

**United States District Court  
District of Western District of Wisconsin  
Madison Division**

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**THE HONORABLE JOHN SIEFERT**

*Plaintiff,*

*v.*

**JAMES C. ALEXANDER, et al;**

*Defendants.*

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*Civil Action No. 08-CV-126-BBC*

**PLAINTIFF'S PROPOSED FINDINGS OF FACT**

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). *Complaint* ¶ 1.

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.

*Complaint ¶ 2.*

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. *Complaint ¶ 3.*

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). *Complaint ¶ 4.*

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

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

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. *Complaint ¶ 7.*

8. 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. Wis. Stat. §§ 757.81-757.99

9. 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.

10. 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.

11. 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).

12. 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.

13. 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. *Complaint* ¶ 8.

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

15. 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.” *Complaint*, Exhibit 1, at 3.

16. 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.” SCR 60.06(2)(b)(1)

17. 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.” SCR 60.06(2)(b)(4).

18. 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.” SCR 60.06(2)(c).

19. 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.” *Complaint*, Exhibit 1, at 5.

20. 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. SCR 60.06(4).

21. 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. *Complaint*, Exhibit 1, at 12-26.

22. 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." *Complaint*, Exhibit 1, at 13.

23. Plaintiff Honorable John Siefert is a circuit court judge in Milwaukee County. *Siefert Affidavit* ¶ 2.

24. Judge Siefert was elected to this office in 1999, and re-elected in 2005. He is currently a candidate for re-election in 2011. *Siefert Affidavit* ¶ 3.

25. Prior to holding elective office as a judge, Judge Siefert was a member of the Democratic Party. Upon assuming office as judge, he was forced to resign his membership in the Democratic Party by SCR 60.06(2)(b)(1), which prohibited sitting judges from belonging to political parties. *Siefert Affidavit* ¶ 4.

26. In 1972, Judge Siefert was a delegate to the Democratic National Convention. *Siefert Affidavit* ¶ 5.

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27. In 1972, and 1974, Judge Siefert was a Democratic candidate for the 63rd District of the Wisconsin State Assembly. *Siefert Affidavit* ¶ 6.

28. In 1975, Judge Siefert was a non-partisan candidate for the office of County Executive, in Racine County, Wisconsin. *Siefert Affidavit* ¶ 7.

29. In 1979, 1983, 1986, 1993 and 1997, Judge Siefert was a candidate for the office of Municipal Judge in Milwaukee County, Wisconsin. He held this office from 1979 to 1983, and again from 1993 to 1999. *Siefert Affidavit* ¶ 8.

30. In 1990 and 1992, Judge Siefert was a Democratic candidate for County Treasurer in Milwaukee County, Wisconsin. He held this office from 1990 to 1993. *Siefert Affidavit* ¶ 9.

31. In 1992, Judge Siefert was an alternate presidential elector for Clinton/Gore. *Siefert Affidavit* ¶ 10.

32. Apart from his duties as judge, Judge Siefert would like to again become a member of the Democratic Party. *Siefert Affidavit* ¶ 11.

33. Judge Siefert does not intend to run a partisan re-election campaign, nor does he intend to appeal to partisanship either as a candidate or as a judge. *Siefert Affidavit* ¶ 12.

34. While Judge Siefert wishes to be a member of the Democratic Party, he does not necessarily agree with every element of the Democratic Party platform, and as a judge would decide each case before him strictly in accordance with the law, regardless of whether such a decision would conflict with provisions in the Democratic Party platform, or the views of various Democratic Party officials or candidates. Joining the Democratic Party, however, may be taken as a shorthand for announcing many of his views. *Siefert Affidavit* ¶ 13.

35. In joining the Democratic Party, Judge Siefert does not intend to pledge or promise certain results in particular cases or classes of cases. *Siefert Affidavit* ¶ 14.

36. Being a member of the Democratic Party would not bias Judge Siefert for or against any particular party or class of parties, nor would it impair his ability to be open-minded in any particular case or class of cases. *Siefert Affidavit* ¶ 15.

37. Judge Siefert is chilled from joining the Democratic party because he fears discipline under the political affiliation clause. *Complaint* ¶ 19.

38. Apart from his duties as judge, Judge Siefert has in the past endorsed candidates for non-partisan office, as allowed by the Wisconsin Code of Judicial Conduct. In making these endorsements, Judge Siefert has not be pledged or promised certain results in particular cases or classes of cases. Making these endorsements has not biased Judge Siefert for or against any particular party or class of parties, nor has it impaired his ability to be openminded in any particular case or class of cases. *Siefert Affidavit* ¶ 16.

39. Apart from his duties as judge, Judge Siefert would also like to exercise his constitutional rights under the First Amendment to endorse candidates for partisan public office. *Siefert Affidavit* ¶ 17.

40. Specifically, Judge Siefert would like to publicly support Senator Barack Obama for President in the upcoming Presidential election, and would like to be able to publicly support other candidates in other races as desired. *Siefert Affidavit* ¶ 17.

41. Judge Siefert is, however, prohibited from doing so by SCR 60.06(2)(b)(4). *Siefert Affidavit* ¶ 17.

42. The fact that Judge Siefert wishes to publicly support Senator Obama does not

mean that he necessarily agrees with him on every disputed legal or political issue, and as a judge he would decide each case before him strictly in accordance with the law, regardless of whether such a decision would conflict with a position taken by Senator Obama. Such public support, however, may be taken as a shorthand for announcing many of his views. *Siefert Affidavit* ¶ 18.

43. By publicly supporting Senator Obama for President, Judge Siefert would not be pledging or promising certain results in particular cases or classes of cases. *Siefert Affidavit* ¶ 19.

44. Judge Siefert's publicly supporting Senator Obama would not bias him for or against any particular party or class of parties, nor would it impair his ability to be openminded in any particular case or class of cases. *Siefert Affidavit* ¶ 20.

45. In the unlikely event that Senator Obama appeared before Judge Siefert as a litigant in a case, he would recuse himself from hearing that case. *Siefert Affidavit* ¶ 21.

46. Based on his experience as a candidate for political office, Judge Siefert believes that endorsing another candidate is often politically dangerous, as by doing so one may alienate potential supporters who are opponents of the endorsed candidate, and may run the risk of being held responsible by the voters for the positions, statements, and actions of the endorsed candidate which would be beyond my control. He would therefore only make such endorsements in partisan races judiciously, as he currently does in non-partisan races. *Siefert Affidavit* ¶ 22.

47. It is the endorsee, not the endorser, who is the primary beneficiary of an endorsement. *Siefert Affidavit* ¶ 23.

48. An endorsement is more likely to bias a judge for or against a particular party or class of parties, or impair his ability to be openminded in any particular case or class of cases, if the judge is being endorsed than if the judge is making the endorsement. *Siefert Affidavit* ¶ 23.

49. A judge who is appointed to the bench by a partisan political official such as a governor is more likely to feel gratitude and be biased in favor of or lack openmindedness in cases involving that governor than if the judge had simply endorsed a particular gubernatorial candidate. *Siefert Affidavit* ¶ 23.

50. Judge Siefert is chilled from making any endorsements because he fears discipline under the endorsement clause. *Complaint* ¶ 20.

51. As a candidate for judicial office, Judge Siefert would like to personally solicit campaign contributions for his 2011 re-election campaign. *Siefert Affidavit* ¶ 24.

52. Specifically, Judge Siefert would like to personally solicit contributions from potential donors both by making personal phone calls, by signing his name to fund-raising letters, and by personally inviting people to his fundraising events *Siefert Affidavit* ¶ 24.

53. Because of the prohibition on personal solicitation in SCR 60.06(4), Judge Siefert's 1999 campaign for Circuit Judge was primarily self-financed. *Siefert Affidavit* ¶ 25.

54. Judge Siefert would also like to personally solicit contributions to retire campaign debt from his 1999 campaign for judicial office. *Siefert Affidavit* ¶ 25.

55. Judge Siefert is, however, prohibited from doing so by SCR 60.06(4). *Siefert Affidavit* ¶ 24, 25.

56. In making such solicitations, Judge Siefert does not intend to pledge or promise certain results in particular cases or classes of cases, either as a *quid pro quo* or for any other reason. *Siefert Affidavit* ¶ 26.

57. Personally soliciting campaign contributions, either via personal phone calls or by

means of signing fund-raising letters, would not bias Judge Siefert for or against any particular party or class of parties, nor would it impair his ability to be open-minded in any particular case or class of cases. *Siefert Affidavit* ¶ 27.

**58.** Campaign contributions are an essential part of any election campaign. *Siefert Affidavit* ¶ 28.

**59.** While Judge Siefert is not up for re-election until 2011, it is common practice for candidates to solicit campaign contributions throughout their term in office, and Judge Siefert would like to begin personally soliciting campaign contributions as soon as possible to ensure that he has adequate campaign funds come 2011. *Siefert Affidavit* ¶ 29.

**60.** Being unable to personally solicit campaign contributions limits Judge Siefert's ability to raise campaign funds, potentially harming his ability to mount an effective election campaign. *Siefert Affidavit* ¶ 30.

**61.** Bans on personally soliciting campaign contributions often benefit incumbents, who often have higher name recognition than their challenger opponents. *Siefert Affidavit* ¶ 31.

**62.** Receiving campaign contributions has a greater risk of biasing a judge for or against a particular party or class of parties, or of impairing his ability to be openminded in any particular case or class of cases, rather than does solicitation of such contributions. *Siefert Affidavit* ¶ 32.

**63.** Under current law, judicial candidates are required to know who has donated to their campaigns and in what amounts, even though they cannot personally solicit such contributions. *Siefert Affidavit* ¶ 33.

**64.** Based on his experience as a candidate, Judge Siefert is aware of certain methods,

such as having committee members make solicitations while the solicited party is in the presence of the candidate, which are allowed by the Code but which undercut its rational. Judge Siefert has not engaged in such practices, and his refusal to do so has limited his ability to raise adequate campaign funds. *Siefert Affidavit* ¶ 34.

65. As a judicial candidate, Judge Siefert will instruct anyone soliciting funds on his behalf not to approach anyone who either has or is likely to have a case in front of his court, and it is his policy to disqualify himself if he sees a litigant before him whom he knows to have contributed to any of his past campaigns, whether for partisan or non-partisan office. *Siefert Affidavit* ¶ 35.

66. Absent the solicitation clause, Judge Siefert would follow the same policy regarding any contributions made as a result of personal solicitation. *Siefert Affidavit* ¶ 36.

67. Judge Siefert is chilled from making such personal solicitations because he fears discipline under the solicitation clause. *Complaint* ¶ 21.

68. Judge Siefert has exhausted all extra-judicial means at his disposal to resolve this matter before proceeding to file this Complaint. *Complaint* ¶ 22.

69. Judge Siefert has no adequate remedy at law. *Complaint* ¶ 23.

Dated: July 18, 2008

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