

*Special Committee on Judicial Election Campaign Intervention  
2018 Judicial Elections*

**2018-10 Opinion**

The Special Committee on Judicial Election Campaign Intervention received a request for an opinion on the following issue:

Troy Odom is a candidate for Chancery Judge in Rankin County. He is the former Chairman of the Rankin County Republican Party Executive Committee. He resigned from that position prior to qualifying to run for Rankin County Chancery Court Judge. He has asked for an opinion to know whether he can state on campaign literature that he is the “Former Chairman of the Rankin County GOP Executive Committee.”

ANALYSIS

Canon 5C(1) of the Code of Judicial Conduct provides that “Judges holding an office filled by public election between competing candidates . . . may, only insofar as permitted by law, . . . identify themselves as members of political parties . . . .”

Mississippi Code Annotated section 23-15-976 provides:

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.

In *Mississippi Republican Party v. Musgrove*, 3:02CV1578WS (S.D. Miss. 2002), the Mississippi Republican Party State Executive Committee brought a declaratory judgment action against the State of Mississippi. This action challenged a portion of section 23-15-976. The court was asked to declare Mississippi’s statutory prohibition on political parties endorsing or contributing to the campaigns of judicial candidates unconstitutional, in violation of the freedom of political speech guaranteed by the United States Constitution and the Mississippi Constitution of 1890. Judge Henry Wingate ruled:

Mississippi Code Annotated§ 23-15-976 . . . 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 vocative of the First and Fourteenth Amendments to the Constitution of the United States

The United States Supreme Court has decided several cases that involve issues about judicial elections. See *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); and *Williams–Yulee v. Fla. Bar*, 135 S.Ct. 1656, 191 L.Ed.2d 570 (2015). None of these cases considered the questions presented here.

However, several federal appellate courts have held unconstitutional state restrictions that prohibit judges and candidates from identifying themselves as members of a political party. See *Carey v. Wolnitzek*, 614 F.3d 189 (6th Circuit 2010); *Winter v. Wolnitzek*, 834 F.3d 681, 689 (6<sup>th</sup> Cir. 2016); *Siefert v. Alexander*, 608 F.3d 974 (7th Circuit 2010), *cert. denied*, 131 S. Ct. 2872 (2011); and *Republican Party of Minnesota v. White*, 416 F.3d 738 (8th Circuit 2005), *cert. denied*, *Dimick v. Republican Party of Minnesota*, 546 U.S. 1157 (2006).

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 Mississippi Code Annotated section 23-15-976 as “campaigning . . . based on party affiliation” or the Mississippi Code of Judicial Conduct.

The vote of the Special Committee was 3 members in favor of this opinion and 2 members opposed.

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This opinion is limited to the scope and authority of the Special Committee under the Mississippi Code of Judicial Conduct.

Any questions should be in writing and directed to:

***Special Committee on Judicial Election Campaign Intervention***

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