IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

THE HONORABLE JOHN SIEFERT,

Plaintiff,

v. Case No. 08-C-126-BBC

JAMES C. ALEXANDER,
LARRY BUSSAN,
GINGER ALDEN,
DONALD LEO BACH,
JENNIFER MORALES,
JOHN R. DAWSON,
DAVID A. HANSHER,
GREGORY A. PETERSON,
WILLIAM VANDER LOOP,
MICHAEL MILLER, AND
JAMES M. HANEY,

Defendants.

DEFENDANTS' PROPOSED FINDINGS OF FACT SUPPORTING CROSS MOTION FOR SUMMARY JUDGMENT

Defendants, members of the Wisconsin Judicial Commission, by their legal counsel, J.B. Van Hollen, Attorney General, and Jennifer Sloan Lattis, Assistant Attorney General, submit their proposed findings of fact on the cross-motions for summary judgment.

1. The plaintiff in this action, Judge John Siefert, has served as a Milwaukee County Circuit Court Judge since August 1, 1999 (Alexander affidavit, 5/15/08, ¶ 5, dkt # 19).

2. Defendant, James C. Alexander, is the executive director of the Wisconsin Judicial Commission. He has held this position since August 1, 1990 (Alexander affidavit, 5/15/08, ¶ 1, dkt # 19).

3. Defendant Larry Bussan is the administrative assistant to the Wisconsin Judicial Commission (Second Alexander affidavit, 10/14/08, ¶ 9).

4. Named defendants Alden, Bach, Morales, Dawson, Hansher, Peterson, Vander Loop, Miller, and Haney are members of the Wisconsin Judicial Commission (Second Alexander affidavit, 10/14/08, ¶ 8; citing Wis. Stat. § 757.83).

5. The commission investigates possible misconduct or permanent disability of a Wisconsin judge or court commission. Wis. Stat. § 757.85. "Misconduct," in this context, is defined by the Wisconsin statutes and includes the "[w]illful violation of a rule of the code of judicial ethics." Wis. Stat. § 757.81(4)(a) (Alexander affidavit, 5/15/08, ¶ 2, dkt # 19).

6. The code of judicial ethics is codified as the "Code of Judicial Conduct" in the Wisconsin Supreme Court Rules Chapter 60 (Alexander affidavit, 5/15/08, ¶ 3, dkt # 19).

7. The Code of Judicial Conduct that took effect on January 1, 1968, contained the first code provision prohibiting partisan political membership in the Wisconsin Judiciary (Alexander affidavit, 5/15/08, ¶ 4, dkt # 19).

8. In 1998, the Wisconsin Supreme Court established the Fairchild Commission to develop and update the Code of Judicial Conduct as regards

judicial campaign, election, and political activities, chaired by former Supreme Court Justice and Seventh Circuit Court of Appeals Judge Thomas E. Fairchild. The report of the Fairchild Commission was filed on June 4, 1999, and a public hearing was held on November 7, 1999. The Fairchild report recommended continuing the code provision prohibiting partisan political membership (Alexander affidavit, 5/15/08, ¶ 6, Exhibit G, dkt # 19).

9. The Wisconsin Supreme Court considered the Fairchild Commission proposals and held open administrative conferences from 2000 through 2004 (Alexander affidavit, 5/15/08, ¶ 7, dkt # 19).

10. Part of the reason for such lengthy consideration was the intervening United States Supreme Court decision of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), finding unconstitutional a Minnesota cannon of judicial conduct (Alexander affidavit, 5/15/08, ¶ 8, dkt # 19).

11. Wisconsin Supreme Court Order No. 00-07 "In the matter of the Amendment of Supreme Court Rules: SCR Chapter 60, Code of Judicial Conduct—Campaigns, Elections, Political Activity," 2004 WI 134, was filed October 29, 2004, with an effective date of January 1, 2005 (Alexander affidavit, 5/15/08, ¶ 9, Exhibit H, dkt # 19).

12. Defendant Alexander is not aware that Judge Siefert spoke against or filed any objection to Order No. 00-07 at the time it was debated. As with all supreme court rules petitions there is public notice and a time for filing written comments or objections. Wis. Stat. § 751.12. Anyone can file a

petition with the court for a rule change at any time. *See* Wisconsin Supreme Court Internal Operating Procedures, III[1] (Alexander affidavit, 5/15/08, ¶ 10, dkt # 19).

13. The Wisconsin Supreme Court's administrative conference agenda calls for a review of the Code of Judicial Conduct in light of the 2007 American Bar Association Model Code. The review procedure contemplated would be to establish a committee similar to the Fairchild Commission (Alexander affidavit, 5/15/08, ¶ 12, dkt # 19).

14. Wisconsin statutes provide for the election of judicial officers in the spring, non-partisan, elections. "'Spring election' means the election held on the first Tuesday in April to elect judicial, educational and municipal officers, nonpartisan county officers and sewerage commissioners." Wis. Stat. § 5.02(21). A "'[s]pring primary'" is "held on the 3rd Tuesday in February to nominate nonpartisan candidates to be voted for at the spring election. . . ." Wis. Stat. § 5.02(22) (Alexander affidavit, 5/15/08, ¶ 11, dkt # 19).

15. Wisconsin Supreme Court Rule 60.05, limits a Wisconsin judge's extra-judicial obligations, and, in particular, prohibits extra-judicial activities that cast reasonable doubt on the judge's capacity to act impartially as judge. (Second Alexander affidavit, 10/14/08, ¶ 1; SCR. 60.05(1)(a) attached as Exhibit P).

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[1] *http://www.wicourts.gov/sc/iop/DisplayDocument.html?content=html&seqNo=24645* (last visited 10/14/2008).

16. The rule specifically prohibits a full-time judge from appearing at a public hearing in matters other than those related to the law, the legal system or the administration of justice or when acting *pro se* in a matter involving the judge or the judge's interests. SCR 60.05(3)(a). However, the rule permits a judge to "serve as an officer, director, trustee or nonlegal advisor . . . of a nonprofit educational, religious, charitable, fraternal, sororal or civil organization. . . ." subject to limitations. SCR 60.05(3)(c) (Second Alexander affidavit, 10/14/08, ¶ 2).

17. SCR 60.03(2) provides that a judge may not allow social, political, or other relationships to influence the judge's judicial conduct or judgment, nor lend the prestige of the judicial office to advance the private interests of others, or permit the impression by others that they are in a special position to influence the judge (Second Alexander affidavit, 10/14/08, ¶ 3).

18. The "Comment" to SCR 60.03(1) provides that " . . . a judge must accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly" (Second Alexander affidavit, 10/14/08, ¶ 4).

19. These code provisions taken as a whole operate to prohibit a Wisconsin judge from belonging to such organizations as Mothers Against Drunk Driving, pro victim/witness domestic violence organizations, Sierra Club or other advocacy organizations that are dedicated to a particular legal philosophy or position that could have an adverse impact on the public's

perception of the judge's impartiality (Second Alexander affidavit, 10/14/08, ¶ 5).

20. The Judicial Conduct Advisory Committee has held that a reserve judge is prohibited from serving as president of a civic organization whose mission is, in substantial part, to advocate social goals through litigation and legislative action (Second Alexander affidavit, 10/14/08, ¶ 6; Opinion 00-5, 1/8/2002, attached as Exhibit Q).

21. Defendant Alexander believes the Judicial Commission's position is consistent with advisory opinions on the federal judicial codes of conduct (Second Alexander affidavit, 10/14/08, ¶ 7; Advisory opinion no. 40, rev'd 1/16/1998, attached as Exhibit R).

22. Joseph A. Ranney is a practicing attorney and member of the Bar of the State of Wisconsin. He has written and spoken extensively on Wisconsin legal history and related topics. He is also an adjunct professor at Marquette Law School, where he regularly teaches a seminar on Wisconsin legal history. Attorney Ranney is qualified to opine as an expert on matters of Wisconsin legal history (Ranney affidavit, 4/24/08, ¶ 1, Ranney curriculum vitae, Exhibit A, dkt # 20).

23. Wisconsin held two constitutional conventions before it became a state, one in 1846 and one in late 1847 and early 1848. Each convention produced a draft state constitution. Following considerable debate on the issue, the 1846 constitution was enacted with a provision for an elective

judiciary. No official transcripts were made of the debates at the 1846 and 1847-48 conventions, but most of the debates were recorded by journalists who attended the conventions. Most of the reports of debates at the 1846 convention are reproduced in Milo M. Quaife, *The Constitutional Convention of 1846*, published by the State Historical Society of Wisconsin in 1919 ("Quaife, *1846 Convention*"). Most of the reports of debates at the 1847-48 convention are reproduced in Milo M. Quaife, *The Attainment of Statehood*, published by the State Historical Society of Wisconsin in 1928 ("Quaife, *Attainment of Statehood*") (Ranney affidavit, 4/24/08, ¶ 2, dkt # 20).

24. There was extensive debate at the 1846 convention as to whether judges in Wisconsin should be elected by the people or appointed by the Governor and/or Legislature. Portions of such debate are set forth in Quaife, *1846 Convention* (Ranney affidavit, 4/24/08, Exhibit B, dkt # 20). The 1846 convention inserted in its constitution a judiciary article that provided for popular election of all judges. The 1846 constitution was defeated by the voters of Wisconsin for reasons unrelated to this provision (Ranney affidavit, 4/24/08, ¶ 3, dkt # 20).

25. There was also debate on this subject at the 1847-48 convention. Portions of such debate are set forth in Quaife, *Attainment of Statehood* (Ranney affidavit, 4/24/08, Exhibit C, dkt # 20). The 1847-48 convention also inserted a judiciary article that provided for popular election of all judges. The 1847-48 constitution, including this article, was approved by the voters of

Wisconsin and became Wisconsin's constitution (Ranney affidavit, 4/24/08, ¶ 3, dkt # 20).

26. As set forth in Ranney affidavit Exhibits B and C, in early debates over a popularly-elected judiciary, concerns were expressed that an openly partisan judiciary would be subject to corrupting influences. Nevertheless, the first nominations to the Wisconsin Supreme Court were partisan (Ranney affidavit, 4/24/08, ¶ 5, dkt # 20).

27. Supreme court nominations were made by partisan conventions. Some participants in the conventions expressed concern about an openly partisan judiciary and indicated that parties should nominate only persons of integrity and ability who would not let partisan considerations influence their decisions. An example is set forth in Wisconsin Chief Justice John Winslow's book on early Wisconsin legal history, *The Story of A Great Court*, published in 1912. ("Winslow, *The Story of A Great Court*"). Specifically, Winslow's description of the 1852 Democratic nominating convention confirms such concerns (Ranney affidavit, 4/24/08, ¶ 6, Exhibit D, dkt # 20).

28. During the 1850s and 1860s, Wisconsin Supreme Court candidates continued to be selected largely on a partisan basis and elections were often conducted based on partisan and political issues. For example:

> a. In *In re Booth*, 3 Wis. 54 (1854) the Supreme Court held by a 2-1 vote, with Justice Samuel Crawford dissenting, that the federal Fugitive Slave Act of 1850 was unconstitutional. Following the Court's decision, Wisconsin defied federal efforts to enforce the law. Justice Crawford was defeated for re-election in 1855 largely because of his dissent in *Booth* and not because of concerns about his legal abilities.

b. In *Ableman v. Booth*, 21 How. (62 U.S.) 514 (1859), the United States Supreme Court reversed the Wisconsin court's 1854 *Booth* decision. The Wisconsin Supreme Court then voted not to file the United States Supreme Court's decision, with Chief Justice Luther S. Dixon dissenting. *Ableman v. Booth*, 11 Wis. 501 (1859). Although Dixon was a Republican and his legal abilities were highly respected, the 1860 Republican convention refused to nominate him for re-election because of his dissent. Dixon was nominated by an independent convention and was narrowly re-elected. An article which I wrote, "'Suffering the Agonies of Their Righteousness': The Rise and Fall of the States Rights Movement in Wisconsin, 1854-1861," 75 *Wisconsin Magazine of History* 83 (Winter 1991-92), see Exhibit E, describes the role that the Booth controversy played on partisanship in judicial elections in more detail.

c. During the late 1840s and early 1850s, many Wisconsin farmers purchased railroad stock by giving promissory notes secured by mortgages on their land in order to obtain railroad service for their communities. Following a depression in 1857, many railroads went into receivership and financiers to whom they had sold the farmers' promissory notes attempted to foreclose on the mortgages. The Wisconsin legislature enacted a series of laws promoting debtor relief, most of which the Wisconsin Supreme Court declared unconstitutional. During the early 1860s, many farmers and their supporters formed a Grand State League to promote debtor relief. The Democratic party, with the League's support, several times nominated Supreme Court candidates to oppose sitting justices up for re-election; the opposing candidates ran largely on a platform of debtor relief. No sitting justice was defeated, but the results were often quite close. *See* Winslow, *Story of A Great Court*, pages 253-55, Ranney affidavit Exhibit D, and see also Ranney, *Trusting Nothing to Providence: A History of Wisconsin's Legal System*, published by the University of Wisconsin Law School in 1999. Ranney affidavit, Exhibit F describing the farm mortgage controversy in more detail.

(Ranney affidavit, 4/24/08, ¶ 7, dkt # 20).

29. As a result of the controversies described in paragraphs 7 above, an informal tradition developed that there should be a partisan balance on the Wisconsin Supreme Court. In 1878, when the size of the Court was expanded from three to five justices, legislative caucuses of both parties

arranged to nominate one Democrat and one Republican as consensus candidates for the new seats to achieve balance on the bench. *See* Winslow, *The Story of a Great Court*, at 380 (Ranney affidavit, 4/24/08, ¶ 8, Exhibit D, dkt # 20; Second Raney Affidavit, 10/12/08, ¶ 3).

30. The last judicial election contest with overt partisan tones was held in 1895 when Winslow, a Democrat, narrowly won re-election over his Republican opponent. *See* Winslow, *The Story of a Great Court*, at 382 (Ranney affidavit, 4/24/08, ¶ 9, Exhibit D, dkt # 20).

31. In 1909, the election of Justice John Barnes created an apparent Democratic majority on the Wisconsin Supreme Court despite the fact voters consistently elected Republican governors and legislatures during this time and the Democratic party was very weak. Little attention was paid to Barnes' party affiliation or to partisan affiliations of the justices, demonstrating "the absolute disappearance of partisan considerations" by that time. *See* Winslow, *The Story of a Great Court*, at 385 (Ranney affidavit, 4/24/08, ¶ 10, Exhibit D, dkt # 20).

32. Prior to 1890, candidates for most state and local offices in Wisconsin were chosen by party caucuses and the state exercised little regulatory control over the candidate selection process. Beginning about 1890, a movement arose to weaken party control over the political process, in particular the nomination process, through state regulation—specifically, by requiring nomination of candidates through primaries rather than caucuses.

Supporters of the movement generally believed that party caucus nominations tended to be controlled by a small group of party leaders and that primaries would give the electorate as a whole a greater voice in the selection of public officials. Supporters of the movement believed that reduction of party control over the nomination and election process was desirable. Legal Historian Ranney has summarized this movement in his book, *Trusting Nothing to Providence: A History of Wisconsin's Legal System* (1999) at pages 259-269. Copies of these pages are attached as **Exhibit I** (Second Ranney Affidavit, 10/12/08, ¶ 4).

33. For example, in 1891 the Legislature enacted Wisconsin's first law replacing caucus nominations with an open primary system, that is, a primary in which any voter could participate in any party's primary (Laws of 1891, chapter 439). The law applied only to counties with populations greater than 150,000 and was repealed two years later but then during the 1890s the Legislature enacted additional laws regulating party caucuses (Second Ranney Affidavit, 10/12/08, ¶ 5).

34. During the 1890s Wisconsin lawmakers also paid attention to the related issue of whether elections should be conducted on a non-partisan basis. The Legislature enacted several laws putting judicial elections on a non-partisan footing:

a. In 1891, the Legislature provided that "No party designation need be placed upon ballots for school or judicial offices" in all municipalities except cities with populations of 50,000 or more (Laws of 1891, chapter 379, § 13; Rev. Stats. 1898, § 38). As the

wording indicates, the non-partisan designation was not mandatory. A copy of a sample judicial election ballot which was part of the Laws of 1891 is attached as **Exhibit J**. In 1893 the law was amended to cover all municipalities (Laws of 1893, chapter 288, § 28).

b. In 1898, the Legislature prohibited voters from choosing a straight party vote option, that is, indicating on the ballot that they wished to vote for all candidates of a particular party rather than voting for individual offices (Rev. Stats. 1898, § 52).

c. In 1911, the Legislature provided that non-partisan nominations "may" be made in judicial elections (Laws of 1911, chapter 613, § 1; Stats. 1911, § 30).

(Second Ranney Affidavit, 10/12/08, ¶ 6).

35. The movement to reduce party influences in the nomination and election process continued during the Progressive era (1901-1914). Robert LaFollette was elected governor in 1900 partly because he advocated an open primary system for all state offices. After a prolonged struggle between LaFollette supporters and conservatives in the Legislature, a statewide open primary law was enacted in 1903 (Laws of 1903, chapter 451) and was ratified by the voters at the 1904 election (Second Ranney Affidavit, 10/12/08, ¶ 7).

36. In 1907, the Legislature allowed Wisconsin cities and villages to hold local elections on a non-partisan basis if they wished (Laws of 1907, chapter 670) and it made the law mandatory in 1912 (Laws of 1912, Special Session, chapter 11) (Second Ranney Affidavit, 10/12/08, ¶ 8).

37. In 1913, the Legislature enacted a law that judicial elections must be held on a non-partisan basis (Laws of 1913, chapter 492, § 2). The

law provided in pertinent part that: "No candidate for any judicial or school office shall be nominated or elected upon any party ticket, nor shall any designation of party or principle represented be used in the nomination or election of any such candidate" (Second Ranney Affidavit, 10/12/08, ¶ 9).

38. The Wisconsin Statutes for 1913 and succeeding years contain a sample ballot for judicial elections which affixes the words "A Nonpartisan Judiciary" after the name of every candidate for judicial office. A copy of the sample ballot from the 1913 Statutes is attached as **Exhibit K** (Second Ranney Affidavit, 10/12/08, ¶ 10).

39. The provisions of the 1913 law referenced in paragraph 10 above continued in effect until 1965 without substantive change. In 1965 such provisions were superseded by Laws of 1965, chapter 666 (Stats. 1967, §§ 5.58, 5.60). The 1965 law provided that no party designation is to appear on the spring primary and general election ballots for judicial and certain other offices. A copy of the sample ballot from the 1967 Statutes is attached as **Exhibit L** (Second Ranney Affidavit, 10/12/08, ¶ 11).

40. The provisions of the 1965 law referenced in paragraph 39 above have continued in effect to the present time without substantive change (Second Ranney Affidavit, 10/12/08, ¶ 12).

41. In 1915, a committee headed by Chief Justice John B. Winslow considered possible improvements to the Wisconsin court system and submitted a report to the Legislature. The Committee confirmed Winslow's

opinion (discussed in paragraph 5 of the Ranney 1st Affidavit) that partisan considerations had largely vanished from judicial elections. A copy of pertinent parts of the Committee's report is attached as **Exhibit M**. The Committee stated:

> The unwritten code which has so happily developed in this state, by which a circuit judge who shows his fitness for the office is retained in the service without regard to political considerations term after term, has been of great service in rendering our courts stable, learned and respected. It has also tended strongly to make them independent and fearless and has well nigh put an end to the judge with his ear to the ground.

(Second Ranney Affidavit, 10/12/08, ¶ 13).

42. In the 1930s, the Wisconsin Bar Association ("State Bar") and members of the legal profession in other states spent substantial time considering and debating the best means of selecting judges. In 1934, the State Bar Committee on Judicial Selection published a report in which it suggested that Wisconsin's elective judicial system be replaced by a system under which: (a) a judicial council would submit the names of three persons for each judicial vacancy and the Governor would appoint with the approval of the State Senate one of the three candidates (or another of his choice, subject to council approval), and (b) voters would vote every six years whether to retain a judge, without any other candidates appearing on the ballot (Second Ranney Affidavit, 10/12/08, ¶ 14).

43. A member of the Bar Committee that prepared the 1934 Plan, Lawrence H. Smith, commented on the Plan. Mr. Smith stated that "the only matter of interest to the public in the question of selection is that our courts

be filled with men who are morally and professionally qualified to hold those important offices." He noted commentary in other states suggesting that problems were associated with both partisan and non-partisan elective systems, but he stated: "We cannot recommend a return to the old convention system, for that means the practical selection of judicial candidates by the managers of leading political parties." A copy of the State Bar's report on the Plan and of Mr. Smith's speech is attached as **Exhibit N** (Second Ranney Affidavit, 10/12/08, ¶ 15).

44. The 1934 Plan was never adopted and apparently was never considered by the Legislature. In 1938, the Bar Committee submitted another report, a copy of which is attached as **Exhibit O**. In the report, the Committee cited a 1937 American Bar Association resolution which stated that: "The importance of establishing methods of judicial selection that will be most conducive to the maintenance of a thoroughly qualified and independent judiciary that will take the state judges out of politics as nearly as may be, is generally recognized" (Second Ranney Affidavit, 10/12/08, ¶ 15).

45. The Committee went on to state: "There will be no disagreement on the proposition that judicial office should be filled by those persons in the community who are best fitted through ability, experience, temperament and character to hold such office. In an electoral free-for-all, other and quite irrelevant considerations are pressed upon the voters" (Second Ranney Affidavit, 10/12/08, ¶ 17).

46. The Committee also stated: "Thanks to our completely non-partisan judicial elections, and to the conscientious manner in which our governors of all parties have, in the main, made their judicial appointments in the past, the Wisconsin judicial system is not in any dire need of change." The Committee then recommended that no further action be taken beyond continuing to discuss the topic of methods of judicial selection (Second Ranney Affidavit, 10/12/08, ¶ 18).

47. The Winslow Committee in 1915 and the State Bar in 1934 and 1938 did not directly discuss the issue of whether judges should be permitted to support partisan candidates for other office or to work on such candidates' behalf. But in Legal Historian Ranney's opinion, Wisconsin's decision to reduce the role of political parties in nominations and elections for office from the 1890s onward, together with the comments of the Winslow Committee and State Bar discussed above and the Legislature's decision to mandate non-partisan judicial elections which has continued in effect from 1913 to the present, all demonstrate that Wisconsin's policy since the 1890s has been that the state's judges should maintain a non-partisan appearance and should take care not be perceived as advocates of a particular political party (Second Ranney Affidavit, 10/12/08, ¶ 19).

48. Plaintiff, Judge Siefert wishes to join the Democratic Party so that he could explore running for partisan office as a Democrat (Siefert deposition, 9/19/2008, p. 6, ll. 5-16), apply for U.S. Marshall as a Democrat

(*Id*., p. 7, ll. 16-25), serve as a delegate to the Democratic National Convention (*Id*., p. 23, ll. 23-25), and be involved in the politics of participation (*Id*., p. 13, ll. 19-25).

49. There are no Republican candidates on the partisan ballot in Milwaukee County, where Judge Siefert serves, in the 2008 elections because Milwaukee is a Democratic county (Siefert deposition, 9/19/2008, p. 32, ll. 3-17).

50. In judicial races in Milwaukee it is more common that both of the candidates, if they could profess a party affiliation, would profess a Democratic Party affiliation (Siefert deposition, 9/19/2008, p. 32, ll. 3-6).

51. As a judicial candidate, Judge Siefert would like to list his membership in the Democratic Party in response to candidate questionnaires (Siefert deposition, 9/19/2008, p. 9, ll. 1-5; p. 17, ll. 3-7).

52. As a judicial candidate, Judge Siefert does not know with certainty whether he would list himself as a Democrat in advertising (Siefert deposition, 9/19/2008, p. 9, ll. 12), but believes that he most likely would not do so because he would not want to stress partisanship in his re-election campaign (*Id*., p. 16, ll. 20-21; p. 17, ll. 1-2).

53. As a judicial candidate, Judge Siefert would not want to appeal to overheated rhetoric in a partisan nature (Siefert deposition, p. 17, ll. 11-17): "I think the current presidential campaign has grown far too partisan in its tone, and I don't think that that kind of partisanship is good in judicial

elections or in any elections including presidential elections." (*Id*., p. 51, ll. 16-20).

54. As a judicial candidate, Judge Siefert does not necessarily desire to use membership in the Democratic Party as a shorthand for his political viewpoint (Siefert deposition, 9/19/2008, p. 13, ll. 8-13).

55. Judge Siefert believes that the most important positions he conveys by claiming himself as a Democrat are a desire for social justice for the poor, and for peace (Siefert deposition, 9/19/2008, p. 14, ll. 12-17; p. 15, ll. 5-13, and ll. 16-18).

56. Judge Siefert finds the non-partisan rules for judicial candidates to be "somewhat chilling," but agrees that "with recent court decisions" he would be allowed to take positions on social justice for the poor and for peace (Siefert deposition, 9/19/2008, p. 16, ll. 10-14).

57. Judge Siefert would like to endorse Barak Obama for president, though not using his "Judge" title (Siefert deposition, 9/19/2008, p. 26, ll. 12-19). He would like to endorse in other partisan offices such as governor or the legislature (*Id*., p. 27, ll. 13-16).

58. If he had endorsed a gubernatorial candidate for office, Judge Siefert would see no particular need for recusing himself from a case involving that Governor's administrative agencies (Siefert deposition, 9/27/2008, p. 27, ll. 21-22).

59. Judge Siefert has no opinion as to whether raising money for a judicial campaign is hindered by the judge's being non-partisan (Siefert deposition, 9/19/2008, p. 39, ll. 2). He does not think he was quoted accurately in a newspaper article suggesting that he had said such (*Id.*, p. 40, 10-16). Judge Siefert believes that the real problem is not being able to ask directly for money (*Id.*, p. 41, ll. 6-8).

60. Judge Siefert has used a campaign committee to raise money, but finds it "very hard to raise money through a committee as opposed to being able to raise it directly" because he believes people expect to be asked personally and don't understand that the rules do not allow it (Siefert deposition, 9/19/2008; p. 33, ll. 13-25; p. 34, ll. 1-7).

61. Judge Siefert understands that he can use committees for fundraising, has used them, and has attended fundraisers for other judicial candidates organized by committee (Siefert deposition, p. 34, ll. 13-19; pp. 10-19).

62. Defendant Judge Gregory A. Peterson is the Deputy Judge for the Wisconsin Court of Appeals and member of the Wisconsin Judicial Commission (Peterson affidavit, 10/9/08; ¶ 1).

63. Judge Peterson was first elected as a circuit judge in Eau Claire County in 1983 and served in that position for sixteen years. He raised only a small amount of money for his campaign, through the committee structure,

prior to his first election until he knew he had no opposition (Peterson affidavit, 10/9/08; ¶ 2).

64. Judge Peterson was first elected to the Court of Appeals in 1999, and has been re-elected once. He raised only a small amount of money for his first campaign, through the committee structure, but ceased raising money once he knew he had no opponent (Peterson affidavit, 10/9/08; ¶ 3).

65. Defendant Judge David A. Hansher was first elected as a circuit judge for Milwaukee County in 1991 and is seeking re-election in April 2009. He is the presiding judge for the civil division in Milwaukee County (Hansher affidavit, 10/10/08, ¶ 1-2).

66. Of the (approximately) ten Milwaukee County judges, who are facing re-election in April 2009, none have commenced any fundraising yet, and Judge Hansher is unaware of any plans they have to raise funds. Judge Hansher has no plans to raise funds for his re-election campaign in April 2009 (Hansher affidavit, 10/10/08 ¶ 3).

67. Judge Hansher believes approximately six Milwaukee County judges stood for re-election in April 2008, and he knows of only one who did any fundraising. Judge William W. Brash was the only Judge to have a fundraiser which he held in approximately December 2007 for the April 2008 election. (Hansher affidavit, 10/10/08, ¶ 4).

Dated this 15th day of October, 2008.

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