2024
MISSISSIPPI
JUDICIAL CAMPAIGN
ELECTION INFORMATION

Required to be Provided to Judicial Candidates by
Canon 5F(6) of the Mississippi Code of Judicial Conduct

Judicial Election Oversight Committee
Attn: Rachel Wilson
Executive Director
Mississippi Commission on Judicial Performance
660 North Street, Suite 104
Jackson, MS 39202
Telephone: (601) 359-1273 Fax: (601) 354-6277
Email: mailbox@judicialperformance.ms.gov

INTRODUCTION

Judicial elections are governed by the Mississippi Code of Judicial Conduct. Canon 5F creates the "Judicial Election Oversight Committee." The Oversight Committee "shall be created whose responsibility shall be to enforce the standards of judicial conduct in judicial elections and provide an accessible forum for advisory opinions in judicial elections." Canon 5F.

Canon 5F has several requirements. First, a Candidate must provide notice of his/her candidacy to the Mississippi Commission on Judicial Performance. This requirement states:

> Within ten (10) days of a judicial candidate's public announcement or official qualification for election to any judicial office in this state, whichever is earlier, a judicial candidate shall forward written notice of such candidacy and the required campaign committee members to the Commission. This notice must provide contact information, which includes the appropriate mailing address, email address, and telephone number, of the candidate and the candidate's campaign committee chair and at least two (2) other members of the candidate's campaign committee.

Second, upon receipt of the Notice, the Oversight Committee is required to provide candidates with specific judicial election campaign materials. This includes a copy of:

1. Canon 5 of the Code of Judicial Conduct;

2. Summaries of any previous opinions issued by any previous Special Committee or Oversight Committee organized for prior elections, or the Supreme Court of Mississippi.

Finally, Canon 5F specifically provides that:

> Any person, including judicial candidates, their campaign committees, or unaffiliated persons or organizations, may seek an advisory opinion about conduct of a judicial campaign. Any interested person is encouraged to seek an advisory opinion from the Oversight Committee before such conduct occurs.

Any questions, requests for opinions, or complaints should be addressed to:

Judicial Election Oversight Committee
Attn: Rachel Wilson
Executive Director
Mississippi Commission on Judicial Performance
660 North Street, Suite 104
Jackson, MS 39202
Telephone: (601) 359-1273 Fax: (601) 354-6277
Email: mailbox@judicialperformance.ms.gov

MEMBERS OF THE OVERSIGHT COMMITTEE

By orders of the Mississippi Supreme Court, dated December 2, 2021 and October 4, 2023, signed by Chief Justice Michael K. Randolph, the 2024 Judicial Election Oversight Committee includes the following members:

Hon. Jack L. Wilson
Presiding Judge
Court of Appeals of the State of Mississippi
P.O. Box 22847
Jackson, MS 39225-2847
601-576-4712
jwilson@courts.ms.gov

James H. Heidelberg, Esq.
Heidelberg Steinberger, P.A.
7711 Delmas Ave.
Pascagoula, MS 39567-4224
228-762-8021
jheidelberg@hs-lawfirm.com

Appointed by:
Justice T. Kenneth Griffis, Jr.
Supreme Court District 1, Place 1

Appointed by:
Justice David M. Ishee
Supreme Court District 2, Place 1

David F. Delgado
Delgado Law Firm, PLLC
5779 Getwell Rd., Bldg. D Ste 5
Southaven, MS 38672-6361
662-536-2120
david@delgadofirm.com

LaToya T. Jeter
Brown Bass & Jeter
P.O. Box 22969
Jackson, MS 39225-2969
601-487-8448
jeter@bbjlawyers.com

Appointed by:
Justice Robert P. Chamberlin
Supreme Court District 3, Place 1

Appointed by:
Presiding Judge Leslie D. King
Supreme Court District 1, Place 2

Hon. M. Ronald Doleac
Retired Chancery Court Judge
105 Wildwood Trace
Hattiesburg, MS 39402
601-467-3143
mrdoleac@netdoor.com

James L. Weir
The Weir Law Firm, PC
P.O. Box 3150
Tupelo, MS 38803-3150
662-841-0220
jayw@weirfirm.com

Appointed by:
Justice Dawn H. Beam
Supreme Court District 2, Place 2

Appointed by:
Justice James D. Maxwell II
Supreme Court District 3, Place 2

Hon. Edward E. Patten, Jr.
Retired Chancery Court Judge
234 S. Extension St.
Hazlehurst, MS 39083
769-257-2184
edwardejr@bellsouth.net

Appointed by:
Presiding Justice James W. Kitchens
Supreme Court District 1, Place 3

Thomas A. Wicker
Hillen Wicker & Tapscott
P.O. Drawer 409
Tupelo, MS 38802-0409
662-842-1721
taw@hillenwicker.com

Appointed by:
Justice Josia D. Coleman
Supreme Court District 3, Place 3

Paul P. Blake
McAngus Goudelock & Courie
P.O. Box 2955
Ridgeland, MS 39158-2955
601-427-7517
paul.blake@mgclaw.com

Appointed by:
Chief Justice Michael K. Randolph
Supreme Court District 2, Place 3

CANON 5
A Judge or Judicial Candidate Shall Refrain From Inappropriate Political Activity

A. All Judges and Candidates

(1) Except as authorized in Sections 5B(2), 5C(1) and 5C(2), a judge or a candidate for election to judicial office shall not:

(a) act as a leader or hold an office in a political organization;

(b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;

(c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions.

Commentary

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Where false information concerning a judicial candidate is made public, a judge or another judicial candidate having knowledge of the facts is not prohibited by Section 5A(1) from making the facts public.

Section 5A(1)(a) does not prohibit a candidate for elective judicial office from retaining during candidacy a public office such as county prosecutor, which is not "an office in a political organization."

Section 5A(1)(b) does not prohibit judges or judicial candidate from privately expressing their views on judicial candidates or other candidates for public office.

A candidate does not publicly endorse another candidate for public office by having that candidate's name on the same ticket. However, Sections 23-15-973 et seq., Miss. Code Ann. (1972) impose restrictions on candidates and political organizations to assure the non-partisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges.

(2) A judge shall resign from judicial office upon becoming a candidate either in a party primary or in a general election for a non-judicial office, except that the judge may continue to hold judicial office while being a candidate for election to or serving as a delegate in a state constitutional convention if the judge is otherwise permitted by law to do so.

(3) A candidate for a judicial office:

(a) shall maintain the dignity appropriate to judicial office and act in a manner consistent with the integrity and independence of the judiciary, and shall encourage members of the candidate's family to adhere to the same standards of political conduct in support of the candidate as apply to the candidate;

Commentary

Although judicial candidates must encourage members of their families to adhere to the same standards of political conduct in support of the candidates that apply to the candidates, family members are free to participate in other political activity. Family members are not prohibited by this subsection from serving on the candidates' campaign committees and otherwise actively involving themselves in the campaigns.

(b) shall prohibit employees and officials who serve at the pleasure of the candidate, and shall discourage other employees and officials subject to the candidate's direction and control, from doing on the candidate's behalf what the candidate is prohibited from doing under the Sections of this Canon;

(c) except to the extent permitted by Section 5C(2), shall not authorize or knowingly permit any other person to do for the candidate what the candidate is prohibited from doing under the Sections of this Canon;

(d) shall not:

(i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office;

(ii) make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court; or

(iii) knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate or an opponent;

Commentary

Section 5A(3)(d)(i) prohibits a candidate for judicial office making pledges or promises to decide cases in any particular way and statements committing the candidate with respect to cases, controversies or issues likely to come before the court on which the candidate will serve if elected. This section does not prohibit or limit a candidate's freedom to announce the candidate's current views on issues so long as the announcement does not bind the candidate to maintain those views after election. See Republican Party of Minn. v. White, 536 U.S. 765 (2002) (declaring unconstitutional restrictions in the Minnesota Code of Judicial Conduct on the announcement of views on legal and political issues.) The comparable offending language, referred to as the "announce clause", formerly appeared in our Code of Judicial Conduct, but was removed with the revision of the code on April 4, 2002. This Section does not prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties.

Section 5A(3)(d)(ii) prohibits a candidate for judicial office making statements that appear to commit the candidate regarding cases, controversies or issues likely to come before the court. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of the candidate's personal views. See also Section 3B(9), the general rule on public comment by judges. Section 5A(3)(d) does not prohibit a candidate from making pledges and promises respecting improvements in court administration.

Section 5A(3)(d) applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection and tenure and legislative bodies confirming appointment. See also Rule 8.2 of the Mississippi Rules of Professional Conduct. Phrases such as "tough on crime," "soft on crime," "pro-business," "anti-business," "pro-life," "pro-choice," or in any similar characterizations suggesting personal views on issues which may come before the courts, when applied to the candidate or an opponent, may be considered to be prohibited by Section 5A(3)(d) only when used in a context which contain a pledge or promise to decide cases in a particular manner.

(e) may respond to personal attacks or attacks on the candidate's record as long as the response does not violate Section 5A(3)(d).

B. Candidates Seeking Appointment to Judicial or Other Governmental Office.

(1) Candidates for appointment to judicial office or judges seeking other governmental office shall not solicit or accept funds, personally or through a committee or otherwise, to support their candidacies.

(2) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that:

(a) such persons may:

(i) communicate with the appointing authority, including any selection or nominating commission or other agency designated to screen candidates;

(ii) seek support or endorsement for the appointment from organizations that regularly make recommendations for reappointment or appointment to the office, and from individuals to the extent requested or required by those specified in Section 5B(2)(a); and

(iii) provide to those specified in Sections 5B(2)(a)(i) and 5B(2)(a)(ii) information as to the candidate's qualifications for the office;

(b) a non-judge candidate for appointment to judicial office may, in addition, unless otherwise prohibited by law:

(i) retain an office in a political organization,

(ii) attend political gatherings, and

(iii) continue to pay ordinary assessments and ordinary contributions to a political organization or candidate and purchase tickets for political party dinners or other political functions.

Commentary

Section 5B(2) provides a limited exception to the restrictions imposed by Sections 5A(1) and 5D. Under Section 5B(2), candidates seeking reappointment to the same judicial office or appointment to another judicial office or other governmental office may apply for the appointment and seek appropriate support.

Although under Section 5B(2) non-judge candidates seeking appointment to judicial office are permitted during candidacy to retain office in a political organization, attend political gatherings and pay ordinary dues and assessments, they remain subject to other provisions of this Code during candidacy. See Sections 5B(1), 5B(2)(a), 5E and Application Section.

C. Judges and Candidates Subject to Public Election.

(1) Judges holding an office filled by public election between competing candidates, or candidates for such office, may, only insofar as permitted by law, attend political gatherings, speak to such gatherings in their own behalf while candidates for election or re-election,

identify themselves as members of political parties, and contribute to political parties or organizations.

Commentary

Section 5C recognizes the distinction between appropriate political activities by judges and candidates subject to non-partisan election and those subject to partisan elections. The language of Section 5C differs from that of corresponding provisions in the ABA Model Code, Sections C(1)(a)(ii) and (iii), in recognition of Mississippi's non-partisan elections for certain positions. Furthermore, Section 23-15-973 et seq., Miss. Code Ann. (1972) imposes restrictions on candidates and political organizations to assure the nonpartisan quality of judicial elections for Supreme Court, Court of Appeals, Chancery Court, Circuit Court and County Court justices and judges. Section 5C(1) permits judges subject to election at any time to be involved in limited political activity. Section 5D, applicable solely to incumbent judges, would otherwise bar this activity. Section 5C(1)(b)(iv) of the ABA Mode Code has not been incorporated. Attending or speaking at a political party gathering in the judge's own behalf while a candidate does not constitute alignments or affiliation with the party sponsoring the gathering.

(2) A candidate shall not personally solicit or accept campaign contributions. A candidate may, however, establish committees of responsible persons to conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums and other means not prohibited by law. Such committees may solicit and accept reasonable campaign contributions, manage the expenditure of funds for the candidate's campaign and obtain public statements of support for the candidacy. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions from lawyers. A candidate's committees shall not solicit or accept contributions and public support for the candidate's campaign earlier than the date the candidate qualified as a candidate or later than 120 days after the last election in which the candidate participates during the election year. A candidate shall not use or permit the use of campaign contributions for the private benefit of the candidate or others.

Commentary

There is legitimate concern about a judge's impartiality when parties whose interests may come before a judge, or the lawyers who represent such parties, are known to have made contributions to the election campaigns of judicial candidates. Section 5C(2) recognizes that in many jurisdictions judicial candidates must raise funds to support their candidacies for election to judicial office. It therefore permits a candidate, other than a candidate for appointment, to establish campaign committees to solicit and accept public support and financial contributions. Though not prohibited, campaign contributions of which a judge has knowledge, made by lawyers or others who appear before the judge, may, by virtue of their size or source, raise questions about a judge's impartiality and be cause for disqualification as provided under Section 3E.

Campaign committees established under Section 5C(2) should manage campaign finances responsibly, avoiding deficits that might necessitate post-election fund-raising, to the extent possible. Such committees must at all times comply with applicable statutory provisions governing their conduct.

Section 5C(2) does not prohibit a candidate from initiating an evaluation by a judicial selection commission or bar association, or, subject to the requirements of this Code, from responding to a request for information from any organization.

(3) Candidates shall instruct their campaign committees at the start of the campaign not to accept campaign contributions for any election that exceed those limitations placed on contributions by individuals, political action committees and corporations by law.

Commentary

The ABA Model Code of Judicial Conduct is drafted for the insertion of specific limits on contributions for judicial campaigns. As adopted for Mississippi, this section simply makes references to limits established by the Legislature by statutes which limit contributions to $5,000 in appellate court races, to $2,500 in chancery, circuit or county court races, and generally limits corporate contributions to $1,000. See Miss. Code Ann. § 23-15-1021 (2000 Supp.) (judicial races) and Miss. Code Ann. § 97-13-15 (1999 Supp.) (corporate contributions.)

(4) A candidate and the candidate's committee shall timely comply with all provisions of law requiring the disclosure and reporting of contributions, loans and extensions of credit.

Commentary

Section 5C(4) of the ABA Model Code of Judicial Conduct which makes special provision for reporting campaign contributions is replaced by the foregoing Section 5C(4) which requires compliance with all provisions of law. See Miss. Code Ann. §§ 23-15-805 and 23-15-1023 (2000 Supp.)

The ABA Model Code includes a Section 5C(5) which approves, under some circumstances, a judicial candidate's name being listed on election materials along with the names of other candidates. This has not been incorporated in the revision of the Mississippi canons.

D. Incumbent Judges. A judge shall not engage in any political activity except as authorized under any other Section of this Code, on behalf of measures to improve the law, the legal system or the administration of justice, or as expressly authorized by law.

Commentary

Neither Section 5D nor any other section of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government. With respect to a judge's activity on behalf of measures to improve the law, the legal system and the administration of justice, see Commentary to Section 4B and Section 4C(1) and its Commentary.

Sections 5A through 5D limit the participation of judges and candidates in political activities. Section 5D expressly prohibits judges from engaging "in any political activity" not expressly authorized by the Code of Judicial Conduct or by law. These provisions do not prohibit voting in party primaries and general elections, which is not "political activity" as the phrase is used in Canon 5. The statute governing non-partisan judicial elections, while prohibiting candidates for judicial offices covered by the statute from campaigning or qualifying for the offices based on party affiliation, does not preclude the candidates from voting in party primaries. Miss. Code Ann. § 23-25-973 (Supp. 2000.)

E. Applicability. Canon 5 generally applies to all incumbent judges and judicial candidates. Successful candidates, whether or not incumbents, are subject to judicial discipline for their campaign conduct; unsuccessful candidates who are lawyers are subject to lawyer discipline for their campaign conduct. Lawyers who are candidates for judicial office are subject to Rule 8.2(b) of the Mississippi Rules of Professional Conduct. However, the provisions of Canon 5F below shall not apply to elections for the offices of justice court judge and municipal judge.

F. Judicial Election Oversight Committee.

1. Proceedings and Authority. A Judicial Election Oversight Committee ("Oversight Committee") shall be created to enforce the standards of judicial conduct in judicial elections and provide an accessible forum for advisory opinions in judicial elections. The Oversight Committee shall have the responsibility to issue advisory opinions as to allegations of ethical misconduct in campaigns for judicial office. The Oversight Committee shall be responsible for elections of Supreme Court, Court of Appeals, chancery court, circuit court or county court judges in this state.

2. Membership. The Oversight Committee shall consist of nine (9) members. Each Justice of the Supreme Court shall each appoint one member. Each member shall be a resident attorney licensed to practice in the state. Each member shall be subject to recusal and conflict of interest rules in the Code of Judicial Conduct as if they were a presiding judge in a case. Also, each member shall recuse in any matter that may directly affect the Supreme Court Justice who appointed that member.

3. Administration. The members shall elect a Chair, Vice Chair and Secretary. The Oversight Committee shall maintain accurate minutes and records. Action taken shall require a quorum of a majority of the members and a majority vote. The Oversight Committee shall be appointed no later than December 1, 2021. The members shall serve a staggered term of four (4) years. The initial appointments by the Justices from District 1 – Place 1, District 2 – Place 1, and District 3 – 1 shall be for four years; the initial appointments by the Justices from District 1 – Place 2, District 2 – Place 2, and District 3 – Place 2 shall be for three years; and the initial appointments by the Justices from District 1 – Place 3, District 2 – Place 3, and District 3 – Place 3 shall be for two years. If a member resigns or is unable to participate, the Justice who appointed the member may appoint another person to serve the remainder of the term.

4. Role of the Commission on Judicial Performance. The Commission shall provide administrative support to the Oversight Committee.

5. Notice. Within ten (10) days of a judicial candidate's public announcement or official qualification for election to any judicial office in this state, whichever is earlier, a judicial candidate shall forward written notice of such candidacy and the required campaign committee members to the Commission. This notice must provide contact information, which includes the appropriate mailing address, email address, and telephone number, of the candidate and the candidate's campaign committee chair and at least two (2) other members of the candidate's campaign committee.

6. Education. The Oversight Committee shall provide educational information to judicial candidates and the campaign committee representatives.

a. Judicial Election Materials. Upon receipt of such notice, the Oversight Committee shall distribute to each judicial candidate a copy of Canon 5 of the Code of Judicial Conduct; a summary of any previous opinions on judicial elections issued by a previous Special Committee or Oversight Committee organized for prior elections, or the Supreme Court of Mississippi. This distribution may be provided in written or electronic form. In lieu of distribution, the Oversight Committee may post the materials in electronic form on the State of Mississippi Judiciary webpage – www.courts.ms.gov – with the disclaimer that the opinions issued and actions taken by a previous Special Committee or Oversight Committee have not been adopted or approved by the Supreme Court of Mississippi.

b. Education Seminar. Each year of a judicial election, the Oversight Committee shall conduct a two hour educational seminar for judicial candidates within sixty (60) days of the qualifying deadline. The seminar shall cover topics on judicial election ethics, election laws, Canon 5, and campaign finance requirements. Judicial candidates and the chair of the candidate's Committee (or a designee) are required to attend in person or electronically.

c. Within ten days of completion of the seminar, each judicial candidate and the Chair of their Committee (or a designee) shall certify their receipt of the Judicial Election Materials, their completion of the seminar, and their understanding of Mississippi law on judicial elections. A judicial candidate without opposition is exempt from attendance at the seminar.

7. Objective. The objective of the Oversight Committee is to alleviate unethical or unfair campaign practices in judicial elections and to provide assistance and direction to judicial candidates and their campaign committees.

a. Questions. Any person, including judicial candidates, their campaign committees, or unaffiliated persons or organizations, may seek an advisory opinion about conduct of a judicial campaign. Any interested person is encouraged to seek an advisory opinion from the Oversight Committee before such conduct occurs.

b. Formal Opinions. The Oversight Committee, on its own or based on a question, may investigate and issue an opinion as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign committee or any independent person, organization or committee that conducts activities which impact on a judicial election.

1. If the Oversight Committee finds the question of limited significance, it may provide an informal opinion. Such informal opinion is not required to identify the candidate(s) or person(s) involved.

2. If the Oversight Committee finds that the question is of sufficient general interest and importance, it may render a formal opinion. A formal opinion may be disclosed to the public. The Oversight Committee shall have the authority to decide whether to identify the candidate(s) or person(s) involved, but must have provided such candidate(s) or person(s) with reasonable notice and an opportunity to respond to the question in issue.

3. The Oversight Committee may decline to issue an opinion when a majority of the members determine that it would be inadvisable to respond to the request. The Oversight Committee should provide a written explanation of its reasoning to the person who requested the opinion.

4. The Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate or campaign committee member upon a formal opinion in any disciplinary or enforcement proceeding.

8. The proceedings under this Rule shall be informal and non-adversarial. The Oversight Committee shall act on all requests within ten (10) days of receipt. In the ten (10) days before the election, the Oversight Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, in no event, within thirty-six (36) hours.

9. The proceedings of the Oversight Committee shall remain confidential. The Oversight Committee shall report any violations of the Code of Judicial Conduct or election law to the appropriate authorities. The Oversight Committee, however, does not have the authority to institute disciplinary action against any judicial candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.

10. The Oversight Committee shall provide the Supreme Court and the Commission on Judicial Performance an annual report of its actions, along with a copy of all information and proceedings related thereto, no later than December 31st of each year. The Oversight Committee may also advise the Supreme Court as to any proposed changes or modifications to the Code of Judicial Conduct that relate to judicial elections or the authority or scope of the Oversight Committee.

[Commentary Deleted]

Code of Judicial Conduct –
Other Selected Provisions Related to Judicial Elections

TERMINOLOGY

"Candidate." A candidate is a person seeking selection for judicial office by election or appointment. Persons become candidates for judicial office as soon as they make public announcements of candidacy, declare or file as candidates with the election or appointment authority, or authorize solicitation or acceptance of contributions or support. The term "candidate" has the same meaning when applied to a judge seeking election or appointment to non-judicial office. See Preamble and Canon 5.

"Independent persons, committees or organizations" shall mean an individual person or organization not required to report as affiliated with a campaign for judicial office. See Section 5F.

"Knowingly," "knowledge," "known" or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Sections 3D, 3E(1), and 5A(3).

"Law" denotes court rules as well as statutes, constitutional provisions and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 4B, 4C, 4F, 4I, 5A(2), 5A(3), 5B(2), 5C, 5D, and 5F.

"Major donor", for the purposes of Section 3E(2), shall be defined as follows:

(a) If the donor is an individual, "donor" means that individual, the individual's spouse, or the individual's or the individual's spouse's child, mother, father, grandmother, grandfather, grandchild, employee and employee's spouse.

(b) If the donor is an entity other than an individual, "donor" means the entity, its employees, officers, directors, shareholders, partners members, and contributors and the spouse of any of them.

(c) A "major donor" is a donor who or which has, in the judge's most recent election campaign, made a contribution to the judge's campaign of (a) more than $2,000 if the judge is a justice of the Supreme Court or judge of the Court of Appeals, or (b) more than $1,000 if the judge is a judge of a court other than the Supreme Court or the Court of Appeals.

(d) The term "contribution to the judge's campaign" shall be the total of all contributions to a judge's campaign and shall be deemed to include all contributions of every kind and type whatsoever, whether in the form of cash, goods, services, or other form of contribution, and whether donated directly to the judge's campaign or donated to

any other person or entity for the purpose of supporting the judge's campaign and/or opposing the campaign of the judge's opponent(s). The term "contribution to a judge's campaign" shall also be deemed to include any publication, advertisement or other release of information, or payment therefor, other than a bona fide news item published by existing news media, which 4 contains favorable information about the judge or which contains unfavorable information about the judge's opponent(s).

"Member of the candidate's family" denotes a spouse, child, grandchild, parent, grandparent, siblings, or other relative or person with whom the candidate maintains a close familial relationship. See Section 5A(3)(a).

"Political organization" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office. See Sections 5A(1).

"Public election." This term includes primary and general elections; it includes partisan elections and nonpartisan elections. See Section 5C.

Commentary

In defining "members of the candidate's family" and "members of the judge's family" siblings of the candidate and judge are included. The phrase "major donor" is also included. Likewise, no reference is made to retention elections. In these respects, this section differs from the ABA Model Code of Judicial Conduct.

CANON 3

A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

E. Disqualification.

(2) Recusal of Judges from Lawsuits Involving Major Donors. A party may file a motion to recuse a judge based on the fact that an opposing party or counsel of record for that party is a major donor to the election campaign of such judge. Such motions will be filed, considered and subject to appellate review as provided for other motions for recusal.

Commentary

Section 3E(2) recognizes that political donations may but do not necessarily raise concerns about a judge's impartiality. The filing, consideration and appellate review of motions for recusal based on such donations are subject to rules governing all recusal motions. For procedures concerning motions for recusal and review by the Supreme Court of denial of motions for recusal

as to trial court judges, see M.R.C.P. 16A, URCCC 1.15, Unif. Chanc. R. 1.11, and M.R.A.P. 48B. For procedures concerning motions for recusal of judges of the Court of Appeals or Supreme Court justices, see M.R.A.P. 27(a). This provision does not appear in the ABA Model Code of Judicial Conduct; however, see Section 3E(1)(e) of the ABA model.

MISSISSIPPI STATUTES ON JUDICIAL ELECTIONS

§ 23-15-874. Prohibition against use of court personnel in judicial campaigns; violations.
A candidate for judicial office shall not use court administrators, deputy court administrators, court reporters, deputy court reporters, judges' secretaries or law clerks as workers in his or her campaign activities. Violations of this section shall be referred to the Commission on Judicial Performance.

§ 23-15-897. Certain information to be included in campaign materials; compliance with section for campaign materials published on electronic platform.

(1) The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:
(a) "Campaign materials" include any materials designed to influence voters for or against any candidate, party or measure to be voted on at any election, or containing information about any candidate, party or measure paid for by a candidate, political committee, or independent expenditure which requires disclosure under campaign finance laws.
(b) "Publish" means the act or instance of making campaign material available to the public, or to a list of subscribers, by mail, telephone, electronic communications platforms, Internet, software applications, printed materials or any other means of distribution.
(c) "Printed material" shall include, but not be limited to, any notice, placard, bill, poster, dodger, pamphlet, advertisement, sign or any other form of printed publication, except notices, posters and the like, which simply announce a speaking date and invite attendance thereon.
(2) No candidate, political committee or other person shall publish, or knowingly cause to be published, any campaign materials unless it contains the following information:
(a) The name of the candidate along with a statement that the message is approved by the candidate; or
(b) If the message has not been approved by a specific candidate, the name of the person, political committee or organization paying for the publication of the message; or
(c) If the message has not been approved by the candidate and no person, political committee or organization is identified as having paid for the publication, the entity producing the campaign materials must be identified.
(3) Publication of campaign materials through an electronic platform shall be deemed to comply with the requirements of this section if the home page of the candidate or political committee provides the information required by subsection (2), and each electronic publication provides a link to that home page.

§ 23-15-995. Applicability to election of general laws for election of state officers.
Except as may be otherwise provided by the provisions of Sections 23-15-974 through 23-15-985, the general laws for the election of state officers shall apply to and govern the election of judges of the Supreme Court.

§ 23-15-973. Opportunities for candidates to address people during court terms; restrictions with respect to political affiliations; penalties for violations.
It shall be the duty of the judges of the circuit court to give a reasonable time and opportunity to the candidates for the office of judge of the Supreme Court, judges of the Court of Appeals, circuit judge and chancellor to address the people during court terms. In order to give further and every possible emphasis to the fact that the said judicial offices are not political but are to be held without favor and with absolute impartiality as to all persons, and because of the jurisdiction conferred upon the courts by this chapter, the judges thereof should be as far removed as possible from any political affiliations or obligations. It shall be unlawful for any candidate for any of the offices mentioned in this section to align himself with any candidate or candidates for any other office or with any political faction or any political party at any time during any primary or general election campaign. Likewise it shall be unlawful for any candidate for any other office nominated or to be nominated at any primary election, wherein any candidate for any of the judicial offices in this section mentioned, is or are to be nominated, to align himself with any one or more of the candidates for said offices or to take any part whatever in any nomination for any one or more of said judicial offices, except to cast his individual vote. Any candidate for any office, whether nominated with or without opposition, at any primary wherein a candidate for any one of the judicial offices herein mentioned is to be nominated who shall deliberately, knowingly and willfully violate the provisions of this section shall forfeit his nomination, or if elected at the following general election by virtue of said nomination, his election shall be void.

§ 23-15-974. Nonpartisan Judicial Election Act; short title.
Sections 23-15-974 through 23-15-985 of this subarticle shall be known as the "Nonpartisan Judicial Election Act."

§ 23-15-975. "Judicial office" defined; positions deemed positions as full-time positions; prohibition against practice of law.
As used in Sections 23-15-974 through 23-15-985 of this subarticle, the term "judicial office" includes the office of justice of the Supreme Court, judge of the Court of Appeals, circuit judge, chancellor, county court judge and family court judge. All such justices and judges shall be full-time positions and such justices and judges shall not engage in the practice of law before any court, administrative agency or other judicial or quasi-judicial forum except as provided by law for finalizing pending cases after election to judicial office.

§ 23-15-976. Judicial office deemed nonpartisan office; candidate for judicial office prohibited from campaigning or qualifying for office based on party affiliation; prohibition on political party fund-raising, campaigning, or contributions on behalf of candidate for judicial office.

A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation. The Legislature finds that in order to ensure that campaigns for nonpartisan judicial office remain nonpartisan and without any connection to a political party, political parties and any committee or political committee affiliated with a political party shall not engage in fund-raising on behalf of a candidate or officeholder of a nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party make any contribution to a candidate for nonpartisan judicial office or the political committee of a candidate for nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated with a political party publicly endorse any candidate for nonpartisan judicial office. No candidate or candidate's political committee for nonpartisan judicial office shall accept a contribution from a political party or any committee or political committee affiliated with a political party.

*Please see the opinion from *Mississippi Republican Party v. Musgrove*, 3:02cv1578WS (S.D. Miss. October 21, 2002) included in this packet. The Mississippi Supreme Court issued its Order on December 12, 2019 making amendments to Canon 5. In that Order the Court references the *Musgrove* Opinion, *Republican Party v. Minnesota v. White*, 536 U.S. 765 (2002), and *Republican Party of Minnesota v. White*, 416 F. 3d 738, 155-166 (8th Cir. 2005), and the Court acknowledged that certain provisions of Section 23-15-976 were rendered unconstitutional. Please refer to Miss. Supreme Court Order No. 89-R-99013-SCT and the *Musgrove* Opinion for the judicially stricken provisions.

§ 23-15-977. Filing of intent to be candidate and fees by candidates for judicial office; notification of county commissioners of filings; procedures to be followed if there is only one candidate who becomes disqualified from holding judicial office after filing deadline.

(1) Except as otherwise provided in this section, all candidates for judicial office as defined in Section 23-15-975 of this subarticle shall file their intent to be a candidate with the proper officials and pay the proper assessment by not later than 5:00 p.m. on February 1 of the year in which the general election for the judicial office is held. If February 1 occurs on a Saturday, Sunday or legal holiday, candidates shall file their intent to be a candidate and pay the proper assessment by 5:00 p.m. on the business day immediately following the Saturday, Sunday or legal holiday. Candidates shall pay to the proper officials the following amounts:

(a) Candidates for Supreme Court justice and Court of Appeals judge, the sum of Two Hundred Dollars ($200.00).

(b) Candidates for circuit judge and chancellor, the sum of One Hundred Dollars ($100.00).

(c) Candidates for county judge and family court judge, the sum of Fifteen Dollars ($15.00).

Candidates for judicial office may not file their intent to be a candidate and pay the proper assessment before January 1 of the year in which the election for the judicial office is held.

(2) Candidates for judicial offices listed in paragraphs (a) and (b) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the State Board of Election Commissioners.

(3) Candidates for judicial offices listed in paragraph (c) of subsection (1) of this section shall file their intent to be a candidate with, and pay the proper assessment made pursuant to subsection (1) of this section to, the circuit clerk of the proper county. The circuit clerk shall notify the county election commissioners of all persons who have filed their intent to be a candidate with, and paid the proper assessment to, such clerk. The notification shall occur within two (2) business days and shall contain all necessary information.

(4) If only one (1) person files his or her intent to be a candidate for a judicial office and that person later dies, resigns or is otherwise disqualified from holding the judicial office after the deadline provided for in subsection (1) of this section but more than seventy (70) days before the date of the general election, the Governor, upon notification of the death, resignation or disqualification of the person, shall issue a proclamation authorizing candidates to file their intent to be a candidate for that judicial office for a period of not less than seven (7) nor more than ten (10) days from the date of the proclamation.

(5) If only one (1) person qualifies as a candidate for a judicial office and that person later dies, resigns or is otherwise disqualified from holding the judicial office within seventy (70) days before the date of the general election, the judicial office shall be considered vacant for the new term and the vacancy shall be filled as provided in by law.

§ 23-15-977.1. Signing oath to abide by election laws.
Simultaneously with filing the required documents to seek election for a judicial office, the candidate shall sign the following pledge under oath and under penalty of perjury:

> "State of Mississippi
>
> County of
>
> I, (name of candidate), do solemnly swear or affirm under penalty of perjury that I will faithfully abide by all laws, canons and regulations applicable to elections for judicial office, understanding that a campaign for a judicial office should reflect the dignity, responsibility and professional character that a person chosen for a judicial office should possess.
>
> (signature of candidate)
>
> (name of candidate)
>
> Sworn to and subscribed before me, this the day of , .

Notary Public or other official

authorized to administer oaths"

§ 23-15-978. Placement of names of candidates for judicial office should appear on ballot.
The names of candidates for judicial office which appear on the ballot at the general election shall be grouped together on a separate portion of the ballot, clearly identified as nonpartisan judicial elections.

§ 23-15-979. Order for listing on ballot of names of candidates for judicial office; references to political party affiliation.
The names of all candidates for judicial office shall be listed in alphabetical order on any ballot and no reference to political party affiliation shall appear on any ballot with respect to any nonpartisan judicial office or candidate.

§ 23-15-980. Listing of unopposed candidates for judicial office on general election ballot.
The name of an unopposed candidate for judicial office shall be placed on the general election ballot.

§ 23-15-981. Two or more candidates qualify for judicial office; majority vote wins; runoff election.
If two (2) or more candidates qualify for judicial office, the names of those candidates shall be placed on the general election ballot. If any candidate for such an office receives a majority of the votes cast for such office in the general election, he shall be declared elected. If no candidate for such office receives a majority of the votes cast for such office in the general election, the names of the two (2) candidates receiving the highest number of votes for such office shall be placed on the ballot for a second election to be held three (3) weeks later in accordance with appropriate procedures followed in other elections involving runoff candidates.

§ 23-15-985. Electors qualified to vote for candidates for nomination for judicial office.
In any election for judicial office, all qualified electors, regardless of party affiliation or lack thereof, shall be qualified to vote for candidates for nomination for judicial office.

§ 23-15-1015. Dates of elections; applicability to elections of laws regulating general elections.
On Tuesday after the first Monday in November 1986, and every four (4) years thereafter and concurrently with the election for representatives in Congress, there shall be held an election in every county for judges of the several circuit and chancery court districts. The laws regulating the general elections shall, except as otherwise provided for in Sections 23-15-974 through 23-15-985, apply to and govern elections of judges of the circuit and chancery courts.

§ 23-15-1021. Limitations on contributions.

It shall be unlawful for any individual or political action committee not affiliated with a political party to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) for the purpose of aiding any candidate or candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, or to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) to any candidate or the candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, as a contribution to the expense of a candidate for judicial office.

§ 23-15-1023. Disclosure of campaign finances.

Judicial candidates shall disclose the identity of any individual or entity from which the candidate or the candidate's committee receives a loan or other extension of credit for use in his campaign and any cosigners for a loan or extension of credit. The candidate or the candidate's committee shall disclose how the loan or other extension of credit was used, and how and when the loan or other extension of credit is to be repaid and the method of repayment. The candidate or the candidate's committee shall disclose all loan documents related to such loans or extensions of credit.

§ 23-15-1025. Distribution of campaign materials.

If any material is distributed by a judicial candidate or his campaign committee or any other person or entity, or at the request of the candidate, his campaign committee or any other person or entity distributing the material shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval. All such material shall conspicuously identify who has prepared the material and who is distributing the material. The identifying language shall state whether or not the material has been submitted to and approved by the candidate. If the candidate has not approved the material, the material shall so state. The identity of organizations or committees shall state the names of all officers of the organizations or committees. Any person, who violates the provisions of this section, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of One Thousand Dollars ($1,000.00) or by imprisonment for six (6) months or both fine and imprisonment.

SUMMARY OF OPINIONS FROM PRIOR SPECIAL COMMITTEES ON JUDICIAL ELECTION CAMPAIGN INTERVENTION AND JUDICIAL ELECTION OVERSIGHT COMMITTEES

The 2024 Judicial Election Oversight Committee is required by Canon 5F to provide the judicial candidate with "summaries of any previous opinions issued by the Special Committee, Special Committees organized for prior elections, or the Supreme Court of Mississippi, which relate in any way to campaign conduct and practices." **The opinions issued and actions taken by a previous Special Committee or Oversight Committee have not been adopted or approved by the Supreme Court of Mississippi.**

On December 12, 2019, the Mississippi Supreme Court amended Canon 5C and 5F of the Code of Judicial Conduct. On December 2, 2021, the Mississippi Supreme Court again amended Canon 5F of the Code of Judicial Conduct. Those amendments have been incorporated in these materials. The Opinions of the Prior Committees on Special Judicial Election Campaign Intervention were based upon prior versions of the Canons and not the newly revised Canons. Therefore, since future Opinions of this Committee on Special Judicial Election Campaign Intervention will be based on the newly revised Canons, future opinions may differ from past opinions due to the revised Canons depending on the facts and issues presented.

The following is a summary of publicly disclosed opinions issued by Special Committees organized for prior elections. The current Special Committee may or may not have the same opinion. If you have a question or concern about any opinion from a prior Special Committee, you should ask for an opinion from the current Special Committee.

I. 2022 Judicial Election Oversight Committee Opinions

A. Opinion 2022-01

An advisory opinion was sought on whether a candidate, who doesn't plan to have a campaign committee, still must provide names and contact information for a campaign committee chair and two other members of their committee as indicated in Canon 5F(5).

The Oversight Committee concluded that a candidate is not required to provide contact information unless and until the candidate forms a campaign committee since Canon 5C(2) states that a candidate "may" establish a campaign committee. Some candidates, particularly those running unopposed, may never form a committee.

B. Opinion 2022-02

An advisory opinion was sought as to whether the limits on donations to judicial campaigns, in Miss. Code Ann. §23-15-1021, apply to donations that a candidate makes to his or her own campaign.

The Oversight Committee concluded that, in light of the U.S. Supreme Court's holding in *Buckley v. Valeo*, 424 U.S. 1, 54 (1976), that a candidate for judicial office has a First Amendment right "to speak without legislative limit on behalf of his own candidacy." This includes monetary donations to his or her own campaign not having a limit.

C. Opinion 2022-03

An advisory opinion was sought on whether a candidate for judge could buy an advertisement in the program for a "Founders' Day Dinner" held by a county Republican women's group. Specifically the question was whether the purchase of the advertisement would violate Miss. Code Ann. Section 23-15-973 which prevents a judicial candidate from aligning with any candidate or candidates for office or political party.

The Oversight Committee discussed how a candidate may clearly attend the Dinner to speak and campaign on his own behalf without violating the relevant statutes or Code of Judicial Conduct. The Committee also discussed the similarities in *James v. Westbrooks*, 275 So. 3d 62 (Miss. 2019). The Committee ultimately determined that, standing alone, the purchase of the advertisement is not an alignment or endorsement of a political party but cautioned that the advertisement should not use any language that actually did endorse the political party or group.

D. Opinion 2022-04

Three issues were called into question by a complaint involving a County Court Judicial Candidate's campaign.

1. A candidate who currently served as a Justice Court Judge was running for County Court Judge and utilized advertisements that listed him as Judge [John Doe] for County Court Judge without disclosing that the candidate's current judicial role was Justice Court. The Justice Court Judge's opponent was actually the incumbent County Court Judge.

   The Oversight Committee determined that it was a violation of Canon 5A(3)(d)(iii) to use the title Judge without disclosing that his judicial role was not the same as that being sought.

2. The candidate utilized materials that did not have the required language in Miss. Code Ann. Section 23-15-1025.

The Oversight Committee gave the candidate ten (10) days to remedy the missing required language.

3. The candidate urged voters to "fill the void" by providing a "male presence" "in the lives of our youth".

   The Oversight Committee concluded that the speech was protected by the First Amendment.

E. *Opinion 2022-05*

A complaint was received regarding a candidate for county court judge utilizing campaign materials that did not comply with Miss. Code Ann. Section 23-15-1025 which requires identification of who paid for the material as well as whether the candidate approved it. The different campaign materials had various levels of disclosure. The Oversight Committee, following prior Committee opinions, determined that some of the partial disclosures on signs did not constitute an "unethical or unfair campaign practice in violation of Canon 5" but encouraged the candidate to disclose all information. For yard signs that included no statutorily required disclosures, the Oversight Committee found them to be a clear violation and instructed the candidate to bring the signs into compliance with the law within ten (10) days.

F. *Opinion 2022-06*

In the Oversight Committee's Opinion 2022-04, a candidate for county court judge who was serving as a justice court judge improperly used the title "Judge" in his campaign material without identifying his current position. He was given ten (10) days to remedy the violation but, after the ten (10) days, signs without the required explanation were still being used. Although the candidate indicated he had attempted to remove all the signs which were in violation, this opinion was issued to publicly name Justice Court Judge Robert Davis as the candidate in opinion 2022-04.

G. *Opinion 2022-07*

A complaint was received regarding a Candidate B indicating that he was the only candidate with judicial experience. However, his opponent, Candidate A, serves as a special master in chancery court. The complaint indicated that according to Miss. Code Ann. Section 41-21-61(b), a special master in chancery court is included in the definition of Chancellor. Further Public Opinion 2018-24 addressed a similar issue. In response to Candidate A's complaint, Candidate B argued that a special master has no authority to render final and binding decisions and only reports and makes recommendations to a chancellor. Candidate B also argued that the definition in section 41-21-61(b) is only intended to clarify that a special master may take certain

actions in civil commitment proceedings and does not transform a special master into a chancellor or "judge".

The Oversight Committee agrees with Candidate B and disapproved of Public Opinion No. 2018-24.

II. 2020 Special Committee Opinions

A. Opinion 2020-01

An advisory opinion was sought on two questions:

1. May a judicial candidate send a letter by mass email to potential supporters and potential contributors that requests support, and may the candidate's committee attach a digital graphic to that letter that contains a donate button with a link that allows the person to make an online financial campaign contribution?

2. May a judicial candidate sign and mail a letter to potential contributors that asks for "support," and also may the envelope for such letter contain a solicitation card and return envelope for the return of financial campaign contributions?

The Special Committee opined that a judicial candidate may ask for support but may not personally solicit or accept campaign contributions under Canon 5C(2) of the Mississippi Code of Judicial Conduct. Thus, the best practice would be to have an individual associated with the judicial candidate's campaign committee to sign the letter soliciting support if the campaign committee seeks to attached a financial solicitation to the letter, regardless of whether the letter is sent by email or by U.S. Mail.

B. Opinion 2020-02

An advisory opinion was sought on three questions:

1. Whether a judicial candidate or their committee may allow placement of signs in a public right-of-way on Mississippi streets, roads, and highways, and, if so, what actions may be taken?

2. May a judicial incumbent who was appointed to office, now seeking a full term, use the phrase "Re-elect" in campaign materials?

3. May a judicial candidate use the services of their judicial employees to assist with their campaign?

Responses:

1. According to Miss. Code Ann. § 63-3-317, it is illegal to place signs located on the rights of way and will be removed on a regular basis. Most municipalities have enacted their own sign ordinances. Candidates should look to the provisions of each municipality as to its particular sign ordinance provisions and requirements.

2. The Special Committee finds that if a judicial candidate incumbent is an incumbent by appointment to fulfill a vacancy and not having been previously elected to that position, then to avoid misrepresentation under Mississippi Code of Judicial Conduct Canon 5A(3)(d)(iii), the phrase "Re-elect" should not be used unless the person was previously elected to that judicial office now sought.

3. Judicial candidates should not use the services of their judicial employees to assist with their campaign. See Miss. Code Ann. § 23-15-874. Additionally, the Employee Manual of the Supreme Court and the Court of Appeals of Mississippi addresses political activity of the employees of those courts, stating that the staff must remain apolitical at all times and sets forth specific prohibited activities.

C. Opinion 2020-03

A candidate had campaign signs stating "Paid for by the Committee to Elect [Candidate's Name]". This resulted in a complaint that all required disclosures were not included. Miss. Code Ann. § 23-15-897(2) requires campaign material to include: (a) The name of the candidate along with a statement that the message is approved by the candidate; or (b) If the message has not been approved by a specific candidate, the name of the person, political committee or organization paying for the publication of the message; or (c) If the message has not been approved by the candidate and no person, political committee or organization is identified as having paid for the publication, the entity producing the campaign materials must be identified.

The Special Committee acknowledges prior opinions accepting the partial disclosure of "approved by the candidate" as sufficient. These signs indicate that the candidate's Campaign Committee paid for the yard sign. The judicial candidate is responsible for their campaign committee. Thus, the Special Committee found no unethical or unfair campaign practice in violation of Canon 5 in this case. However, prospectively judicial candidates should be on notice to comply with both portions of the statutorily required disclosures as to whether the judicial candidate approved of the campaign sign and as to who paid for the campaign sign. Furthermore, while the Special Committee did not find a violation of Canon 5 in that it was not unethical or unfair campaign practice, the Committee did find that the signs fail to contain statutory disclosures under Miss. Code Ann. §§ 23-15-1025 and 23-15-897. Thus, the Committee directs the judicial candidate and the judicial candidate's campaign committee to bring the signs into

compliance or to Cease and Desist from using and from displaying the campaign yard signs that contain no disclosures.

D. Opinion 2020-04

The Special Committee received a complaint about the use of the title "Judge" and the use of the judicial candidate's photograph in the candidate's judicial robes in campaign yard signs. The Special Committee acknowledges yard signs have limited space and also acknowledge that Canon 5A(3)(d)(iii) prohibits judicial candidates from misrepresenting the identity, qualifications, present position or other fact concerning the candidate. The candidate does currently hold a judicial office and the judicial candidate is now seeking a different judicial office that holds the title of Justice, not Judge. Furthermore, the signs use the term "elect" displayed in a readable size and form. Thus the candidate is not portraying that the candidate now holds the position of Justice or seeks re-election to the judicial office of Justice.

E. Opinion 2020-05

The Special Committee received a request for reconsideration of Special Committee Opinion 2020-04. As noted, Special Committee Opinion 2020-04 explains that the campaign sign of a judicial candidate at issue uses the title judge, and the judicial candidate is currently a sitting judge while the candidate is seeking a position as a Justice. Furthermore, the sign uses the term "elect," not re-elect. The Special Committee determined that this information is not false, constitutes a true statement, and is not misleading in the context used. The First Amendment of the U.S. Constitution protects true speech, even in the context of judicial elections. See *O'Toole v. O'Connor*, 260 F. Supp. 3d 901, 912 (S.D. Ohio 2017), *aff'd*, 733 F. App'x 828 (6th Cir. 2018).

F. Public Statement

The Committee to Elect Latrice Westbrooks to Supreme Court Justice failed to timely file its periodic campaign finance report that was due on October 9, 2020. It was filed late on October 13, 2020. The Campaign Committee's periodic campaign finance report that was due on June 10, 2020 was filed late on June 18, 2020. The Campaign Committee's report that was due on July 10, 2020 was also filed late on July 14, 2020. Canon 5C(4) requires candidates and candidates' committees to timely comply with all provisions of law requiring the disclosure and reporting of contributions, loans and extensions of credit.

G. Public Statement No. 2

The Committee to Elect Latrice Westbrooks to Supreme Court Justice failed to timely file its pre-election report that was due on October 27, 2020. Judge Westbrooks and the Campaign Committee shall immediately comply with the statutory campaign finance filing requirements.

H. Public Statement No. 3

The Committee to Elect Latrice Westbrooks to Supreme Court Justice failed to file its periodic campaign finance report that was due on January 8, 2021 in violation of Canon 5C(4) and Miss. Code Ann. §§ 23-15-805 and 23-15-807. Prior late filings of required reports were also noted.

III. 2018 Special Committee Opinions

A. Opinion 2018-01

Campaign Materials include: push cards, pamphlets, circulars, handbills, personal fans, sample ballots, bumper stickers, advertisements, signs (including signs for display on motor vehicles or in yards), billboards, banners, direct mail or other commercially printed items. The Special Committee is also of the opinion that the inclusion of the language "approved by the candidate" is sufficient to indicate the material was submitted to the candidate, approved by the candidate, and paid for/distributed by either the candidate or the candidate's committee as the disclaimer. The Special Committee is of the opinion that very small Campaign Materials may be purchased and distributed, without the required disclaimer.

B. Opinion 2018-02

The Special Committee finds no violation of the Code of Judicial Conduct where prior to 2018 a candidate posted a picture on his Facebook page which depicted a gavel with the caption "2018".

The Special Committee finds no violation of the Code of Judicial Conduct where in 2016, a candidate posted a picture on his Facebook page that depicted himself at the Supreme Court of Mississippi, behind the bench, and holding a gavel before the qualifying deadline and after he publicly stated he was running for Judge.

The Special Committee finds no violation of the Code of Judicial Conduct where a candidate personally solicited votes in a Facebook post of a picture of himself holding his campaign sign which states, "Elect [Candidate] 11/6/18." This was posted well before the qualifying deadline.

The Special Committee finds no violation of the Code of Judicial Conduct where a candidate mailed a form letter to elected officials in the court district directly soliciting votes and support.

The Special Committee finds no violation of the Code of Judicial Conduct where a candidate turned his truck into a portable sign and has parked it at a courthouse in the district.

The Special Committee finds no violation of the Code of Judicial Conduct where a candidate personally solicited votes in a Facebook post.

C. Opinion 2018-03

The Special Committee finds that there is not a violation of the code of Judicial Conduct for a non-judge candidate to use his/her name followed by the position sought. The use of the term "John Doe, Chancery Judge" is not misleading and does not imply that the candidate holds the judicial office. It is common practice in elections to include only the candidate's name and office sought. The words "elect" or "for" may be used at the discretion of the candidate, but are not required.

D. Opinion 2018-04

Canon 5C(2) prohibits the candidate from "personally . . . accept[ing] campaign contributions." The Special Committee is of the Opinion that the receipt of a campaign donation through a credit card transaction that is processed by or through the candidate's office credit card account would violate Canon 5C(2). The candidate's committee may process the credit campaign donation or the committee may use a third party to process the donation.

E. Opinion 2018-05

The Special Committee notes that in *Reed v. Town of Gilbert*, Ariz., 135 S. Ct. 2218 (2015), the United States Supreme Court ruled unconstitutional a local sign ordinance that set time limits for display by political candidates.

F. Opinion 2018-006

The Special Committee recognizes that a "Referee" is statutorily authorized to perform judicial functions, but the position of "Referee" is not equivalent to that of an elected or appointed judge as contemplated by the statutes and Mississippi Constitution. The Special Committee finds that it is a violation of Canon 5A(3)(d)(iii) for a candidate who has served as Youth Court "Referee" to refer to themselves as a "Judge" in campaign materials. The Special Committee finds that it is a violation of Canon 5A(3)(d)(iii) for a candidate who has served as a Youth Court "Referee" to depict themselves in a judicial robe, without a clear explanation of the judicial roles of the position held.

G. Opinion 2018-07

The Special Committee has determined that it is appropriate to notify the public that Brad Clanton has failed to comply with Code of Judicial Conduct Canon 5F(7). Specifically, neither Mr.

Clanton nor his committee chair person has completed the required two-hour course on campaign practices, finance, and ethics.

H. Opinion 2018-08

The Special Committee is of the opinion there is no violation of the Code of Judicial Conduct by the use of the general phrase – "Servicing in Youth Court since 2003" on campaign signs. According to Mississippi Code Annotated § 43-21-107, "youth court' is a "division of the county court of each county . . . and the county judge shall be the judge of the youth court . . . " Therefore, the Special Committee is aware the judicial election campaigns for the position of "County Court" may require a discussion of qualifications and discussion of any prior service in "Youth Court." The Special Committee finds no violation in the general use of both "Youth Court" and "County Court" in campaign materials.

I. Opinion 2018-09

A candidate who was formerly a judge may use a judicial title in a campaign when the candidate is not currently a judge only if the campaign material clearly identifies the circumstances justifying the use of the title. If the candidate is not currently a judge, then the candidate's use of the title "judge" is misleading if the candidate does not also indicate that the candidate is not currently a judge. The candidate can satisfy this requirement in a number of ways, including use of the word "former" or an indication of the years in which the candidate actually served as a judge. The judge may use the term "Re-elect" along with the statement of the office held and the term of service.

J. Opinion 2018-10

The Special Committee on Judicial Election Campaign Intervention is of the opinion that the Candidate may include in campaign materials the statement that he is the "Former Chairman of the Rankin County GOP Executive Committee." While this statement refers to a political party, it is a true and accurate statement of a position that the Candidate previously held. It may be used in campaign materials to show the experience and community service of the Candidate. Thus the Special Committee is of the opinion that the use of this information in the Candidate's Campaign materials is not a violation of the Mississippi Code Annotated § 23-15-976 as "campaigning . . . based on party affiliation" or the Mississippi Code of Judicial Conduct.

K. Opinion 2018-11

A "Youth Court Referee" may claim to have "judicial experience", so long as the campaign material clearly identifies the circumstances justifying the Candidate's "judicial experience." A "Youth Court Referee" may depict themselves in campaign materials wearing a black robe if there is a clear explanation of the judicial roles of the position held.

L. Opinion 2018-12

The Special Committee finds no rules or law that prohibits a candidate's committee from having a fundraising event that indicates a Democratic or Republican nominee for Congress as the special guest. The Special Committee is aware of no rules or law that would prohibit a non-judicial candidate from endorsing a judicial candidate.

M. Opinion 2018-13

The Special Committee is of the opinion that when an individual or company donates a newspaper advertisement, billboard, or ad space in print or radio to a committee of a candidate, that in each scenario the materials should state that the material "has been submitted and approved by the candidate."

N. Opinion 2018-14

The Special Committee is of the opinion that any question about the qualification of a candidate is not within the jurisdiction of the Special Committee.

O. Opinion 2018-15

Candidate F complained that Candidate G used a "comparison chart" that contained information about her experience that was factually incorrect. The Special Committee agrees that Candidate G should include the updated and correct information as provided by Candidate F and that Candidate G should not use the prior comparison chart and shall cease and desist from distributing information that is incorrect.

P. Opinion 2018-16

The Special Committee is of the opinion that there is no prohibition against a judicial candidate attending another political or judicial candidate's fundraiser or event as long as the judicial candidate is simply attending on their own behalf.

Q. Opinion 2018-17

The Special Committee is of the opinion that while a candidate who presently holds or previously held a judicial office may be depicted in campaign materials wearing a judicial robe, the advertisements must also clearly identify the office currently or previously held in an easily readable size and form, such that materials will not mislead the voter as to the candidate's present position. A current municipal judge, who is running for chancery court judge, may film a

commercial that depicts the candidate in a judicial robe if, the candidate clearly explains the judicial role of the position the candidate held.

R. Opinion 2018-18

The Special Committee on Judicial Election Campaign Intervention received a complaint against Candidate J because Candidate J referred to herself as a "Special Youth Court Judge" in campaign materials. Based on the information provided to the Special Committee, the Special Committee is of the opinion that Candidate J was appointed as a "special judge" under section 43-21-123. Accordingly, it is appropriate for Candidate J to refer to herself as a "special youth court judge".

S. Opinion 2018-19

The Special Committee is of the opinion that there is no rule or law that prohibits a candidate's committee from having a fundraising event that indicates an elected official as the special guest.

T. Opinion 2018-20

A candidate had a radio ad about her opponent that stated, "A state's special committee on judicial elections found [Candidate G] to be intentionally dishonest." In Opinion 2018-15, the Special Committee did not find [Candidate G] "knowingly misrepresented" [Candidate F]'s qualifications or that his campaign materials were "intentionally dishonest". The Special Committee finds the radio ad false and misleading. The Special Committee directs [Candidate F] and the Committee to Elect [Candidate F] to cease and desist the use of this radio ad.

U. Opinion 2018-21

The Special Committee found a candidate can answer questions concerning their church and faith. However, the Special Committee opined that a candidate who answers questions about their stances on political/religious matters may violate Canon 5A(3)(d).

V. Opinion 2018-22

An incumbent judge, who is not up for election is prohibited by Canon 5A(1)(b) from "publicly endors[ing] a candidate." Canon 5A(3)(a) does not permit an incumbent judge to publicly endorse another judicial candidate even though the candidate is a family member.

W. Opinion 2018-23

The Special Committee is of the opinion that non-judicial candidates and political parties may endorse judicial candidates. It would be a violation for any judicial candidate or candidate's committee to pay for the printing and distribution of an "Official Democratic Ballot."

X. Opinion 2018-24

Mississippi Code Ann. § 41-21-61(a) defines "Chancellor as a chancellor or special master" for mental health/treatment commitments. Because Candidate L serves as a Special Master for mental health/treatment commitments, under Section 41-21-61(a), she may be considered a "judge" and she may use the term "judge" in this campaign.

Y. Opinion 2018-25

The Special Committee is of the opinion that § 23-15-1025 requires that "[a]ll such material shall conspicuously identify who has prepared the material and who is distributing the material." This language requires that the disclaimer be on each side of a sign that has printed campaign related material.

Z. Opinion 2018-26

The complaint alleges that judicial candidate O has campaigned using the title "Judge" on his campaign materials and at speaking engagements. These are all done without clear explanation, or in some cases, no explanation or clear identification that he is not a Circuit Court Judge but is a municipal court judge. The Special Committee has reviewed the campaign materials submitted in the complaint, the response provided by O, and the campaign Facebook page. The Special Committee finds that O's use of the phrase "Judge [O]" on his Facebook page, campaign signs, and campaign materials is in violation of Canon 5A(3)(d)(iii) of the Code of Judicial Conduct which provides that "[a] candidate for judicial office shall not knowingly misrepresent the identity, qualifications, present position or other fact concerning the candidate . . ." The Special Committee orders the candidate and his committee immediately case and desist the use of the phrase "Judge [O]" on Facebook and campaign materials. The Special Committee instructs the candidate and his committee that the phrase "Judge [O]" may only be used if the materials clearly identify the circumstances justifying the use of the title and identify the proper title of the position actually held.

AA. Opinion 2018-27

The Special Committee orders judicial candidates, their committees and staff to cease and desist in the preparation or distribution of sample ballots or newspaper advertisements if such includes candidates from a political party.

The complaint alleges that P's committee failed to report the use of campaign funds on radio advertisements. P's committee responded stating that they had not purchased the radio ads but his campaign paid a consultant, [R] Strategies, which created, placed, and paid for the ads. The payments to the consultant were properly reported. § 23-15-807 requires that committees report contributions and expenditures. § 23-15-807 requires that P's committee not only report an expenditure to R Strategies. Indeed, R Strategies was the committee's "agent, . . ., contractor, consultant or other person acting on his behalf." Based on the response of P's committee, the Special Committee is of the opinion that § 23-15-807 requires the disclosure of each person or organization or political entity who "receive[d] an expenditure, payment or other transfer" from R Strategies.

There are allegations that each candidate has published or distributed false or misleading campaign material and social media posts. Each candidate has decided how to use date and information to establish their claim to be "most qualified." In fact, the two candidates have a different type of experience – P advocates that he has had more cases on appeal, and Q advocates he has had more success on appeal. The Special Committee is of the opinion that the candidates have a First Amendment right to select their message to the voters.

Candidate P complains that Candidate Q made improper statements in a Facebook post. The complaint asserts that Q's statement that he is "Conservative," is endorsed by business and conservatives, a former Republican Councilman, Pro Family and an avid hunter and outdoorsman, as contrasted by P who is listed as "Liberal", "Supported by Barak Obama", Supported by Hillary Clinton", an "Abortion Defender:, and "attacked and opposed 2nd Amendment Rights", violates the non-partisan requirement of judicial elections and appears to commit Q to a position regarding a case or issue that is likely to come before the Mississippi Court of Appeals. The Special Committee is of the opinion that the claims made in the Facebook post are protected speech under the First Amendment. Further, the Special Committee is of the opinion that issues relating to abortion and the 2nd Amendment are not pledges or promises to decide cases in any particular way or statements committing the candidate with respect to cases, controversies or issues likely to come before the Court of Appeals. As to the statement that Q claims to be a "Republican" Councilman, the Special Committee issued Opinion 2018-10 where the Special Committee determined that it was a true and accurate statement of a position that the Candidate previously held.

BB. Public Statement

In Opinion 2018-26, the Special Committee considered a complaint that judicial candidate Kelly Mims was in violation of the Code of Judicial Conduct and ordered certain action by Mims and his committee. The Special Committee has further determined, pursuant to Canon 5F(3)(e)(i), that Opinion 2018-26 should be released to the public and it should be clear to all voters that Mims currently holds a position of Municipal Court Judge and is not the "Circuit Court Judge".

CC. Public Statement

In Opinion 2018-27, the Special Committee considered several complaints filed by and against judicial candidates David McCarty and Jeff Weill. In this Opinion, the Special Committee found various violations of the Code of Judicial Conduct and ordered certain actions be taken.

The Special Committee considered the complaints and has determined, pursuant to Canon 5F(3)(e)(i), that Opinion 2018-17 should be released to the public.

DD.Opinion 2018-28 (REVISED)

The "Friends of [P]" filed its October 20, 2018 Pre-Election Campaign Finance report. The report indicated a contribution dated October 5, 2018, in the amount of $18,814.20, received from the Committee to Elect [Q]. Q is currently the incumbent circuit court judge of the position sought, and eventually, won by judicial candidate P. The Secretary of State asked the Special Committee whether this was an appropriate (i.e. legal) campaign contribution.

The Special Committee is of the opinion that the Friends of P is in violation of the Code of Judicial Conduct for accepting a campaign contribution from the committee of another judicial candidate.

First, Canon 5C(2) authorizes a judicial candidate's committee to "reasonable campaign contributions." Canon 5C(3) provides that "[c]andidates shall instruct their campaign committees at the start of the campaign not to accept campaign contributions for any election that exceed those limitations placed on contributions by individuals, political action committees and corporations by law." The limit for a circuit court race for individuals and political action committees is $2,500. Miss. Code Ann. § 23-15-1021. Corporate contributions are limited to $1,000. Miss. Code Ann. § 97-13-15. The contribution from the Committee to Elect Q was in the amount of $18,814.20. The contribution here substantially exceeded the limits placed on judicial campaigns by the Mississippi Legislature and the Code of Judicial Conduct.

EE. Opinion 2018-29

Candidate [S] filed a complaint against judicial candidate [P] and his committee based on the alleged violations of Special Committee Opinion 2018-28. The Special Committee found no further violations, but did transfer the matter to the Mississippi Commission on Judicial Performance.

IV. 2016 Special Committee Opinions

A. Annual Report

The Special Committee noted the receipt of a request for an opinion about the propriety of a judge making a financial contribution to a candidate for judicial office. The Special Committee was of the unanimous opinion that Canon 5A prohibits a sitting judge from making such a contribution, despite the fact that judicial candidates are non-partisan.

B. Opinion 2016-001A

Miss. Code Ann. § 23-15-1025 requires that material distributed by a judicial candidate or his committee shall state that it is distributed by the candidate or with his approval. If the candidate has not approved the material shall so state. Material shall identify who has prepared and is distributing material. (See also Miss. Attorney General Opinion No. 2010-0041. Sept. 24, 2010.) Name and address of author and printer is not required if material has been submitted to and approved by candidate or his campaign committee.

If material is distributed by a campaign committee, and if the officers of the committee are a matter of public record in an appropriate public office, the Special Committee does not consider campaign material without identification of committee officers to be in violation of Canon 5. Otherwise, Miss. Code Ann. § 23-15-1025 appears to require that officers of the committee be identified on the materials. Filing of statements of committee organization is addressed in Miss. Code Ann. §§ 23-15-803 and 23-15-805.

V. 2015 Special Committee Opinions

[Candidate A] sought an advisory opinion on two questions:

3. Whether it would be appropriate for [Candidate A]'s election committee to sponsor a "corporate table" at a political fundraiser hosted by the XYZ County Republican Party?

4. Whether it would be appropriate for [Candidate A] to attend the function for the purpose of campaigning?

The Special Committee opined that, pursuant to Canon 5B(2)(b)(ii) and Canon 5B(2)(b)(iii), the candidate may purchase a ticket and attend the political event. But, Canon 5A(1)(b) prohibited the candidate or his committee from sponsoring a table as it would constitute an improper appearance of publicly endorsing a particular political party.

VI. 2014 Special Committee Opinions

A. Opinion 2014-001

Canon 5A(3)(d)(iii) of the Mississippi Code of Judicial Conduct prohibits a candidate for judicial office from knowingly misrepresenting his/her "qualifications, present position, or other

fact concerning the candidate . . . " The Special Committee has previously opined that a candidate who holds another judicial office may use the title "judge" in campaign literature if the material clearly identifies the circumstances justifying the use of the title and identifies the judgeship currently held. See Special Committee Opinion 2006-002. This opinion also provides that phrases and logos must contain such phrases as "elect" before a candidate's name and "for" between the candidate's name and position sought, in an easily readable size and form, in those circumstances in which the candidate does not hold the judicial office sought.

All candidates for judicial office are held to a high standard of accuracy in their campaign advertisements. Judicial robes, often used by candidates in judicial campaign materials, are a widely recognized symbol of judicial office. Like the use of the term "judge", the depiction of a candidate wearing a judicial robe may be misleading in certain circumstances. For example, the depiction of a candidate wearing a robe when he/she currently holds no judicial office and has never held judicial office misrepresents the candidate's present position and violates Canon 5A(3)(d)(iii). Furthermore, in those instances in which a sitting judge seeks a different judicial office or a former judge seeks judicial office, the depiction of the candidate wearing a judicial robe may also imply that the candidate currently holds the office sought. Therefore, the Special Committee is of the opinion that campaign materials wearing a judicial robe, the advertisements must also clearly identify the office currently or previously held in and easily readable size and form, such that the materials will not mislead the voter as to the candidate's present position.

B. Public Statements.

1. **October 31, 2014.** The Special Committee issued a public statement today regarding advertising material which attempts to impact the race for Circuit Court Judge of XYZ County, Mississippi.

The Special Committee said:

Print material circulated by an organization calling itself South Forward IEPAC in support of a candidate for Circuit Court Judge has been brought to the attention of the Special Committee. Mississippi law prohibits a candidate for Judge of the Supreme Court, Court of Appeals, Circuit Court or Chancery Court from aligning himself with any candidate or candidates for any other office or with any political faction or any political party at any time during any primary or general election campaign.

Mississippi law requires that campaigns for judicial office shall be nonpartisan and without any connection to a political party, political parties and any committee or political committee affiliated with a political party. The Committee finds that the materials in question improperly align a candidate for Circuit Court Judge with a candidate for another political office and violate the intention that judicial campaigns for Circuit Court Judge shall be nonpartisan.

2. **Undated Public Statement**. [Candidate B], a candidate for Circuit Court Judge, has, in the view of the Special Committee, violated Canon 5A3(d)(iii) of the Code of Judicial Conduct by the use of campaign material which is misleading and implies that he is the incumbent Circuit Court Judge.

[Candidate B] currently serves as a municipal court judge. Some of his campaign materials use the terms "Judge" without identification that the position held is municipal judge. This candidate also presents himself in a judicial robe without identifying what judgeship he holds. This candidate was previously sent a copy of Opinion 2006-002 issued by the Special Committee on Judicial Election Campaign Intervention which provides that any campaign material "must clearly identify the circumstances justifying use of the title, including identifying the judgeship currently held. The use of the title cannot be misleading, cannot misrepresent the candidate's present position, and must make it clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election." The same prohibition applies to a candidate pictured in a judicial robe without identification of the judicial office held.

The Special Committee found the campaign materials to be misleading and sent [Candidate B] a cease and desist requires pursuant to Canon 5F(3)(c). It is the opinion of the Special Committee that this candidate has continued to utilize misleading campaign materials following receipt of the cease and desist request, resulting in the issuance of this public statement.

3. **August 6, 2014**. The Special Committee received a request for an opinion from a candidate for county court judge, concerning his opponent's intention to address the circuit court venire. The candidate considered this to be a violation of Miss. Code Ann. § 23-15-973, because the statute does not specifically state that candidates for the office of county court judge are permitted to address the venire during court terms. The Special Committee concluded that, while § 23-15-973 specifies certain judicial candidates who are permitted to address juries, the statute states no prohibition against affording candidates for county court judge the same opportunity. The Special Committee opined that the circuit court judge may allow a candidate for county court judge to address the jury venire; although, under a literal reading of the statute, the circuit court judge was not required to do so. The Special Committee was of the further opinion that, if one candidate was allowed to address the venire, then all county court candidates should be afforded the same right and opportunity upon request.

4. **July 14, 2014.** [Candidate C], a candidate for the office of county court judge inquired as to the propriety of his attendance at a public reception and fundraiser for the incumbent district attorney who was aligned with the Republican party. The fundraiser was not being sponsored by a political party, there was no price of admission, and all attorneys in a multi-county area were invited to attend.

The Special Committee found the question to be of limited significance and provided an informal opinion under Canon 5F(2), advising that he could attend the fundraiser and speak on his own behalf at it, if desired; however, he was prohibited from and must refrain from publicly endorsing or aligning himself with a political party as a candidate for judicial office.

5. **June 27, 2015**. The Special Committee considered a complaint by the Committee to Elect [Candidate D] against [Candidate E]. The Special Committee addressed each allegation of wrongdoing:

a. [Candidate E] violated Canon 4A and Canon 5A of the Code of Judicial Conduct by disseminating false information about [Candidate D] in the form of materials bearing the title "Judicial Candidate Falsifies Bankruptcy";

Response: The Special Committee determined that violations of Canon 4A were outside the Special Committee's charge and that it had no authority to address such violations, if any. As to Canon 5A, the Special Committee determined it was unable to determine from the evidence presented whether the materials which the complainant attributed to [Candidate E] were in fact distributed by him or with his approval. The materials submitted did not include the disclosures required by Miss. Code Ann. § 23-15-1025, which provides that material distributed by a judicial candidate or his campaign committee, or any other person or entity at his request, "shall state that it is distributed by the candidate or that it is being distributed with the candidate's approval." The statute also requires that all such materials "shall conspicuously identify who has prepared the material and who is distributing the material." The Special Committee determined to send a letter to [Candidate E] to ask: (1) whether the material entitled "Judicial Candidate Falsifies Bankruptcy" was distributed by him, his committee, or at the request of either; and, if so, (2) whether the form in which it was distributed differs in any material way from the item at issue or, otherwise, included the information required by § 23-15-1025.

b. that [Candidate E] failed to file a political organization statement for his campaign committee;

Response: The Special Committee determined that additional investigation was needed and issued a letter to [Candidate E] advising him of the requirements of § 23-15-803; directing him to determine whether the chair of his campaign committee had complied with this statute; and, if not, directing [Candidate E] to cause his campaign chair to make the required filing with the Office of Secretary of State.

c. that [Candidate E]'s campaign chair (or his designee) failed to attend the 2-hour course required by Canon 5F; and

Response: The Special Committee determined there was no record of attendance at the course by [Candidate E]'s campaign chairperson or his designee, additional investigation was needed, and issued a letter to [Candidate E] bringing this matter to his attention and calling on him to inform the Special Committee whether the attendance records are in error and, if not, to supply the name and address of a designee to receive and review a DVD of the presentation

d. that [Candidate E] financed his campaign with a personal loan without filing the appropriate judicial loan form with the Office of the Secretary of State.

Response: The Special Committee reviewed the requirements of Miss. Code Ann. § 23-15-1023 and determined that the Report of Receipts and Disbursement filed on May 9, 2014, with the Secretary of State by [Candidate E]'s judicial committee indicated that a loan was made by the candidate to the committee without the filing of the judicial loan form. The Special Committee determined additional investigation was needed and issued a letter to the Treasurer of [Candidate E]'s campaign committee, calling to his attention the requirements of the statute and directing him to inform the Special Committee whether the required judicial loan form developed by the Secretary of State had been filed. The letter will further advise that if the judicial loan form has not been filed, immediate compliance with the statute is required.

On September 18, 2015, the Special Committee reviewed the information requested from [Candidate E] and found that the information satisfied the Special Committee's questions and concerns.

6. **October 7, 2014**. The Special Committee considered a complaint filed by [Candidate F] against a county court judge, alleging that the county court judge had been introducing [Candidate F]'s opponent to prospective jurors and allowing him to speak and distribute campaign materials. The complaint alleged that this violated Miss. Code Ann. § 23-15-973. The Special Committee determined that § 23-15-973 does not prohibit a county court judge from allowing candidates to address and/or distribute campaign materials to jurors but it also identified the concern that Canon 5 prohibits an incumbent judge from endorsing a candidate. The Special Committee issued a letter to [Candidate F] informing him that, while there is no direct allegation that the county court judge is endorsing his opponent, equal access to the jury pools should be afforded to all candidates.

VII. 2010 Special Committee Opinions

A. Opinion 2010-1

We have been asked by a candidate to render an advisory opinion. The request states the following facts:

> Individual persons desire to write letters and mail letters in support of a Candidate. The letters would ask the voters to support the Candidate and vote for the Candidate. Such letters would not be generated at the request of the Candidate but would, instead, be voluntary activity undertaken by the letter writer on his or her own initiative. Each such letter would clearly state that a cash contribution or donation is not requested and should not be given or tendered to either the letter writer or the Candidate.
>
> Under the same circumstances, i.e., completely voluntary activity not requested by the Candidate, individual persons desire to generate and hand out, or post in conspicuous places, other written material urging support for Candidate.

The questions the request poses, together with the best answers this Committee can give are as follows:

1. Would that voluntary activity violate Canon 5?

> The important distinction is between what the candidate can do and what only his committee can do. That is because under Canon 5A(3)(c) the candidate can "authorize or knowingly permit" anyone to do anything he can do but cannot "authorize or knowingly permit" anyone but his committee to do the things the candidate cannot do. Under Canon 5C(2), a candidate shall not "personally solicit or accept campaign contributions or personally solicit publicly stated support."
>
> So, if the written material does not "personally solicit" campaign contributions or "publicly stated support," the candidate can hand it out and so can anyone else.
>
> But if the written material does "personally solicit" campaign contributions or "publicly stated support", the candidate cannot "authorize or knowingly permit" anyone other than his committee to distribute it.
>
> Note: One member of this committee disagrees with the conclusion stated in the previous paragraph.

2. Would the cost and expenses of such mailing, or generation and posting of other written materials, be considered a contribution under Canon 5? If so, by whom, the Candidate or someone else, must that contribution be reported?

Aggregate independent expenditures as defined by state law which exceed $200 must be reported by the spender pursuant to Miss. Code Ann. § 23-15-809. Aggregate contributions to a candidate's committee which exceed $200 must be reported by the committee pursuant to Miss. Code Ann. §§ 23-15-805, 23-15-807, 23-15-1023 and related statutes.

Any further clarifications should be sought from the Secretary of State and/or the Attorney General as they are the state officials charged with the responsibility of construing and applying these laws.

3. Must each such letter, or other written material, reflect that it had been submitted to and approved by the Candidate?

This committee's mandate is to construe and apply Canon 5, which requires disclosure and reporting of contributions, but which does not require disclosures on campaign literature. That is a matter governed solely by state statute. See Miss. Code Ann. § 23-15-1025. Any clarification should be sought from the Secretary of State and/or the Attorney General.

4. Must each such letter, or other written material, reflect by whom it was prepared and by whom the cost and expenses, etc., were paid?

See the response to question number 3 above.

5. Would such letter writing, or use of other written material, [be] activity . . . useable by and through, and only by and through, a Candidate's campaign election committee established under Canon 5?

That depends upon the content of the letter or other written material. See the response to number 1 above.

6. Would any of the answers to the foregoing questions change if the costs and expenses of such mailing and preparation of other written material remained less than $1,000.00 referenced under TERMINOLOGY, "major donor" (c) of the Code of Judicial Conduct? If so, what change would be made?

No. The responses above speak to which contributions are legal and/or must be reported. The "major donor rule" does not speak to those requirements but instead governs the later effect of contributions on judicial recusal.

B. *Opinion 2010-2*

The Special Committee has been asked whether a candidate who was formerly a judge may use a judicial title in a campaign when the candidate is not currently a judge. In Opinion 2006-2, the Committee looked to Canon 5(A)(3)(d)(iii) which prohibits misrepresentation of a candidate's qualifications. With respect to the use of the title "judge", it said "The campaign material must clearly identify the circumstances justifying use of the title, including the judgeship currently held. The use of the title cannot be misleading, cannot misrepresent the candidate's present position, and must make clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election."

Under this opinion, if the candidate is not currently a judge, then the candidate's use of the title "judge" is misleading if the candidate does not also indicate that the candidate is not currently a judge. The candidate could satisfy this requirement in a number of ways, including use of the work "former" or an indication of the years in which the candidate actually served as a judge.

C. *Opinion 2010-3 and Public Statement*

The committee has been informed of an anonymous leaflet being distributed in a Circuit Court Judge's race which says "Elect [Candidate G]" and carries the caption "Tea Party of MS Endorses [Candidate G]." When contacted, [Candidate G] admitted that he approved the leaflet.

In the opinion of the Committee based upon the facts presented to the Committee that the leaflet violates several state statutes. Miss. Code Ann. § 23-15-1025 says that all material distributed with a candidate's approval "shall conspicuously identify who has prepared the material and who is distributing the material." This leaflet does not contain any such identification.

In addition, it is a violation of Miss. Code Ann. § 23-15-973 for a candidate to "align himself with . . . any political faction or any political party" and a violation of Miss. Code Ann. § 23-15-976 for a candidate to campaign for "office based on party affiliation." In this leaflet, [Candidate G] "aligns" himself with a political faction or party and is campaigning based on party affiliation, all of which is a violation of Mississippi law.

C. Other Opinions and Disclosures in Annual Report

1. Complaints were made about a candidate's campaign signs because the candidate used the title "judge" without explaining that she did not hold the office she sought but rather held an inferior judicial office. [Candidate] agreed to gather up the offending signs and replace them with proper ones.

2. A formal complaint was made claiming that a candidate had made a false statement about his opponent. The allegedly offending candidate submitted an affidavit stating that he did not

know that what he had said was false when he said it. The committee sent the candidates a letter which quoted Canon 5A(3)(iii) which says a candidate may not "knowingly misrepresent" a fact concerning an opponent. It added that the committee was not equipped to determine whether the offending candidate had or had not known that the statement was false when he made it. The letter also informed the complaining candidate that Canon 5C(1) allows candidates for judicial office to speak at partisan political events so long as the candidates does not "align" himself with the political party.

3. A candidate complained that his opponent published a leaflet referring to himself as "our friend, our neighbor, our judge" when the allegedly offending candidate was not in fact a judge. After inquiry, the Committee determined that pages of the leaflet not supplied with the complaint indicated that the candidate was currently a partner in a law firm and only sought to be elected to office of judge. No action was taken.

4. A candidate for circuit judgeship complained that, in violation of Miss. Code Ann. § 25-15-973, the incumbent circuit judge refused to allow him to speak on the first day of the term to the voters assembled for the purpose of forming a new grand jury. The Committee called the offending incumbent who said that he had not been aware he had a statutory responsibility to let his opponent speak.

5. A complaint was made about both an elected partisan official holding a fundraiser for an opposing judicial candidate and also the candidate speaking at an event at which partisan candidates would also speak. The Committee responded that it was not considered a violation of the code or relevant statutes for a candidate to attend and speak at a party gathering or be endorsed by a candidate for another office as long as the initiative comes from a third party and not from the candidate.

6. A complaint was made about a push card which violated Miss. Code Ann. § 23-15-225 because it did not say who prepared it, who was distributing it, or whether the candidate approved it. The Committee contacted the offending candidate and asked him to comply with the statute, which was done.

7. A complaint was received that a candidate was soliciting or accepting contributions without the benefit of a proper campaign committee in violation of Canon 5C(2). The allegedly offending candidate stated he had a committee but the Secretary of State's office reported that it did not have on file a "Statement of Organization for Political Committee." The matter was referred to the Secretary of State's office. The candidate then filed the proper documentation.

8. A complaint was made about an advertisement in which an opposing judicial candidate was referred to as a "title lawyer and debt collector." In view of the literal truth of this statement, the committee did not feel that any action was warranted even though the characterization obviously did not fairly characterize the opponent's practice.

9. A question was received about a candidate speaking as a non-paying guest at a breakfast fundraiser for a congressional candidate who was running in a partisan election. The Committee informed the complaining person that the comment to Miss. Code of Judicial Conduct Canon 5C(1) says that "attending or speaking at a political party gathering in the judge's own behalf while a candidate does not constitute alignments or affiliation with the party sponsoring the gathering."

10. A candidate complained about mailings for his opponent which bore the bulk rate postage number of the local political party. The Committee responded that a political party is free to contribute to a candidate so long as the contribution is reported, and that while a candidate may not align himself with a party, a party is allowed to align itself with a candidate.

11. A question was raised about the applicability of Miss. Code Ann. § 23-15-1025 to match books bearing a candidate's name. The Committee decided not to address this situation given the impracticality of putting a disclaimer on campaign items such as matchbooks and buttons.

12. After the elections were over, a candidate asked for a public opinion that would discuss more generally the role of partisan politics in judicial elections. The Committee believed that such an opinion is needed, but chose to defer issuance at this time because of pending revision to the Mississippi Code of Judicial Conduct, which may or may not alter that role.

VIII. 2008 Special Committee Opinions and Decisions

On October 29, 2008, the Special Committee issued two public statements and one letter to a candidate:

1. The Special Committee issued a public statement regarding advertising material circulated by Mississippians for Economic Progress, which attempt to impact the race for the Supreme Court in the Southern District of Mississippi, it said:

> Print material circulated by an organization calling itself, Mississippians for Economic Progress, in support of the candidacy of [Candidate H] has been brought to the attention of the Special Committee. The material in question singles out "trial lawyers" which is a common reference to lawyers who represent individual plaintiffs in lawsuits for damages. It is the view of the Special Committee that this material is inappropriate to judicial elections in that it urges partiality rather than impartiality in the judicial function. Accordingly, the use of material which speaks of "trial lawyers" pejoratively and which seeks to impact the election of judges is condemned.

2. The Special Committee issued a public statement regarding television ads attributed to Law Enforcement Alliance for America which attempt to impact the race for the Supreme Court in the Southern District of Mississippi, and it said:

> The TV ads attacking a justice for his votes in criminal cases accusing him of not "protecting" families have been brought to the attention of the Special Committee. These ads violate the Code of Judicial Conduct with respect to judicial elections in that they urge a course of action which is not in keeping with the duty of a justice of the Supreme Court to decide the legal issues on an impartial basis. A judge is sworn to uphold the law and adjudicate cases in accordance with law, and not ignore the law based upon the popularity or infamy of those who appear before the court or the heinousness of the crime of which they are accused.
>
> Accordingly, the Special Committee condemns these ads as they urge a biased rather than impartial court system.

3. The Special Committee wrote a letter to [Candidate H] that said:

> The quote attributed to you in a news report on the website to the effect that the committee had found that the LEAA ads appeared to be "coordinated" with the [Candidate H] campaign is untrue. The Special Committee has not found nor intimated any such coordination. The suggestion that it did so is false and misleading. You should issue an immediate retraction if the quote was accurately attributed or request a correction if it was not. Because of the immediacy of the election, this letter to you will be released by the Special Committee to the press.

IX. 2006 Special Committee Opinions and Decisions

A. Opinion 2006-001

The Special Committee was asked for an advisory opinion on two questions concerning the interpretation of the words "donor" and "major donor" as used in the Code of Judicial Conduct. These words are defined in the Code and the term "major donor" takes on significance only in the context of litigations before a sitting judge whose candidacy has received contributions from a person or entity so designated. The significance is that a party may file a motion to compel recusal of a judge where the "opposing party or counsel of record for that party is a major donor to the election campaign of such judge." Code of Judicial Conduct, Canon 3E(2). The Code does not require recusal in that instance. All that can be said is that having a "major donor" in the case is an appropriate circumstance in which to raise the recusal issue. The judge and, ultimately, the Supreme Court will determine whether recusal is required.

The questions presented were stated as follows:

1. Whether individual contributions of several lawyers associated with the same firm are aggregated for purposes of determining whether the firm is a major donor; and

2. Where the firm is also a contributor, whether the individual contributions made by members of the firm are aggregated with the firm's contribution for that purpose.

The Special Committee responded with the determination that the questions were outside the scope of the Special Committee.

B. Opinion 2006-002

The Special Committee was asked for an advisory opinion on the use of the word "judge" in campaign literature if the candidate currently holds a judicial office other than the office for which he/she is a candidate. The Special Committee has further received inquiries about the use of the word "judge" in campaign materials by candidates who do not hold a judicial office without the use of clarifying words such as "elect" or "for".

The questions posed are paraphrased below:

1. May a candidate who holds a judicial office other than the office for which he/she is a candidate use the title "judge"?

   Response: Canon 5A(3)(d)(iii) prohibits a candidate from knowingly misrepresenting their qualifications or present position. The Special Committee is of the opinion that a candidate who holds another judicial office may use the title "Judge" in campaign materials subject to certain limitations. The campaign material must clearly identify the circumstances justifying use of the title, including identifying the judgeship currently held. The use of the title cannot be misleading, cannot misrepresent the candidate's present position, and must make it clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election.

2. May a candidate use his/her name together with the title of the office the candidate is currently seeking?

   Response: The Special Committee has received inquiries and copies of material with phrases or logos such as "John Doe, Circuit Judge" or "Jane Doe, Chancery Judge" when the candidate does not hold judicial office. This again raises the issue of misrepresentation of qualifications or present position as cited in Canon 5A(3)(d)(iii) above. The Special Committee is of the opinion that such material may be misleading and may imply that the candidate currently holds the judicial office. The Special Committee's opinion is that a non-judge candidate may not use these phrases without including

language such as "elect" before the candidate's name and position sought or "for" between the candidate's name and the position sought. The terms "elect" or "for" should be in an easily readable size and form such that they may not be easily overlooked.

C. Public Statement

Pursuant to Canon 5F(3)(d) of the Code of Judicial Conduct, the Special Committee on Judicial Election Campaign Intervention herein releases the following public statement:

[Candidate I], a candidate for Chancery Court Judge has, in the view of the Special Committee, violated Canon 5A(3)(d)(iii) of the Code of Judicial Conduct by the use of campaign material which is misleading and implies that he is the incumbent Chancery Court Judge.

[Candidate I] currently serves as a justice court judge and as a special master in the chancery court. His campaign materials use the terms "Judge [Candidate I] Chancery Court" and "Elect Judge [Candidate I] Chancery Court Judge".

[Candidate I] was previously sent a copy of Opinion 2006-002 which provides that any campaign material "must clearly identify the circumstances justifying use of the title, including identifying the judgeship currently held. The use of the title cannot be misleading, cannot misrepresent the candidate's present position, and must make it clear to the voting public that the candidate is not a judge of the court for which the candidate is currently seeking election.

The Special Committee found [Candidate I]'s campaign materials to be misleading and on September 12, 2006 sent [Candidate I] a cease and desist request pursuant to Canon 5F(3)(c). It is the opinion of the Special Committee that [Candidate I] has continued to distribute misleading campaign materials following receipt of the cease and desist request, resulting in the issuance of this public statement.

X. 2004 Special Committee Opinions and Decisions

The Special Committee was asked for an advisory opinion on whether soliciting donations on a campaign website are permitted where the solicitations are made by the campaign committee char(s). The Special Committee concluded that website solicitation in the name of the campaign committee chair(s) does not violate the prohibitions against personal solicitation of contributions by the candidate.

XI. 2002 Special Committee Opinions and Decisions

A. Opinion No. 2002-0001

The Special Committee was asked for an opinion on the following circumstances:

The candidate is seeking an office in which all candidates run at large for unnumbered posts. Those receiving the highest votes fill the number of posts available. The candidate proposes to file a motion to recuse all of the incumbent judges from matters in which he represents clients before them because they are all his opponents in the race.

The Special Committee has also been asked by a sitting judge in similar circumstances whether he should recuse himself in matters involving candidates for office in the district in which the judge is also a candidate for reelection and all candidates run for unnumbered posts.

The Special Committee concluded that these requests involve issues outside of the scope of this Committee's authority. This issue put by the motion to recuse is one of judicial conduct in on going judicial proceedings rather than candidate campaign conduct. The determination whether a judge should recuse in a case should be made in accordance with the rules promulgated by the Mississippi Supreme Court: Rule 16A, Mississippi Rules of Civil Procedure; Rule 1.15, Uniform Rules of Circuit and Chancery Court Practice; Rule 1.11 Uniform Chancery Court Rules: and Rule 48B Mississippi Rules of Appellate Procedure.

B. Complaint on Campaign Materials

The Special Committee considered a complaint about a campaign flyer bearing the legend "Paid for by the Committee to Elect [Candidate J] and approved by the candidate." The flyer asserts, among other things, that "[Candidate J] will fight the special interest groups – like the personal injury lawyers who have created the 'lawsuit industry.'"

The Special Committee concluded that it violates the Code of Judicial Conduct, Canons 5A(3)(d)(i) and (ii). The Special Committee directed that the following press release immediately issued to all media outlets.

Special Committee on Judicial Election Campaign Intervention.
Press Release
November 5, 2002

[Candidate J], a candidate . . . has, in the view of this committee, violated Canon 5A(3)(d)(i) and (ii) of the Code of Judicial Conduct by asserting that he will "fight the special interest groups – like the personal injury lawyers who have created the 'lawsuit industry.'" This statement singles out "personal injury lawyers" as those [Candidate J] intends to "fight." The committee views this as a pledge or promise inconsistent with the fair and impartial administration of justice in violation of Canon 5A(3)(d)(i) and appears to commit [Candidate J] on issues likely to come before him should he be elected, in violation of Canon 5A(3)(d)(ii).

C. Summary of Complaints Without Merit

1. A vendor took issue with a judge's committee reporting a refund for photography work as a campaign contribution. [This was considered a reporting issue, if anything at all and clearly not a violation of the Code of Judicial Conduct.]

2. An anonymous complaint alleged a judge's court administrator was his campaign chairperson; this was not true. The Committee found no evidence to substantiate the claim.

3. A campaign committee complained about a 3rd party soliciting contributions for candidates then the 3rd party would forward the contributions to the candidate's committees. The Special Committee found no violation in the activity complained of.

4. A special interest group complained about the response of a candidate to that group's ads attacking the candidate. There was not a majority of the Committee in support of a conclusion that there was a violation.

5. A candidate complaint of a circuit clerk campaigning for a candidate. The Special Committee found the circuit clerk was an independent elected official and not subject to the statutory limitations placed on court administrators, law clerks, etc.

6. A candidate believes another candidate had personally solicited publicly stated endorsements, which can only be solicited by the candidate's committee. The Special Committee could find no evidence that the candidate had personally solicited the endorsements.

7. A candidate's committee questioned the use of the title "Judge" in the campaign materials of a candidate who had served as a special judge by appointment. The Special Committee found that the candidate adequately explained the circumstances surrounding the use of the title and were, therefore, proper.

8. An anonymous complainant believed a candidate's wife writing a letter soliciting support violated Canons 5A(1)(c) and 5C(2). The Special Committee concluded the activity was not a violation.

UNITED STATES SUPREME COURT
DECISIONS ON JUDICIAL ELECTIONS

Republican Party of Minnesota v. White, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002).

Caperton v. A.T. Massey Coal Co., Inc., 129 S.Ct. 2252, 2259, 173 L.Ed.2d 1208 (2009).

Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 130 S. Ct. 876, 175 L.Ed.2d 753 (2010).

Williams-Yulee v. Fla. Bar, 135 S.Ct. 1656, 191 L.Ed2d 570 (2015).

MISSISSIPPI CASES ON JUDICIAL ELECTIONS

Mississippi Republican Party v. Musgrove, 3:02CV1578WS (S.D. Miss. October 21, 2002)

Mississippi Comm'n on Judicial Performance v. Solomon C. Osborne, 11 So.3d 107 (Miss. 2009)

In re William C. Bell, 962 So.2d 537 (Miss. 2007).

Mississippi Republican Party v. Musgrove, 3:02CV1578WS (S.D. Miss. October 21, 2002)

FINAL DECLARATORY JUDGMENT

Before the Court is plaintiffs First Amended Complaint for Declaratory Judgment and for Injunctive Relief and Motion for Temporary Restraining Order and for Preliminary Injunction under Title 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure 57 and 65. [Fn. 1] By its motion, plaintiff Mississippi Republican Party State Executive Committee (hereinafter "Republican Party") requests this court to declare that Mississippi's explicit statutory prohibition on political parties endorsing or contributing to the campaigns of judicial candidates violates the freedom of political speech guaranteed by the United States Constitution and the Mississippi Constitution of 1890. Defendant Ronald Musgrove, named in his official capacity as Governor of the State of Mississippi, is represented in this constitutional challenge by the Attorney General of the State of Mississippi pursuant to Mississippi Code Annotated§ 7-5-1 and 28 U.S.C.A. § 2403(b).

As campaigns are currently underway through which candidates are seeking election on November 5, 2002, to the Mississippi Supreme Court, the Court of Appeals, and various lower courts, this Court has expedited consideration of this matter. With the consent of the parties and pursuant to Fed. R. Civ. P. 65(a)(2), the consideration of the preliminary injunction has been consolidated with consideration of the merits. This Court, having been advised of the premises by the plaintiff and Attorney General, enters this final declaratory judgment pursuant to Fed. R. Civ. P. 57 and 58 and finds for the plaintiff to the extent set forth below.

At issue are sections 23-15-976 and 23-15-1021 [Fn. 2] of the Mississippi Code Annotated which prohibit political parties and their affiliated committees from endorsing or financially contributing to a candidate for judicial office or to that candidate's campaign. [Fn. 3] The plaintiff contends that this prohibition on endorsements and contributions to judicial candidates and campaigns unlawfully abridges the right of free speech found in the First Amendment to the United States Constitution and Sections 11 and 13 of the Mississippi Constitution of 1890. [Fn. 4] This is not the first instance in which a federal court has been called upon to review a First Amendment challenge to statutes prohibiting political parties from supporting candidates for judicial election. Indeed, both the plaintiff and the Attorney General recognize the weight of authority from the United States Supreme Court and other federal courts finding similar prohibitions to be unconstitutional restrictions on core political speech.The authority of states to regulate elections "does not extinguish the State's responsibility to observe the limits established by the first amendment rights of the State's citizens." Eu y. San Francisco Democratic Cent Comm., 489 U.S. 214, 109 S.Ct. 1013, 1019 (1989);
also Republican Party of Minnesota v. 536 U.S._, 122 S.Ct. 2528, 2533 (2002). If the regulation at issue impairs the First Amendment rights of political parties, "it can survive constitutional scrutiny only ifthe State shows that it addresses a compelling state interest ... and is narrowly tailored to serve that interest." E.u, 489 U.S. at 222; ~ al~o Republican Partv of Minnesota, 122 S.Ct. at 2534. By prohibiting political parties from endorsing or contibuting to candidates for judicial election, the restrictions contained in Sections 23-15-976 and 23-15-1021 unquestionably limit the core political speech of the parties and fundamentally impair their First Amendment rights, without being narrowly tailored to a compelling government interest. See Republican Party of Minnesota, 122 S.Ct. at 2534 (reiterating that first amendment rights of free speech apply to judicial elections); Buckley v. Valeo, 424 U.S. l, 96 S.Ct. 612 (1976); Gearv v.
Renne, 911 F.2d 280 (9'h Cir. 1990), rev'd on other grounds, 111 S.Ct. 2331 (1991); California Democratic Party v. Lungren, 919 F.Supp. 1397, 1400 (N.D. Cal. 1996).

Applying the rigors of strict scrutiny analysis to statutes prohibiting political parties from supporting or endorsing election candidates, several federal courts have previously held similar prohibitions to the ones at issue to be unconstitutional restrictions on political speech. See ~, 911 F.2d at 284-85 (declaring unconstitutional prohibition on political parties from supporting judicial candidates); California Democratic Party, 919 F.Supp. at 1404-05 (same); also Ey, 489 U.S. at 229 (declaring unconstitutional prohibition on political parties from endorsing candidates in primary elections); Abrams v. Reno, 452 F.Supp. 1166, 1171 (S.D.Fla. 1978) (same); cf. Republican Partyof Minnesota, 112 S.Ct. at 2538-539 (declining to distinguish political speech in judicial elections from political speech in legislative elections); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 660, 110 S.Ct. 1391, 1398 (1990) (distinguishing constitutional limits on political expenditures from "absolute ban onall forms" of political expenditures) .

This Court finds the analysis of these decisions to be applicable to the statutory prohibitions at issue and that such analysis compels a determination that the prohibitions at issue are unconstitutional. In sum, it is well established, and the Attorney General does not disagree, that a state may not directly suppress core political speech of a political party concerning the merits of judicial candidates by prohibiting the party from endorsing or financially supporting judicial candidates.

Having found the endorsement and contribution prohibitions in sections 23-15-976 and 23-15-1021 to be constitutionally infirm, ITIS HEREBY ORDERED that:

1. Plaintiffs request for a declaratory judgment is GRANTED.

2. Mississippi Code Annotated§ 23-15-976, as amended in 1999, with the exception of the first sentence stating "[a] judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation," is hereby declared volative of the First and Fourteenth Amendments to the Constitution of the United States.

3. It is further ORDERED that although the named plaintiff in this litigation is the Mississippi Republican Party State Executive Committee, the fundamental constitutional right to free speech is also equally enjoyed by the Mississippi Democratic Executive Committee, and all similar political parties. Since the prohibitions in questionhave been declared unconstitutional, the relief afforded to the plaintiff enures to the benefit of all political parties.

4. It is further ORDERED that as a part of the relief set forthin Paragraph 2 above that political parties and any committee or political action committee affiliated with a political party shall be subject to the same financial limits as apply to individuals and political action committees as set forth in Mississippi Code Annotated§ 23-15-1021.

5. By agreement of the parties, any claims for relief other set forth in the First Amended Complaint than those claims addressed above are hereby dismissed without prejudice.

6. By agreement of the parties, plaintiff waives any claim against defendant for attorneys' fees, expenses, and costs.

SO ORDERED AND ADJUDGED this the 21st day of October, 2002.

/s/ Henry T. Wingate
United States District Judge

Footnotes

1. This court has jurisdiction over this matter pursuant to Title28 U.S.C. §§ 1331, 1334 and Title 42 U.S.C. § 1983.

2. Mississippi Code Annotated§ 23-15-976, as amended in1999, provides in part:

> A judicial office is a nonpartisan office and a candidate for election thereto is prohibited fromcampaigning or qualifying for such an office based on party affiliation [P]olitical parties
> and any committee or political committee affiliated with a political party shall not engage in fund-raising on behalf of a candidate or officeholder of a nonpartisan judicial office, norshall a political party or any committee or political committee affiliated with a political party make any contribution to a candidate for nonpartisan judicial office or the political committee of a candidate for nonpartisan judicial office, nor shall a political party or any committee or political committee affiliated witha political party publicly endorse any candidate for nonpartisan judicial office. No candidate or candidate's political committee for nonpartisan judicial office shall accept a contribution from apolitical party or any committee or political committee affiliated with a political party.

Mississippi Code Annotated§ 23-15-1021 provides:

> It shall be unlawful for any individual or political action committee not affiliated with a political party to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) for the purpose of aiding any candidate or candidate's political committee for judge of a county, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, or to give, donate, appropriate or furnish directly or indirectly, any money, security, funds or property in excess of Two Thousand Five Hundred Dollars ($2,500.00) to any candidate orthe candidate's political committee for judge of acounty, circuit or chancery court or in excess of Five Thousand Dollars ($5,000.00) for the purpose of aiding any candidate or candidate's political committee for judge of the Court of Appeals or justice of the Supreme Court, as a contribution to the expense of a candidate for judicial office.

3. Prior to 1999, section 23-15-976 consisted of only the following language: "A judicial office is a nonpartisan office and a candidate for election thereto is prohibited from campaigning or qualifying for such an office based on party affiliation." In 1999, the Mississippi Legislature amended Section 23-15-976 retaining the first sentence above and adding the prohibitions at issue. See 1999 General Laws, chpt. 301, § 16. The same legislation created the financial prohibitions at issue in section 23-25-1021. Id. at§ 1. The amendmentsbecame law over the veto of the Governor.

4. The first Amendment rights to freedom of speech are made applicable to the States by the Due Process Clause of the Fourteenth Amendment. Tashjian v. Republican Party, 479 U.S. 208, 214, 107 S.Ct. 544(1986). As the issues herein are resolved in favor of plaintiff pursuant to the United States Constitution, it is unnecessary for this court to address the state constitutional law issues presented in the complaint.

Mississippi Commission on Judicial Performance v. Solomon C. Osborne, 11 So.3d 107(Miss. 2009).

CARLSON, Presiding Justice, for the Court.

¶ 1. The motion for rehearing filed by Solomon C. Osborne is denied. However, the motion for rehearing filed by the Mississippi Commission on Judicial Performance is granted, in part. Thus, the original opinions are withdrawn, and these opinions are substituted therefor.

¶ 2. In this judicial-discipline case, the Mississippi Commission on Judicial Performance ("the Commission") recommends to this Court that, based on his judicial misconduct, Solomon Osborne, former County Court Judge for Leflore County, should be removed from office, restrained from ever seeking judicial office again, and assessed with costs of this proceeding.

FACTS AND PROCEEDINGS BEFORE THE COMMISSION

¶ 3. On September 13, 2006, while campaigning for reelection as a county court judge for Leflore County, Judge Solomon C. Osborne spoke before the Greenwood Voters League, a predominantly African-American political organization. Portions of his speech appeared the next day in the local newspaper, The Greenwood Commonwealth. In an article entitled: "Osborne: Blacks not where we should be. County judge says progress has been made, more is needed," the newspaper quoted Judge Osborne as stating:

> White folks don't praise you unless you're a damn fool. Unless they think they can use you. If you have your own mind and know what you're doing, they don't want you around.1

¶ 4. Forty-eight complaints were filed with the Commission regarding Judge Osborne's comments. On February 12, 2007, the Commission filed a formal complaint against Judge Osborne, alleging willful misconduct in office and conduct prejudicial *110 to the administration of justice which brings the judicial office into disrepute, thus causing such conduct to be actionable pursuant to the provisions of Article 6, Section 177A of the Mississippi Constitution of 1890, as amended.

¶ 5. Judge Osborne, acting as his own attorney,2 answered the complaint and denied making the statements attributed to him by The Greenwood Commonwealth. He moved the Commission to dismiss the complaint on the basis that its charge violated the First and Fourteenth Amendments ofthe United States Constitution and comparable provisions of the Mississippi Constitution, averring further that the Commission's complaint was politically and racially motivated.

¶ 6. The Commission referred the matter to a duly-constituted committee,which held a formal hearing. Both parties agreed to dispense with an evidentiary hearing on the facts, allowing instead an agreed statement of the facts to be entered into evidence for a review, finding, and proposed recommendation. The committee concluded the following:

> [T]his Tribunal is convinced by clear and convincing evidence that Judge Solomon C. Osborne, has violated the following Canons, Statute, and Section 177A of the MississippiConstitution of 1890, as amended, to-wit:
>
> Canon 1. By making a public inflammatory, derogatory statement about all people of the White race, thereby eroding public confidence in the integrity and independence of his Court.
>
> Canon 2.(A) & (B) By making a public spectacle of himself and thereby demeaning the prestige of his office.
>
> Canon 3.(B)(5) By publicly announcing manifest bias and prejudice based on race.
>
> Canon 5.(A)(1)(a) By maintaining membership in, attending meetings, and promoting the agenda of a political organization.
>
> Statute: Section 97-9-59 Mississippi Code, 1972, Ann. (Perjury) By making an oath to an untrue, false and improper statement when Solomon C. Osborne knew his statement was untrue and false.
>
> Section 177A of the Mississippi Constitution of 1890. By conducting himself in a way which constitutes wilful misconduct in office and conduct which isprejudicial to the administration of justice,bringing his judicial office into disrepute.

¶ 7. The committee filed its findings of fact, conclusions of law, and recommendation with the Commission on February 15, 2008. The Commission accepted and adopted the Committee's recommendation and thereafter entered its findings of facts, conclusions of law, and recommendation on March 18, 2008. The Commission found that Judge Osborne's behavior violated Canons 1, 2(A), 2(B), 3(B)(5), and 5(A)(1)(a) of the Mississippi Code of Judicial Conduct, and Section 97-9-59 of the Mississippi Code of 1972, Annotated. The Commission has recommended to this Courtthat Judge Osborne be removed from office, restrained from ever seeking judicial office again, and assessed with costs of this proceeding in the amount of $731.89.

DISCUSSION

¶ 8. Judicial misconduct proceedings are reviewed de novo, giving considerable deference to the findings, based on clear and convincing evidence, of the recommendations of the Commission. Miss. Comm'n on Judicial Performance v. Boland, *111 975 So.2d882, 888 (Miss.2008) (Boland I) (citing Miss. Comm'n on Judicial Performance v. Boykin, 763 So.2d 872, 874 (Miss.2000)).This Court, however, is obligated to conduct an independent inquiry. Id. (citing Miss. Comm'n on Judicial Performance v. Neal,774 So.2d 414, 416 (Miss.2000)). Though the Commission's findings are considered, this Court is not bound by its findings. Miss. Comm'n on Judicial Performance v. Whitten, 687 So.2d744, 746 (Miss.1997).

I.

¶ 9. The role of the judiciary is central to the concept of justice andthe rule of law. The Mississippi Code of Judicial Conduct, throughits canons, was established to help ensure the public's trust and confidence in the state's judicial system, and to provide guidance to judges in maintaining the principal standards of judicial conduct both on and off the bench. This Court is vested with the authority to discipline any judicial officer for violation of a judicial canon. Miss. Const. art. 6, § 177A. Enforcement of the canons is essential to the purpose they serve.

¶ 10. Judge Osborne claims First Amendment protection for his speech and for his attendance before the Greenwood Voter's League. He

challenges the constitutionality of the Commission's recommendation that he be punished.

¶ 11. The Commission responds, arguing that the racial overtones of Judge Osborne's comments cast doubt on his integrity, independence, and ability to be fair and impartial in all matters that come before his court. The Commission asserts that application of the judicial canons in this case is narrowly tailored to serve a compelling state interest, thus Judge Osborne's conduct does not enjoy First Amendment protection.

A. Political organization

¶ 12. Beginning with the Commission's finding that Judge Osborne violated Canon 5(A)(1)(a) by maintaining membership in, attending meetings of, and promoting the agenda of a political organization, we need not address Judge Osborne's constitutional argument.3 Based on the record before us, Judge Osborne's attendance before the Greenwood Voters League did not violate section5(A)(1)(a), or any other section of the canons.4 Canon 5(A)(1) reads infull, as follows:

> Except as authorized in Sections 5B(2), 5C(1) and5C(2), a judge or candidate for election to judicial office shall not:
> (a) act as a leader or hold an office in a politicalorganization;
> (b) make speeches for a political organization orcandidate or publicly endorse a candidate for public office;
> (c) solicit funds for or pay an assessment or make acontribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, or other political functions.

(Emphasis added.)

¶ 13. The Commission's finding rests solely on what transpired during rebuttal *112 at the formal hearing for this matter. A committee member queried counsel for Judge Osborne about the Greenwood Voters League. The attorney explained he thought it could be fairly characterized as a non-dues, political organization that meets weekly. When the committee member asked how one becomes a member, the attorney responded, "Justby attending a meeting." The committee member then asked if Judge Osborne therefore was a member. The attorney said, "Yes." No further questions were asked about the Voters League.

[4] ¶ 14. The Commission has misinterpreted and misapplied Canon 5. The canon does not prohibit membership "per se" in a political organization.5 Rather, as denoted by section 5A(1) and its subsections, the canon prohibits judicial incumbents and judicial candidates alike from engaging in certain inappropriate political activity normally associated with such organizations. See also sections 5B(2), 5C(1), 5C(2)and 5D.

¶ 15. There is no evidence in the record that Judge Osborne acted as a leader for, or held an office in, the Greenwood Voters League, in violation of section 5A(1)(a). Likewise, there is no indication that Judge Osborne was making a speech on behalf of the Voters League, as prohibited by section 5A(1)(b). Additionally, although Judge Osborne admittedly attended political gathering, ordinarily a violation under 5A(1)(c), the record evinces only that he was there as a judicial candidate running for reelection. Section 5C(1) expressly permits incumbent judges to attend and speak to political gatherings on their own behalf while candidates for election or reelection.

B. Political speech

¶ 16. The subject of Judge Osborne's inflammatory statements was his criticism of a Caucasian mayor's appointment of two local African-Americans to the Greenwood Election Commission. While these statements admittedly were made by Judge Osborne during a year when he was campaigning for reelection as the incumbent county court judge, we do not find that these invidious statements constitute protected political speech under the First Amendment of the United States Constitution, or Article 3, Section 13 of the Mississippi Constitution of 1890, as amended.

¶ 17. The United States Supreme Court addressed the issue of protected political speech in Republican Party of Minnesota v. White, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002). White stands for the proposition that in states which choose to elect their judges and which have judicial canons prohibiting judicial candidates "from announcing their views on disputed legal and political issues" such canons violate the First Amendment. White, 536 U.S. at 788, 122 S.Ct. 2528. In White, the Court had before it a factual scenario in which a candidate for associate justice of the Minnesota Supreme Court "distributed literature criticizing severalMinnesota Supreme Court decisions on issues such as *113 crime,
welfare and abortion." Id. at 768, 122 S.Ct. 2528. In discussing the procedural history of this case, the Court noted that the Eighth Circuit Court of Appeals recognized that "the announce clause both prohibits speech on the basis of its content and burdens a category of speech that is 'at the core of our First Amendment freedoms'-speech about the qualifications of candidates for public office." Id. at 774, 122 S.Ct. 2528 (citing Republican Party v.
Kelly, 247 F.3d 854, 861, 863 (8th Cir.2001)).

¶ 18. Traditionally, this Court, in assessing whether speech by a member of the judiciary is protected political speech, has appliedthe two-prong test promulgated in Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968).
Applying the Pickering test, a reviewing court looks to whether, inlight of the content, form, and context of the speech at issue, the speech addresses a matter of legitimate public concern. Miss.
Comm'n on Judicial Performance v. Boland, 975 So.2d 882, 891 (Miss.2008) (citing Scott v. Flowers, 910 F.2d 201, 210 (5th Cir.1990)). If the speech is not deemed to be a matter of legitimatepublic concern, the inquiry ends, otherwise, the next step of the inquiry is to balance the First Amendment rights of the public employee against the government's interest. Boland I, 975 So.2d at891.

¶ 19. In Boland I, this Court found that Judge Boland was not engaging in political speech when she remarked on the ignorance of members of the Hinds County Board of Supervisors, criticized the educational background and demeanor of justice court judges, told a participant to "get the hell out" of the room, and remarked that her African-American constituents in Hinds County could "goto hell." Id. In applying the two-prong Pickering test, this Court held "[s]ince Judge Boland's comment was not made within the content, form or context of a matter of legitimate public concern, no further analysis is necessary by this Court. Accordingly, we find that Judge Boland's comment was not protected by the First Amendment." Boland I, 975 So.2d at 892. In doing so, this Court distinguished Judge Boland from the judge in Mississippi Commission on Judicial Performance v. Wilkerson, 876 So.2d 1006 (Miss.2004). Boland I, 975 So.2d at 892. This Court made that distinction on the basis that the judge in Wilkerson wrote a letter to a newspaper that contained commentary on his religious views on homosexuality without ever identifying himself as a judge. Boland I,

975 So.2d at 892 (citing Wilkerson, 876 So.2d at 1008). "Without his permission, a radio show later aired a conversation Wilkerson had with a reporter concerning the letter." Id. (citing Wilkerson, 876 So.2d at 1008).

¶ 20. We find today's case comparable to the facts in Boland I inasmuch as Judge Osborne's commentary on Caucasian officials and their African-American appointees in his jurisdiction is not worthy of being deemed a matter of legitimate political concern in his reelection campaign, but merely an expression of his personal animosity. Therefore, inasmuch as Judge Osborne's comments "[were] not made within the content, form or context of a matter of legitimate public concern, no further analysis is necessary by this Court." Boland I, 975 So.2d at 892. Likewise, this case is distinguishable from Wilkerson in that Judge Osborne was appearing at the meeting in his capacity as a judge-this was not a personal letter to the editor of his local paper. On the other hand, speaking before a group of his constituents, Judge Osborne no doubtexpressed his disdain for the local Caucasian mayor and his African-American appointees in making his inflammatory remarks; however, he did not *114 limit his remarks to commentary on the mayorand the mayor's appointments. Judge Osborne went further:

> White folks don't praise you [African-Americans] unless you're a damn fool. Unless they think they can use you. If you have your own mind and knowwhat you're doing, they don't want you around.

As we found in Boland I, Judge Osborne's comments "were disparaging insults and not matters of legitimate public concern." Boland I, 975 So.2dat 892. Importantly, today's case is distinguishable from White in that Judge Osborne's disparaging insults went well beyond the realm of protected campaign speech expressing views on disputed legal and political issues and discussing the qualifications of the judicial office for which Judge Osborne was campaigning.

¶ 21. As a postscript on this issue, we direct our judges to the commentary under Canon 2 of the Mississippi Code of Judicial Conduct,which states in pertinent part:

> Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance ofimpropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be reviewed as burdensome by the ordinary citizen and should do so freely and willingly.

¶ 22. No one is compelled to serve as a judge, but once an individual offers himself or herself for service, that individual accepts the calling with full knowledge of certain limitations upon speech and actions in order to serve the greater good. A calling to public service is not without sacrifice, including the acceptance of limitations on constitutionally granted privileges. This principle is deeply rooted in many areas of government service. For example, members of the Armed Forces are limited in matters pertaining to outside employment. See 10 U.S.C. § 973(a) 1980. Likewise, some civil service employees are restricted from "actively participat [ing] in political activity in any primary or election ina municipality where he is employed ....." Miss.Code Ann. § 21-31-27 (Rev.2007). See also Miss.Code Ann. § 21-31-75 (Rev.2007).

¶ 23. In the end, we find that Judge Osborne's disparaging remarks were not protected speech under either our federal or state constitution. Accordingly, we agree with the Commission's findings that Judge Osborne's remarks violated Canons 1, 2(A) & (B), and 3(B)(5), thus causing the judge's conduct to be actionable under Section 177A of the Mississippi Constitution of 1890.

II.

¶ 24. The Commission asserts that, when confronted with the complaint alleging judicial misconduct for his inappropriate remarks, Judge Osborne, under oath, knowing that the allegations were true and that he had in fact said what was reported in the newspaper, purposely denied making the remarks. The Commission further asserts that, by entering into an agreed statement of the facts in lieu of an evidentiary hearing, Judge Osborne conceded that the remarks were made. The Commission, therefore, contends that Judge Osborne committed perjury in violation of Mississippi Code Annotated Section 97-9-59, which provides in pertinent part:

> Every person who shall wilfully and corruptly swear, testify or affirm falsely to any material matter under oath, affirmation or declaration legally administered in any matter, cause or proceeding pending in any court of law or equity, or *115 before any officer thereof, or in any case where an oathor affirmation is required by law or is necessary for the prosecution or defense of any private right or for the ends of public justice, or in any matter or proceeding before any tribunal or officer created by theConstitution or by law, or where any oath may be lawfully required by any judicial, executive, or administrative officer, shall beguilty of perjury....

Miss.Code Ann. § 97-9-59 (Rev.2006).

¶ 25. In Re Collins, quoting 83 C.J.S. Stipulations Section 25,held:

> [An] Agreed Statement of Facts on which the parties submit [a] case for trial is binding and conclusive on them, and the facts stated are not subject to subsequent variation. So, the parties will not be permitted to deny the truth of the facts stated, or the truth, competency or sufficiency of any admission contained in the Agreed Statement or to maintain a contention contrary to the Agreed Statementor be heard to claim that there are other facts that the Court may presume to exist, orto suggest, on appeal, that the facts were other than stipulated, or that any material fact was omitted.

In re Collins, 524 So.2d 553, 561 (Miss.1987) (citing 83 C.J.S. Stipulations § 25 (1954)).

¶ 26. Lying under oath is an abuse of the judicial process which Judge Osborne was elected to uphold. Perjury is not a matter to be taken lightly, nor will it be tolerated by this Court. A proceeding before the Commission on Judicial Performance is no different from a trial and "[a] trial is a proceeding designed to be a search for the truth." Sims v. ANR Freight System, Inc., 77 F.3d 846, 849(5th Cir.1996). "When a party attempts to thwart such a search, the courts are obligated to ensure that such efforts are not only cut short, but that the penalty will be sufficiently severe to dissuade others from following suit." Jones v. Jones, 995 So.2d 706, 711-12(Miss.2008) (quoting Scoggins v. Ellzey Beverages, Inc., 743 So.2d 990 (Miss.1999)).

¶ 27. The Commission on Judicial Performance contends to this Court that Judge Osborne committed perjury pursuant to Mississippi Code Section 97-9-59. However, the Commission never formally charged Osborne with perjury. A formal charge is required. A verdict without a formal complaint is no different from a criminal trial without an indictment. Therefore, in the absence of a formal complaint and a hearing on the merits, this Court lacks the authority to accept the finding of the Commission on the perjury count.

¶ 28. For the reasons stated, the Commission's recommendation that Judge Osborne be sanctioned for committing perjury must be rejected.6 III.¶ 29. Having accepted and agreed with the Commission's finding thatJudge Osborne's remarks were in violation of Canons 1, 2(A) & (B), 3(B)(5), thus causing such conduct to be actionable pursuant to the provisions of Article 6, Section 177A of the Mississippi Constitution of 1890, as amended, we now turn to a discussion of appropriate sanctions.

¶ 30. In accordance with Section 177A of the Mississippi Constitution and *116 Rule 10 of the Rules of the Commission on Judicial Performance, as interpreted by this Court, the Commission is charged with recommending disciplinary sanctions, and the Court, based upon a review of the entire record, must determine the appropriate sanction. In fact, in the end, this Court alone has the power to impose sanctions. Miss. Comm'n on Judicial Performance v. Osborne, 977 So.2d 314, 324 (Miss.2008) (citing In re Quick, 553 So.2d 522, 527 (Miss.1989)). The primary purpose of judicial sanctions is not punishment of the individual judge but "to restore and maintain the dignity and honor of the judicial office and to protect the public against future excesses." Miss. Comm'n on Judicial Performance v. Guest, 717 So.2d 325, 329 (Miss.1998) (citing In re Harned, 357 N.W.2d 300, 302 (Iowa 1984)). The sanctions available to us when disciplining a judge include: (1) removal from office; (2) suspension from office; (3) fine; and (4) public censure or reprimand. Miss. Comm'n on Judicial Performance v. Osborne, 977 So.2d 314, 324 (Miss.2008), cf. Miss. Comm'n on Judicial Performance
v. Teel, 863 So.2d 973, 975 (Miss.2004) (citing Miss. Const. art. 6, §177A); Miss. Comm'n on Judicial Performance v. Walker, 565 So.2d1117, 1128-32 (Miss.1990) (compiling list of judicial performance sanctions in Mississippi).

¶ 31. The appropriateness of sanctions is weighed based on the following factors, often referred to by this Court as the Gibson factors: (1) the length and character of the judge's public service; (2) whether there is anyprior case law on point; (3) the magnitude of the offense and the harm suffered; (4) whether the misconduct is an isolated incident or evidences a pattern of conduct; (5) whether moral turpitude was involved; and (6) the presence or absence of mitigating or aggravating circumstances. Miss. Comm'n on Judicial Performance v. Gibson, 883 So.2d 1155, 1157 (Miss.2004).7 The Commission recommended that Judge Osborne be removed from office. However, since the institution of the subject proceedings, Judge Osborne has resigned from the bench.

A. The length and character of the judge's public service.

¶ 32. Judge Osborne was appointed to the bench in 2001, and he later waselected and reelected in the 2002 and 2006 general elections, respectively.However, in looking to the character of his service, Judge Osborne's tenure in the judiciary has been marked by prior disciplinary proceedings before the Commission and sanctions by this Court. In Mississippi Commission on Judicial Performance v. Osborne, 876 So.2d 324 (Miss.2004) (Osborne I), Judge Osborne was publicly reprimanded for practicing law as a judge in violation of Mississippi Code Sections
9-1-25 and 9-9-9 (Rev.2002). In Mississippi Commission on Judicial Performance v. Osborne, 977 So.2d 314, 326 (Miss.2008) (Osborne II), Judge Osborne was suspended for 180 days and assigned the costs of that proceeding for failing to observe high standards of conduct and invoking his office in objecting to the repossession of the automobile jointly owned by his wife and mother-in-law. Today's case is Osborne

I.

B. Whether there is any case law on point.

¶ 33. Having already discussed factual similarities between this case and Mississippi Commission on Judicial Performance v. Boland, 975 So.2d 882 (Miss.2008) *117 (Boland I), we will not belabor the point. In Mississippi Commission on Judicial Performance v. Byers, 757 So.2d 961 (Miss.2000), the Commission had recommended removal from office prior to Judge Byers losing her bid for reelection. Because she was no longer in office, this Court imposed a sanction less severe than removal from office. Id. at 973.

C. The magnitude of the offense.

¶ 34. Undermining the public confidence in the integrity, propriety, and impartiality of the office is an egregious offense. Judge Osborne's comments received widespread publicity in themedia to the extent that forty-eight citizens complained to the Commission.

D. Whether the misconduct is an isolated incident or evidences a pattern of conduct.

¶ 35. As discussed previously, Judge Osborne has a long history of violating the judicial canons and being sanctioned by this Court. Itwould stand to reason that a third offense warrants a harsh sanction.

E. Whether moral turpitude was involved.

¶ 36. The Commission argues that Judge Osborne's comments failed to uphold the "dignity and respect of the judiciary" pursuantto this Court's holding in Mississippi Commission on Judicial Performance v. Sanford, 941 So.2d 209, 217 (Miss.2006). The Commission's argument on this point is based on its assertion of perjury committed by Judge Osborne. Inasmuch as we have resolved the perjury issue in favor of Judge Osborne, we find that moral turpitude was not involved.

F. The presence or absence of mitigating or aggravating circumstances.

¶ 37. Judge Osborne urges this Court to consider his community and public service and his plans for improvement to the juvenile justice system in Leflore County. However, the Commission pointsto Judge Osborne's prior disciplinary history as an aggravating factor. See Miss. Comm'n on Judicial Performance v. Lewis, 913 So.2d 266 (Miss.2005). This Court agrees with the Commission that two prior offenses outweigh the character of Judge Osborne's service to his community.

¶ 38. Based on Judge Osborne's actions in today's case and his history of judicial misconduct already discussed, the harshest constitutional remedy-removal from office-would be appropriate. We acknowledge that since the institution of these proceedings before the Commission, Judge Osborne has resigned his judicial position, effective May 30, 2008. Thus, one obvious issue to consider is the propriety of removing from office, or suspending from office, a judge who is no longer holding judicial office at the time of

this Court's decision in a judicial misconduct case. In otherwords, what is the point?

¶ 39. We acknowledge that in at least two cases, after finding egregious conduct on the part of the subject judges, we chose the sanction of public reprimand as the judges, by the time of our decisions, had been removed from judicial office via the citizens at the ballot box. Miss. Comm'n on Judicial Performance v. Boland, 998 So.2d 380, 393 (Miss.2008) (Boland II); Miss. Comm'n on Judicial Performance v. Byers, 757 So.2d 961, 973 (Miss.2000).

¶ 40. On the other hand, in Mississippi Commission on Judicial Performance v. Dodds, 680 So.2d 180 (Miss.1996), this Court found thatthe judge "should be removed from the bench." Id. at 201. This finding was made notwithstanding the fact that the subject judge had chosen not to seek reelection to judicial office and thus was no longer in office at thetime of *118 this Court's decision to remove him from office. Id. at 182 n. 1. Of significant import in today's case is the following language foundin Dodds, in which Justice Banks, writing for the majority, stated:

> Floyd Dodds was not a candidate for reelection in the 1995 elections and, therefore, left office in January 1996. It follows that this case is moot insofar as it requires that he leave office. We conclude, however, that there are substantial reasons for bringing this matter to a conclusion with a decision on the merits. First, one should notbe able to preclude discipline by the simple expedient of resigning or otherwise voluntarily leaving office. See In re the Matter of Weeks, 134 Ariz. 521, 658 P.2d 174 (1983). Additionally, judicial conduct is a matter of great public interestand our decisions serve as a guide for the entire judiciary and to preserve the public confidence in it. In re Yaccarino, 101 N.J. 342, 502 A.2d 3, 30-31 (1985); Matter of Probert, 411 Mich. 210, 308 N.W.2d 773, 776 (1981); Judicial Inquiry and Review Bd. v. Snyder, 514 Pa. 142, 523 A.2d 294, 298 (1987).

Dodds, 680 So.2d at 182 n1. See also Miss. Comm'n on Judicial Performance v. Brown, 918 So.2d 1247, 1256, 1259 (Miss.2005) (judge removed from office although he "claim[ed] he [would] not seek anotherterm.").

¶ 41. As we stated in Osborne II, "[a] second offense undoubtedly warrants a harsher penalty." Osborne, 977 So.2d at 326. In Osborne II, wefound that Judge Osborne's judicial misconduct warranted, inter alia, a suspension from office for a period of 180 days. Id. at 327. It thus logically follows that a third offense of judicial misconduct on the part of Judge Osborne would warrant a harsher penalty than the 180-day suspension which Judge Osborne received for his second offense.
Therefore, we find that in today's case, Osborne III, the appropriate sanction is suspension from office for a period of one year and the assessment of costs. Again, we find this sanction to be in keeping with the logic expressed in Dodds for the imposition of a sanction of removal (or in this case, suspension), even though the judge chose to resign from judicial office prior to this Court's decision. Dodds, 680 So.2d at 182 n1.

¶ 42. In Boland II, this Court found that because the voters had removed the judge from office by the time we decided her case, the constitutional sanction of removal from office was no longer available. Boland II, 998 So.2d at 393. More specifically, we stated that "[s]ince the public removed [the judge] from office before this Court could act on the Commission's recommendation, the remaining options [under the Constitution] are only to fine or publicly censure or reprimand her." Id. However, this statement in Boland II is inconsistent with Dodds. Therefore, to this limited extent, Boland II is overruled.

CONCLUSION

¶ 43. Judge Osborne's actions constituted willful misconduct in office and conduct prejudicial to the administration of justice which brought the judicial office into disrepute. We thus order Judge Osborne to be suspended from office for a period of one year and to be assessed costs in the sum of $731.89.

¶ 44. FORMER COUNTY COURT JUDGE SOLOMON C. OSBORNE SHALL BE SUSPENDED FROM OFFICE FOR A PERIOD OF ONE YEAR FROM AND AFTER THE ISSUANCEOF THE MANDATE IN THIS CASE AND IS ASSESSED COSTS OF $731.89.
WALLER, C.J., RANDOLPH, LAMAR, CHANDLER AND PIERCE, *119 JJ., CONCUR. KITCHENS, J., DISSENTS WITHSEPARATE WRITTEN OPINION JOINED IN PART BY GRAVES, P.J., AND DICKINSON, J. DICKINSON, J., CONCURS IN PART AND DISSENTS IN PART WITH SEPARATE WRITTEN OPINION JOINED BY GRAVES, P.J., AND KITCHENS, J.

KITCHENS, Justice, Dissenting.
¶ 45. Although I agree with Justice Dickinson's conclusion that this case is controlled by the U.S. Supreme Court's decision in Republican Party v. White, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002), I write separately to express my convictionthat, where our ethical rules collide with the freedom of speech,our canons must yield to our constitutions.

¶ 46. Credibility is the fresh air by which courts breathe life into their decisions. Without credibility, judicial opinions cannot go forth from the courthouse to spread the rule of law. Without credibility, a court's written word is worthless. Without credibility,judges are reduced from arbiters of justice to men and women vainly whispering from a lonely mountaintop. No justice voting today would say that the Code of Judicial Conduct is not a critically important standard by which the credibility of our state's judiciary is measured.

¶ 47. But unwavering fidelity to constitutional principles must always transcend and trump even the loftiest and most laudable goals and guidelines for our state judiciary. Our democracy has survived for more than two centuries for no reason more important than courts' faithful protection of unfettered political debate, a freedom deemed sacred by our state constitution. Miss. Const. art. 3, § 13. Long have our nation's judges recognized that "[i]f there isa bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Texas v. Johnson, 491 U.S. 397, 414, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989). "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serveits high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." Terminiello v. Chicago, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131 (1949).

¶ 48. Today, we are asked to pass judgment in a case that places these two tenets in direct tension, positing a question of whether we afford greater importance to our ethical rules or our dedication to free speech. I agree with Justice Dickinson that the majority's distinction of this case from the

U.S. Supreme Court's holding in Republican Party v. White is misplaced. But I would also hold that, to the extent the Code of Judicial Conduct regulates speech, itis powerless to sanction.

¶ 49. To be sure, the Mississippi Constitution's commands that judges refrain from "willful misconduct" and "conduct prejudicial to the administration of justice," Miss. Const. art. 6, § 177A, are not facially violative of the First Amendment. The U.S. Supreme Court has gone to great lengths to distinguish speech, which the First Amendment fiercely protects, and conduct, which it does not protect. See, e.g., Wisconsin v. Mitchell, 508 U.S. 476, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993). Likewise, to the extent that the Code of Judicial Conduct implicates pure conduct, I do not suggest that it trespasses upon the ground staked off by the First Amendment and our state Constitution, and I would not subject decisions thereunder to great scrutiny. See, e.g., *120 United States v. O'Brien, 391 U.S. 367, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968). But when government seeks to level the sword of judgment against a speaker because of the political content of his message, rather than for the act of speaking, then the restriction "mustbe subjected to the most exacting scrutiny." Boos v. Barry, 485 U.S. 312, 321, 108 S.Ct. 1157, 99 L.Ed.2d 333 (1988). The majority erroneously applies the lesser standard that the U.S. Supreme Court has developed to address the speech of public employees. Maj. Op. at 18 (citing Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968)). The high court, the Fifth Circuit Court of Appeals, and this Court all have made abundantly clear that elected judges are no mere "public employees" but moderators of public debate that, like all elected officials, enjoy a "role that ... makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance." Republican Party v. White, 536 U.S. 765, 781-82, 122 S.Ct.2528, 153 L.Ed.2d 694 (2002) (quoting Wood v. Georgia, 370 U.S. 375, 395, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962)). See also Jenevein v. Willing, 493 F.3d 551, 558 (5th Cir.2007) (applying strict scrutiny in a case involving a Texas judge punished for public speech); Miss. Comm'n on Judicial Performance v. Wilkerson, 876 So.2d 1006, 1011 (Miss.2004) (applying strict scrutiny in the case of a judge who wrote in a local newspaper that homosexuals belonged in mental institutions).

¶ 50. Under this degree of scrutiny, a speech regulation comports with theFirst Amendment only when it has been narrowly tailored to address a compelling state interest, Boos, 485 U.S. at 321, 108 S.Ct. 1157, and any restriction that punishes constitutionally protected speech is necessarily overbroad. See United States v. Playboy Entm't Group, 529 U.S. 803, 120S.Ct. 1878, 146 L.Ed.2d 865 (2000). In my view, Judge Osborne's comments were far beneath the dignity of a judge. But just as clearly, his comments addressed a political issue, and not just any political issue, but the seminal political issue of this state's history: race. Therefore, any provision of legal force that punishes Judge Osborne for that speech violates the First Amendment of the U.S. Constitution and Article 3, Section 13 of the Mississippi Constitution.

¶ 51. Ultimately, despite the White Court's attention to "disputed legaland political issues," White, 536 U.S. at 768, 122 S.Ct. 2528, our free-speech jurisprudence makes clear that the government violates the First Amendment and Section 13 not only by punishing a speaker for engaging in political speech, but also by enumerating the topics upon which speech is tolerated, "[f]or it is a prized American privilege to speakone's mind, although not always with perfect good taste, on all public institutions." Bridges v. California, 314 U.S. 252, 270, 62 S.Ct. 190, 86 L.Ed. 192 (1941). See also Boos, 485 U.S. 312, 108 S.Ct. 1157, 99 L.Ed.2d 333 (reiterating that content-based restrictions on speech will be subjected to strict scrutiny). "It is simply not the function of government to select which issues are worth discussing or debating in the course of a political campaign." White, 536 U.S. at 782, 122 S.Ct. 2528 (Scalia, J.) (quoting Brown v. Hartlage, 456 U.S. 45, 60, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982)).

¶ 52. I would hold, therefore, that an application of the Code of Judicial Conduct violates the First Amendment and Section 13 not only when it punishes speech regarding "disputed legal and political issues," but also when it punishes speech regarding any political issue, disputed or otherwise. For that reason, I would find that the Mississippi Commission on Judicial Performance is powerless to sanction *121 Judge Osborne for the message that he delivered.

¶ 53. Furthermore, because the First Amendment's protections alsoextend to communicative conduct and include the freedom of association, Roberts v. United States Jaycees, 468 U.S. 609, 104 S.Ct. 3244, 82 L.Ed.2d 462 (1984), I would find that our federal and state constitutions forbid sanction against Judge Osborne for membership in the Greenwood Voters League or any other political organization. "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as [the U.S. Supreme Court] has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." NAACP v. Ala. ex rel. Patterson, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Therefore, if we recognize, as we should, that Judge Osborne's political speech fell within the protections of Section 13 and the First Amendment, then we must also recognize that the association he undertook for the expressionof those ideas likewise enjoyed constitutional protection.

¶ 54. Today's decision not only violates the protections afforded toJudge Osborne under the First Amendment and Section 13 of the Mississippi Constitution but also deprives the voters of this state the benefit of full, unfettered debate by their judicial candidates and officeholders. Under our state's system of judicial elections, the decision of whether an outspoken judge's comments warrant removal rests properly with his constituents.

¶ 55. Judge Osborne's rhetoric sits no more easily with me than with any other justice voting today. But "[i]f the provisions of the Constitution be not upheld when they pinch, as well as when they comfort, they may as well be abandoned." Home Building & LoanAss'n v. Blaisdell, 290 U.S. 398, 483, 54 S.Ct. 231, 78 L.Ed. 413 (1934) (Sutherland, J., dissenting). Accordingly, I dissent.

GRAVES, P.J. AND DICKINSON, J., JOIN THIS OPINION INPART.

DICKINSON, Justice, Concurring in Part and Dissenting in Part.

¶ 56. The state may not "censor what the people hear as they undertake to decide for themselves which candidate is most likelyto be an exemplary judicial officer. Deciding the relevance of candidate speech is the right of the voters, not the State." Republican Party of Minnesota v. White, 536 U.S. 765, 794, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002) (Kennedy, J., concurring).

¶ 57. Judge Osborne's malevolent, racist words should be offensiveto all rational, fair-minded people. As judicial officers, however, we are required to follow the law. With the utmost respect to the justices comprising the majority, I cannot conclude that this Court is today following the law. I therefore must respectfully dissent in part.

The Law¶ 58. The controlling law for governmental attempts to control the speech of elected judges is White, in which the United States Supreme Court addressed the question of "whether the First Amendment permits the Minnesota Supreme Court to prohibit candidates for judicial election in

that State from announcing their views on disputed legal and political issues." Id. at 768, 122 S.Ct. 2528. In deciding that states may not prohibit judicial candidates from making speeches on political issues during a campaign, the White Court noted that political speech is a category of speech thatis "at the core of our First Amendment freedoms." Id. at 774, 122 S.Ct. 2528. In reviewing some of *122 its precedent, the White Court went further to state:

> "The role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves onmatters of current public importance." Wood v.Georgia, 370 U.S. 375, 395, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962). "It is simply not the functionof government to select which issues are worth discussing or debating in the course of a political campaign." Brown v. Hartlage, 456 U.S. 45, 60, 102 S.Ct. 1523, 71 L.Ed.2d 732 (1982) (internal quotation marks omitted). We have never allowedthe government to prohibit candidates from communicating relevant information to voters during an election.

White, 536 U.S. at 781-82, 122 S.Ct. 2528. Thus, according to White, this Court is constitutionally prohibited from punishing a candidate for judicial office for "announcing their views on disputed legal and politicalissues."

¶ 59. Indeed, this Court recently has held that judges do not abandon theirconstitutional rights when they take the oath of office, and that this Court may not impose sanctions where doing so would contravene an individual's constitutional rights. Miss. Comm'n on Judicial Performance v. Wilkerson, 876 So.2d 1006, 1010 (Miss.2004).

Judge Osborne's Statement

¶ 60. According to the Commission, Judge Osborne-referring to the appointment of two local African-Americans to the Greenwood Election Commission by a Caucasian mayor-made the following statement: "White folks don't praise you unless you're a damn fool. Unless they thinkthey can use you. If you have your own mind and know what you're doing, they don't want you around."

¶ 61. I cannot agree with the majority's single sentence with which it attempts to distinguish White. The majority says only that "Judge Osborne's disparaging insults went well beyond the realm of protectedcampaign speech expressing views on disputed legal and political issues. " Maj. Op. at 20. To the contrary, Judge Osborne was clearly announcing his view on a disputed political issue-his disagreement withthe Greenwood mayor's appointments to the Greenwood Election Commission. Disagreement with an elected mayor's political appointments to an election commission would seem to me to easily qualify as a "disputed political issue."

¶ 62. Judge Osborne made his statements in an election year, after he hadqualified as a candidate. He was speaking in his capacity as a qualified candidate. The subject of his inflammatory statements was his criticism of two political appointments to the Greenwood Election Commission. Thus, Judge Osborne's speech-offensive though it was-constitutes protected political speech, and this Court, in my view, is powerless to punish him for it.

¶ 63. With the greatest respect for my esteemed colleagues in the majority, I find it curious that the majority virtually ignores White (recognized as the controlling authority on the issue of restricting a judicial candidate's speech), and then proceeds to ignore its holding; relying instead on Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed.2d 811 (1968), a case decided forty years ago which involves a school teacher, not a judicial candidate.

¶ 64. In fairness to the majority, I recognize-and must point out-that White did not address the precise question of "whether a State may restrict the speech of judges because they are judges-for example, as part of a code of judicial con *123 duct... " White, 536 U.S. at 796, 122 S.Ct. 2528 (Kennedy, J., concurring). Justice Kennedy stated: Whether the rationale of [Pickering] and Connick v. Myers, 461 U.S. 138, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983), could be extended to allow a general speech restriction on sitting judges-regardless of whether they are campaigning-in order to promote the efficient administration of justice, is not an issue raised here.

Id. In my view, however, there is no logical argument why the principles announced in White would not extend to any canon or other restriction on a judge's right to free speech during the course of a political campaign.

¶ 65. Although I agree with the majority's conclusions concerning all other matters, I cannot agree that Judge Osborne may be punished for making a political speech. Thus, I concur in part and dissent in part.

GRAVES, P.J., AND KITCHENS, J., JOIN THIS OPINION.

Footnotes

1 According to the Commission, the statement was made in reference to the appointment of two local African-Americans to the Greenwood Election Commission by a Caucasian mayor.

2 By the time of the subsequent committee hearing, Osborne was represented by counsel.

3 See Kron v. Van Cleave, 339 So.2d 559, 563 (Miss.1976) ("courts will not decide a constitutional question unless it is necessary to do so in order to decide the case"); see also Spector Motor Serv. v. McLaughlin, 323 U.S. 101, 105, 65 S.Ct. 152, 154, 89 L.Ed. 101 (1944) (If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality ... unless such adjudication is unavoidable.).

4 In its formal complaint, the Commission charged Judge Osborne with violating section A(3)(a), not section A(1)(a) of Canon 5.

5 The Greenwood Voters League is a predominantly African-American political organization which regularly endorses candidates sympathetic to the black community. Jordan v. Greenwood, 534 F.Supp. 1351, 1354 (N.D.Miss.1982). It is general knowledge that the League holds weekly meetings in the City of Greenwood, either at public places or private facilities open to the public, to discuss civic issues. During election cycles, many candidates running for political office, as well as judicial office, are invited by the League to speak. There is no evidence in the record demonstrating that the League practices invidious discrimination on the basis of race, gender, religion, or national origin. See Canon 2C.

6 We do not dispute the fact that, from the record, the Commission could have charged Osborne with perjury via a formal complaint, and proceeded to an evidentiary hearing on this issue; however, the Commission did not do so.

7 In Gibson, we modified the Baker factors. Gibson, 883 So.2d at 1158 (citing Inquiry Concerning Dennis M. Baker, Chancellor, 535 So.2d 47, 54 (Miss.1988)).

In re William C. Bell, 962 So.2d 537 (Miss. 2007)

DICKINSON, Justice, for the Court.

¶ 1. Three judicial candidates filed a complaint in the Hinds County Chancery Court claiming that a fourth candidate *539 made a false and misleading statement in violation of both Canon 5 of the Mississippi Code of Judicial Conduct and Section 23–15–977.1 of the Mississippi Election Code. After the chancerycourt issued a temporary restraining order ("TRO") requiring the defendant to cease making the statement, the defendant filed an emergency appeal to this Court. Finding the plaintiffs' petition failed to state a claim upon which relief could be granted by the chancery court, we vacated the TRO by order entered on November 6, 2006. The purpose of this opinion is to provide this Court's reasoning for dissolving the TRO.

BACKGROUND FACTS AND PROCEEDINGS

¶ 2. William C. Bell was a candidate for Chancery Judge of the Fifth Chancery Court District, Subdistrict 5–1. During the course of his campaign, Bell promised that, if elected, he would dedicate his time to "help clear the backlog of criminal cases in Hinds County."

¶ 3. On Saturday, November 4, 2006—three days prior to the election—three other candidates ("Plaintiffs") for the same position filed a complaint in the Hinds County Chancery Court seeking, inter alia, a TRO. On that same day, the chancellor held a hearing and issued a TRO which temporarily restrained Bell "from making or publicizing further false and misleading claims that if he is elected as a Chancery Judge of the Fifth Chancery Court District, he will help clear the backlog of criminal cases in Hinds County, or any such similar claims."

¶ 4. Immediately thereafter, pursuant to Rule 21 of the Mississippi Rules of Appellate Procedure, Bell filed a petition for an extraordinary writ asking that we dissolve the TRO. A quorum of this Court, sitting en banc, reviewed Bell's petition,1 an answer filed by the three plaintiffs, and a response filed by Bell. With one justicedissenting, we found the complaint failed to state a claim upon which relief could be granted by the chancery court, and we dissolved the TRO.

DISC
USSI
ONI.

¶ 5. The restraining order issued against Bell raises serious and substantial constitutional issues, such as prior restraint of the First Amendment right to free speech. There also is some logic to the argumentthat a system which forces one with aspirations of judicial office to jump into the political arena, raise money, and campaign for votes, and then judicially restrains the candidate from what he or she might say in the course of the campaign exhibits a touch of hypocrisy. But we need not address those concerns today because this case must be decided on a different level.

¶ 6. This case, brought in chancery court against a judicial candidate, alleges the candidate has violated—and is likely to continue to violate—the Mississippi Code of Judicial Conduct. Stated another way, and to be very clear, the cause of action alleged in this matter is the violation of the Mississippi Code of Judicial Conduct, and the remedy sought for that violation is a restraining order, maturing into an injunction. Although restraining orders and injunctions frequently are issued by our chancery courts as remedies for various legal and equitable claims, they are not—and have never been—issued by our trial courts to remedy violations of the Code of Judicial Conduct.

¶ 7. We think it important to state at the outset that those who believe a judicial candidate or a judge has violated (or will *540 violate) the Mississippi Code of Judicial Conduct have another forum in which to seek an appropriate remedy. As we will discuss herein, such claims must be filed with the Judicial Performance Commission in accordance with the Mississippi Constitution. And if the Judicial Performance Commission fails to act, the aggrieved party may seek a writ of mandamus from this Court, ordering the Commission to address the issue. But the aggrieved party is not allowed—and has never been allowed—to pursue as a cause of action such a claim in our state courts.

¶ 8. Article 1, Section 1, of the Mississippi Constitution establishes and empowers Mississippi's three separate branches ofgovernment, one of which is the judiciary. Under Article 6, whichaddresses the distribution of judicial power, the jurisdiction of thechancery court is established:

¶ 9. The chancery court shall have full jurisdiction in the followingmatters and cases, viz.:

> (a) All matters in equity;
> (b) Divorce and alimony;
> (c) Matters testamentary and of administration;
> (d) Minor's business;
> (e) Cases of idiocy, lunacy, and persons of unsound mind;
> (f) All cases of which the said court had jurisdiction under the laws in force whenthis Constitution is put in operation.

Miss. Const. art. 6, § 159.

¶ 10. This Court has previously stated that " '[t]he constitution makers of 1890 knew, when they invested the chancery court withfull jurisdiction of all matters in equity, (Sec. 159 of Const.) that the supreme court had theretofore held that equity is defined as that system of justice which was administered by the high court ofchancery in England ' " Mitchell v. Rawls, 493 So.2d 361, 364 (Miss.1986) (quoting Griffith's Mississippi Chancery Practice § 584 (2d Ed.1950)). Thus, the equitable jurisdiction and power of the chancery court is limited to the system of justice administeredby England's high court of chancery.2

¶ 11. Based upon this authority, we have searched in vain for citation of authority which suggests that the high court of chanceryin England entertained and adjudicated disputes between candidates for public office.3 Instead, as this Court held in In re McMillin, 642 So.2d 1336, 1339 (Miss.1994), "[c]hancery courts in this state do not have the jurisdiction to enjoin elections or to otherwise interfere with political and electoral matters which are not within the traditional reach of equity *541 jurisdiction." See also Goodman v. Rhodes, 375 So.2d 991, 994 (Miss.1979) (Court dissolved injunction because chancery court had no jurisdiction to determine the candidates whose names should appear on the ballot); Brumfield v. Brock, 169 Miss. 784, 788, 142 So. 745, 746 (1932) ("By a long line of decisions this court has held that courts of equity deal alone with civil and property rights and not with political rights."). Thus, the challenge to Bell's conduct does not fall within the chancery court's equitable jurisdiction.4

¶ 12. It is true of course that, in a proper case, restraining orders and injunctions are within the jurisdiction of our chancery courts. See, e.g., S. Bus Lines, Inc. v. Amalgamated Ass'n of Street, Elec.Ry. & Motor Coach Employees, 205 Miss. 354, 374, 38 So.2d 765, 768 (1949) (injunction allowed in chancery to enjoin unlawful conspiracy to commit violence); Miss. Theatres Corp. v. Hattiesburg Local

Union No. 615, 174 Miss. 439, 449, 164 So. 887, 890 (1936) (injunction allowed in chancery to restrain breach of contract). But these and other cases require that an application for injunctive relief be predicated upon some legal or equitable claim which will, at some point, proceed to the merits. Indeed, an applicant for injunctive relief must demonstrate, inter alia, a substantial likelihood of prevailing on the merits of the claim. Cityof Durant v. Humphreys County Mem'l Hosp./ Extended Care Facility, 587 So.2d 244, 250 (Miss.1991). No such showing could be made in this case.

II.

¶ 13. The courts which make up our judiciary are not authorized to resolve every claim and dispute that may arise between our citizens. The plaintiff must file a complaint which alleges some cognizable claim or cause of action against the defendant. Absent some colorable claim that acandidate or other defendant committed a tort or violated a statute or constitutional provision, our courts consistently have refused to adjudicate election disputes. For instance, this Court held in 1907 that

> [t]here is no provision in the law for the courts to entertain contests between rival candidates of a particular political party, and determine for that party which of the candidates shall be declared itsnominee ..... The only contests that the courts can entertain are those originating under generalelection laws.

Ramey v. Woodward, 90 Miss. 777, 781, 44 So. 769, 769 (1907). See also Howard v. Sheldon, 151 Miss. 284, 294, 117 So. 839, 839 (1928)(citing Ramey and recognizing that "courts should not assume such jurisdiction").

¶ 14. Our courts do, however, have jurisdiction and constitutional authority to adjudicate election-related claims of violation of a statute orconstitutional provision.5 For instance, in City of Grenada v. Harrelson, 725 So.2d 770, 774 (Miss.1998), this Court found that the circuit court erred in failing to enjoin an election that *542 was based on improper ward lines. The circuit court had found that, based on this Court's decision in McMillin, it did not have the authority to enjoin the election.Id. at 773. In overruling the trial court, this Court stated:

> This Court has long followed the doctrine of non-judicial interference in the election scheme. See In re Wilbourn, 590 So.2d 1381 (Miss.1991). However, we have said, " '[A court] can direct an official or commission to perform its official duty or to perform a ministerial act, but it cannot projectitself into the discretionary function of the official or the commission. Stated differently, it can direct action to be taken, but it cannot direct the outcome of the mandated function.' " In re Wilbourn, 590 So.2d at 1385 (quoting Hinds County Democratic Executive Committee v. Muirhead, 259 So.2d 692, 695 (Miss.1972)). We have also said, "[t]hus, a court could, if necessary, compel by mandamus an election commission or executive committee to perform its statutory duty upon its failure to do so, or prohibit it by way of injunction or writ of prohibition from exceeding its statutory authority in some respect; use of an extraordinary writ, however, cannot be extended to actually telling the commission what action to take." Id.Harrelson, 725So.2d at 773–74. See also Scott v. Stater, 707 So.2d 182, 185 (Miss.1997) (affirming circuit court's issuance of a restraining order preventing a mayor from suspending a properly appointed judge for violations of the Judicial Code of Conduct; onlyconstitutional avenue of relief was to file a formal complaint with the Judicial Performance Commission).¶ 15. The complaint filed against Bell in the chancery court alleges that, during the course of the campaign, he made "false and misleading statements" which were "in violation ofCanon 5 of the Mississippi Code of Judicial Conduct and Bell's oath taken pursuant to Section 23–15–977.1 of the Mississippi Election Code." It is, of course, within the prerogative of the Legislature to create a civil cause of action for lying while runningfor public office. However, were it to do so,it is not likely that our courts—at their current operational and budgetary levels—could handle the additional caseload. We do note, though, that the plaintiffs were not without a forum within which to seek a remedy.

III.

¶ 16. According to its Preamble, the Mississippi Code of Judicial Conduct ("Code"), adopted April 2, 2002, establishes "standards of ethical conduct of judges."6 The Preamble further provides thatthe Code "is not designed or intended as a basis for civil liability or criminal prosecution."

¶ 17. The Commission on Judicial Performance ("Commission"), established by Article 6, Section 177A of the Mississippi Constitution, receives and investigates certain complaints againstjudges, including "conduct prejudicial to the administration of justice which brings the judicial office into disrepute." Miss. Const. art. 6, § 177A. Thus, alleged violations of the Canons fall within the Commission's scope and authority. The Commission, however, has no authority to discipline or sanction judges or candidates for judicial office. Instead, the Commission makes recommendations to this Court, which is constitutionally empowered to exercise oversight over the judiciary and ultimatelyto determine *543 the discipline of judicial officers for violations of the Canons.

¶ 18. In promulgating the Canons, this Court established a Special Committee on Judicial Election Campaign Intervention ("Special Committee") "whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office." Miss.Code of Judicial Conduct Canon 5(F). Absent legislative enactment imposing criminal or civil liability for violation of the Canons, thecircuit and chancery courts have no power to grant relief for such alleged violations. Finding no such statute, we hold that an alleged violation of the Canons is not cognizable as a cause of action before our trial courts, but rather must be pursued through the Commission or the Special Committee.

IV.

¶ 19. The plaintiffs also accuse Bell of violating Section 23–15–977.1 of the Mississippi Code, which requires candidates for judicial office to sign a "pledge under oath and under penalty of perjury." Plaintiffs do not allege that Bell failed to sign the pledge recited in the statute, so we must assume

they claim he violated the pledge. The only remedy provided in the statute for offering false information in the pledge or oath is a criminal actionfor perjury. The statute provides no civil claim or cause of action for the failure of a candidate to fulfill the pledge or oath. Because (as the plaintiffs argued and the chancellor correctly found) the chancery courts do not hear criminal cases, they are powerless to adjudicate a criminal charge of perjury. See Miss. Const. art. 6, § 159.

CONCLUSION

¶ 20. Based upon the authorities and discussion herein, this Court dissolved the temporary restraining order issued by the Hinds CountyChancery Court.

¶ 21. TEMPORARY RESTRAINING ORDER VACATED. WALLER AND COBB, P.JJ., CONCUR. RANDOLPH, J., CONCURSIN RESULT ONLY. DIAZ, J., DISSENTS WITH SEPARATE WRITTEN OPINION. SMITH, C.J., EASLEY, CARLSON AND GRAVES, JJ., NOT PARTICIPATING.

DIAZ, Justice, Dissenting.

¶ 22. By refusing to address the merits of this case, the majority fails to recognize that any wrong existed beyond the violation of a judicial canon.Once Respondents sought relief via the Special Committee, and the Committee failed to act as required by Canon 5, the Respondents had a right to seek equitable relief in the chancery court.

¶ 23. First, while the First Amendment certainly protects political speech, States may restrict false and misleading statements provided that the restriction comports with strict scrutiny. See Republican Party of Minn. v. White, 536 U.S. 765, 122 S.Ct. 2528, 153 L.Ed.2d 694 (2002) (finding that the Minnesota Code of Judicial Conduct's "announce clause," prohibiting candidates for judicial office from announcing her views on acontested issue, violated the First Amendment); Brown v. Hartlage, 456 U.S. 45, 53–54, 102 S.Ct. 1523, 1529, 71 L.Ed.2d 732, 741 (1982) ("When a State seeks to restrict directly the offer of ideas by a candidateto the voters, the First Amendment surely requires that the restriction bedemonstrably supported by not only a legitimate state interest, but a compelling one, and that the restriction operate without unnecessarily circumscribing protected expression.").

*544 ¶ 24. Second, the majority incorrectly finds that Respondents were without "some legal or equitable claim which [would], at some point, proceed to the merits." Our Canons require the Special Committee to takeaction when a judicial candidate is suspected of violating the Code of Judicial Conduct, therefore, Respondents had a claim which should have proceeded on the merits. Miss.Code of Judicial Conduct Canon 5(F)(4) (2006). By issuing the TRO, the chancellor correctly found that there wasno adequate remedy at law. Moore v. Sanders, 558 So.2d 1383, 1385 (Miss.1990) (the basis for injunctive relief is inadequacy of a remedy at law).

¶ 25. Third, the majority mischaracterizes the jurisdiction of our chancerycourts. The finding that "the equitable jurisdiction and power of the chancery court is limited to the system of justice administered by England's high court of chancery," is a misapprehension of our judicial system. The jurisdiction of our chancery courts is not limited to the definition of equity as it existed in nineteenth century England. There are in fact three sources of our chancery court's subject matter jurisdiction: (1) the Mississippi Constitution; (2) statutory law; and (3) case law. SeeBridges & Shelson, Griffith Mississippi Chancery Practice (2000 Ed.) § 24.7 Fourth, by holding that election matters do not fall within the chancery court's equitable jurisdiction, the majority fails to mention the cases where this Court has found chancery jurisdiction proper. In Adams Cty. Election Comm'n v. Sanders, 586 So.2d 829, 831 (Miss.1991), we held that state courts, including chancery courts, had concurrent jurisdiction with the federal courts to consider whether Section 5 of the Voting Rights Act applied to changes in election procedures. This Court previously had decided Carter v. Luke, 399 So.2d 1356 (Miss.1981) and Lovorn v. Hathorn, 365 So.2d 947 (Miss.1978), which involved chancery review of similar election matters. Though the cases later were consolidated for review by the Supreme Court in Hathorn v. Lovorn, 457 U.S. 255, 102 S.Ct. 2421, 72 L.Ed.2d 824 (1982), they were never reversed for lack of proper jurisdiction. Moreover, ample evidence exists that candidates for judicial election historically have sought equitable relief from our chancery courts in election matters. See Leslie Southwick, The Least of Evils for Judicial Selection, 21 Miss. C.L.Rev. 209, 226–35 (2002) (summarizing the 2000 SupremeCourt campaigns where candidates sought injunctive relief in chancery courts to curb United States Chamber of Commerce television advertisement).

¶ 26. Fifth, and contrary to the majority's holding, there is no need for the Legislature to create a civil cause of action for making misrepresentations while running for public office. A chancery court may issue an injunction in the absence of a statutory or constitutional violation, as the absence of a remedy at law is the very nature of equity jurisdiction. Equity is defined by Black's Law Dictionary as "[j]ustice administered according to fairness as contrasted with the strictly formulated rules of common law." Black's Law Dictionary 484 (5th ed.1979). Legislative action is not needed because "there is always jurisdiction in equity to affordrelief *545 for all rights withheld or wrongs done or impendingly threatened to be done. If there is no plain, adequate and complete remedy at law, litigants may resort to equity." Griffith § 24(c) (emphasis supplied).

¶ 27. Finally, judicial elections are unique in that both the Legislature and this Court have taken steps to remove them from the political realm. In 1994, the Legislature adopted the Nonpartisan Judicial Election Act, prohibiting judicial candidatesfrom aligning themselves with political parties. Miss.Code Ann. §§ 23–15–974 through 23–15–981 (Supp.2006). Eight years later,this Court established the Special Committee on Judicial Election Campaign Intervention to oversee alleged misconduct in judicial campaigns, with this Court having ultimate authority over judicial candidates. Miss.Code of Judicial Conduct Canon 5(F)(4) (2006). The unique nature of judicial elections undermines the majority's reliance on the doctrine of non-judicial interference in political matters.

¶ 28. Since Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962), we have rejected the argument that elections were political questions outside the reach of the courts. See, e.g., Boyd v. Tishomingo Cty. Democratic Exec. Comm. & Members, 912 So.2d 124 (Miss.2005) (upholding circuit court's judgment affirming primary election results); Waters v. Gnemi, 907 So.2d 307 (Miss.2005) (circuit court's order authorizing a special election was proper); Barbour v. Gunn, 890 So.2d 843, 846 (Miss.2004) (circuit court had authority to hear election contest); Grist v. Farese, 860 So.2d 1182 (Miss.2003) (affirming circuit court's determination that former chancellor was not qualified to run for district attorney); In re Proposed Initiative Measure No. 20 v. Mahoney, 774 So.2d 397 (Miss.2000) (holding that circuit courts could judge constitutionality of ballot initiatives); City ofGrenada v. Harrelson, 725 So.2d 770 (Miss.1998) (circuit courthad jurisdiction to enjoin elections that violated statutory requirements).

¶ 29. However, the majority relies on the pre-Baker decisions of Howard v. Sheldon, 151 Miss. 284, 294, 117 So. 839 (1928), and

Ramey v. Woodward, 90 Miss. 777, 781, 44 So. 769, 769 (1907), for the proposition that "our courts have consistently refused to adjudicate election disputes." This misstates modern election law by focusing on antiquated interpretations of nonjusticiability. We have clearly moved away from such a position, particularly where judicial elections are concerned.

¶ 30. For the foregoing reasons, the chancery court had jurisdiction to provide an equitable remedy once the Special Committee failed to act.

Footnotes

1 Attached to Bell's petition were the pleadings filed in thechancery court proceeding.

2 Our analysis of equity jurisdiction may not fairly be read to imply that a chancery court's jurisdiction is limited to equity matters. As our discussion above recognizes, the Mississippi Constitution and numerous statutes detail a variety of non-equity matters over which a chancery court may properly exercise its jurisdiction. However, neither the Mississippi Constitution nor any statute or rule of equity grants to ourchancery courts the power to issue an order restraining a judicial candidate from violating the Code of Judicial Conduct.

3 Similarly, we find no authority which suggests that the chancery courts in Mississippi exercised jurisdiction over election disputes prior to adoption of the Mississippi Constitution in 1890. The Mississippi Supreme Court held in 1874 "that the constitution confers upon the chancery court full jurisdiction of all matters in equity, and equity is defined to be that system of justice which is administered by the high court of chancery in England in the exercise of its extraordinary jurisdiction." Smith v. Everett, 50 Miss. 575, 579 (1874), overruled on other grounds by Bank of Miss. v. Duncan, 52 Miss. 740, 748–49 (1876).

4 Nor does the challenge relate to divorce and alimony; matterstestamentary and of administration; minor's business; or cases of idiocy, lunacy, or persons of unsound mind. See Miss. Const. art. 6, § 159.

5 We, of course, do not contend that the judiciary must shy away from all matters of a political nature. The Harrelson quote above explains as much. However, as the cases cited by the dissent demonstrate,our courts have noted probable jurisdiction in election cases only to enforce a statutory or constitutional requirement or prohibition. We find no case where this Court has allowed a trial court to take jurisdiction overa violation of the Code of Judicial Conduct. This Court, of course, takes jurisdiction over matters from the Judicial Performance Commission, as provided by the Mississippi Constitution.

6 Although the Code and its five Canons ordinarily address the conduct of judges, Canon 5 specifically applies to the conduct of "a judgeor a candidate for election to judicial office."

7 In addition to Article 6 Section 159 cited by the majority, theConstitution grants chancery courts jurisdiction over six additional matters. Miss. Const. Art. 6 §§ 160–61. Through roughly 200 statutes, our Legislature has added to the original equity jurisdiction of the chancery court. Griffith § 24a. It has long been understood that "[t]he legislature may add new equity powers to those established by the Constitution." Davis v. Davis, 194 Miss. 343, 346, 12 So.2d 435, 436 (1943).