a). The jurisdiction over the claims arising under the First and Fourteenth Amendments is founded upon 28 U.S.C. §§ 1331 and 1343(a).

5. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

Parties

6. Plaintiff Honorable John Siefert is an individual and resident of Wisconsin. He lives in Milwaukee, Wisconsin, in Milwaukee county.

7. The Defendants are the members of Wisconsin Judicial Commission (“Commission”), sued in their official capacities: James C. Alexander (Executive Director), Larry Bussan (Administrative Assistant), Ginger Alden, Donald Leo Bach, John R. Dawson, James M. Haney, David A. Hansher, Michael R. Miller, Jennifer Morales, Gregory A. Peterson, and William Vander Loop. The Commission was created pursuant to Article 7, Section 11 of the Wisconsin Constitution and with the inherent power of the Wisconsin Supreme Court, codified by the Wisconsin legislature in §§ 757.81-757.99 of the Wisconsin Statutes. The executive director of the Commission investigates any allegation of misconduct by a judicial official and makes an initial determination of whether it warrants review by the Commission. Wis. Admin. Code § JC 4.01. The Commission may then authorize the executive director to conduct a full, fair, and prompt investigation of any violation of the Code of Judicial Conduct and presents the findings to the Commission. Wis. Admin. Code § JC 4.03. The Commission is then empowered to determine whether to file formal charges against a judicial officer in the Wisconsin Supreme Court. Wis. Stat. § 757.85(5). If formal charges are filed, the Commission may authorize the executive director or other counsel to prosecute the case on behalf of the Commission. Wis. Admin. Code § JC 4.08(6), § JC 6.01.

Facts

8. Wisconsin state court judges are selected through a process of non-partisan judicial elections. Regulation of judicial conduct, as well as the conduct of candidates for judicial office, is governed by the Wisconsin Code of Judicial Conduct (“the Canons”), found in Chapter 60 of the Supreme Court Rules. SCR 60.01 *et seq.*

9. On October 29, 2004, the Wisconsin Supreme Court issued Order 00-07, amending the Canons. See Wisconsin Supreme Court Order 00-07, attached as Exhibit 1. This Order added several provisions to the existing Canons, and significantly altered the scope and language of several others.

10. Order 00-07 added a definition of “Impartiality” in SCR 60.01(7m), which provides that impartiality “means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.”

11. SCR 60.06(2)(b)(1) (“the political affiliation clause”) provides that no judge or judicial candidate may “[b]e a member of any political party.”

12. SCR 60.06(2)(b)(4) (“the endorsement clause”) provides that no judge or judicial candidate may “[p]ublicly endorse or speak on behalf of [a political party’s] candidates or platforms.”

13. An exception to the political affiliation clause and endorsement clause is provided by SCR 60.06(2)(c), added by Order 00-07, which states that “[a] partisan political office holder who is seeking election or appointment to judicial office or who is a judge-elect may continue to engage in partisan political activities required by his or her present position.”

14. Prior to Order 00-07, SCR 60.06(2) had applied only to judges, not judicial candidates, and had stated that “[e]xcept for activities concerning his or her own election, a judge shall not be a member of any political party or participate in its affairs, caucuses, promotions, platforms, endorsements, conventions or activities. A judge shall not make or solicit financial or other contributions in support of its causes or publicly endorse or speak on behalf of its candidates or platforms.”

15. SCR 60.06(4) (“the solicitation clause”) provides that a “judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions.” This provision underwent only minor modification from Order 00-07.

16. Three of the Wisconsin Supreme Court’s seven judges dissented from Order 00-07 on constitutional grounds. In an opinion joined by fellow judges Prosser and Butler, Judge Roggensack cited *Republican Part of Minnesota v. White*, 536 U.S. 765 (2002) and *Buckley v. Valeo*, 424 U.S. 1 (1976) for the conclusion that the restrictions on political activity found SCR 60.06(2)(b) violated the First Amendment. According to the judges, SCR 60.06(2)(b)’s political affiliation clause and endorsement clause were under-inclusive, both because of the exception provided for current political office-holders, and because the provision only applied to political parties and not to other overtly partisan political groups. Exhibit 1, at 12-26.

17. Judges Prosser and Bulter also objected to SCR 60.06(4)’s solicitation clause. Judge Prosser noted that, read literally, the clause would prohibit candidates from personally accepting contributions from good friends and co-workers, or even a spouse. The rule was also “inconsistent because it allowed judges and candidates to establish fundraising committees but pretended that the fundraisers thus recruited were not also being invited to give money” and “so unrealistic that inadvertent or unavoidable violations were commonplace.” Exhibit 1, at 13.

18. Plaintiff Honorable John Siefert is a circuit court judge in Milwaukee County. He is a candidate for re-election in 2011. As a judge, he is currently bound by the Canons and potentially subject to discipline by the Commission for his conduct.

19. Judge Siefert would like to be a member of the Democratic party. Associating with this group would not bias Judge Siefert for or against a particular parties or class of parties, nor would it impair his ability to be open-minded. However, Judge Siefert is chilled from joining the Democratic party because he fears discipline under the political affiliation clause.

20. Judge Siefert would like to endorse candidates both in the 2008 election and in future elections. Making such endorsements would not bias Judge Siefert for or against a particular parties or class of parties, nor would it impair his ability to be open-minded. However, Judge Siefert is chilled from making any such endorsements because he fears discipline under the endorsement clause.

21. Judge Siefert wants to make personal phone calls and sign letters seeking contributions to his upcoming election campaign. Making personal solicitations would not bias Judge Siefert for or against a particular parties or class of parties, nor would it impair his ability to be open-minded. However, Judge Siefert is chilled from making such personal solicitations because he fears discipline under the solicitation clause.

22. Plaintiff has exhausted all extra-judicial means at his disposal to resolve this matter before proceeding to file this Complaint.

23. Plaintiff has no adequate remedy at law.

COUNT I

THE POLITICAL AFFILIATION CLAUSE IS FACIALLY UNCONSTITUTIONAL AND OVERBROAD, PROHIBITING JUDICIAL CANDIDATES' FREEDOM OF SPEECH AND ASSOCIATION.

24. Plaintiff realleges the preceding paragraphs.

25. SCR 60.06(2)(b)(1)'s political affiliation clause provides that no judge or judicial candidate may "[b]e a member of any political party."

26. The overbreadth doctrine "permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when 'judged in relation to the statute's plainly legitimate sweep.'" *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)). As such, the overbreadth doctrine prevents a law from having a chilling effect on protected speech. *Hodgkins ex rel. Hodgkins v. Peterson*, 355 F.3d 1048, 1056 (7th Cir. 2004).

27. Judges and judicial candidates have the constitutional right to associate with political groups of their choosing. *White*, 536 U.S. at 774-75. The political affiliation clause prevents judges and judicial candidates from associating with political parties by being a member of a political party, and is not narrowly tailored to further any compelling state interest, but is an overbroad, unconstitutional regulation of protected political speech under the First and Fourteenth Amendments. *See Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Cir. 2005).

COUNT VII

THE POLITICAL AFFILIATION CLAUSE IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFF.

28. Plaintiff realleges the preceding paragraphs.

29. SCR 60.06(2)(b)(1)'s political affiliation clause provides that no judge or judicial candidate may "[b]e a member of any political party."

30. Judge Siefert would like to be a member of the Democratic party. Associating with this group would not bias Judge Siefert for or against a particular parties or class of parties, nor would it impair

his ability to be open-minded. However, Judge is chilled from joining the Democratic party because he fears discipline under the political affiliation clause.

31. The political affiliation clause as applied to Judge Siefert violates his freedom to associate and is unconstitutional and in violation of the First and Fourteenth Amendments.

COUNT III

THE ENDORSEMENT CLAUSE IS FACIALLY UNCONSTITUTIONAL, AND OVERBROAD, PROHIBITING JUDICIAL CANDIDATES' FREEDOM OF SPEECH AND ASSOCIATION.

32. Plaintiff realleges the preceding paragraphs.

33. SCR 60.06(2)(b)(4)'s endorsement clause provides that no judge or judicial candidate may “[p]ublicly endorse or speak on behalf of [a political party’s] candidates or platforms.”

34. The overbreadth doctrine “permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when judged in relation to the statute’s plainly legitimate sweep.” *Morales*, 527 U.S. at 52 (internal citations omitted). As such, the overbreadth doctrine prevents a law from having a chilling effect on protected speech. *Hodgkins*, 355 F. 3d at 1056.

35. The endorsement clause sweeps all endorsements, regardless of context, into the sphere of speech prohibited by the Wisconsin Code of Judicial Conduct, and is thus not narrowly tailored to further a compelling interest but instead constitutes an unconstitutionally overbroad application of the rules governing judicial political campaign speech and association, in violation of the First and Fourteenth Amendments. *See White*, 416 F.3d at 766.

COUNT IV

THE ENDORSEMENT CLAUSE IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFF.

36. Plaintiff realleges the preceding paragraphs.

37. SCR 60.06(2)(b)(4)'s endorsement clause provides that no judge or judicial candidate may “[p]ublicly endorse or speak on behalf of [a political party’s] candidates or platforms.”

38. Judge Siefert would like to endorse candidates both in the 2008 election and in future elections. Making such endorsements would not bias Judge Siefert for or against a particular parties or class of parties, nor would it impair his ability to be open-minded. However, Judge is chilled from making any such endorsements because he fears discipline under the endorsement clause.

39. The endorsement clause as applied to Plaintiff sweeps all endorsements, regardless of context, into the sphere of speech prohibited by the Wisconsin Code of Judicial Conduct, and is thus not narrowly tailored to further a compelling interest but instead constitutes an unconstitutionally overbroad applications of the rules governing judicial political campaign speech and association. As a consequence, the endorsement clause as applied to Plaintiff constitutes an unconstitutional regulation of protected political speech and association, violation of the First and Fourteenth Amendments. *White*, 416 F.3d at 766.

COUNT V

THE SOLICITATION CLAUSE IS FACIALLY UNCONSTITUTIONAL AND OVERBROAD, PROHIBITING JUDICIAL CANDIDATES’ FREEDOM OF SPEECH AND ASSOCIATION.

40. Plaintiff realleges the preceding paragraphs.

41. SCR 60.06(4)'s solicitation clause provides that a "judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions."

42. The overbreadth doctrine "permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when judged in relation to the statute's plainly legitimate sweep." *Morales*, 527 U.S. at 52 (internal citations omitted). As such, the overbreadth doctrine prevents a law from having a chilling effect on protected speech. *Hodgkins*, 355 F. 3d at 1056.

43. The solicitation clause sweeps constitutionally protected speech within its scope, and is not narrowly tailored to further a compelling state interest, but is overbroad, unconstitutional regulations of protected political speech under the First and Fourteenth Amendments. *White*, 416 F.3d at 766; *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002).

COUNT VI

THE SOLICITATION CLAUSE IS UNCONSTITUTIONAL AS APPLIED TO PLAINTIFF.

44. Plaintiff realleges the preceding paragraphs.

45. SCR 60.06(4)'s solicitation clause provides that a "judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions."

46. Judge Siefert want to make personal phone calls and sign letters seeking contributions to his upcoming election campaign. When making these solicitations, Judge Siefert does not intent to pledge or promise certain results in any particular case or class of cases. Making personal solicitations would not bias Judge Siefert for or against a particular parties or class of parties, nor would it impair his ability to

be open-minded. However, Judge is chilled from making such personal solicitations because he fears discipline under the solicitation clause.

47. Because it impinges on his First Amendment rights of speech and association, the solicitation clause as applied to Judge Siefert constitutes an unconstitutional regulation of protected political speech and association, in violation of the First and Fourteenth Amendments. *White*, 416 F.3d at 766; *Weaver*, 309 F.3d at 1322.

Prayer for Relief

48. Plaintiff realleges the previous paragraphs.

WHEREFORE, Plaintiff requests this Court to:

(1) Declare Wisconsin Supreme Court Rule 60.06(2)(b)(1) unconstitutional and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution;

(2) Declare Wisconsin Supreme Court Rule 60.06(2)(b)(1) unconstitutional as applied to the Plaintiff on the grounds that it chills and prohibits Plaintiff's free association rights under the First and Fourteenth Amendments to the United States Constitution.

(3) Declare Wisconsin Supreme Court Rule 60.06(2)(b)(4) unconstitutional and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution;

(4) Declare Wisconsin Supreme Court Rule 60.06(2)(b)(4) unconstitutional as applied to the Plaintiff on the grounds that it chills and prohibits Plaintiff's free speech and association rights under the First and Fourteenth Amendments to the United States Constitution.

(5) Declare Wisconsin Supreme Court Rule 60.06(4) unconstitutional and overbroad in violation of the First and Fourteenth Amendments to the United States Constitution;

(6) Declare Wisconsin Supreme Court Rule 60.06(4) unconstitutional as applied to Plaintiff on the grounds that it chills and prohibits Plaintiff's free speech rights under the First and Fourteenth Amendments to the United States Constitution.

(7) Prohibit, by way of preliminary and permanent injunction, the Defendants, their agents, and successors from enforcing Wisconsin Supreme Court Rule =60.06(2)(b)(1), 60.06(2)(b)(4), and 60.06(4), and from filing, initiating, or considering complaints based on 60.06(2)(b)(1), 60.06(2)(b)(4), and 60.06(4) against Judge Siefert or other judges or judicial candidates who engage in the above described protected activities.

(16) Grant Plaintiff's costs and attorney's fees pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

(17) Grant Plaintiff such other relief as may be just and equitable.

Dated: February 25, 2008

Respectfully submitted,

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