**UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF INDIANA**
**FORT WAYNE DIVISION**

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| **TORREY BAUER,** ***et al.*** <br> ***Plaintiffs*****,** <br> ***v.*** <br> **RANDALL T. SHEPARD,** ***et al.*** <br> ***Defendants*****.** | **Civil Action No. 3:08-CV-196-TLS-CAN** |

**RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

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## Introduction

On May 1, 2009, Plaintiffs and Defendants concurrently filed their motions for summary judgment. Pursuant to this Court's order, Plaintiffs now timely respond.

## Statement of Material Facts

Plaintiffs have furnished their statement of facts in their Summary Judgment Memorandum. (Doc. 71.) Plaintiffs agree that no dispute of material fact exists but contend that Defendants are not entitled to judgment as a matter of law.

## Argument

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Based on the undisputed facts in this case, the former commits clause and the current commits clauses, the solicitation clauses, the partisan activities clause, and the recusal requirement as applied to the Questionnaire violate the First Amendment.

Plaintiffs have affirmatively articulated their contentions as to the unconstitutionality of the challenged canons in their Memorandum Support Summary Judgment. (Doc. 71.) In an effort to minimize repetition, this brief will focus solely on responding to Defendants' arguments supporting Defendants' motion for summary judgment in their favor.

### I. Article III Requirements Are Satisfied.

The Commission contends that this matter is not ripe and that Plaintiffs are collaterally estopped from litigating this matter by *Indiana Right to Life, Inc. v. Shepard,* 507 F.3d 545 (7th

Cir. 2007). (Comm'n Mem. Sum. Judg. at 12.) This Court already addressed these issues in its May 6, 2008, decision, noting that the Seventh Circuit decision was directed towards standing issues, not ripeness issues. *Bauer v. Shepard*, No.3:08-cv-196 , 2008 WL 1994868 at *13-15 (N.D. Ind. May 6, 2008). Nothing has changed in the interim to affect that decision.

For a case to be ripe, a plaintiff must allege "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [that] there exists a credible threat of prosecution thereunder." *Commodity Trend Serv. Inc. v. Commodity Futures Trading Commission*, 149 F.3d 679, 687 (7th Cir. 1998) (*citing Babbitt v. United Farm Workers Nat'l Union,* 442 U.S. 289*,* 298 n.3 (1979)). However, "[a] plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech need not show that the authorities have threatened to prosecute him; the threat is latent in the existence of the statute." *Wisconsin Right to Life v. Schober,* 366 F.3d 485, 489 (7th Cir. 2004).

Plaintiffs satisfy these requirements. They have indicated that not only were they chilled during the 2008 election cycle, but that they would be likewise chilled by the new canons from engaging in such speech in subsequent elections. (2nd Am. Compl. ¶¶ 30, 32.) Judge Certo and Mr. Bauer both have asserted they intend be judicial candidates in the future. (*Id.* at ¶¶ 28, 32.) And as history would support, IRL will continue to send out questionnaires to judicial candidates. (*Id.* at ¶ 21.) Credible injury under the new canons exists.

Because this is a pre-enforcement action, actual enforcement of the canons against Plaintiffs Certo or Bauer is not necessary, contrary to what Defendants contend. (Comm'n Mem. Sum. Judg. at 13.) The threat is latent in the canons. *Bauer,* WL 1994868 at *14. Moreover, a credible threat of enforcement exists. First, Ms. Babcock, in responding to judicial candidates

who inquired about answering the 2008 Questionnaire, specifically referenced the new code in her response. (*Babcock Correspondence,* Ex. 3).[1] Second, the Commission continues to assert the merit of Advisory Opinion #1-02, which is part of the source of the chill in this matter. (*See, e.g.,* Mem. Sum. Judg. at 22) (arguing that the Advisory Opinion sheds meaningful insight on the meaning of "commits" and "appears to commit" in the canons). That some judicial candidates believe that the their answers to the questionnaire should not be implicated by the canon—new or old—is irrelevant when it is clear that the Commission has conducted itself in such a way as to suggest that they are. If the Commission believed the questionnaire did not seek answers that violated the Canons, Ms. Babcock would have responded by informing candidates they could proceed in answering the questionnaire. Her actual conduct, along with that of the Commission in this case, belies such a belief. Indeed, this Court recognized in its prior decision that the Commission "is unwilling to commit to the position that answering the IRL questionnaires at issue in this case does not violate the 'pledges and promises clause' or the 'commits' clause." *Bauer,* 2008 WL 1994868 at *2. Nothing in their subsequent briefing or conduct indicates such is not the case under the new canons.

The Commission argues that since it has not engaged in any enforcement against judicial candidates under these canons for answering the Questionnaire, Plaintiffs' as-applied challenges are not legitimately sought. (Comm'n Mem. Sum. Judg. at 13, 23.) However, as mentioned above, this is a pre-enforcement challenge—actual enforcement is not necessary. Moreover, the

[1]All exhibit references refer to the *Parties' Agreed Preliminary Injunction Exhibits* furnished to this Court at the preliminary injunction hearing in this matter unless otherwise noted.

Commission misapprehends the notion of an as-applied challenge. An as-applied challenge to a provision asserts that, even in the face of a constitutional provision, it is unconstitutional for it to be applied to a specific context. *See, e.g., FEC v. Wisconsin Right to Life*, 127 S.Ct. 2652, 2659 (2007) ("*WRTL*") (noting that "'[i]n upholding § 203 against a facial challenge, we did not purport to resolve future as-applied challenges.'") (citations omitted). Here, Plaintiffs have facially challenge the canons at issue, but have also asserted as-applied challenges to protect, at minimum, the right of Plaintiffs to engage in the specific conduct they allege they wish to engage in but for the canons. This is a legitimate legal theory.

Last, the Commission questions Plaintiffs' standing to challenge the former commits clause. (Comm'n Mem. Sum. Judg. at 13.) In light of the Commission's continued litigation of this matter, Plaintiffs believe they have credible concern about the collateral consequences of failing to protect their speech under this Court's preliminary injunction with a permanent injunction. *See Dailey v. Vought Aircraft Co.*, 141 F.3d 224, 228 (5th Cir. 1998) (finding that "the mere possibility of adverse collateral consequences is sufficient to preclude a finding of mootness"); *In re Hancock*, 192 F.3d 1083, 1084 (7th Cir. 1999) (*citing Dailey,* 141 F.3d at 227-29). But ultimately, if the Commission is willing to stipulate to an agreed order that it will not enforce the canons against judicial candidates who answered the questionnaire under the protection of preliminary injunction, Plaintiffs would be willing to let the matter rest.

**II. The Commits Clauses Are Facially Unconstitutional.**

Recognizing that the commits clauses are subject to strict scrutiny, the Commission asserts that the clauses serve the state's interest in preserving impartiality through protecting

judicial openmindedness. (Comm'n Mem. Sum. Judg. at 15-16.) But openmindedness is not a compelling interest and the capacity for a rule to narrowly serve that interest is problematic.

The problem with openmindedness has less to do with the concept itself and more to do with the constitutional problems involved in enforcing it. Since a judge's openmindedness is a subjective inquiry that is not readily known, the only means of protecting this interest is to engage in substantial inquiry about the intent and effect of the speech involved. Such an inquiry is directly contrary to free speech principles: a regulation of speech "must be objective, focusing on the substance of the communication rather than amorphous considerations of intent and effect." *WRTL*, 127 S.Ct. at 2666 (*citing Buckley v. Valeo,* 424 U.S.1, 43-44 (1976)). The only truly objective way to evaluate a judicial candidate's speech is to look at the words spoken and what such words, on their face, mean. *See Valeo,* 424 U.S. at 43-44. Regulating speech to protect openmindedness does not achieve this.

Indeed, this is in part why the new commits clause facially fails. The commentary to the new commits clause seeks to regulate speech based upon intent and effect: "[t]he making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases," but "instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result." Canon 4.1(A), Commentary 15. Thus, while the Commission may claim that the new commits clause eliminated the offending "appears to commit" language and

the accompanying problems of such language, (Comm'n Mem. Sum Judg. at 17), it still retains its constitutional failing of vagueness.[2]

Even if the current commits clause is somehow narrower in its scope than the one considered in *Buckley v. Illinois Judicial Inquiry Comm'n,* 997 F.2d 224 (7th Cir. 1993) by allowing candidates speech "to include anything consistent with impartial adjudication" this does not save it constitutionally, as the Commission argues. (Comm'n Mem. Sum. Judg. at 17.) What is meant by "consistent with impartial adjudication" is far from clear, perhaps because it is directed towards openmindedness, (*id.*), which is a subjective test. But more crucially, both commits clauses ignore that *Buckley* recognized the existence of legitimate, constitutionally protected promises that would still be prohibited under the current commits clause. "[P]ledges to give a better shake to indigent litigants or harried employers," "promises to be tough on crime," or that a candidate "is committed to upholding the First Amendment" can be reasonably viewed to violate the commits clauses. This makes the clauses facially overbroad and vague.

The Commission seems to suggest that because Plaintiffs' articulation of a narrower rule is somehow vague, the current commits clause's vagueness and inadequate tailoring is therefore legitimate. (Comm'n Mem. Sum. Judg. at 19-20.) Preliminarily, Plaintiffs' proffered constitutional rule is not vague. The language is adopted from *Buckley* and *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), prohibiting a judicial candidate from making "promises to rule in particular ways in particular cases or types of case, [which] are within the

[2] The Commentary is relevant to analyzing the scope of the canons. *See Duwe v. Alexander*, 490 F. Supp. 2d. 968, 976 (W.D. Wis. 2007). Indeed, the Commission looks to the commentary to derive its arguments regarding the purpose of the solicitations clause. (Comm'n Mem. Sum. Judg. at 33.)

state's regulatory power," *Buckley,* 997 F.2d at 230, and from making a "pledge or promise certain results." *White,* 536 U.S. at 812 (Ginsburg, J., dissenting) (noting agreement among the parties of the legitimacy of prohibiting such statements). If the inclusion of "class of cases," designed to reach promises about broad categories of cases, such as pledges about all DUI cases or promises in all murder cases, lends ambiguity to the clause, the existence of a properly narrow rule still exists without that phrase.

Indeed, the Commission concedes the current commits clause is vague but seeks to justify that vagueness as somehow appropriate. (Comm'n Mem. Sum. Judg. at 19.) Under the First Amendment, however, speech regulations are not afforded breathing room for vagueness. If no legitimate rule exists that would not be vague, the solution is not to let the vague rule stand but instead to have no rule at all. Likewise, the existence of federal rules that appear to have the same scope does not inure constitutionality to the canons here. (Comm'n Mem. Sum. Judg. at 20.) Those rules are not before this Court and have not been constitutionally reviewed.

The commits clauses are unconstitutionally overbroad and vague, and fail strict scrutiny both on their face and as applied.

**III. The Recusal Clause Is Unconstitutional.**

Plaintiffs' challenge to the recusal clause contains two discrete parts. First, Plaintiffs challenge the constitutionality of applying the clause to circumstances where a judge has answered the questionnaire and is subject to discipline if he does not recuse himself in a case because his "impartiality might reasonably be questioned" in cases involving issues on the questionnaire. In addition to this as-applied challenge, Plaintiffs also challenge the issues recusal requirement found in Section 5, which requires recusal when a "judge, while a judge or a judicial

candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy." Canon 2.11(5).

The Commission contends that the recusal clause is facially constitutional because it addresses bias for and against parties and openmindedness. (Comm'n Mem. Sum. Judg. at 21-22.) Plaintiffs do not dispute that the recusal clause, in requiring recusal where a judge's "impartiality might reasonably be questioned," serves a compelling interest in preserving impartiality as to parties. However, if recusal is required by responses to the questionnaire, that interest is not served because the questionnaire deals with issues, not parties. *White,* 536 U.S. at 776-77. And even if openmindedness is a compelling interest, mandatory recusal for answering the questionnaire does not serve that interest because its narrow scope, to including only statements made while a judge or judicial candidate, render it underinclusive to that interest. *See White,* 536 U.S. at 779; *Duwe,* 490 F. Supp. 2d at 976. As applied to the questionnaire, the recusal clause is unconstitutional.

As to the facial constitutionality of the issues recusal requirement, the Commission contends that it is not vague. (Comm'n Mem. Sum. Jug. at 22.) But the issues recusal requirement retains the offending "appears to commit" language that has render the commits clause consistently unconstitutional. *See Indiana Right to Life v. Shepard*, 463 F. Supp. 2d 879 (N.D. Ind. 2006), *rev'd on other grounds by Shepard*, 507 F.3d 545; *Pa. Family Inst., Inc. v. Celluci*, 489 F. Supp. 2d 447, 459-60 (E.D. Pa. 2007), *vacated by Pa. Family Inst., Inc. v. Celluci*, 521 F. Supp. 2d 351, 388 (E.D. Pa. 2007) (narrowly construing canon "to keep it from being held unconstitutional under the First Amendment"); *Kansas Judicial Watch v. Stout*, 440

F. Supp. 2d 1209 (D. Kan. 2006), *vacated in part on other grounds by Kansas Judicial Review v. Stout,* 519 F.3d 1107, 1122 (10th Cir. 2008); *Alaska Right to Life Political Action Comm. v. Feldman,* 380 F. Supp. 2d 1080 (D. Alaska 2005), *rev'd on other grounds by Alaska Right to Life Political Action Comm. v. Feldman,* 504 F.3d 840, 853 (9th Cir. 2007); *Family Trust Foundation of Ky., Inc. v. Wolnitzek,* 345 F. Supp. 2d 672, 711-12 (E.D. Ky. 2004). Indeed, it is substantially similar to the recusal provision struck down in *Duwe,* 490 F. Supp. 2d at 977. This facial problem is only exacerbated by the Commission's continual reliance on Advisory Opinion #1-02 for guidance on the meaning of "commits" and "appear to commit." (Comm'n Mem. Sum. Judg. at 22.) The Opinion's ad hoc approach was part of the justification for the prior court in this case to strike down as vague the former commits clause. *See Shepard,* 463 F. Supp. 2d at 890.

The recusal clause is unconstitutional as applied to the questionnaire, and the issue recusal requirement is unconstitutional on its face and as applied to the questionnaire.

**IV. The Solicitation Clauses Are Unconstitutional.**

The Commission argues that the solicitation clauses are constitutional because they advance the state's compelling interest in preventing judicial coercion. (Comm'n Mem. Sum. Judg. at 24.) Specifically, the Commission expresses concern that judges will coerce prospective donors into giving through personal solicitation. (Comm'n Mem. Sum. Judg. at 24.) This purported interest is neither compelling nor served by the soliciation clauses.

Preventing potential contributors, whether to a campaign or to a political party, from feeling pressure is not a sufficiently compelling interest to justify restriction First Amendment rights. The state does have an interest in preventing actual coercion, and therefore could justifiably prohibit contributions that were solicited as part of a *quid pro quo*, *Siefert v.*

*Alexander,* 597 F. Supp. 2d. 860, 887 (W.D. Wis. 2009), but it cannot ban solicitations simply to safeguard the subjective feelings of a potential contributor. *See Carey v. Wolnitzek*, 3:06-cv-36, 2008 WL 4602786 at *16 (E.D. Ky. Oct. 10, 2006) ("It may also be more difficult for a solicitee to decline to contribute where the judge makes the solicitation himself rather than through an agent. However, the state does not have a compelling interest in simply making it more comfortable for solicitees to decline to contribute to judicial campaigns.").

Nevertheless, even assuming that the state does have a compelling interest in preventing coerced feelings, the solicitation clause still fails strict scrutiny, because it is not narrowly tailored to that interest. Indiana's solicitation clauses are not limited to cases where potential contributors feel or are likely to feel coerced by a solicitation to contribute to a campaign or a political party. *See Siefert,* 597 F. Supp. 2d at 888. It applies broadly to all solicitations, regardless of context. Indeed, the Commission asserts that the legitimate scope the solicitations clauses includes a ban on soliciting family and friends, (Comm'n Mem. Sum. Judg. at 28), the coercion of whom the state has very little interest in preventing. The solicitation clauses are therefore overinclusive and overbroad. *See White II*, 416 F.3d at 766; *Weaver v. Bonner,*309 F.3d 1312, 1322 (11th Cir. 2002).

It should also be noted that this interest is in no way confined to contributions solicited by judicial candidates. A person may "feel directly or indirectly coerced" when solicited by a legislative candidate just as much as when solicited by a judicial candidate. Indeed, no coercive difference exists between Judge Certo and a legislative candidate encouraging students to contribute to the Republican Party. And in the case of solicitations for a campaign, the felt coercion could be greater in the case of legislative candidates, since it is generally unknown

prior to an election whether a judge will ever sit on a case involving a potential contributor, whereas legislators have the authority to influence the law on whatever matters they so choose. So, if Indiana's purported interest in avoiding feelings of coercion does justify a ban on personal solicitation by judicial candidates, then it would equally justify a ban on personal solicitation by legislative candidates. *See Siefert,* 597 F. Supp. 2d at 887. But Indiana does not prohibit legislative candidates from personally soliciting campaign contributions. As such, the solicitation clauses on their face and as applied to Judge Certo is underinclusive and fails strict scrutiny. *See White,* 536 U.S. at 779-80; *Republican Party of Minnesota v. White,* 416 F.3d 738, 757 (8th Cir. 2005) ("*White II*").

To the extent that personal solicitation by candidates raises impartiality concerns, these concerns are inherent in the state's decision to elect judges in a partisan manner in the first place. As the Eleventh Circuit observed in *Weaver*:

> It is the general practice of electing judges, not the specific practice of judicial campaigning, that gives rise to impartiality concerns because the practice of electing judges creates motivations for sitting judges and prospective judges in election years and non-election years to say and do things that will enhance their chances of be elected.

*Weaver* 309 F.3d at 1320. *See Siefert,* 597 F. Supp. 2d at 888.

Likewise, " [c]ampaigning for elected office necessarily entails raising campaign funds." *Id.* at 1322; *see also White*, 536 U.S. at 789-90 (O'Connor, J., concurring) ("Unless the pool of judicial candidates is limited to those wealthy enough to independently fund their campaigns, a limitation unrelated to judicial skill, the cost of campaigning requires judicial candidates to engage in fundraising.") The "fact that judicial candidates require financial support and public endorsements to run successful campaigns does not suggest that they will be partial if they are

elected." *Weaver*, 309 F.3d at 1322. But even if some members of the public assume this is the case, this is ultimately a consequence inherent in the state's decision to elect its judges. *See White*, 536 U.S. at 792 (O'Connor, J., concurring) ("If the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges").

While banning personal solicitations for campaigns does not further Indiana's interest in preserving judicial impartiality, it does serve the interests of incumbents. Because incumbents tend to have higher name recognition than challengers, and are more likely to have developed donor lists and contacts, it is easier for an incumbent to raise money through an intermediary than for a challenger to do so. As Justice Scalia noted in *McConnell v. FEC,* 540 U.S. 93 (2003), an election "is an area in which evenhandedness is not fairness. If all electioneering were evenhandedly prohibited, incumbents would have an enormous advantage. Likewise, if incumbents and challengers are limited to the same quantity of electioneering, incumbents are favored." *Id.* at 249 (Scalia, J., concurring in part and dissenting in part). If the only way for a challenger to defeat an incumbent is, as is often the case, to outraise and outspend him, restrictions on personal solicitation will serve eliminate the one advantage a potential challenger may have over an incumbent opponent.

The Commission contends that the formation of committees to make solicitations makes the solicitation clauses narrowly tailored. (Comm'n Mem. Sum. Judg. at 26.) However, judicial candidates can know the source the contributions, whether to a party or to their own campaign, making "[s]uccessful candidates [] feel beholden to the people who helped them get elected

regardless of who did the soliciting." *Weaver*, 309 F.3d at 1323. *See also Siefert,* 597 F. Supp. 2d at 888.

The solicitation clauses are unconstitutional on their face and as applied to Judge Certo's constitutionally protected speech.

**V. The Partisan Activities Clauses Are Unconstitutional.**

The Commission argues that the partisan activities clauses serve a compelling interest in protecting judicial independence and its appearance, keeping it free from political bias. (Comm'n Mem. Sum. Judg. at 29-30.) In essence, the State is trying to mitigate the effects of electing judges upon their duties. (Comm'n Mem. Summ. Judg. at 30.) However, as Justice O'Connor notes in *White*, "[i]f the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges." *White,* 536 U.S. at 792 (O'Connor, J., concurring); *see also White*, 536 U.S. at 788 (*quoting Renne v. Geary,* 501 U.S. 312, 349 (1991) (Marshall, J., dissenting)) ("If the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the participants in that process . . . the First Amendment rights that attach to their roles.") Indiana has chosen to have partisan elections for some of its judicial offices. It must assume, in large degree, whatever risks are associated with that choice, as well.

The Commission contends that the state has an interest in "masking ... partisan preferences for the purpose of upholding the integrity and the appearance of impartiality of the judiciary." (Comm'n Mem. Sum. Judg. at 30.) How this is a legitimate, much less a compelling, interest is unclear, as the state has chosen to have a partisan elections. Fundamentally, hiding an individuals' biases from the public does not advance the integrity of the judiciary in the slightest.

Faith in the impartiality of the judiciary is just as easily lost by implying deceit as by implying allegiance: "[A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect." *Bridges v. California*, 314 U.S. 252, 270-71 (1941). This interest is not legitimate.

Regardless of the interest served by the partisan activities clauses, however, a more narrowly tailored remedy to serve those interests is available: recusal. If judicial candidates go to far in their partisan activities, they can be legitimately disqualified from hearing cases where their bias is certain or their partiality to a litigant is clear. *White II*, 416 F.3d at 754; *Siefert,* 597 F. Supp. 2d at 882; *Carey,* 2008 WL 4602786 at *18.

Last, the Commission asserts that the meaning of "act as a leader" is not vague, but rather an obvious reference not to a Republican elected official but to "a conscious act by an individual to provide overt guidance and leadership as a member of a political organization, and the organization's reciprocal embrace of the individual's overall political vision and leadership." (Comm'n Mem. Sum. Judg. at 34.) Under this definition, Judge Certo should be able to speak to students on behalf of the Republican Party, speak at political club meetings on behalf of Republican judges and the Republican Party, and even serve as a delegate—none of these activities reflect a "reciprocal embrace" between Judge Certo and the Party. Yet the Commission has yet to indicate that Judge Certo's conduct is permissible under the Code.

Indeed, the Commission goes on to explain that "the prohibition against party leadership would seem to encompass the assumption of any officially recognized role within the party." (Comm'n Mem. Sum. Judg. at 34.) This assertion is so markedly uncertain of the exact

parameters of the clause that it is understandable that Judge Certo is chilled from engaging in the associational and speech activities he is constitutionally entitled to enjoy. The partisan activities clause is vague.

The partisan activities clauses are unconstitutional on its face and as applied to Judge Certo's constitutionally protected associational activities.

## Conclusion

For the foregoing reasons as well as those articulated in Plaintiffs' Summary Judgment Memorandum, the commits clauses, the issue recusal requirement, the solicitation clauses, and the partisan activities clauses are all unconstitutional on their face and as applied to the facts of this case. The recusal requirement is also unconstitutional as applied to the questionnaire. The Commission's Motion for Summary Judgment should be denied as a matter of law.

Dated: May 15, 2009

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 15, 2009, I electronically filed the foregoing with the Clerk of the court using the CM/ECF system which sent notification of such filing to the following:

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