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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION**

Randolph Wolfson,)	
)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action No. _____
)	
J. William Brammer, Jr., in his official)	
capacity as Chairman of the Arizona)	
Commission on Judicial Conduct, John C.)	
Gemmill, in his official capacity as)	
Vice-chairman of the Arizona Commission)	
on Judicial Conduct, Angela H. Sifuentes.)	
in her official capacity as secretary of the)	
Arizona Commission on Judicial Conduct,)	
Robert M. Brutinel, in his official capacity)	
as member of the Arizona Commission on)	

Judicial Conduct, Sylvia Patino-Branfon, in)
her official capacity as member of the)
Arizona Commission on Judicial Conduct,)
Harriett Chavez, in her official capacity)
as member of the Arizona Commission on)
Judicial Conduct, Sheila S. Polk, in her)
official capacity as member of the Arizona)
Commission on Judicial Conduct,)
Louis Frank Dominguez, in his official)
capacity as member of the Arizona)
Commission on Judicial Conduct, Sherry)
L. Geisler, in her official capacity as)
member of the Arizona Commission on)
Judicial Conduct, Catherine M. Stewart,)
in her official capacity as member of the)
Arizona Commission on Judicial Conduct,)
Marion Weinzweig, in her official capacity)
as member of the Arizona Commission on)
Judicial Conduct, J. Conrad Baran, in his)
official capacity as Chair of the Arizona)
Disciplinary Commission, Daisy R. Flores,)
in her official capacity as Vice-Chair of the)
Arizona Disciplinary Commission, Jeff)
Messing, in his official capacity as member)
of the Arizona Disciplinary Commission,)
John Pressley Todd, in his official capacity)
as member of the Arizona Disciplinary)
Commission, William W. Horsley, in his)
official capacity as member of the Arizona)
Disciplinary Commission, Laura Bellau, in)
her official capacity as member of the)
Arizona Disciplinary Commission, Pamela)
M. Katzenberg, in her official capacity as)
member of the Arizona Disciplinary)
Commission, Timothy Gooding, in his)
official capacity as member of the Arizona)
Disciplinary Commission, Karen Osborne,)
in her official capacity as member of the)
Arizona Disciplinary Commission, and)
Robert B. Van Wyck, in his official capacity)
as Chief Bar Counsel for the State Bar of)
Arizona,)

Defendants.)
)
)

VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

COMES NOW Plaintiff Randolph D. Wolfson, and for his Complaint against the Defendants, states the following:

Introduction

1. This is a civil action for declaratory and injunctive relief arising under the First and Fourteenth Amendments to the Constitution of the United States. It concerns the constitutionality of portions of Canons 3 and 5 of the Arizona Code of Judicial Conduct.
2. Wolfson complains that Canons 3E(1)(e), 5A(1)(b), 5A(1)(c), 5A(1)(d), 5B(d)(i), and 5B(2) are all unconstitutional on their face and as applied to Wolfson, and that they are all unconstitutionally overbroad or vague, and not narrowly tailored to satisfy a compelling interest.

Jurisdiction and Venue

3. This action arises under Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the Constitution of the United States.
4. The jurisdiction of this Court over the claims arising under 42 U.S.C. § 1983 is founded upon 28 § U.S.C. 1343(a). The jurisdiction over the claims arising under the First and Fourteenth Amendments is founded upon 28 U.S.C. §§ 1331 and 1343(a).

5. Venue in this district is proper pursuant to 28 § U.S.C. 1391(b).

Parties

6. Plaintiff Randolph D. Wolfson is an individual and resident of Arizona. He lives in Golden Valley, Arizona, located in Mohave County. Wolfson has been an attorney for 26 years and is admitted to the State Bar of Arizona. He is a candidate for the office of Superior Court Judge, Division V, for Mohave County, Arizona, in the 2008 judicial elections.

7. The Defendants are the members of the Arizona Commission on Judicial Conduct, sued in their official capacity: J. William Brammer, Jr. (Chairman), John C. Gemmill (Vice-Chairman), Robert M. Brutinel, Angela H. Sifuentes, Harriet Chavez, Sylvia Pation-Branfon, Louis Frank Dominguez, Sheila S. Polk, Sherry L. Geisler, Catherine M. Stewart, and Marion Weinzweig. Rule 2 of the Arizona Rules of the Commission on Judicial Conduct provides that “[t]he purpose of the commission is to administer the judicial discipline . . . system established by the constitution.

8. Also sued as Defendants are Robert B. Van Wyck, Chief Bar Counsel for the State Bar of Arizona, as well as the members of the Arizona Disciplinary Commission, sued in their official capacity: J. Conrad Baran (Chair), Daisy R. Flores (Vice-Chair), John Pressley Todd, William W. Horsley, Laura Bellau, Pamela M. Katzenberg, Timothy Gooding, Karen Osborne, and Jeff Manning. Chief Bar Counsel and the members of the ADC are appointed by the Arizona Supreme Court to investigate and

prosecute violations of the Arizona Rules of Professional Conduct.

Facts

9. Arizona state court judges are selected through a process of partisan judicial elections. Regulation of judicial conduct, as well as the conduct of candidates for judicial office, is governed by the Arizona Code of Judicial Conduct (“the Canons”).

10. Violations of the Canons are prosecuted by two separate bodies. The Arizona Commission on Judicial Conduct (“CJC”) has jurisdiction over judges and former judges concerning allegations of misconduct occurring prior to or during services as a judge.” The CJC has authority under Article 6.1 of the Arizona Constitution to investigate complaints involving violations of the Arizona Code of Judicial Conduct, and to make recommendations to the Arizona Supreme Court, including recommendations of reprimand, censure, involuntary retirement, disqualification, and criminal conduct. *See* Rules 2, 17 & 18, Arizona Commission on Judicial Conduct Handbook, March 2007, attached as Exhibit 2, at 16, 19.

11. Violations of the Canons may also be prosecuted by the Arizona Disciplinary Commission (“ADC”) of the Arizona Bar. Rule 8.2(b) of the Arizona Rules of Professional Conduct provides that “a lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.” Canon 5C of the Arizona Code of Judicial Conduct also provides that “an unsuccessful candidate who is a lawyer is subject to a lawyer discipline for his or her campaign conduct. A

lawyer who is a candidate for judicial office is subject to [Rule] 8.2(b) of the Arizona Rules of Professional Conduct.”

12. The Arizona Judicial Ethics Advisory Commission (“JEAC”) is a body empowered by the Arizona Supreme Court to render formal advisory opinions to judges and judicial candidates upon request, and to offer formal interpretations of the Canons. Advisory Opinions issued by JEAC are not binding on the CJC or ADC, but may be used as a defense in judicial and lawyer discipline proceedings. *See* Rule 19(h), Arizona Commission on Judicial Conduct Handbook, October 2006, attached as Exhibit 2 at 20.

13. Plaintiff Randolph D. Wolfson is a individual and resident of Arizona.

14. In 2006, Wolfson was a candidate for the office of Kingman Precinct Justice of the Peace, in Mohave County, Arizona.

15. During the course of his 2006 campaign, Wolfson wanted to answer questions from voters regarding his views on disputed legal and political issues. However, despite wishing to engage in this protected political speech, Wolfson did not do so, because he believed that he was prohibited from doing so by several of the Canons.

16. Specifically, Wolfson believed that he was prohibited from answering questions from voters regarding his views on disputed legal and political issues by Canon 5B(1)(d)(i) (the “pledges and promises clause”), which provides that a judge or judicial candidate shall not “with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the

impartial performance of the adjudicative duties of the office.”

17. Because he believed answering questions from voters regarding his views on disputed legal and political issues was prohibited by the pledges and promises clause, Wolfson did not do so.

18. Wolfson also believed that he was prohibited from answering questions from voters regarding his views on disputed legal and political issues by Canon 3E(1)(e). Canon 3E(1)(e) (the “commits clause”) specifies that a judge must recuse himself or herself when “the judge, while a judge or candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to: (i) an issue in the proceedings; or (ii) the controversy in the proceedings.”

19. The official Commentary to the Arizona Code of Judicial Conduct provides that “disqualification or other remedial action may be required of any judge in cases that involve an issue about which the judge previously announced his or her views even if such action is otherwise appropriate under the code. Therefore, judges should take this into consideration before announcing their views on disputed political or legal issues.” Judges who decline to recuse as recuse themselves as required by Canon 3E(1)(e) can face discipline.

20. Because he believed answering questions from voters regarding his views on disputed legal and political issues would require his recusal as judge on cases involving those issues under the commits clause, Wolfson did not do so.

21. In addition, apart from his campaign for Justice of the Peace, Wolfson regularly gave talks during the 2006 campaign in his capacity as a practicing attorney regarding the issue of same-sex marriage and family values. These talks consisted of a PowerPoint presentation (“the Presentation”) in which Wolfson discussed the political, legal, and moral ramifications of normalizing homosexuality and changing the traditional definition of marriage as between one man and one woman. *See Powerpoint Presentation (original)*, attached as Exhibit 3.

22. As originally written, the Presentation included several statements relating to Arizona Proposition 107, a ballot initiative in the 2006 election..¹ The statements were as follows: (1) “ACTIVIST JUDGES CAN BE CONTROLLED BUT IT WILL TAKE A CONSTITUTIONAL AMENDMENT TO GET IT DONE” (2) “Marriage is between a man and a woman. A YES vote on Prop. 107 will prevent a redefinition of marriage by political forces & activist judges.” *See* Exhibit 3.

23. Wolfson wanted to give the Presentation as originally written, and to advocate in support of Proposition 107. However, because he believed these statements were prohibited by the pledges and promises clause, and mandating recusal under the

¹Proposition 107 was a proposed amendment to the Arizona Constitution. The text of the proposed amendment reads: “To Preserve and protect marriage in this state, only a union between one man and one woman shall be valid or recognized as a marriage by this state or its political subdivisions and no legal status for unmarried persons shall be created or recognized by this state or its political subdivisions that is similar to that of marriage.”

commits clause, he did not do so. Instead, Wolfson changed the Presentation by removing the above listed statements and inserting into his discussion of Proposition 107 the following disclaimer: “As a candidate for election to judicial office, Mr. Wolfson is not allowed to state his support or opposition on disputed legal issues.” *See Powerpoint Presentation (as used)*, attached as Exhibit 4.

24. In addition to the pledges and promises clause, and the commits clause, Wolfson also believed that he was prohibited from giving the Presentation as originally written by Canon 5A(1)(d) (the “campaigning prohibition”), which provides that a judicial candidate cannot “actively take part in any political campaign other than his or her own election, reelection or retention in office.”

25. Because he believed giving the Presentation as originally written was prohibited by the campaigning prohibition, Wolfson did not do so.

26. During the course of his 2006 campaign, Wolfson also wished to endorse other candidates for political office, and support their election campaigns. Wolfson believes that working with and supporting other candidates running on his party’s ticket is necessary for any candidate hoping to run a successful campaign.

27. However, despite wishing to engage in this protected political speech, Wolfson did not do so, because he believed that he was prohibited from doing so by the campaigning prohibition.

28. In addition to the campaigning prohibition, Wolfson also believed that he

was prohibited from endorsing other candidates for political office and supporting their election campaigns which provides that a judge or judicial candidate shall not “make speeches for a political organization or candidate or publicly endorse a candidate for public office.”

29. “Political organization” is defined in the Code as “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.”

30. The political activities clause was formally interpreted by JEAC in Advisory Opinion 96-09. Advisory Opinion 96-09 involved the question “is it appropriate for a judge to appear in a television advertisement endorsing a ballot proposition the judge was involved in drafting?” *See Advisory Opinion 96-09* attached as Exhibit 6. After citing several provisions of the Canons, including the political activities clause, JEAC concluded that this was prohibited, stating: “the code does not permit a judge to act as a spokesperson and advocate for others.” *Id.* at 2.

31. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 96-08. In the course of that opinion, JEAC stated, with reference to the political activities clause, that:

Judges may not participate in campaigns for or against political candidates, even those who take positions affecting the administration of justice. Canon 5A(1) of the Code of Judicial Conduct prohibits judges from publicly endorsing a candidate, making speeches for a political organization or candidate, or actively taking part in any political campaign other than their own election.

See Advisory Opinion 96-08 attached as Exhibit 5.

32. Because he believed he was prohibited from endorsing other candidates and from supporting their election by the political activities clause, Wolfson did not do so.

33. Finally, during the course of his 2006 campaign, Wolfson wanted to personally solicit campaign contributions at live appearances and speaking engagements, by making phone calls and by signing his name to fund appeal letters.

34. However, despite wishing to engage in this protected political speech, Wolfson did not do so, because he believed that he was prohibited from doing so by Canons 5A(1)(b) and 5B(2) (collectively “the solicitation clauses”). Canon 5A(1)(c) provides that a judicial candidate shall not “solicit funds for or pay an assessment to a political . . . organization.” Similarly, Canon 5B(2) provides that “[a]ll candidates should refrain from personally soliciting campaign contributions” (collectively “the solicitation clauses”).

35. Because he believed he was prohibited from personally soliciting campaign contributions by the solicitation clauses, Wolfson did not do so.

36. On September 12, 2006, Wolfson sent a letter to JEAC requesting an opinion on whether the Canons prohibited him from voicing his opinion on Proposition 107 and from discussing his views on disputed legal and political issues. *See Letter of Wolfson to JEAC, September 12, 2006* attached as Exhibit 7.

37. On September 14, 2006, Keith Stott, Executive Director of JEAC, left a phone message for Wolfson, which he returned on September 14, 2006. Mr. Stott informed Wolfson that in light of *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), it was Mr. Stott’s opinion that Mr. Wolfson could announce his views on political and legal issues, including Proposition 107. However, Mr. Stott went on to state that a formal opinion on Wolfson’s request could take up to sixty days (60) to prepare.

38. Keith Stott again contacted Wolfson on September 20, 2006, leaving him a telephone message saying that a formal advisory opinion would take at least thirty (30) days.

39. On October 3, 2006, Wolfson filed suit against the CJC and ADC, challenging the constitutionality of the pledges and promises clause, the commits clause, the campaigning prohibition, the political activities clause, and the solicitation clauses.

40. The formal advisory opinion requested by Wolfson was released on October 23, 2008. *See Advisory Opinion 06-05*, attached as Exhibit 8. In response to Wolfson’s question: “May a judge standing for retention or election respond to a political interest group questionnaire seeking the candidate’s views on disputed political and legal issues or judicial philosophy?” JEAC’s answered “Yes, provided the responses conform to the requirements of Canon 5B(1)(d)(i).” The Opinion cited *White* for the proposition that a “judicial candidate may publicly discuss his or her personal opinion of an initiative measure or other political subject . . . because a candidate may express views on any

disputed issue.” *Id.* at 2.

41. Despite this general statement, however, Opinion 06-05 placed several significant qualifications on the ability of judicial candidates to announce their views on disputed legal and political issues. For example, the Opinion states:

It is important to note, however, that Canon 5B(1)(d)(i) states: “[A] candidate . . . shall not: . . . with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.’ The commentary to this canon cautions that the candidate ‘should emphasize in any public statement the candidate’s duty to uphold the law regardless of his or her personal views.’ Should a candidate choose to make public statements about issues that later come before the court, the candidate may be required to disqualify himself or herself from cases involving those issues.

Id. at 2.

42. Opinion 06-05 further states:

Outside the realm of campaign conduct, however, a judge’s political activity is governed by Canon 5A, which prohibits a judge from “mak[ing] speeches for a political organization or candidate” and “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office.” Canon 5A(1)(b), (d) . . . Although restrictions on judges’ public discourse were substantially reduced by *White*, that case was limited to campaign speech”

Id. at 2.

43. On November 7, 2006, Wolfson was defeated in his bid for the office of Kingman Precinct Justice of the Peace. It is Wolfson’s belief that his inability to engage in the above mentioned constitutionally protected activities prohibited by the Canons was a contributing factor in his defeat.

44. In early 2007, Wolfson announced his candidacy for the office of Superior Court Judge, Division V, for Mohave County, Arizona, in the 2008 judicial election. Wolfson continued to seek relief in his constitutional challenge to the above mentioned canons.

45. On August 8, 2007, Wolfson's Complaint was dismissed without prejudice on prudential ripeness grounds. According to the opinion of the court, Wolfson should have requested a formal advisory opinion from JEAC on whether the activities he wished to engage in were, in fact, prohibited by the Canons. *See Wolfson v. Brammer*, 2007 WL 2288024 (D. Ariz. August 8, 2007).

46. On December 12, 2007, Wolfson filed a request for a formal advisory opinion with JEAC. *See Letter of Wolfson to JEAC, December 12, 2007*, attached as Exhibit 9. Wolfson's request sought advice as to whether he was prohibited by the Canons from engaging in the above mentioned activities.

47. On April 30, 2008, JEAC issued Advisory Opinion 08-01, responding to Wolfson's request. *See Advisory Opinion 08-01*, attached as Exhibit 10.

48. Wolfson's request letter stated: "I would like during the course of my campaign to be able to announce my views on a number of disputed legal and political issues, but am concerned that in doing so I would be violating Canons 5A(1)(b), or 5B(1)(d)(i), and would be required to recuse myself from cases involving those issues by Canon 3E(1)(e)." *Id.* at 1.

49. With respect to Wolfson’s request regarding Canon 5B(1)(d)(i) (the pledges and promises clause), JEAC responded: “Although a similar issue was addressed in Advisory Opinion 06-05, this question appears to be broader in scope than the inquiry made in that opinion. The answer, however, remains the same.” *See* Advisory Opinion 08-01 at 2.

50. With respect to Wolfson’s request regarding Canon 5A(1)(b) (the political activities clause), JEAC responded:

This provision is clear on its face and in Advisory Opinion 96-09, this committee pointed out, ‘the code does not permit a judge to act as a spokesperson and advocate for others.’ *White* allows certain activities when a judicial candidate is conducting his or her own campaign for office, but does not otherwise address or relax restrictions on campaigning for other political candidates. And it is difficult to see how endorsing or promoting a candidate for another elective office would inform the electorate of the endorsing candidate’s qualifications for judicial office.

Id. at 2.

51. With respect to Wolfson’s request regarding Canon 3E(1)(e) (the issues recusal clause), JEAC responded: “Should a candidate choose to make public statements about issues that later come before the court, the candidate may be required to disqualify himself or herself from cases involving those issues.” *Id.* at 2.

52. Wolfson’s request letter stated: “I would like to endorse candidates in other races . . . but am concerned that in doing so I would be violating Canons 5A(1)(b) or 5A(1)(d).” Exhibit 9, at 1.

53. In response, JEAC stated: “The candidate may not endorse other

candidates.” Advisory Opinion 08-01, at 1. In support of this conclusion, JEAC cited the language of Canons 5A(1)(b) and 5A(1)(d), as well as prior Advisory Opinions 96-08 and 96-09. *Id.* at 2.

54. Wolfson’s request letter stated: “I would like to be able to personally solicit contributions to my campaign and personally receive such contributions, but am concerned that in doing so I would be violating Canon 5A(1)(c).” Exhibit 9, at 1.

55. In response, JEAC stated that “Canon 5B(2) specifically prohibits a judicial candidate from ‘personally soliciting campaign contributions’ and directs candidates to ‘refer potential contributors to the candidate’s campaign committee.’ The canon is clear on its face and no further explication or discussion is needed.” Advisory Opinion 08-01, at 3.

56. Based on Advisory Opinion 08-01, as well as the plain language of the Canons, Wolfson continues to believe that he is prohibited from announcing his views on disputed legal and political issues and from answering questions from voters regarding such issues by the pledges and promises clause, the commits clause, and the campaigning prohibition.

57. Both as part of his campaign and apart from it, Wolfson would like announce his views on disputed legal and political issues, and answer questions from voters regarding his positions on such issues in the 2008 election, and in future elections. For example, Wolfson would like to announce his position on issues such as abortion and

same-sex marriage by making statements such as “I am pro-choice” or “I am pro-life”; “I believe Roe v. Wade was wrongly decided” or “I believe Roe v. Wade was correctly decided”; “I believe the Arizona Constitution compels state recognition of same-sex marriage” or “I believe the Arizona Constitution does not compel state recognition of same-sex marriage.”

58. Wolfson does not wish to pledge or promise certain results in particular cases or classes of cases. Announcing his views on such issues would neither cause Wolfson to be biased for or against any party nor affect his ability to be open-minded with regard to any legal issue.

59. However, because Wolfson believes that he is prohibited by the pledges and promises clause, the general recusal clause, issues recusal clause, and the campaigning prohibition from announcing his views on disputed legal and political issues and from answering questions from voters regarding his positions on such issues, Wolfson has not done so and will not do so unless and until the offending provisions are enjoined.

60. For example, in March of 2008, Wolfson was asked as part of an online candidate forum: “What is your opinion of the current domestic violence laws?” In response, Wolfson cited the language of the pledges and promises clause and commits clause, and then stated “although as candidate in this forum it is my intent and desire to participate fully, openly and assertively regarding issues of the day, I am constrained [for the reasons outlined in the Code above] from responding to controversies or issues which

are likely to come before me if elected.” See *Political Community, Mohave County Politics, Mohave County Elections, Superior Court Judge - Division V, Randolph Wolfson, Please outline your positions*, available at: <http://mohavepolitics.com/>.

61. Based on Advisory Opinions 96-08, 96-09, and 08-01, as well as the plain language of the Canons, Wolfson continues to believe that he is prohibited from endorsing other candidates for political office and from supporting their election campaigns by the political activities clause and the campaigning prohibition.

62. Both as part of his campaign and apart from it, Wolfson would like to endorse other candidates for political office, and support their election campaigns in the 2008 election, and in future elections. Wolfson believes that working with and supporting other candidates running on his party’s ticket is necessary for any candidate hoping to run a successful campaign.

63. In making such endorsements, Wolfson does not intend to pledge or promise certain results in particular cases or classes of cases. Making such endorsements would neither cause Wolfson to be biased for or against any party nor affect his ability to be open-minded with regard to any legal issue.

64. However, because Wolfson believes that he is prohibited by the political activities clause and the campaigning prohibition from endorsing other candidates for political office and from supporting their election campaigns, Wolfson has not done so and will not do so unless and until the offending provisions are enjoined.

65. Based on Advisory Opinion 08-01, as well as the plain language of the Canons, Wolfson continues to believe that he is prohibited from personally soliciting campaign contributions by the solicitation clauses.

66. Both as part of his campaign and apart from it, Wolfson would like to personally solicit campaign contributions both in the 2008 judicial election and in future judicial elections at live appearances and speaking engagements, by making phone calls and by signing his name to fund appeal letters.

67. In making such solicitations, Wolfson does not intend to pledge or promise certain results in particular cases or classes of cases. Making such solicitations would neither cause Wolfson to be biased for or against any party nor affect his ability to be open-minded with regard to any legal issue.

68. However, because Wolfson believes that he is prohibited by the solicitation clauses from personally soliciting campaign contributions, Wolfson has not done so and will not do so unless and until the provisions are enjoined.

69. Immediate and irreparable injury, loss, and damage has occurred to Wolfson and will continue to occur as a result of Canons 3E(1), 3E(1)(e), 5A(1)(b), 5A(1)(c), 5A(1)(d), 5B(1)(d)(i), and 5B(2).

70. Wolfson has no adequate remedy at law.

COUNT I

CANON 5B(1)(d)(i)'S PLEDGES AND PROMISES CLAUSE IS FACIALLY UNCONSTITUTIONAL.

71. Wolfson realleges the preceding paragraphs.

72. Canon 5B(1)(d)(i)'s pledges and promises clause provides that a judge or judicial candidate shall not “with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”

73. The pledges and promises clause was formally interpreted by JEAC in Advisory Opinion 06-05. In Advisory Opinion 06-05, JEAC considered the question: “May a judge standing for retention or election respond to a political interest group questionnaire seeking the candidate’s views on disputed political and legal issues or judicial philosophy?” Advisory Opinion 06-05, at 1. JEAC’s answer to this inquiry was: “Yes, provided the responses conform to the requirements of Canon 5B(1)(d)(i).” *Id.* The Opinion cited *White* for the proposition that a “judicial candidate may publicly discuss his or her personal opinion of an initiative measure or other political subject . . . because a candidate may express views on any disputed issue.” *Id.* at 2. The Opinion went on to caution that “It is important to note, however, that Canon 5B(1)(d)(i) states: “[A] candidate . . . shall not: . . . with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”” *Id.* The opinion further noted that “[a]lthough restrictions on judges’ public discourse were substantially

reduced by *White*, that case was limited to campaign speech” *Id.*

74. The pledges and promises clause was also formally interpreted by JEAC in Advisory Opinion 08-01. In Advisory Opinion 08-01, JEAC considered the question: “May a judicial candidate publicly announce his or her views on a ‘number of disputed legal and political issues?’” *See* Advisory Opinion 08-01 at 1. JEAC responded: “Although a similar issue was addressed in Advisory Opinion 06-05, this question appears to be broader in scope than the inquiry made in that opinion. The answer, however, remains the same.” *Id.* at 2.

75. Judicial candidates have the constitutional right to announce their views on disputed legal and political issues. *White*, 536 U.S. at 775.

76. The pledges and promises clause is a content-based restriction on political speech, and, as such, is subject to strict scrutiny. *Berger v. City of Seattle*, 512 F.3d 582, 589 n.8 (9th Cir. 2008). Because it is not narrowly tailored to further any compelling government interests, the pledges and promises clause is unconstitutional.

77. A law or regulation “may be unconstitutionally vague for two reasons. First, the regulation may fail to give persons of ordinary intelligence adequate notice of the conduct proscribed; second, it may permit or authorize arbitrary and discriminatory enforcement.” *G.K. Ltd. Travel v. City of Lake Oswego*, 436 F.3d 1064, 1084 (9th Cir. 2006) (internal citations omitted).

78. Canon 5B(1)(d)(i)’s pledges and promises clause is not adequately defined

because judicial candidates such as Wolfson who wish to engage in constitutionally protected speech by announcing their views on disputed political and legal issues believe that the clause prevents them from making such statements. For this reason, the pledges and promises clause chills speech and is a vague, unconstitutional regulation of protected political speech and association under the First and Fourteenth Amendments.

79. A law or regulation “is overbroad if it does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech.” *Klein v. San Diego County*, 463 F.3d 1029, 1038 (9th Cir. 2006) (internal citations omitted).

80. The pledges and promises clause sweeps constitutionally protected announcements of personal views on disputed legal and political issues within the sphere of prohibited speech under the Canon, and thus is an overbroad, unconstitutional regulation of protected political speech under the First and Fourteenth Amendments. *White*, 536 U.S. at 788.

COUNT II

CANON 5B(1)(d)(i)’S PLEDGES AND PROMISES CLAUSE IS UNCONSTITUTIONAL AS APPLIED TO WOLFSON.

81. Wolfson realleges the preceding paragraphs.

82. Canon 5B(1)(d)(i)’s pledges and promises clause provides that a judge or judicial candidate shall not “with respect to cases, controversies, or issues that are likely

to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”

83. The pledges and promises clause was formally interpreted by JEAC in Advisory Opinion 06-05. In Advisory Opinion 06-05, JEAC considered the question: “May a judge standing for retention or election respond to a political interest group questionnaire seeking the candidate’s views on disputed political and legal issues or judicial philosophy?” Advisory Opinion 06-05, at 1. JEAC’s answer to this inquiry was: “Yes, provided the responses conform to the requirements of Canon 5B(1)(d)(i).” *Id.* The Opinion cited *White* for the proposition that a “judicial candidate may publicly discuss his or her personal opinion of an initiative measure or other political subject . . . because a candidate may express views on any disputed issue.” *Id.* at 2. The Opinion went on to caution that “It is important to note, however, that Canon 5B(1)(d)(i) states: “[A] candidate . . . shall not: . . . with respect to cases, controversies, or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.”” *Id.* The opinion further noted that “[a]lthough restrictions on judges’ public discourse were substantially reduced by *White*, that case was limited to campaign speech” *Id.*

84. The pledges and promises clause was also formally interpreted by JEAC in Advisory Opinion 08-01. In Advisory Opinion 08-01, JEAC considered the question: “May a judicial candidate publicly announce his or her views on a ‘number of disputed

legal and political issues?” See Advisory Opinion 08-01 at 1. JEAC responded:

“Although a similar issue was addressed in Advisory Opinion 06-05, this question appears to be broader in scope than the inquiry made in that opinion. The answer, however, remains the same.” *Id.* at 2.

85. Wolfson would like to announce his views on disputed legal and political issues such as abortion and same-sex marriage, and would like to answer questions from voters regarding his views on disputed legal and political issues both in the 2008 judicial election and in future judicial elections.

86. Wolfson does not wish to pledge or promise certain results in particular cases or classes of cases. Announcing his views on such issues would neither cause Wolfson to be biased for or against any party nor affect his ability to be open-minded with regard to any legal issue.

87. Wolfson believes that the pledges and promises clause prohibits him from announcing his views on disputed legal and political issues such as abortion and same-sex marriage, and from answering questions from voters regarding his views on disputed legal and political issues.

88. The pledges and promises clause as applied to Wolfson sweeps judicial candidates’ protected speech into the sphere of speech prohibited by the Arizona Code of Judicial Conduct and is thus not narrowly tailored to serve a compelling state interest, in direct violation of *White*.

COUNT III

CANON 3E(1)(e)'S COMMITS CLAUSE IS FACIALLY UNCONSTITUTIONAL.

89. Wolfson realleges the preceding paragraphs.

90. Canon 3E(1)(e)'s commits clause provides that a judge must disqualify himself or herself when “the judge, while a judge or candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to: (i) an issue in the proceedings; or (ii) the controversy in the proceedings.”

91. The official Commentary to the Arizona Code of Judicial Conduct provides that “disqualification or other remedial action may be required of any judge in cases that involve an issue about which the judge previously announced his or her views even if such action is otherwise appropriate under the code. Therefore, judges should take this into consideration before announcing their views on disputed political or legal issues.”

92. JEAC Advisory Opinions 06-05 and 08-01 also provide that: “Should a candidate choose to make public statements about issues that later come before the court, the candidate may be required to disqualify himself or herself from cases involving those issues.” Advisory Opinion 06-05, at 2; Advisory Opinion 08-01, at 3.

93. Judicial candidates have the constitutional right to announce their views on disputed legal and political issues. *White*, 536 U.S. at 788.

94. The commits clause is a content-based restriction on political speech, and,

as such, is subject to strict scrutiny. *Berger*, 512 F.3d at 589 n.8. Because it is not narrowly tailored to further any compelling government interests, the commits clause is unconstitutional.

95. A law or regulation “may be unconstitutionally vague for two reasons. First, the regulation may fail to give persons of ordinary intelligence adequate notice of the conduct proscribed; second, it may permit or authorize arbitrary and discriminatory enforcement.” *G.K. Ltd. Travel*, 436 F.3d at 1084 (internal citations omitted).

96. Canon 3E(1)(e)’s commits clause is not adequately defined because judicial candidates such as Wolfson who wish to engage in constitutionally protected speech by announcing their views on disputed political and legal issues believe that the commits clause requires them to recuse themselves if they make such statements. For this reason, Canon 3E(1)(e) chills speech and is a vague, unconstitutional regulation of protected political speech and association under the First and Fourteenth Amendments.

97. A law or regulation “is overbroad if it does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech.” *Klein*, 463 F.3d at 1038 (internal citations omitted).

98. Canon 3E(1)(e) sweeps constitutionally protected announcements of personal views on disputed legal and political issues within the sphere of prohibited speech under the Canon, and is thus not narrowly tailored but is an overbroad,

unconstitutional regulation of protected political speech under the First and Fourteenth Amendments. *White*, 536 U.S. at 788.

COUNT IV

CANONS 3E(1)(e)'S COMMITS CLAUSE IS UNCONSTITUTIONAL AS APPLIED TO WOLFSON.

99. Wolfson realleges the preceding paragraphs.

100. Canon 3E(1)(e)'s commits clause provides that a judge must disqualify himself or herself when “the judge, while a judge or candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to: (i) an issue in the proceedings; or (ii) the controversy in the proceedings.”

101. The official Commentary to the Arizona Code of Judicial Conduct provides that “disqualification or other remedial action may be required of any judge in cases that involve an issue about which the judge previously announced his or her views even if such action is otherwise appropriate under the code. Therefore, judges should take this into consideration before announcing their views on disputed political or legal issues.”

102. JEAC Advisory Opinions 06-05 and 08-01 also provide that: “Should a candidate choose to make public statements about issues that later come before the court, the candidate may be required to disqualify himself or herself from cases involving those issues.” Advisory Opinion 06-05, at 2; Advisory Opinion 08-01, at 3.

103. Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788.

104. The commits clause, as applied to Wolfson, has the effect of chilling speech because judicial candidates such as Wolfson have refrained from announcing their views on disputed legal and political issues for fear they must later recuse themselves from proceedings relating to such issues.

105. Wolfson would like to announce his views on disputed legal and political issues such as abortion and same-sex marriage, and would like to answer questions from voters regarding his views on disputed legal and political issues both in the 2008 judicial election and in future judicial elections. Wolfson does not wish to pledge or promise certain results in particular cases or classes of cases. Announcing his views on such issues would neither cause Wolfson to be biased for or against any party nor affect his ability to be open-minded with regard to any legal issue.

106. Wolfson believes that the commits clause prohibits him from announcing his views on disputed legal and political issues such as abortion and same-sex marriage, and from answering questions from voters regarding his views on disputed legal and political issues.

107. Canon 3E(1)(e) sweeps constitutionally protected announcements of personal views on disputed legal and political issues within the sphere of prohibited speech under the Canon, and is thus not narrowly tailored but is an unconstitutional regulation of protected political speech under the First and Fourteenth Amendments. *White*, 536 U.S. at 788.

COUNT V

CANON 5A(1)(b)'S POLITICAL ACTIVITIES CLAUSE IS FACIALLY UNCONSTITUTIONAL.

108. Wolfson realleges the preceding paragraphs.

109. Canon 5A(1)(b)'s political activities clause provides that a judge or judicial candidate shall not “make speeches for a political organization or candidate or publicly endorse a candidate for public office.”

110. “Political organization” is defined in the Code as “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.”

111. The political activities clause was formally interpreted by JEAC in Advisory Opinion 96-09. Advisory Opinion 96-09 involved the question “is it appropriate for a judge to appear in a television advertisement endorsing a ballot proposition the judge was involved in drafting?” Advisory Opinion 09-09, at 1. After citing several provisions of the Canons, including the political activities clause, JEAC concluded that this was prohibited, stating: “the code does not permit a judge to act as a spokesperson and advocate for others.” *Id.* at 3.

112. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 96-08. In the course of that opinion, JEAC stated, with reference to the political activities clause, that:

Judges may not participate in campaigns for or against political candidates,

even those who take positions affecting the administration of justice. Canon 5A(1) of the Code of Judicial Conduct prohibits judges from publicly endorsing a candidate, making speeches for a political organization or candidate, or actively taking part in any political campaign other than their own election.

Advisory Opinion 09-09, at 3.

113. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 06-05. In Opinion 06-05, JEAC stated that:

Outside the realm of campaign conduct . . . a judge’s political activity is governed by Canon 5A, which prohibits a judge from “mak[ing] speeches for a political organization or candidate” and “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office.” Canon 5A(1)(b), (d) . . . Although restrictions on judges’ public discourse were substantially reduced by *White*, that case was limited to campaign speech”

Id. at 2.

114. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 08-01. In the course of that opinion, JEAC stated, with reference to the political activities clause, that judicial candidates “may not endorse other candidates.” Advisory Opinion 08-01, at 1. The Opinion also states that “it is difficult to see how endorsing or promoting a candidate for another elective office would inform the electorate of the endorsing candidate’s qualifications for judicial office.” *Id.* at 2.

115. Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788.

116. The political activities clause is a content-based restriction on political

speech, and, as such, is subject to strict scrutiny. *Berger*, 512 F.3d at 589 n.8. Because it is not narrowly tailored to further any compelling government interests, the political activities clause is unconstitutional.

117. A law or regulation “is overbroad if it does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech.” *Klein*, 463 F.3d at 1038 (internal citations omitted).

118. The political activities clause of Canon 5A(1)(b) sweeps constitutionally protected announcements of personal views on disputed legal and political issues within the sphere of prohibited speech under this Canon, and is thus not narrowly tailored but is an overbroad, unconstitutional regulation of protected political speech under the First and Fourteenth Amendments.

119. Further, the political activities clause sweeps all endorsements, regardless of context, into the sphere of speech prohibited by the Arizona Code of Judicial Conduct, and is thus not narrowly tailored to serve a compelling interest but instead constitutes an unconstitutionally overbroad application of the rules governing judicial political campaign speech and association, in violation of the First and Fourteenth Amendments. *See Republican Party v. White*, 416 F.3d 738 (8th Cir. 2005).

COUNT VI

CANON 5A(1)(b)'S POLITICAL ACTIVITIES CLAUSE IS UNCONSTITUTIONAL AS APPLIED TO WOFLSON.

120. Wolfson realleges the preceding paragraphs.

121. Canon 5A(1)(b)'s political activities clause provides that a judge or judicial candidate shall not “make speeches for a political organization or candidate or publicly endorse a candidate for public office.”

122. “Political organization” is defined in the Code as “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.”

123. The political activities clause was formally interpreted by JEAC in Advisory Opinion 96-09. Advisory Opinion 96-09 involved the question “is it appropriate for a judge to appear in a television advertisement endorsing a ballot proposition the judge was involved in drafting?” *See Advisory Opinion 96-09* attached as Exhibit 6. After citing several provisions of the Canons, including the political activities clause, JEAC concluded that this was prohibited, stating: “the code does not permit a judge to act as a spokesperson and advocate for others.” *Id.* at 3.

124. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 96-08. In the course of that opinion, JEAC stated, with reference to the political activities clause, that:

Judges may not participate in campaigns for or against political candidates,

even those who take positions affecting the administration of justice. Canon 5A(1) of the Code of Judicial Conduct prohibits judges from publicly endorsing a candidate, making speeches for a political organization or candidate, or actively taking part in any political campaign other than their own election.

See Advisory Opinion 96-08 attached as Exhibit 5.

125. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 06-05. In Opinion 06-05, JEAC stated that:

Outside the realm of campaign conduct . . . a judge’s political activity is governed by Canon 5A, which prohibits a judge from “mak[ing] speeches for a political organization or candidate” and “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office.” Canon 5A(1)(b), (d) . . . Although restrictions on judges’ public discourse were substantially reduced by *White*, that case was limited to campaign speech”

Id. at 2.

126. The political activities clause was also formally interpreted by JEAC in Advisory Opinion 08-01. In the course of that opinion, JEAC stated, with reference to the political activities clause, that judicial candidates “may not endorse other candidates.” Advisory Opinion 08-01, at 1. The Opinion also states that “it is difficult to see how endorsing or promoting a candidate for another elective office would inform the electorate of the endorsing candidate’s qualifications for judicial office.” *Id.* at 2.

127. Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788.

128. Wolfson would like to endorse various political officials during the 2008

judicial elections and in future judicial elections. In making endorsements, Wolfson does not intend to pledge or promise any certain result in any particular case or class or type of cases. Nor would making endorsements cause Wolfson to be biased for or against any party or affect his open-mindedness in any particular case or class or type of cases.

129. Wolfson believes that the political activities clause as applied to him prohibits him from endorsing candidates for political office.

130. The political activities clause as applied to Wolfson sweeps all endorsements, regardless of context, into the sphere of speech prohibited by the Arizona Code of Judicial Conduct, and is thus not narrowly tailored to serve a compelling interest but instead constitutes an unconstitutionally overbroad applications of the rules governing judicial political campaign speech and association. As a consequence, the political activities clause as applied to Wolfson constitutes an unconstitutional regulation of protected political speech and association, violation of the First and Fourteenth Amendments. *White*, 416 F.3d at 766.

COUNT VII

CANON 5A(1)(d)'S CAMPAIGNING PROHIBITION IS FACIALLY UNCONSTITUTIONAL.

131. Wolfson realleges the preceding paragraphs.

132. Canon 5A(1)(d)'s campaigning prohibition provides that a judicial candidate cannot “actively take part in any political campaign other than his or her own election, reelection or retention in office.”

133. The campaigning prohibition was formally interpreted by JEAC in Advisory Opinion 06-05. In Opinion 06-05, JEAC stated that:

Outside the realm of campaign conduct . . . a judge’s political activity is governed by Canon 5A, which prohibits a judge from “mak[ing] speeches for a political organization or candidate” and “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office.” Canon 5A(1)(b), (d) . . . Although restrictions on judges’ public discourse were substantially reduced by *White*, that case was limited to campaign speech”

Id. at 2.

134. The campaigning prohibition was also formally interpreted by JEAC in Advisory Opinion 08-01. In the course of that opinion, JEAC stated, with reference to the campaigning prohibition, that judicial candidates “may not endorse other candidates.” Advisory Opinion 08-01, at 1. The Opinion also states that “it is difficult to see how endorsing or promoting a candidate for another elective office would inform the electorate of the endorsing candidate’s qualifications for judicial office.” *Id.* at 2.

135. Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788.

136. The campaigning prohibition is a content-based restriction on political speech, and, as such, is subject to strict scrutiny. *Berger*, 512 F.3d at 589 n.8. Because it is not narrowly tailored to further any compelling government interests, the campaigning prohibition is unconstitutional.

137. A law or regulation “may be unconstitutionally vague for two reasons. First,

the regulation may fail to give persons of ordinary intelligence adequate notice of the conduct proscribed; second, it may permit or authorize arbitrary and discriminatory enforcement.” *G.K. Ltd. Travel*, 436 F.3d at 1084 (internal citations omitted).

138. Canon 5A(1)(d)’s campaigning prohibition is not adequately defined because it is unclear whether the prohibition extends to state ballot initiatives. Canon 5A(1)(d) chills speech and is thus a vague, unconstitutional regulation of protected political speech and association under the First and Fourteenth Amendments.

139. A law or regulation “is overbroad if it does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech.” *Klein*, 463 F.3d at 1038 (internal citations omitted).

140. The campaigning prohibition sweeps constitutionally protected endorsements within the sphere of prohibited speech under the Canon, and, thus, is not narrowly tailored but is an overbroad, unconstitutional regulation of protected political speech under the First and Fourteenth Amendments. *White*, 536 U.S. at 788.

COUNT VIII

CANON 5A(1)(d)’S CAMPAIGNING PROHIBITION IS UNCONSTITUTIONAL AS APPLIED TO WOLFSON.

141. Wolfson realleges the preceding paragraphs.

142. Canon 5A(1)(d)’s campaigning prohibition provides that a judicial candidate cannot “actively take part in any political campaign other than his or her own

election, reelection or retention in office.”

143. The campaigning prohibition was formally interpreted by JEAC in Advisory Opinion 06-05. In Opinion 06-05, JEAC stated that:

Outside the realm of campaign conduct . . . a judge’s political activity is governed by Canon 5A, which prohibits a judge from “mak[ing] speeches for a political organization or candidate” and “actively tak[ing] part in any political campaign other than his or her own election, reelection or retention in office.” Canon 5A(1)(b), (d) . . . Although restrictions on judges’ public discourse were substantially reduced by *White*, that case was limited to campaign speech”

Id. at 2.

144. The campaigning prohibition was also formally interpreted by JEAC in Advisory Opinion 08-01. In the course of that opinion, JEAC stated, with reference to the campaigning prohibition, that judicial candidates “may not endorse other candidates.” Advisory Opinion 08-01, at 1. The Opinion also states that “it is difficult to see how endorsing or promoting a candidate for another elective office would inform the electorate of the endorsing candidate’s qualifications for judicial office.” *Id.* at 2.

145. Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788.

146. Wolfson would like to endorse other candidates for political office, and support their election campaigns during the 2008 judicial elections and in future judicial elections. In making endorsements, Wolfson does not intend to pledge or promise any certain result in any particular case or class or type of cases. Nor would making

endorsements cause Wolfson to be biased for or against any party or affect his open-mindedness in any particular case or class or type of cases.

147. Wolfson believes that the campaigning prohibition as applied to him prohibits him from endorsing candidates for political office.

148. The campaigning prohibition as applied to Wolfson sweeps all endorsements, regardless of context, into the sphere of speech prohibited by the Arizona Code of Judicial Conduct, and is thus not narrowly tailored to serve a compelling interest but instead constitutes an unconstitutionally application of the rules governing judicial political campaign speech and association. As a consequence, the campaigning prohibition as applied to Wolfson constitutes an unconstitutional regulation of protected political speech and association, violation of the First and Fourteenth Amendments. *White*, 416 F.3d at 766.

COUNT IX

CANON 5A(1)(c) AND 5B(2)'S SOLICITATION CLAUSES ARE FACIALLY UNCONSTITUTIONAL.

149. Wolfson realleges the preceding paragraphs.

150. The solicitation clause of Canon 5A(1)(c) provides that a judicial candidate shall not “solicit funds for or pay an assessment to a political organization or candidate.”

151. “Political organization” is defined in the Code as “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.” Wolfson’s campaign committee therefore qualifies as a

political organization under the canons.

152. The solicitation clause of Canon 5B(2) provides that “[a]ll candidates should refrain from personally soliciting campaign contributions.”

153. The solicitation clauses were formally interpreted by JEAC in Advisory Opinion 08-01. In Advisory Opinion 08-01, JEAC considered the question: “May a judicial candidate personally solicit and receive campaigning contributions?” Advisory Opinion 08-01, at 4. In answering this question, JEAC stated: “Canon 5B(2) specifically prohibits a judicial candidate from ‘personally soliciting campaign contributions’ and directs candidates to ‘refer potential contributors to the candidate’s campaign committee.’ The canon is clear on its face and no further explication or discussion is needed.” Advisory Opinion 08-01, at 3.

154. Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788.

155. The solicitation clauses are content-based restrictions on political speech, and, as such, are subject to strict scrutiny. *Berger*, 512 F.3d at 589 n.8. Because they are not narrowly tailored to further any compelling government interests, the solicitation clauses are unconstitutional.

156. A law or regulation “is overbroad if it does not aim specifically at evils within the allowable area of State control but, on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of

speech.” *Klein*, 463 F.3d at 1038 (internal citations omitted).

157. The solicitation clauses sweep constitutionally protected speech within their scope, and are not narrowly tailored but are overbroad, unconstitutional regulations of protected political speech under the First and Fourteenth Amendments. *White*, 416 F.3d at 766; *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002).

COUNT X

CANON 5A(1)(c) AND 5B(2)’S SOLICITATION CLAUSES ARE UNCONSTITUTIONAL AS APPLIED TO WOLFSON.

158. Wolfson realleges the preceding paragraphs.

159. The solicitation clause of Canon 5A(1)(c) provides that a judicial candidate shall not “solicit funds for or pay an assessment to a political organization or candidate.”

160. “Political organization” is defined in the Code as “a political party or other group, the principal purpose of which is to further the election or appointment of candidates to public office.” Wolfson’s campaign committee therefore qualifies as a political organization under the canons.

161. The solicitation clause of Canon 5B(2) provides that “[a]ll candidates should refrain from personally soliciting campaign contributions.”

162. The solicitation clauses were formally interpreted by JEAC in Advisory Opinion 08-01. In Advisory Opinion 08-01, JEAC considered the question: “May a judicial candidate personally solicit and receive campaigning contributions?” Advisory Opinion 08-01, at 4. In answering this question, JEAC stated: “Canon 5B(2) specifically

prohibits a judicial candidate from ‘personally soliciting campaign contributions’ and directs candidates to ‘refer potential contributors to the candidate’s campaign committee.’ The canon is clear on its face and no further explication or discussion is needed.” Advisory Opinion 08-01, at 3.

163. Wolfson wants to make personal phone calls and sign letters seeking contributions to his campaign in the 2008 judicial election and in future judicial elections. In making personal solicitations, Wolfson does not intend to pledge or promise any certain result in any particular case or class or type of cases. Nor would making personal solicitations cause Wolfson to be biased for or against any party or affect his open-mindedness in any particular case or class or type of cases.

164. Wolfson believes that the solicitation clauses as applied to him prohibit him from making phone calls and signing letters to specific individuals and the general population requesting contributions. As a consequence, the solicitation clauses as applied to Wolfson constitute unconstitutional regulations of protected political speech and association, in violation of the First and Fourteenth Amendments. *White*, 416 F.3d at 766; *Weaver*, 309 F.3d at 1322.

Prayer for Relief

165. Wolfson realleges the preceding paragraphs.

WHEREFORE, Wolfsons request this Court to:

(1) Declare that Arizona Code of Judicial Conduct Canon 5B(1)(d)(i) is a

content-based restriction on political speech, and is unconstitutionally overbroad, vague, and not narrowly tailored to further a compelling state interest in violation of the First and Fourteenth Amendments to the United States Constitution;

(2) Declare Arizona Code of Judicial Conduct Canon 5B(1)(d)(i) unconstitutional as applied to Wolfson in violation of free speech and freedom of association rights under the First and Fourteenth Amendments to the United States Constitution;

(3) Declare that Arizona Code of Judicial Conduct Canon 3E(1)(e) is a content-based restriction on political speech, and is unconstitutionally overbroad, vague, and not narrowly tailored to further a compelling state interest in violation of the First and Fourteenth Amendments to the United States Constitution;

(4) Declare Arizona Code of Judicial Conduct Canons 3E(1)(e) unconstitutional as applied to Wolfson in violation of free speech and freedom of association rights under the First and Fourteenth Amendments to the United States Constitution;

(5) Declare that Arizona Code of Judicial Conduct Canon 5A(1)(b) is a content-based restriction on political speech, and is unconstitutionally overbroad, and not narrowly tailored to further a compelling state interest in violation of the First and Fourteenth Amendments to the United States Constitution;

(6) Declare Arizona Code of Judicial Conduct Canon 5A(1)(b) unconstitutional

as applied to Wolfson in violation of free speech and freedom of association rights under the First and Fourteenth Amendments to the United States Constitution;

(7) Declare that Arizona Code of Judicial Conduct Canon 5A(1)(d) is a content-based restriction on political speech, and is unconstitutionally overbroad, and not narrowly tailored to further a compelling state interest in violation of the First and Fourteenth Amendments to the United States Constitution;

(8) Declare Arizona Code of Judicial Conduct Canon 5A(1)(d) unconstitutional as applied to Wolfson on the grounds that it chills and prohibits his free speech rights under the First and Fourteenth Amendments to the United States Constitution and is not narrowly tailored in violation of his rights to engage in political speech under the First and Fourteenth Amendments to the United States Constitution;

(9) Declare that Arizona Code of Judicial Conduct Canon 5A(1)(c) is a content-based restriction on political speech, and is unconstitutionally overbroad, and not narrowly tailored to further a compelling state interest in violation of the First and Fourteenth Amendments to the United States Constitution;

(10) Declare Arizona Code of Judicial Conduct Canon 5A(1)(c) unconstitutional as applied to Wolfson in violation of free speech and freedom of association rights under the First and Fourteenth Amendments to the United States Constitution;

(11) Declare that Arizona Code of Judicial Conduct Canon 5B(2) is a content-based restriction on political speech, and is unconstitutionally overbroad, and not

narrowly tailored to further a compelling state interest in violation of the First and Fourteenth Amendments to the United States Constitution;

(12) Declare Arizona Code of Judicial Conduct Canon 5B(2) unconstitutional as applied to Wolfson in violation of free speech and freedom of association rights under the First and Fourteenth Amendments to the United States Constitution;

(13) Prohibit, by way of preliminary and permanent injunction, the Defendants, their agents, and successors from enforcing Arizona Code of Judicial Conduct Canons 3E(1)(e), 5A(1)(b), 5A(1)(c), 5A(1)(d), 5B(1)(d)(i), and from filing or considering complaints based on these provisions against judicial candidates who announce their views on disputed legal and political issues, who personally solicit funds, or who make endorsements, and all others similarly situated;

(14) Grant Plaintiff's costs and attorney's fees pursuant to 42 U.S.C. § 1988 and any other applicable authority; and

(15) Grant Plaintiff such other relief as may be just and equitable.

Dated: May 20, 2008

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Respectfully submitted,

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