2018
MISSISSIPPI
JUDICIAL CAMPAIGN
ELECTION INFORMATION

Required to be Provided to Judicial Candidates by
Canon 5F(1) of the Mississippi Code of Judicial Conduct

Special Committee on Judicial Election Campaign Intervention
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INTRODUCTION

Judicial elections are governed by the Mississippi Code of Judicial Conduct. Canon 5F creates the "Special Committee on Judicial Election Campaign Intervention." The Special Committee "shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office." Canon 5F.

Canon 5F(1) 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 the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this state, whichever is later, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address and telephone number, to the Commission.

Second, upon receipt of the Notice, the Special 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 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; and

3. A form acknowledgment, which each candidate shall promptly return to the Commission and therein certify that the candidate has read and understands the materials forwarded and agrees to be bound by such standards during the course of the campaign.

This document provides you with the information required under Canon 5F(1).

The form acknowledgment is included. Please complete this form and return it to the Commission. Your "failure to comply with this section shall constitute a per se violation of this

Section." As a result, the Committee will be required to immediately publicize your failure to comply to all candidates and to all appropriate media outlets.

Finally, Canon 5F specifically provides that:

> In the event of a question relating to conduct during a judicial campaign, judicial candidates, their campaign organizations, and all independent persons, committees and organizations are encouraged to seek an opinion from the Special Committee before such conduct occurs.

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

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MEMBERS OF THE SPECIAL COMMITTEE

By order of the Mississippi Supreme Court, dated January 30, 2018, signed by Chief Justice William L. Waller, Jr., the 2018 Special Committee on Judicial Campaign Intervention includes the following members:

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CODE OF JUDICIAL CONDUCT

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 non-partisan 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 or personally solicit publicly stated support. 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 and public support from lawyers. A candidate's committees shall not solicit or accept contributions and public support for the candidate's campaign earlier than 60 days before the qualifying deadline 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. Special Committee--Proceedings and Authority. In every year in which an election is held for Supreme Court, Court of Appeals, chancery court, circuit court or

county court judge in this state and at such other times as the Supreme Court may deem appropriate, a Special Committee on Judicial Election Campaign Intervention ("Special Committee") shall be created whose responsibility shall be to issue advisory opinions and to deal expeditiously with allegations of ethical misconduct in campaigns for judicial office. The committee shall consist of five (5) members. The Chief Justice of the Supreme Court; the senior justices of Supreme Court Districts 1, 2, and 3, excluding the Chief Justice; and the Chief Judge of the Court of Appeals, shall each appoint one member. All members shall be attorneys licensed to practice in the state. No person shall be appointed to serve as a member of a Special Committee for the year in which such person is a candidate for judicial office. Should the Chief Justice of the Supreme Court expect to be a candidate for judicial office during the year for which a Special Committee is to be appointed the Chief Justice shall declare such expectation, and in such event, the appointment which otherwise would have been made by the Chief Justice shall be made by the next senior justice of the Supreme Court who is not otherwise charged with appointing authority under this Canon and not seeking judicial office in such year. Should a senior justice of Supreme Court Districts 1, 2, or 3, excluding the Chief Justice, expect to be a candidate for judicial office during such a year, the next senior justice of the same Supreme Court District who is not otherwise charged with appointing authority and is not seeking judicial office shall make the appointment. Likewise, should the Chief Judge of the Court of Appeals expect to be a candidate for judicial office during such a year, the next senior judge of the Court of Appeals who is not seeking judicial office shall make the appointment. Any action taken by the Special Committee shall require a majority vote. Each Special Committee shall be appointed no later than February 1 in the year of their service, and it shall continue in existence for ninety (90) days following such judicial elections or for so long thereafter as is necessary to consider matters submitted to it within such time. The Commission shall provide administrative support to the Special Committee. Should any appointing authority fail to make an appointment, three members shall constitute a sufficient number to conduct the business of the Special Committee. The objective of the Special Committee shall be to alleviate unethical and unfair campaign practices in judicial elections, and to that end, the Special Committee shall have the following authority:

(1) Within ten (10) days of the effective date of this rule or within the ten (10) days after formally announcing and/or officially qualifying for election or re-election to any judicial office in this state, whichever is later, all candidates, including incumbent judges, shall forward written notice of such candidacy, together with an appropriate mailing address and telephone number, to the Commission. Upon receipt of such notice, the Special Committee shall, through the Commission, cause to be distributed to all such candidates by certified mail-return receipt requested copies of the following: Canon 5 of the Code of Judicial Conduct; 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; and a form acknowledgment, which each candidate shall promptly return to the Commission and therein certify that the candidate has read and understands the materials forwarded and

agrees to be bound by such standards during the course of the campaign. A failure to comply with this section shall constitute a per se violation of this Section authorizing the Committee to immediately publicize such failure to all candidates in such race and to all appropriate media outlets. In the event of a question relating to conduct during a judicial campaign, judicial candidates, their campaign organizations, and all independent persons, committees and organizations are encouraged to seek an opinion from the Special Committee before such conduct occurs.

(2) Opinions as to the propriety of any act or conduct by a judicial candidate, a candidate's campaign organization or an independent person, committee or organization conducting activities which impact on the election and as to the construction or application of Canon 5 may be provided by the Special Committee upon request from any judicial candidate, campaign organization or an independent person, committee or organization. If the Special Committee finds the question of limited significance, it may provide an informal opinion to the questioner. If, however, it finds the questions of sufficient general interest and importance, it may render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Furthermore, the Special Committee may issue formal opinions on its own motion under such circumstances, as it finds appropriate. The Special Committee may decline to issue an opinion when a majority of the Special Committee members determine that it would be inadvisable to respond to the request and to have so confirmed in writing their reasoning to the person who requested the opinion. All formal opinions of the Special Committee shall be filed with the Supreme Court and shall be a matter of public record except for the names of the persons involved, which shall be excised. Both formal and informal opinions shall be advisory only; however, the Commission on Judicial Performance, the Supreme Court and all other regulatory and enforcement authorities shall consider reliance by a judicial candidate upon the Special Committee opinion in any disciplinary or enforcement proceeding.

(3) Upon receipt of a written allegation indicating a violation by a judicial candidate of any provision of Canon 5 during the course of a campaign for judicial office, or indicating actions by any person(s), committee(s) or organization(s) which are contrary to the limitations placed upon candidates by Canon 5, the Commission staff shall immediately forward a copy of the allegation by e-mail, and U.S. mail to the Special Committee members and the judicial candidate, and said Committee shall:

> **(a) in a manner which comports with due process, provide the candidate with a list of provisions he or she is accused of violating, and provide the candidate an opportunity to respond;**
>
> **(b) seek, from the informing party and/or the subject of the information, such further information on the allegations as it deems necessary;**

(c) conduct such additional investigation as the Committee may deem necessary;

(d) determine whether the allegations warrant speedy intervention and, if so, immediately issue a confidential cease-and-desist request to the candidate and/or organization or independent committee or organization believed to be engaging in unethical and/or unfair campaign practices. If the Committee determines that the unethical and/or unfair campaign practice is of a serious and damaging nature, the Committee may, in its discretion, disregard the issuance of a cease-and-desist request and immediately take action authorized by the provisions of paragraph (3)(e)(i) and (ii), hereafter described. If the allegations of the complaint do not warrant intervention, the Committee shall dismiss the same and so notify the complaining party.

(e) If a cease-and-desist request is disregarded or if the unethical or unfair campaign practices otherwise continue, the Committee is further authorized:

> **(i) to immediately release to all appropriate media outlets, as well as the reporting party and the person and/or organization against whom the information is submitted, a public statement setting out the violations believed to exist, or, in the case of independent persons, committees or organizations, the actions by an independent person, committee or organization which are contrary to the limitations placed upon candidates by Canon 5. In the event that the violations or actions have continued after the imposition of the cease and desist request, the media release shall also include a statement that the candidate and/or organization or independent person, committee or organization has failed to honor the cease-and-desist request, and**
>
> **(ii) to refer the matter to the Commission on Judicial Performance or to any other appropriate regulatory or enforcement authority for such action as may be appropriate under the applicable rules.**

(4) All proceedings under this Rule shall be informal and non-adversarial, and the Special Committee shall act on all requests within ten (10) days of receipt, either in person, by facsimile, by U.S. mail, or by telephone. In any event, the Special Committee shall act as soon as possible taking into consideration the exigencies of the circumstances and, as to requests received during the last ten (10) days of the campaign, shall act within thirty-six (36) hours.

(5) Except as herein specifically authorized, the proceedings of the Special Committee shall remain confidential, and in no event shall the Special Committee have the authority to institute disciplinary action against any candidate for judicial office, which power is specifically reserved to the Commission on Judicial Performance under applicable rules.

(6) The Committee shall after conclusion of the election distribute to the Commission on Judicial Performance copies of all information and all proceedings relating thereto.

(7) This Canon 5F shall apply to all candidates for judicial offices of the Supreme Court, Court of Appeals, chancery courts, circuit courts and county courts, be they incumbent judges or not, and to the families and campaign/solicitation committees of all such candidates. Persons who seek to have their name placed on the ballot as candidates for such judicial offices and the judicial candidates' election committee chairpersons, or the chairperson's designee, shall no later than 20 days after the qualifying date for candidates in the year in which they seek to run complete a two-hour course on campaign practices, finance, and ethics sponsored and approved by the Committee. Within ten days of completing the course, candidates shall certify to Committee that they have completed the course and understand fully the requirements of Mississippi law and the Code of Judicial Conduct concerning campaign practices for judicial office. Candidates without opposition are exempt from attending the course.

Commentary

Provision is made for the Special Committee to issue opinions to judicial candidates. Ordinarily, absent extraordinary circumstances or statutory authority to the contrary, when a judge or candidate, relying on the opinion of the Special Committee, acts in accordance with the opinion and the opinion is based on a full disclosure of facts and circumstances, the judge or candidate will not be subject to disciplinary or enforcement action or liability.

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 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

§ 23-15-995. 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.

§ 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 not later than 5:00 p.m. on the first Friday after the first Monday in May before the general election for judicial office and shall pay to the proper officials the following amounts:

(a) Candidates for Supreme Court judge and Court of Appeals, 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.

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.Ed.2d 570 (2015).

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

The 2018 Special Committee on Judicial Election Campaign Intervention is required by Canon 5F(1) 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 following is a summary of publicly disclosed opinions issued by Special Committees organized for prior elections.[1]

I. 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§ 23-15-1025 requires that material distributed bya 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.[2] 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,[3] the Special Committee does not consider campaign material without identification of committee officers to be in violation of Canon 5. Otherwise, Miss. Code§ 23-15-1025 appears to require that officers of the committee be identified on the materials.

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[1] The opinions cited are from prior Special Committees. The 2018 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 2018 Special Committee.

[2] See also Miss. Attorney General Opinion No. 2010-00541, Sept. 24, 2010.

[3] Filing of statements of committee organization is addressed in Miss. Code §§ 23-15-803 and 23-15-805.

The Special Committee notes that Mississippi election statutes do not define campaign "material." The Special Committee finds and opines that campaign paraphernalia which do not impart a message beyond identification of the candidate, contact information and office sought, such as buttons, lapel pins, letterhead, envelopes, business cards, bumper stickers, and the like do not violate Canon 5 without the statements referenced in§ 23-15-1025.

II. 2015 Special Committee Opinions.

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

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

2. Whether it would it 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(l)(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.

III. 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. Id.

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 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 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 Judge 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 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 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 judgship 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 request 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 section 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 his 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 fund-raiser for the incumbent district attorney who was aligned with the Republican party. The fund-raiser 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 fund-raiser 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 of 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 section 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 Cannon 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 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 section 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.

IV. 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 to 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 a 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 5(C)(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 of 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 clarification 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 5A(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 word “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 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. Section 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. Section 23-15-973 for a candidate to "align himself with . . . any political faction or any political party" and a violation of Miss. Code Ann. Section 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.

D. 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 5(A)(3)(d)(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 5(C)(l) allows candidates for judicial office to speak at partisan political events so long as the candidate 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 a 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 5(C)(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 5(C)(l) 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 impractically 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.

V. 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 in 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:

> 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 an 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.

IV. 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 litigation before a sitting judge whose candidacy has received contributions from a person or entity so designated. The significance is that a party may filed 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 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.

V. 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 chair(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.

VI. 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. The 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 5.A. (3) (d) (I) and (ii). The Special Committee directed that the following press release immediately issue 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 5.A. (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(l)(c) and 5C(2). The Special Committee concluded the activity was not a violation.

MISSISSIPPI CASES ON JUDICIAL ELECTIONS

I. *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 if the 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 Party of 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 on all 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. ln 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, IT IS HEREBY ORDERED that:

l. 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 vocative 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 question have 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 forth in 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 Title 28 U.S.C. §§ 1331, 1334 and Title 42 U.S.C. § 1983.

2. Mississippi Code Annotated§ 23-15-976, as amended in 1999, provides in part:

> 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 .... [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, 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.

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 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.

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 amendments became 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.

II. *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 of the 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 Mississippi Constitution 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 is prejudicial 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 Court that 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.2d 882, 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.2d 744, 746 (Miss.1997).

I.

¶ 9. The role of the judiciary is central to the concept of justice and the rule of law. The Mississippi Code of Judicial Conduct, through its 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 section 5(A)(1)(a), or any other section of the canons.4 Canon 5(A)(1) reads in full, as follows:

> Except as authorized in Sections 5B(2), 5C(1) and 5C(2), a judge or 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.

(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, “Just by 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 several Minnesota 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 applied the 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, in light 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 legitimate public 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 at 891.

¶ 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 “go to 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 doubt expressed 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 mayor and 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 know what 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.2d at 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 of impropriety. 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 in a 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 oath or 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 the Constitution or by law, or where any oath may be lawfully required by any judicial, executive, or administrative officer, shall be guilty 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 Statement or be heard to claim that there are other facts that the Court may presume to exist, or to 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 that Judge 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.2d

1117, 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 any prior 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 was elected 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

III.

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 the media 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. It would 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” pursuant to 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 points to 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 other words, 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 that the 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 the time 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 found in 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 not be 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 interest and 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 another term.").

¶ 41. As we stated in Osborne II, "[a] second offense undoubtedly warrants a harsher penalty." Osborne, 977 So.2d at 326. In Osborne II, we found 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 ISSUANCE OF 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 WITH SEPARATE 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 conviction that, 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 is a 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 serve its 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, it is 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 "must be 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 the First 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, 120 S.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 legal and 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 speak one'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 also extend 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 expression of those ideas likewise enjoyed constitutional protection.

¶ 54. Today's decision not only violates the protections afforded to Judge 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 & Loan Ass'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 IN PART.

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 likely to 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 offensive to 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 that is "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 on matters 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 function of 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 allowed the 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 political issues."

¶ 59. Indeed, this Court recently has held that judges do not abandon their constitutional 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 think they 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 protected campaign 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 with the 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 had qualified 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)).

III. *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 chancery court 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 justice dissenting, we found the complaint failed to state a claim upon which relief could be granted by the chancery court, and we dissolved the TRO.

DISCUSSION

I.

¶ 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 argument that 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 of government, one of which is the judiciary. Under Article 6, which addresses the distribution of judicial power, the jurisdiction of the chancery court is established:

¶ 9. The chancery court shall have full jurisdiction in the following matters 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 when this 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 with full 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 of chancery 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 administered by 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 chancery in 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. City of 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 a candidate 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 its nominee.... The only contests that the courts can entertain are those originating under general election 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 or constitutional 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 project itself 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, 725 So.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; only constitutional 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 of Canon 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 running for 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 that the 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 against judges, 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 ultimately to 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, the circuit 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 action for 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 County Chancery Court.

¶ 21. TEMPORARY RESTRAINING ORDER VACATED. WALLER AND COBB, P.JJ., CONCUR. RANDOLPH, J., CONCURS IN 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 a contested 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 candidate to the voters, the First Amendment surely requires that the restriction be demonstrably 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 take action 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 was no 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 chancery courts. 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. See Bridges & 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 Supreme Court 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 afford relief *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 candidates from 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 of Grenada v. Harrelson, 725

So.2d 770 (Miss.1998) (circuit court had 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 the chancery 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 our chancery 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; matters testamentary 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 over a 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 judge or a candidate for election to judicial office."

7 In addition to Article 6 Section 159 cited by the majority, the Constitution 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).

ACKNOWLEDGMENT

I, the undersigned candidate for judicial office, do hereby acknowledge receipt of a copy of Canon 5 of the Code of Judicial Conduct and do certify that I have read said Canon 5 and any accompanying materials and do understand the content thereof. I further certify that I agree to abide by and be governed by the standards therein contained during my campaign for judicial office.

This the ___ day of _____ , 2018.

_____

STATE OF MISSISSIPPI

COUNTY OF _____

Personally appeared before me, the undersigned authority in and for the aforementioned jurisdiction, the individual named above, who stated under oath that he or she signed the acknowledgment and that the statements contained therein are true and correct.

SWORN TO AND SUBSCRIBED before me, on this the __ day of _____, 2018.

_____
Notary Public

My Commission Expires: