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SUPREME COURT OF WISCONSIN

No. 00-07

In the matter of the Amendment of Supreme Court Rules: SCR Chapter 60, Code of Judicial Conduct - Campaigns, Elections, Political Activity

FILED

OCT 29, 2004

Cornelia G. Clark
Clerk of Supreme Court
Madison, WI

On November 7, 2000, the court held a public hearing on the final report filed on June 4, 1999, by the court's Commission on Judicial Elections and Ethics on its examination of judicial campaign ethics and judges' participation in partisan politics. The Commission's report proposed the retention or revision of specified provisions of the Code of Judicial Conduct, SCR chapter 60. The court considered those proposals at its open administrative conferences on November 16, 2000, December 13, 2000, January 10, 2001, October 29, 2001, October 30, 2001, November 28, 2001, November 10, 2003, January 28, 2004, and approved the final form of the rule on April 21, 2004. Additional discussion was held at the court's open administrative conference on October 27, 2004.

IT IS ORDERED that, effective January 1, 2005, the Supreme Court Rules are amended as follows:

SCR 60.01 (7m) and (8m) are created to read:

60.01 (7m) "Impartiality" means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

(8m) "Judge-elect" means a person who has been elected or appointed to judicial office but has not yet taken office.

SCR 60.04 (4) (f) is created to read:

60.04 (4) (f) The judge, while a judge or a candidate for judicial office, has made a public statement that commits, or appears to commit, the judge with respect to any of the following:

1. An issue in the proceeding.

2. The controversy in the proceeding.

SCR 60.06 (1g) is created to read:

60.06 (1g) Terminology. In this section, "judge" has the meaning given in SCR 60.01 (8), except that in subs. (1r), (2), and (4), "judge" does not include a court commissioner or a municipal judge who did not devote 40 or more hours to the performance of his or her official duties in the preceding calendar year.

SCR 60.06 (1) is renumbered SCR 60.06 (1m) and amended to read:

60.06 (1m) Candidate for Office. A judge shall not become a candidate for a federal, state, or local nonjudicial elective office without first resigning his or her judgeship. A judge's

eligibility to serve may be governed by other rules or constitutional provisions.

COMMENT

Article VII, section 10 (1) of the Wisconsin Constitution provides, "No justice of the supreme court or judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected." See Wagner v. Milwaukee County Election Comm'n, 2003 WI 103, 263 Wis. 2d 709, 666 N.W.2d 816.

SCR 60.06 (2) is repealed and recreated to read:

SCR 60.06 (2) Party membership and activities.

(a) Individuals who seek election or appointment to the judiciary may have aligned themselves with a particular political party and may have engaged in partisan political activities. Wisconsin adheres to the concept of a nonpartisan judiciary. A candidate for judicial office shall not appeal to partisanship and shall avoid partisan activity in the spirit of a nonpartisan judiciary.

(b) No judge or candidate for judicial office or judge-elect may do any of the following:

1. Be a member of any political party.

2. Participate in the affairs, caucuses, promotions, platforms, endorsements, conventions, or activities of a political party or of a candidate for partisan office.

3. Make or solicit financial or other contributions in support of a political party's causes or candidates.

4. Publicly endorse or speak on behalf of its candidates or platforms.

(c) A partisan political office holder who is seeking election or appointment to judicial office or who is a judge-

elect may continue to engage in partisan political activities required by his or her present position.

(d) 1. Paragraph (b) does not prohibit a judge, candidate for judicial office or judge-elect from attending, as a member of the public, a public event sponsored by a political party or candidate for partisan office, or by the campaign committee for such a candidate.

2. If attendance at an event described in subd. 1. requires the purchase of a ticket or otherwise requires the payment of money, the amount paid by the judge, candidate for judicial office, or judge-elect shall not exceed an amount necessary to defray the sponsor's cost of the event reasonably allocable to the judge's, candidate's, or judge-elect's attendance.

(e) Nothing in this subsection shall be deemed to prohibit a judge, judge-elect, or candidate for judicial office, whether standing for election or seeking an appointment, from appearing at partisan political gatherings to promote his or her own candidacy.

COMMENT

The rule prohibits political party membership and activities by judges, nonincumbent candidates for judicial office, and judges-elect. When one becomes a candidate for judicial office is determined by the terms of SCR 60.01 (2) which defines "candidate" as "a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions." The rule prohibits judicial candidates and judges-elect as well as judges from making or soliciting contributions to the party or its candidates and from publicly endorsing or speaking on behalf of partisan candidates or platforms. Although the rule contemplates the continuance of nonpartisanship on the part of Wisconsin judges and those

seeking judicial office, judges are not expected to lead lives of seclusion. As members of the public and as public officeholders, judges may attend public events, even those sponsored by political parties or candidates, so long as the attendance does not constitute the kind of partisan activity prohibited by this rule. The judge, judicial candidate or judge-elect is responsible for so conducting herself or himself that her or his presence at the sponsored event is not made to appear as an endorsement or other prohibited political activity. The judge, judicial candidate, or judge-elect should also exercise care that the price of his or her ticket to any such event does not include a prohibited political contribution.

SCR 60.06 (3) is repealed and recreated to read:

60.06 (3) Campaign Conduct and Rhetoric.

(a) **In General.** While holding the office of judge or while a candidate for judicial office or a judge-elect, every judge, candidate for judicial office, or judge-elect should maintain, in campaign conduct, the dignity appropriate to judicial office and the integrity and independence of the judiciary. A judge, candidate for judicial office, or judge-elect should not manifest bias or prejudice inappropriate to the judicial office. Every judge, candidate for judicial office, or judge-elect should always bear in mind the need for scrupulous adherence to the rules of fair play while engaged in a campaign for judicial office.

COMMENT

This subsection is new. It states a rule generally applicable to judges, candidates for judicial office, and judges-elect.

(b) **Promises and commitments.** A judge, judge-elect, or candidate for judicial office shall not make or permit or authorize others to make on his or her behalf, with respect to cases, controversies, or issues that are likely to come before the court, pledges, promises, or commitments that are

inconsistent with the impartial performance of the adjudicative duties of the office.

COMMENT

This section prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court. A judge or candidate for judicial office may not, while a proceeding is pending or impending in the court to which selection is sought, make any public comment that may reasonably be viewed as committing the judge, judge-elect or candidate to a particular case outcome. As a corollary, a candidate should emphasize in any public statement the candidate's duty to uphold the law regardless of his or her personal views. This section does not prohibit a candidate from making pledges or promises respecting improvements in court administration. Nor does this section prohibit an incumbent judge from making private statements to other judges or court personnel in the performance of judicial duties. This section applies to any statement made in the process of securing judicial office, such as statements to commissions charged with judicial selection.

(c) **Misrepresentations.** A candidate for a judicial office shall not knowingly or with reckless disregard for the statement's truth or falsity misrepresent the identity, qualifications, present position, or other fact concerning the candidate or an opponent. A candidate for judicial office should not knowingly make representations that, although true, are misleading, or knowingly make statements that are likely to confuse the public with respect to the proper role of judges and lawyers in the American adversary system.

COMMENT

This subsection is new. The first paragraph is based on the August 2003 amendments to the ABA model code of conduct.

The second paragraph is aspirational. Thus, "should" is used rather than "shall." The remaining standards are mandatory and prohibit candidates from knowingly or with reckless disregard for the truth making various specific types of misrepresentations. Candidates are not responsible for misrepresentations or misleading statements made by third

parties not subject to the control of the candidate, e.g., through independent expenditures by interest groups.

SCR 60.06 (4) is repealed and recreated to read:

60.06(4) Solicitation and Acceptance of Campaign Contributions. A judge, candidate for judicial office, or judge-elect shall not personally solicit or accept campaign contributions. A candidate may, however, establish a committee to solicit and accept lawful campaign contributions. The committee is not prohibited from soliciting and accepting lawful campaign contributions from lawyers. A judge or candidate for judicial office or judge-elect may serve on the committee but should avoid direct involvement with the committee's fundraising efforts. A judge or candidate for judicial office or judge-elect may appear at his or her own fundraising events. When the committee solicits or accepts a contribution, a judge or candidate for judicial office should also be mindful of the requirements of SCR 60.03 and 60.04(4).

COMMENT

A judge should avoid having his or her name listed on another's fundraising solicitation even when the listing is accompanied with a disclaimer that the name is not listed for fundraising purposes.

Acknowledgement by a judge or candidate for judicial office of a contribution in a courtesy thank you letter is not prohibited.

SCR 60.06 (5) is created to read:

60.06 (5) Solicitation and Acceptance of Endorsements. A judge or candidate for judicial office may solicit or accept endorsements supporting his or her election or appointment personally or through his or her committee. A judge, candidate for judicial office, or his or her committee is not prohibited

from soliciting and accepting endorsements from lawyers and others. A judge or candidate for judicial office shall not knowingly personally solicit or accept endorsements from parties who have a case pending before the court to which election or appointment is sought. Nevertheless, a judge or judicial candidate may personally solicit or accept endorsements from the types of organizations that ordinarily make recommendations for selection to the office. In soliciting or accepting an endorsement, a judge or candidate for judicial office should be mindful of the requirements of SCR 60.03 and 60.04 (4).

COMMENT

This subsection is new. In light of the restrictions on campaign rhetoric under SCR 60.06 (3), the receiving of endorsements is an important method of informing the electorate of broad-based and presumably informed support for a particular candidacy. As with the solicitation and acceptance of campaign contributions, knowing solicitation and acceptance of endorsements from current litigants are prohibited. Candidates for judicial office may solicit and accept endorsements from entities that regularly endorse candidates, such as newspapers and trade organizations. Neither culling nor cross-checking of names on mailing lists or dockets is required.

SCR 60.07 is repealed and recreated to read:

60.07 Applicability. General. Subject to sub. (2), all judges shall comply with this chapter. Candidates for judicial office and judges-elect shall comply with SCR 60.06.

(2) **Part-time Judicial Service.** A judge who serves on a part-time basis, including a reserve judge, a part-time municipal judge and a part-time court commissioner, is not required to comply with the following: SCR 60.05 (3) (a), (b), (c) 1b., 2.a, and c., (4) (a) 1.b., (b) (c), (d) and (e), (5), (6), (7) and (8).

COMMENT

Candidates for judicial office and judges-elect are subject to the requirements of SCR 60.06.

IT IS FURTHER ORDERED that notice of this amendment be given by a single publication of a copy of this order in the official state newspaper and in an official publication of the State Bar of Wisconsin.

Dated at Madison, Wisconsin, this 29th of October, 2004.

BY THE COURT:

Cornelia G. Clark
Clerk of Supreme Court

SHIRLEY S. ABRAHAMSON, C.J. (concurring). The impartial and detached judge is not merely a virtuous, lofty ideal. Such a judge is the essence of due process, the keystone of our concept of justice.

Reasonable and meaningful limits on partisan political activity are important to preserve an independent and impartial judiciary. Since the founding of the state, Wisconsin judicial elections have been structured to ensure that judges remain independent, impartial, and non-partisan.

The wisdom of nonpartisan judicial elections and of separating judges and judicial candidates from partisan political parties is increasingly evident given the realities of modern partisan political campaigns, modern partisan governance, and the nature of cases that come to the courts. Political parties and the partisan executive and legislative branches of government (and members thereof) are frequent litigants. Individuals and groups take positions on cases based on (or coincidental with) substantive positions taken by partisan political parties or partisan candidates for office.

I view the limitations on partisan political activity in the Code as minor inconveniences compared to the great and compelling public interest of having judicial candidates and the

judiciary demonstrate an understanding of, and commitment to, the nonpartisan rule of law.

I similarly view SCR 60.04(6) and the comment prohibiting the use of judges' names and their offices in fundraising activities. This rule presents a minor inconvenience to judicial candidates compared to the great and compelling public interest that no person feel directly or indirectly coerced by the presence of judges to contribute funds to judicial campaigns.

My vision of the Wisconsin judiciary, adhering to long-standing Wisconsin tradition, is to keep partisan politics out of the judiciary and to keep the judiciary out of partisan politics.

For the reasons set forth I support the judicial code and comments as drafted.

DAVID T. PROSSER, J. *(dissenting).* I respectfully dissent from some of the rule changes adopted by the court. The new judicial campaign rules are permeated with unrealistic expectations, unreasonable prohibitions, and inexplicable bias. They are not narrowly tailored to serve compelling and viable policy objectives, see Republican Party of Minnesota v. White, 536 U.S. 765, 774-75 (2002), and thus are likely to be found unconstitutional.

In Wisconsin the people elect judicial officers——from supreme court justices to municipal court judges. Many of these judicial officers first obtain their positions by appointment but eventually must run in an election. I do not dispute that a code of judicial conduct may address some issues that arise in a person's quest to become a judge as well as a judge's effort to retain the judgeship. I also acknowledge that a judicial code may regulate some political activity of a judge that is unrelated to the judge's own election campaign. However, a judicial code may not regulate the political activity of a person who is not a judge unless that activity is directly related to the person's judicial campaign. Regulation of a non-judge's political speech is a restriction of the non-judge's constitutional rights of speech and association. The proposition that the constitutional rights of non-judges may be

curtailed by a judicial rule is extraordinary, and any such rule must be very narrowly drawn.

The former SCR 60.06 purportedly regulated "inappropriate political activity" by judges and judicial candidates. However, the only prohibition on a "candidate" for judicial office who was not already a judge was a prohibition on personally soliciting or accepting campaign contributions. SCR 60.06(4).[1] In truth, the former rule was silly if applied literally because it prohibited a candidate from personally accepting a check from the candidate's own spouse. It also prohibited a judge or other person from personally accepting a contribution from a best friend or co-worker whose contribution was spontaneous and completely altruistic. In addition, the rule was inconsistent because it allowed judges and candidates to establish fundraising committees but pretended that the fundraisers thus recruited were not also being invited to give money. Former SCR 60.06(4) was so unrealistic that inadvertent or unavoidable violations were commonplace. SCR 60.06(4) has now been revised, but it retains the same flaws as the former rule. The principal merit of the rule in its various forms is that it is directly linked to an important policy objective in judicial campaigns,

[1] (4) Solicitation or acceptance of campaign contributions. A judge or candidate for judicial office shall not personally solicit or accept campaign contributions.

that is, to limit any candidate's direct involvement in campaign fundraising so as to avoid compromises that might affect a judge or future judge's ability to be impartial in future cases.

Former SCR 60.06(2) applied only to judges. It provided that a judge "shall not be a member of any political party or participate in its affairs, caucuses, promotions, platforms, endorsements, conventions or activities." This stringent rule reinforced the principle that the Wisconsin judiciary is nonpartisan and that partisan considerations should not affect the determination of judicial decisions.[2]

The court now extends this rule to persons who have not yet become judges . . . and may never become judges. SCR 60.06(2)(b). In short, it applies to persons who are still private citizens. The new rule insists that a person who merely seeks election or appointment to a judgeship must surrender membership in a political party and give up any other partisan activity, even though that partisan activity is unrelated to the judgeship. In my view, this new rule is overbroad and an

[2] See also current SCR 60.03(2) and SCR 60.04(1)(b):

> 60.03(2) A judge may not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. . . .
>
> 60.04(1)(b) A judge shall be faithful to the law and maintain professional competence in it. A judge may not be swayed by partisan interests, public clamor or fear of criticism.

obvious violation of the First Amendment freedoms of association and speech. It cannot survive a strict scrutiny analysis to which it would be subjected under White.

Moreover, the infringement in new SCR 60.06(2)(b) is unnecessary. SCR 60.06(2)(a) provides that a "candidate for judicial office shall not appeal to partisanship." This new rule is designed to discourage judicial candidates from making a narrow appeal to members of one political party to gain an electoral advantage. I support this change, even though it is a restriction on pure speech, because it underscores the nonpartisan nature of our judiciary and tries to minimize the kind of pre-election activity that might undermine public confidence or lead to future recusals. Unlike SCR 60.06(2)(b), SCR 60.06(2)(a) is directly linked to judicial campaigns.

Prohibiting political activity that is not intended to promote a person's own election as a judge is going too far. Requiring a person who is not a judge to give up the right to party membership, the right to make partisan contributions, and the right to engage in political activity unrelated to the person's own election is simply too sweeping to pass constitutional muster.

The Commission on Judicial Elections and Ethics proposed a rule that contained no exceptions to these "candidate" prohibitions, so that they applied to partisan political

officeholders such as state legislators and elected district attorneys who might seek a judgeship. As a practical matter, such a rule would have required these officials to resign their positions before seeking a judicial office. The proposed rule was so plainly unworkable that this court was forced to craft SCR 60.06(2)(c), excepting such officeholders. In excepting these officeholders, however, the court permits some judicial candidates who are not judges to engage in partisan political activity while determining that other non-judge candidates may not. It is very hard to defend this disparate treatment. If the new rule actually serves "a compelling state interest," it is unfathomable why only some non-judge judicial candidates are required to follow it.

There are members of this court who believe that it is unfair to give non-judge candidates freedom to engage in some partisan political activity while prohibiting sitting judges from doing so. This concern smacks of incumbency protection. Judges should not be able to invoke all the trappings of their incumbency——e.g., campaign photographs from the bench——while depriving opponents of their constitutional right to political association. The constitutional right to freedom of association should not be so easily dismissed.

There is no pattern of incumbent judges falling to challengers on account of the challengers' partisan political

credentials. On the contrary, the public tends to re-elect judges who wage nonpartisan or bipartisan campaigns and who conduct themselves without partisanship in office. In any event, under SCR 60.06(2)(a), candidates for judicial office are not permitted to appeal to partisanship, even if they were to retain their right to political association before they become judges.

Finally, I am concerned about the apparent bias in the new rules. The new rules prohibit a candidate who is not a judge from membership in a political party, but they do not prohibit a candidate who is not a judge from membership in other organizations that advocate policy changes, have large memberships, and have substantial electoral influence. This disturbing inconsistency suggests disapproval of political parties and people who have been active in partisan politics. It is difficult to understand why a candidate's mere membership in a political party is an evil susceptible to prohibition, but membership in a powerful lobbying organization is not.

PATIENCE D. ROGGENSACK, J. *(dissenting to revisions in SCR 60.06(2))*. I write in dissent because I conclude that SCR 60.06(2) of the Code of Judicial Ethics, which prohibits some candidates for judicial office from associational activities related to political parties, does not pass muster under the First and Fourteenth Amendments[3] of the United States Constitution.

The Code of Judicial Ethics defines a candidate for judicial office as:

> a person seeking selection for or retention of a judicial office by means of election or appointment who makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, or authorizes solicitation or acceptance of contributions or support.

SCR 60.01(2). SCR 60.06(2) prohibits candidates from engaging in associational activities with political parties, if the candidate is not a partisan elected official. Accordingly, candidates who hold certain offices are not subject to the prohibition. SCR 60.06(2)(c). The Code of Judicial Ethics does not regulate other associational activities by candidates, so

[3] The First Amendment of the United States Constitution provides: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The First Amendment is made applicable to state action by the Fourteenth Amendment. Sauk County v. Gumz, 2003 WI App 165, ¶8, 266 Wis. 2d 758, 669 N.W.2d 509.

that candidates who participate in other politically active organizations may continue to do so.

The First Amendment guarantees political association, as well as political expression. Buckley v. Valeo, 424 U.S. 1, 15 (1976). As the United States Supreme Court has explained,

> [T]he First and Fourteenth Amendments guarantee freedom to associate with others for the common advancement of political beliefs and ideas, a freedom that encompasses (t)he right to associate with the political party of one's choice.

Id. (quoted citations omitted). The right of association is a fundamental right; therefore it cannot be restricted unless the regulation passes strict scrutiny. Republican Party of Minnesota v. White, 536 U.S. 765, 774-75 (2002). Strict scrutiny requires that the regulation be narrowly tailored to serve a compelling state interest. See Monroe County Dep't of Human Servs. v. Kelli B., 2004 WI 48, ¶26, 271 Wis. 2d 51, 678 N.W.2d 831. The interest of maintaining a nonpartisan judiciary is asserted as the compelling state interest that requires these restrictions.

In my view, SCR 60.06(2) does not pass strict scrutiny. First, I am not persuaded that the stated interest is a "compelling" interest. Other states have judiciaries that actually seek office on party tickets, e.g., Ohio and Texas. While I personally believe that a nonpartisan judiciary is the better choice, I am not convinced that a "better choice" is

sufficient reason to support a compelling state interest. In addition, I can see nothing unique to membership in a political party that would not be present in the myriad of other organizations that are overtly partisan in nature, e.g., People For the American Way, Judicial Watch, the Sierra Club or Democracy Now.

Furthermore, the regulation is under-inclusive because it excepts all who seek judicial office while they hold a partisan elected position. SCR 60.06(2)(c). It has been held that under-inclusiveness reduces the credibility of the purpose that the rule is asserted to promote. White, 536 U.S. at 780. In my view, it does so here.

Finally, the regulation does not withstand strict scrutiny because it is over-inclusive. That is, it is not narrowly tailored to meet the rule's stated purpose. It is over-inclusive, unnecessarily circumscribing protected associations, because few who apply for judicial appointment or run for judicial office are chosen to become judges. Therefore, forcing them to withdraw from all political activity is not necessary to promoting the stated purpose of the rule, maintaining a nonpartisan judiciary. Because I conclude that SCR 60.06(2) does not withstand strict scrutiny and violates the First Amendment's right to freely associate, I dissent from the

court's decision to make it a part of the Wisconsin Code of Judicial Ethics.

For the foregoing reasons, I dissent.

I am authorized to state that Justices DAVID T. PROSSER and LOUIS B. BUTLER, JR. join this dissent.

LOUIS B. BUTLER, JR., J. *(concurring in part, dissenting in part).* I agree with most of the proposed rule changes to SCR Chapter 60, Code of Judicial Conduct – Campaigns, Elections, Political Activity. I join Justice Roggensack's dissent regarding the revisions in SCR 60.06(2). I write separately because of my concerns about the revisions to SCR 60.06(4), and how that section might be applied to judicial elections.

The revision to 60.06(4) would not allow a judge, judge-elect or judicial candidate to personally solicit or accept campaign contributions. Instead, a candidate could establish a committee to solicit and accept lawful contributions. While a judge or candidate could serve on the committee and appear at his or her own campaign events, that judge or candidate should avoid direct involvement with the committee's fundraising efforts. Just what does that mean? Should the judge or candidate avoid selecting a location for a "reception" to be held where donations would be accepted? Should he or she be involved in deciding who would be invited to a reception? Should the candidate refrain from identifying friends to the committee that the committee might want to contact to solicit? Should the candidate be able to approve or veto fundraising efforts proposed by the committee? The revision to the rule raises questions about a judicial candidate's level of participation that are not raised by the current rule.

Of more concern is the Comment to the revised rule, which states that a judge should avoid having his or her name listed on another's fundraising solicitation even when the listing is accompanied with a disclaimer that the name is not listed for fundraising purposes. In light of the proposed revision to SCR 60.06(5), which would not prohibit a judge from endorsing another judicial candidate, who would be in violation if a judge's name was listed on an invitation to a reception that included a disclaimer, the candidate or the judge endorsing the candidate? Indeed, is there a violation at all, as the Comment suggests?

As Justice Roggensack points out in her dissent, the First Amendment guarantees political association as well as political expression. Buckley v. Valeo, 424 U.S. 1, 15 (1976). Supreme Court Rule 60.06(5) does not preclude judicial endorsements, nor should it. If the Comment correctly interprets 60.06(4), however, then judicial candidates would be faced with the dilemma of either not using judicial endorsements at all (a rule that some might prefer), or with effectively doubling the cost of any campaign budget for mailings, as one would no longer be able to include two separate documents in one envelope (one that included a list of supporters on an invitation to a "reception," and the other that included a return envelope that would allow an individual to support the candidate in a number of ways,

including a donation to the campaign). Such an interpretation unnecessarily limits the political expression of the candidate seeking to show a strong level of support for his or her candidacy. It also chills, unnecessarily, the political expression of the judge or judicial candidate seeking to support another judicial candidate. Why would a judge want to run the risk that someone else's campaign committee might inadvertently get that judge in trouble by using his or her name in an inappropriate manner? Taking for granted that there is a compelling state interest in prohibiting a judge or a judicial candidate from personally soliciting or accepting campaign contributions, I am not convinced that the revision to SCR 60.06(4), as interpreted by the Comment to the rule, is narrowly tailored to serve that interest.

Our state has not yet passed campaign finance reform laws. Judges and judicial candidates are precluded from making or permitting others to make, with respect to cases, controversies, or issues that are likely to come to the court, pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. New SCR 60.06(3). Judges and judicial candidates are not only precluded from appealing to partisanship in order to get elected, a rule that I agree is narrowly tailored to meet a compelling state interest (New 60.06(2)(a)), they are also

precluded from even becoming members of a political party or actively engaging in any partisan activities.[4] Most judicial campaigns currently consist of getting out strong lists of supporters in order to scare off competition and in order to show how strong a candidate may be. If the revised code limits or eliminates a candidate's ability to get his or her message out and show the level of support that exists, then I fear that judicial elections will degenerate to the types of personal attacks that have increased in recent years. Such attacks necessarily undermine the integrity of the judiciary. As long as we choose to elect judges in this state, and until some measure of campaign finance reform is passed by the legislature, candidates have to be able to effectively campaign. The old Rule effectively allowed judicial candidates to campaign. I fear that the new rule, as interpreted by the Comment to SCR 60.06(4), does not.

There is an old adage that aptly applies here: "If it ain't broke, don't fix it." Because SCR 60.06(2)(b) and 60.06(4) are not narrowly tailored to meet a compelling state interest, and

[4] I am reminded of the 1984 presidential campaign, which included closed political primaries. If Wisconsin decided to go back to the closed primary system, would judges and judicial candidates be deprived of the right to vote in the primary because of SCR 60.06(2)(b), since one would have to declare political party membership in order to vote at all in the primary?

because these rules interfere with and chill a judicial candidate's freedoms of expression and association, I respectfully dissent from the adoption of these provisions. I join with the majority in the adoption of the remainder of the revisions to SCR Chapter 60.

I am authorized to state that Justice DAVID T. PROSSER joins this dissenting in part, concurring in part opinion.