

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

TORREY BAUER, DAVID CERTO, and  
INDIANA RIGHT TO LIFE, INC.,

Plaintiffs,

v.

Civil Action No. \_\_\_\_\_

RANDALL T. SHEPARD, in his official capacity) as a member of the Indiana Commission on Judicial Qualifications, STEPHEN L. WILLIAMS, in his official capacity as a member of the Indiana Commission on Judicial Qualifications, JOAN M. HURLEY, in her official capacity as member of the Indiana Commission on Judicial Qualifications, JOHN C. TRIMBLE, in his official capacity as member of the Indiana Commission on Judicial Qualifications, MARK LUBBERS, in his official capacity as member of the Indiana Commission on Judicial Qualifications, DARYL R. YOST, in his official capacity as member of the Indiana Commission on Judicial Qualifications, SHERRILL WM. COLVIN, in her official capacity as member of the Indiana Commission on Judicial Qualifications, ANTHONY M. ZAPPIA, in his official capacity as member of the Indiana Disciplinary Commission, SALLY FRANKLIN ZWEIG, in her official capacity as member of the Indiana Disciplinary Commission, DIANNE L. BINDER, in her official capacity as member of the Indiana Disciplinary Commission, CORINNE R. FINNERTY, in her official capacity as member of the Indiana Disciplinary Commission, FRED AUSTERMAN, in his official capacity as member of the Indiana Disciplinary Commission, R. ANTHONY PRATHER, in his official capacity as member of the Indiana Disciplinary Commission, J. MARK ROBINSON, in his official capacity as member of the Indiana Disciplinary Commission, ROBERT L. LEWIS, in his official capacity as member of the Indiana Disciplinary Commission, MAUREEN GRINSFELDER, in her official capacity as member of the Indiana

(VERIFIED COMPLAINT  
FOR RELIEF)

**Disciplinary Commission,** )  
**Defendants.** )

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**COMES NOW** Plaintiffs Torrey Bauer, David Certo, and Indiana Right to Life, Inc.

(“IRL”),and, for their complaint against the Defendants, state 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 3E(1) and 5A(3)(d) of the Indiana Code of Judicial Conduct.

**2.** Canon 5A(3)(d)(i) (the “pledges and promises clause”) provides that a candidate for judicial office shall not “make *pledges or promises* of conduct in office other than the faithful and impartial performance of the duties of the office.” (emphasis added). Canon 5A(3)(d)(ii) (the “commits clause”) provides that a candidate for judicial office shall not “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 . . . .” (emphases added).

**3.** Plaintiffs complain that Canon 5A(3)(d)’s pledges and promises clause and commits clause, both on their face and as applied to the Indiana Right to Life Judicial Candidate Questionnaire (“IRL Questionnaire”) and to Plaintiffs Torrey Bauer and David Certo, are unconstitutional in that they infringe upon constitutionally protected free speech and association. Specifically, the pledges and promises clause and commits clause chill judicial candidates' free speech, are unconstitutionally overbroad and vague, and cannot be constitutionally applied to the IRL Questionnaire or to Plaintiffs Bauer or Certo. The provisions also inhibit IRL from receiving judicial candidates' responses to the questions and from publishing any substantive responses for fear of exposing responsive candidates to discipline, to this degree prohibiting IRL, its members, and other interested citizens from receiving and publishing candidates' political speech and prohibiting IRL from exercising its freedom of speech.

4. Canon 3E(1) (the “recusal requirement”) requires judges to recuse themselves when a “judge's impartiality might reasonably be questioned . . . .”

5. Plaintiffs complain that Canon 3E(1)'s recusal requirement as applied to the IRL Questionnaire and to Plaintiffs Bauer and Certo is unconstitutional in that it infringes upon constitutionally protected free speech and association. Specifically, the recusal requirement chills judicial candidates' free speech and cannot be constitutionally applied to the IRL Questionnaire or to Plaintiffs Bauer or Certo. The provision also inhibits IRL from receiving judicial candidates' responses to the questions and from publishing any substantive responses for fear of exposing responsive candidates to discipline, thereby prohibiting IRL, its members, and other interested citizens from receiving and publishing candidates' political speech and prohibiting IRL from exercising its freedom of speech.

#### **Jurisdiction and Venue**

6. 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.

7. 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).

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

#### **Parties**

9. Plaintiff Torrey Bauer is an individual and resident of the State of Indiana. Torrey Bauer lives in the City of Warsaw, Indiana, in the County of Kosciusko, and is a candidate for Superior Court Judge in Kosciusko County in the 2008 elections.

10. Plaintiff David Certo is an individual and resident of the State of Indiana. David Certo lives in the City of Indianapolis, Indiana, in the County of Marion, and is a candidate for re-election as Superior Court Judge in Marion County in the 2008 elections.

11. Plaintiff IRL is a non-profit corporation incorporated in the State of Indiana. IRL is not associated with any political candidate, political party, or campaign committee. IRL headquarters are

located in the City of Evansville in the County of Vanderburgh. The Articles of Incorporation and By-Laws of IRL are attached as Exhibits 1 and 2. IRL uses judicial questionnaires to gather and publish candidates' views on legal and political issues.

**12.** The Defendants are the members of the Indiana Commission on Judicial Qualifications (“CJQ”), sued in their official capacity: Randall T. Shepard, Stephen L. Wililams, Joan M. Hurley, John C. Trimble, Mark Lubbers, Daryl R. Yost, and Sherrill Wm. Colvin. The Indiana Code § 33-38-13-14(a) provides that the commission may “institute formal proceedings against a justice or judge.”

**13.** Also as Defendants are the members of the Indiana Disciplinary Commission, sued in their official capacity: Anthony M. Zappia, Franklin Zweig, Dianne L. Binder, Corinne R. Finnerty, Fred Austerman, R. Anthony Prather, J. Mark Robinson, Robert L. Lewis, and Maureen Grinsfelder. The Indiana Rules of Professional Conduct provide disciplinary procedures for attorneys who are candidates for judicial office who fail to “comply with the applicable provisions of the Code of Judicial Conduct.” Ind. R. of Prof'l Conduct 8.2(b)(1999). Disciplinary procedures are administered by the Disciplinary Commission, Ind. S. Ct. R. 23, § 2, and the Disciplinary Commission “supervise[s] the investigation of claims of misconduct.” *Id.* at § 8(c).

### **Facts**

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

**15.** Canon 5A(3)(d)(i) (the “pledges and promises clause”) provides that a candidate for judicial office shall not “make *pledges or promises* of conduct in office other than the faithful and impartial performance of the duties of the office.” (emphasis added) Canon 5A(3)(d)(ii) (the “commits clause”) provides that a candidate for judicial office shall not “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 . . . .” (emphases added)

**16.** In 2002, the CJQ issued Preliminary Advisory Opinion #1-02 regarding the effect *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), had on Indiana's judicial canons. See *Preliminary Advisory Opinion #1-02* attached as Exhibit 3. The Memorandum stated that while the United States Supreme Court had found “announce clauses” unconstitutional, Indiana had eliminated that provision. *Id.* at 2. The CJQ further stated that the CJQ would still enforce “the rules in Canon 5 requiring candidates . . . to not make pledges and promises of conduct in office, . . . and to not make statements which commit or appear to commit the candidate with respect to cases likely to come before the court.” (citations omitted). *Id.* Specifically, the CJQ asserts that “broad statements relating to the candidate's position on disputed social and legal issues, . . . incurs the risk of violating the ‘commitment’ clause and/or the ‘promises’ clause.” *Id.* at 4.

**17.** Plaintiff IRL is a non-profit corporation incorporated in the State of Indiana. IRL gathers information and publishes questionnaires to educate its members and other citizens about candidates for public office.

**18.** In 2004, IRL brought suit against the CJQ and Disciplinary Commission, challenging the constitutionality of Canons 3E(1), 5A(3)(d)(i) and (ii). On November 14, 2006, the pledges and promises clause and commits clause were declared unconstitutional by the federal district court, and an injunction was issued preventing enforcement of those provisions by the CJQ or Disciplinary Commission. See *Indiana Right to Life v. Shepard*, 463 F. Supp. 879 (N.D. Ind. 2006). The CJQ and Disciplinary Commission appealed, and on October 26, 2007, the Seventh Circuit reversed on standing grounds. See *Indiana Right to Life v. Shepard*, 507 F.3d 545 (7th Cir. 2007).

**19.** On March 22, 2008, IRL mailed an explanatory cover letter and a 2008 “Indiana Right to Life Judicial Candidate Questionnaire” (“IRL Questionnaire”) to all judicial candidates nominated by the various parties. The letter explained that the questionnaire's deadline was April 15, 2008. See *Letter and IRL Questionnaire* attached as Exhibits 4 & 5.

**20.** IRL received thirty-five responses from judicial candidates. See *IRL Questionnaire Responses* attached as Exhibit 6 and 7. Five candidates responded by letter. One of these candidates

indicated in his letter that “I believe that responding to the survey would violate the judicial canons that are currently in place,” and that “[a]s such, I respectfully decline to respond to your survey.” *Id.* at 2. Another candidate stated that “I must decline to answer because of Judicial Commission.” *Id.* at 3. A third candidate wrote that

I have reviewed the Questionnaire and I believe that due to the limitations of the Indiana Code of Judicial Conduct, I am not able to respond to any of the questions posed. As you know, a candidate for Judicial office is prohibited from making any statements that commit or appear to commit the candidate with respect to cases, controversies, or issues that are likely to come before the Court. Notwithstanding the citation to *Republican Party of Minnesota v. White*, 122 S. Ct. 2528 (2002), I believe that taking a position on these highly sensitive and volatile issues while running for Judicial office would be, in my opinion, a violation of the Indiana Code of Judicial conduct.

*Id.* at 4.

**21.** Of the thirty-one candidates who filled out the questionnaire forms, twenty-one declined to answer some or all of the questions. Exhibit 6, at 6-57; Exhibit 7, at 2-59. For the questions these candidates declined to answer, each candidate checked a box marked “Decline” which included the following explanatory note:

By declining to answer, I assert that I would have replied to this question but for the prospect that I may be disciplined for doing so under Indiana Judicial Canon 5A(3)(d)(i) and (ii)—which provides that a judicial candidate “shall not: (i) make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office; [or] (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.” I also will not answer because doing so could subject me to mandatory recusal as a judge under Canon 3E(1), which requires “A judge [to] disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” My response would neither cause me to be biased for or against parties nor affect my ability to be open-minded with regard to any issue.

*Id.* at 4-28.

**22.** Of the twenty-one candidates who marked “Decline,” one candidate underlined the sentence the portion of the explanation that read “(ii) make statements that commit or appear to commit the candidate with respect to cases controversies, or issues that are likley to come before the court.” Exhibit 6, at 6-10. Another struck out the sentence in the explanatory note reading “My response would neither cause me to be biased for or against parties nor affect my ability to be open-minded with regard to any issue.” *Id.* at 11-15.

**23.** Ten candidates did answer each of the questions on the IRL Questionnaire. Exhibit 7, at 60-83. However, IRL will not publish these responses, for fear that doing so will subject the responding candidates to discipline under Canons 5A(3)(d)(i) and (ii), and will require these candidates to recuse themselves on cases involving issues discussed in the IRL Questionnaire.

**24.** Torrey Bauer is a candidate for Superior Court Judge in Kosciusko County, Indiana, in the 2008 elections, and intends to run for judicial office in future elections. Elections for Superior Court Judge in Kosciusko County are partisan. As a candidate for judicial office he is bound by the Canons. Bauer received a copy of the IRL Questionnaire in March of 2008. At the time Bauer received the Questionnaire, he was unaware that the district court's decision in *Indiana Right to Life v. Shepard* had been reversed on appeal. In April of 2008, Bauer returned his copy of the IRL Questionnaire to IRL, having answered all of the questions on the questionnaire. Exhibit 7, at 60-64.

**25.** In answering the questions on the IRL Questionnaire, Bauer did not pledge or promise certain results in particular cases or classes or types of cases, but rather merely announced his views on disputed legal and political issues. Answering the questions on the IRL Questionnaire and announcing his views on disputed legal and political issues has not caused Bauer to be biased for or against any party and would not prevent him from remaining open-minded on any issue raised in the IRL Questionnaire.

**26.** However, because he has answered the questions on the IRL Questionnaire, Bauer believes that he may have violated the pledges and promises clause and commits clause of Canon 5A(3)(d), and is potentially subject to discipline by the CJQ or Disciplinary Commission.

**27.** Further, because he has answered the questions on the IRL Questionnaire, Bauer may be required to recuse himself in cases involving those issues by Canon 3E(1), and may be subject to discipline if he does not recuse in such a case.

**28.** David Certo is currently a Superior Court Judge in Marion County, Indiana. He is a candidate for re-election to this office in the 2008 elections, and intends to run for judicial office in future elections. Elections for Superior Court Judge in Marion County are partisan. As a candidate for judicial office he is bound by the Canons. Judge Certo received a copy of the IRL Questionnaire in March of 2008.

Judge Certo would have answered all of the questions on the IRL Questionnaire, but did not answer any of the questions because he believed he was prohibited from doing so by Canon 5A(3)(d)(i) and (ii).

**29.** Judge Certo does not wish to pledge or promise certain results in particular cases or classes or types of cases, but merely wishes to announce his views on disputed legal and political issues. Answering the questions on the IRL Questionnaire and announcing his views on disputed legal and political issues would not cause Judge Certo to be biased for or against any party and would not prevent him from remaining open-minded on any issue raised in the IRL Questionnaire.

**30.** Further, Judge Certo did not answer the questions on the IRL Questionnaire because, if he did so, he may be required to recuse himself in cases involving those issues by Canon 3E(1), and may be subject to discipline if he does not recuse in such a case.

**31.** IRL wishes to publish responses to the IRL Questionnaire of judicial candidates, including Judge Certo, before the May 6, 2008, primary election and November 4, 2008, general election. In addition, IRL wishes to publish the responses of judicial candidates to identical questionnaires to be sent to judicial candidates in future elections.

**32.** However, the pledges and promises clause and commits clause, both on their face and as applied to the IRL Questionnaire chill judicial candidates' exercise of their free speech rights and free association. Judicial candidates, such as Judge Certo and Candidate Bauer, are unable to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day. *Buckley v. Valeo*, 424 U.S. 1, 52-53 (1976). Judicial candidates cannot tell the public their views on disputed political and legal issues. *White*, 536 U.S. at 788. By prohibiting judicial candidates from exercising their freedom of speech on legal and political issues of concern to the voters, the CJQ and the Disciplinary Commission require judicial candidates to withhold essential information from the voters as they seek to educate themselves and participate fully in democracy.

**33.** As a result of Canons 3E(1), 5A(3)(d)(i) and (ii), although IRL would like to publish and distribute the answers to the IRL Questionnaire, IRL and its members are now unable to fully exercise their

free speech and association rights to receive and publish political information, since the judicial candidates must refuse to answer the questions in the IRL Questionnaire. Further, if IRL publishes the three substantive responses it received, it fears it will subject those judicial candidates to discipline.

34. Immediate and irreparable injury, loss, and damage has occurred and will continue to occur as a result of the pledges and promises clause and commits clause, chilling Plaintiffs' free speech and free association rights.

35. Plaintiffs have no adequate remedy at law.

### COUNT I

**CANON 5A(3)(d)(i)'S PLEDGES AND PROMISES CLAUSE AND CANON 5A(3)(d)(ii)'S COMMITS CLAUSE ARE ON THEIR FACE UNCONSTITUTIONALLY VAGUE AND OVERBROAD, PROHIBITING AND CHILLING JUDICIAL CANDIDATES' PROTECTED POLITICAL SPEECH AND IMPINGING ON PLAINTIFFS' FREEDOM OF SPEECH AND ASSOCIATION.**

36. Plaintiffs reallege the preceding paragraphs.

37. Canon 5A(3)(d) provides that a candidate for judicial office “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 . . . .” (emphases added).

38. The pledges and promises clause and commits clause are content based restrictions on political speech, and, as such, are subject to strict scrutiny. *Entertainment Software Association v. Blagojevich*, 469 F.3d 641 (7th Cir. 2006). Because they are not narrowly tailored to further any compelling government interests, the pledges and promises clause and commits clause are unconstitutional.

39. A law is vague if it does not have “a 'reasonable degree of clarity' such that anyone of ordinary intelligence can grasp its import.” *Weinberg v. City of Chicago*, 310 F.3d 1029, 1042 (7th Cir. 2002) (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984)).

40. Canons 5A(3)(d)(i) and (ii) does not adequately define its pledges and promises clause or the commits clause since judicial candidates who wish to engage in constitutionally protected speech by announcing their views on disputed political and legal issues believe that these clauses prevent them from making such announcements. *See IRL Questionnaire Responses* attached at Exhibit 6 and 7. Likewise, IRL believes that judicial candidates who have answered the questionnaire will be subject to discipline for announcing their views and has refrained from publishing their responses as a consequence. As such, Canons 5A(3)(d)(i) and (ii) chills speech and is a vague, unconstitutional regulation of protected political speech under the First and Fourteenth Amendments.

41. A law is overbroad “where ‘it prohibits a substantial amount of protected expression.’” *United States v. Johnson*, 376 F.3d 689, 694 (7th Cir. 2004) (quoting *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002)).

42. Canons 5A(3)(d)(i) and (ii) sweeps constitutionally protected announcements of personal views on disputed legal and political issues within the sphere of prohibited speech under the Canon, deterring judicial candidates from announcing their views and deterring IRL from publishing any answers judicial candidates have given announcing their views. Thus, Canons 5A(3)(d)(i) and (ii) are overbroad, unconstitutional regulations of protected political speech under the First and Fourteenth Amendments. *See White*, 536 U.S. at 788.

## COUNT II

### **CANON 5A(3)(d)(i)’S PLEDGES AND PROMISES CLAUSE AND CANON 5A(3)(d)(ii)’S COMMITS CLAUSE AS APPLIED TO THE IRL QUESTIONNAIRE UNCONSTITUTIONALLY PROHIBIT AND CHILL JUDICIAL CANDIDATES’ PROTECTED POLITICAL SPEECH AND PLAINTIFFS’ FREEDOM OF SPEECH AND ASSOCIATION.**

43. Plaintiffs reallege the preceding paragraphs.

44. Canon 5A(3) states: “A candidate for judicial office: . . . (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 . . . .” (emphases added).

45. The IRL Questionnaire asks judicial candidates to announce their views on disputed political and legal issues. *See IRL Questionnaire* attached at Exhibit 5. Specifically, the IRL Questionnaire ask judicial candidates to announce their views on nine disputed legal and political issues. *See id.* attached at Exhibit 5. Such announcements are protected political speech under *White*, 536 U.S. at 788.

46. Canons 5A(3)(d)(i) and (ii)'s “pledges and promises” clause and “commits” clause as applied to the IRL Questionnaire sweep judicial candidates' announced personal views on disputed legal and political issues into the sphere of speech prohibited by the Indiana Judicial Canons and, thus, constitute an unconstitutionally overbroad application of the rules governing judicial political campaign speech and association, *see Buckley v. Illinois Judicial Inquiry Bd.*, 997 F.2d 224, 231 (7th Cir. 1993), and are in direct violation of *White*, 536 U.S. at 788.

47. Further, judicial candidates, including Judge Certo, believe that Canon 5A(3)(d)(i) and (ii) as applied to the IRL Questionnaire prohibits them from responding to the IRL Questionnaire. *See IRL Questionnaire Responses* attached at Exhibits 6 and 7. Likewise, IRL believes that judicial candidates that answered the IRL Questionnaire may be exposed to disciplinary proceedings for violation of Canon 5A(3)(d)(i) and (ii), even though the IRL Questionnaire only asks judicial candidates to announce their views on disputed legal and political issues. As consequence, Canon 5A(3)(d)(i) and (ii)'s pledges and promises clause and commits clause are vague in application, constituting an unconstitutional regulation of protected political speech and association, in violation of the First and Fourteenth Amendments of the United States Constitution.

### COUNT III

#### **CANON 3E(1)'S RECUSAL REQUIREMENT IS UNCONSTITUTIONAL AS APPLIED TO THE IRL CANDIDATE QUESTIONNAIRE**

**48.** Plaintiffs reallege the preceding paragraphs.

**49.** Canon 3E(1) (the “recusal requirement”) requires judges to recuse themselves when a “judge's impartiality might reasonably be questioned . . . .”

**50.** Canon 3E(1) as applied to the IRL Questionnaire has the effect of chilling speech, as judicial candidates, including Judge Certo, have refrained from responding to the IRL Questionnaire and from announcing their views on disputed legal and political issues raised in a judicial campaign for fear they must later recuse themselves from proceedings relating to such issues. For candidates who answered the questionnaire, IRL has not published those responses because it believes that doing so will force those judicial candidates to recuse themselves for announcing their views on disputed legal and political issues. Such an effect is in violation of the First and Fourteenth Amendment rights of freedom of speech.

**51.** Judicial candidates have the constitutional right to announce their views on legal and political issues. *White*, 536 U.S. at 788. Consequently, Canon 3E(1) as applied to the IRL Questionnaire imposes an unconstitutional penalty on judicial candidates who exercise their constitutional right to announce their views on disputed political and legal issues and chills IRL's speech.

**52.** The recusal requirement is a content based restriction on political speech, and, as such, is subject to strict scrutiny. *Blagojevich*, 469 F.3d at 641. Because they are not narrowly tailored to further any compelling government interests, the pledges and promises clause and commits clause are unconstitutional.

**53.** Further, Canon 3E(1) as applied to the IRL Questionnaire is overbroad in its scope, covering not only appropriate situations in which a judge must recuse him or herself, such as a bias concerning a party or a party's lawyer before him, but applying also to protected

speech, in violation of the First and Fourteenth Amendment rights to free speech and association.

**54.** Because of the overbreadth of Canon 3E(1) as applied to the IRL Questionnaire, IRL is denied its right to receive and publish information regarding judicial candidates' personal views on contested legal and political issues, in violation of its First and Fourteenth Amendment rights to free speech and association. IRL is also denied its right to free speech as it fears that publishing the answers furnished by two judicial candidates would require those judicial candidates to recuse themselves and subject them to discipline if they do not so recuse.

**55.** Plaintiffs also complain that Canon 3E(1) as applied to the IRL Questionnaire is unconstitutionally vague. A law is vague if it does not have “a 'reasonable degree of clarity' such that anyone of ordinary intelligence can grasp its import.” *Weinberg v. City of Chicago*, 310 F.3d 1029, 1042 (7th Cir. 2002) (citing *Roberts v. United States Jaycees*, 468 U.S. 609, 629 (1984)).

**56.** Canon 3(E)(1) as applied to the 2004 Candidate Questionnaire does not adequately state when a judge's impartiality might “reasonably be questioned” as judicial candidates who wish to engage in constitutionally protected speech by announcing their views on disputed political and legal issues believe that this clause prevents them from making such announcements. Similarly, IRL believes that judicial candidates who have engaged in constitutionally protected speech by announcing their views on disputed legal and political issues would be subject to discipline if that speech was published and the candidate as judge refused to recuse and therefore will not publish those answers. As such, Canon 3E(1) as applied to the IRL Questionnaire chills speech and is a vague, unconstitutional regulation of protected political speech and association under the First and Fourteenth Amendments to the United States Constitution.

#### **PRAYER FOR RELIEF**

**57.** Plaintiff realleges the previous paragraphs.

**WHEREFORE**, Plaintiffs request this Court to:

(1) Declare Canons 5A(3)(d)(i) and (ii) unconstitutionally vague and overbroad, and in violation of Plaintiffs' right of free speech and association under the First and Fourteenth Amendments to the United States constitution;

(2) Declare that Canons 5A(3)(d)(i) and (ii) unconstitutionally chill and prohibit Plaintiffs' rights to receive and publish speech under the First and Fourteenth Amendments to the United States Constitution;

(3) Declare Canons 5A(3)(d)(i) and (ii) unconstitutional as applied to the IRL Questionnaire on the grounds that it chills and prohibits Plaintiffs' free speech rights under the First and Fourteenth Amendments to the United States Constitution;

(4) Declare Canon 3E(1) unconstitutional as applied to the IRL Questionnaire on the grounds that it chills and prohibits Plaintiffs' free speech rights under the First and Fourteenth Amendments to the United States Constitution;

(5) Prohibit, by way of permanent injunction, the Defendants, their agents, and successors, from enforcing Canon 5A(3)(d)(i) and (ii), and from filing or considering complaints based on Canons 5A(3)(d)(i) and (ii) against judicial candidates who respond to the IRL Questionnaire and all others similarly situated;

(6) Prohibit, by way of permanent injunction, the Defendants, their agents, and successors, from enforcing Canon 3E(1) against judicial candidates who respond to the IRL Questionnaire and all others similarly situated;

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

(8) Grant Plaintiffs such other relief as may be just and equitable.

Dated: April 18, 2008

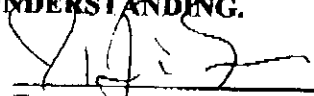
Respectfully submitted,

/s/Anita Y. Woudenberg  
James Bopp, Jr., Ind. #2838-84  
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*Lead Counsel for Plaintiff*  
*\*Pro Hac Vice Application to be filed*

**VERIFICATION**

**I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS MADE IN THE FOREGOING VERIFIED COMPLAINT CONCERNING ME ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.**

Dated: April 17, 2008

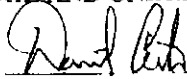


Torrey Bauer  
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VERIFICATION

I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS MADE IN THE FOREGOING VERIFIED COMPLAINT CONCERNING ME ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated: April 17, 2008



David Certo  
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dcerto@und.com

## VERIFICATION

I SWEAR (OR AFFIRM) UNDER THE PENALTIES FOR PERJURY UNDER THE LAWS OF THE UNITED STATES THAT THE FOREGOING STATEMENTS MADE IN THE FOREGOING VERIFIED COMPLAINT CONCERNING ME AND MY ORGANIZATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND UNDERSTANDING.

Dated: April 6, 2008



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