

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

2018-23 Opinion

The Special Committee on Judicial Election Campaign Intervention received a complaint filed by Candidate P.

Candidate P has provided a document that purports to be the “Official Sample Democratic Ballot - Hinds County - November 6, 2018.” (A copy of the sample ballot is attached as Exhibit “A”.) The sample ballot marks the preferred candidates for the elections for Senate, House of Representatives, and “Nonpartisan Judicial Races.” The sample ballot also indicates that it was “Paid for by Democratic Candidates,” but does not identify who paid to print or distribute the material.

Candidate P complains that this “official sample ballot” is not in compliance with Mississippi election rules. She argues that the sample ballot constitutes “an alignment with the Democratic party as opposed to an endorsement.” Candidate P also argues that this sample ballot violates various election laws.

In Opinion 2018-12, the Special Committee issued an opinion that determined it was permissible for a non-judicial candidate from another election to endorse a judicial candidate. 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 to declare that Mississippi's 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. 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 volative of the First and Fourteenth Amendments to the Constitution of the United States.

Based on this ruling, the Special Committee is of the opinion that non-judicial candidates and political parties may endorse judicial candidates.

The Special Committee, however, has reviewed the "Official Sample Democratic Ballot" that was submitted and finds that there may be violations of Mississippi's campaign laws.

First, if any judicial candidate or the candidate's committee, pays for the printing or distribution of this "Official Sample Democratic Ballot," the Special Committee has determined that the judicial candidate and the candidate's committee would be in violation of Mississippi Code Annotated § 23-15-1025. This statute, titled "Distribution of campaign materials," provides:

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.

Second, the Special Committee has determined that the “Official Sample Democratic Ballot” is considered to be campaign materials and must have a disclosure as required by Mississippi Election laws. Specifically, Mississippi Code Annotated § 23-15-897(2), titled “Certain information to be included in campaign materials . . .,” provides:

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.

As a result, the Special Committee is of the opinion that the “Official Sample Democratic Ballot” is in violation of section 23-15-897(2) because it does not contain the required disclosure.

Since the Special Committee has determined that the “Official Sample Democratic Ballot” violates sections 23-15-897(2) and 23-15-1025, the Special Committee orders that any person, committee, political party or organization cease and desist the distribution of the “Official Sample Democratic Ballot.”

The Special Committee also finds that any person, committee, political party or organization who has paid for the printing or distribution of the “Official Sample Democratic Ballot” also provides a financial benefit for the judicial candidates that are indicated to be a preferred candidates. This expenditure may be subject to the limitation on contributions under Mississippi Code Annotated § 23-15-1021 and such expenditure should be disclosed as required by Mississippi Code Annotated § 23-15-805.

Committee Member Everett T. Sanders recused from this opinion and did not participate.

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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UNITED STATES SENATE

David Baria Democrat
 Roger F. Wicker Republican
 Danny Beedwell Libertarian
 Shawn O'Hara Reform

UNITED STATES SENATE

Tobey Bernard Barzee
 Mike Espy
 Cindy Hyde-Smith
 Chris McDaniel

US House of Rep
 2nd Congressional District

Bennie G. Thompson Democrat
 Irving Harris Reform
 Troy Ray Republican

US House of Rep
 3rd Congressional District

Michael Ted Evans Democrat
 Michael Guest Republican
 Matthew Holland Reform

Nonpartisan Judicial Election
 Court of Appeals District 2 Position 1

Eric Charles Hawkins Nonpartisan
 Cecilia James Nonpartisan
 Deborah McDonald Nonpartisan

Nonpartisan Judicial Election
 Court of Appeals District 4 Position 2

Byron Carter Nonpartisan
 David McCarty Nonpartisan
 Jeff Weill, Sr. Nonpartisan

Nonpartisan Judicial Election
 Chancery Court, District 5-1

Dewayne Thomas Nonpartisan

Nonpartisan Judicial Election
 Chancery Court, District 5-2

Reginald Harrison Nonpartisan
 Crystal Wise Martin Nonpartisan

Nonpartisan Judicial Election
 Chancery Court, District 5-3

Denise Owens Nonpartisan

Nonpartisan Judicial Election
 Chancery Court, District 5-4

Monique Brown-Berrett Nonpartisan
 Ottawa E. Carter, Jr. Nonpartisan
 Tiffany Grove Nonpartisan
 Steven P. Nixon Nonpartisan

Nonpartisan Judicial Election
 Circuit Court, District 7-1

Matt Allen Nonpartisan
 Bruce W. Burton Nonpartisan
 Pat McNamara Nonpartisan
 Bill Walker Nonpartisan
 Adrienne Wooten Nonpartisan

Nonpartisan Judicial Election
 Circuit Court, District 7-2

Kinston S. Campbell Nonpartisan
 Tomie Green Nonpartisan

Nonpartisan Judicial Election
 Circuit Court, District 7-3

Winston Lee Kidd Nonpartisan

Nonpartisan Judicial Election
 Circuit Court, District 7-4

Gerald Jerry Kucia Nonpartisan
 Eleanor Faye Peterson Nonpartisan
 Joseph Anthony Scifani Nonpartisan
 Trent L. Walker Nonpartisan

County Court District 1

Greta Mack Harris Nonpartisan
 Bridgetta Marie Morgan Nonpartisan
 Melvin Priester Nonpartisan

County Court District 2

LaRita Cooper-Stokes Nonpartisan

County Court District 3

John Fike Nonpartisan
 Yami 'Larry' Kings Nonpartisan
 Johnnie McDaniel Nonpartisan

School Board 3

Linda K. Lawe Independent

Exhibit A