

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
COVINGTON DIVISION – CIVIL**

**JOSEPH FISCHER** : **Case No. 2:22-cv-00121**  
**and** :  
**FISCHER FOR SUPREME COURT** :  
**COMMITTEE** :  
**and** :  
**ROBERT A. WINTER, JR.** :  
**Plaintiffs** :  
**v.** :  
**Hon. KAREN A. THOMAS,** :  
**in her official capacity** :  
**as Member, Judicial Conduct Commission:**  
**and** :  
**Hon. R. MICHAEL SULLIVAN** :  
**in his official capacity** :  
**as Member, Judicial Conduct** :  
**Commission** :  
**and** :  
**Hon. EDDY COLEMAN** :  
**in his official capacity** :  
**as Member, Judicial Conduct** :  
**Commission** :  
**and** :  
**Hon. JEFF S. TAYLOR** :  
**in his official capacity** :  
**as Member, Judicial Conduct** :  
**Commission** :  
**and** :

**Hon. JOE E. ELLIS**  
**in his official capacity** :  
**as Member, Judicial Conduct**  
**Commission** :

**and** :

**Hon. JANET LIVELY McCAULEY.** :  
**in her official capacity** :  
**as Member, Judicial Conduct** :  
**Commission** :

**and** :

**JIMMY SHAFFER,** :  
**in her official capacity** :  
**as Executive Secretary, Judicial** :  
**Conduct Commission** :  
**Defendants** :

**PLAINTIFF’S AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND**  
**INJUNCTIVE RELIEF**

Plaintiffs, by and through counsel, for their Complaint, allege as follows:

**INTRODUCTION**

1. It is déjà vu all over again. This case is a response to the latest iteration by the Kentucky Judicial Conduct Commission to suppress protected First Amendment speech in the context of a judicial campaign, and in particular the threatened deprivation of Plaintiffs’ First Amendment rights by the official capacity Defendants named herein. This action raises a challenge to Rules 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13), in both facial and as-applied challenges.

**PARTIES**

2. At all relevant times herein, Plaintiff, Joseph Fischer, is a resident of Campbell County, Kentucky, and was and is a candidate for Kentucky Supreme Court, 6<sup>th</sup> District for the November, 2022 election, covering counties in Northern Kentucky. Plaintiff Fischer for Kentucky Supreme Court Committee is his campaign committee. Plaintiff Robert A. Winter, Jr. is a resident of Kenton County, Kentucky, and was and is a candidate for the Kentucky Court of Appeals, 6<sup>th</sup> District, 2<sup>nd</sup> Division, for the November, 2022 election, also covering counties in Northern Kentucky.
3. Defendants Hon. Karen Thomas, R. Michael Sullivan, Hon. Eddy Coleman, Hon. Jeff S. Taylor, Hon. Joe E. Ellis, and Hon. Janet Lively McCauley are members of the Judicial Conduct Commission (“JCC”), who are all sued in their official capacities. Defendant Jimmy Shaffer is the Executive Secretary of the JCC. The JCC is responsible for, among other things, enforcement of the Kentucky Code of Judicial Conduct, and associated rules, as well as rules for the processing of complaints. The JCC accepts complaints from the public. For the avoidance of doubt, the JCC does actively enforce and threatens to enforce, the Kentucky Code of Judicial Conduct, including the rules challenged herein.

**JURISDICTION AND VENUE**

4. Subject matter jurisdiction over the claims and causes of action asserted by Plaintiffs in this case is conferred on this Court pursuant to 42 U.S.C. §1983, 42 U.S.C. § 1988, 28 U.S.C. §1331, 28 U.S.C. §1343, 28 U.S.C. §§ 2201 and 2202, and other applicable law.
5. Venue in this district is proper pursuant to 28 U.S.C. §1391 and other applicable law.
6. Venue in this division is appropriate, since all of the deprivations of Plaintiffs’ Constitutional Rights occurred and were directed to Campbell and/or Kenton Counties, a Defendant resides

in this District and Division, and future deprivations of Plaintiffs' Constitutional Rights are threatened and likely to occur in this division.

**FACTS COMMON TO ALL CLAIMS**

7. In 2022, Mr. Fischer was and is a candidate for Kentucky Supreme Court, for the 6<sup>th</sup> Supreme Court District, which covers a number of Northern Kentucky counties. Similarly, Mr. Winter was and is a candidate for Kentucky Court of Appeals, for the 6<sup>th</sup> Supreme Court District, Second Division, which covers the same counties.
8. Mr. Fischer is a lifelong Republican, who has served as a Republican member of the Kentucky House of Representatives for more than two decades. His affiliation with, support of, and alignment with, the Republican party is longstanding and well-known. Mr. Winter is likewise a lifelong Republican, whose affiliation with, support of, and alignment with, the Republican party is longstanding and well-known.
9. The Sixth Kentucky Supreme Court District is largely Republican and it is becoming more and more Republican over time.
10. Mr. Fischer's opponent, the incumbent Supreme Court Justice, Justice Michelle Keller, is a lifelong Democrat, was appointed by Democratic Governor Beshear, but who, since her appointment, has changed her registration to independent. Similarly, Mr. Winter's opponent, the incumbent Kentucky Court of Appeals Judge Suzanne Cetrulo, is a lifelong Democrat, was appointed by Democratic Governor Beshear, but has changed her registration to independent.
11. Most of Justice Keller's donors are registered Democrats, including prominent Democrats, such as former Governor Steve Beshear and his wife, Jane.<sup>1</sup> Most of Judge Cetrulo's donors

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<sup>1</sup> See <http://kref.ky.gov> (last visited 10/3/2022).

are registered Democrats, including prominent Democrats, and she has campaigned at events with Democratic office holders and candidates including the current Democratic Lt.

Governor, Jacqueline Coleman:



12. Almost all of the people endorsing Justice Keller are registered Democrats.<sup>2</sup> The same is true for Judge Cetrulo.

13. Earlier this year, Mr. Fischer inquired of the Judicial Ethics Opinion for certain advice on his campaign activities, including his affiliation with the Republican Party, and that body issued an opinion, JE 130.<sup>3</sup> Among other things, that opinion answered the following question in the negative: “May a judicial campaign committee’s advertising include symbols closely associated with a political party in its advertising (i.e., democratic – donkey & republican – elephant)? No.” Allegedly doing so would “render hollow” the non-partisan nature of the judicial elections.

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<sup>2</sup> <https://www.kellerforkentucky.com/endorsements.html> (last visited 10/3/2022).

<sup>3</sup> [https://kycourts.gov/Courts/Judicial-Ethics/Judicial%20Ethics%20Opinions/JE\\_130.pdf](https://kycourts.gov/Courts/Judicial-Ethics/Judicial%20Ethics%20Opinions/JE_130.pdf) (last visited 10/3/2022).

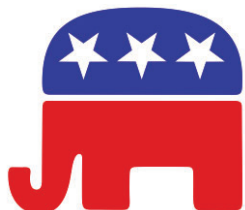
14. Mr. Fischer and his campaign have not been shy about his Republican party affiliation, and his campaign materials generally denote: “Joe Fischer for Kentucky Supreme Court --- the Conservative Republican.” Mr. Winter has similarly advertised that he is “conservative” in his campaign signs, and has told voters that he is a “a Republican.” Mr. Fischer, Mr. Winter, and their respective campaigns have never, however, expressly indicated that he is the nominee of the Republican party. And for the avoidance of all doubt, all of Mr. Winter and Mr. Fischer, and their campaign’s speech have been truthful and accurate. At times, Mr. Fischer has utilized the following image, to include an elephant, in his campaign materials:



15. In light of JE Opinion JE 130, Mr. Fischer used a general elephant instead of the Republican elephant.<sup>4</sup> But for that opinion, and the JCC’s general threat of enforcement, he would have used the Republican Elephant symbol (and still would/will do so but for that threat of enforcement).

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<sup>4</sup> See:



16. Mr. Fischer and Mr. Winter have both obtained, and are now using in campaign materials, endorsements from both Kentucky Right to Life and Northern Kentucky Right to Life. They both have long involvement with both organizations and Mr. Fischer, as a sitting state legislator, sponsored certain pro-life legislation.
17. Those right to life organizations have taken issue with Mr. Fischer's opponent, Justice Keller, in part for her approval of abortions for out-of-state minors without their parents' knowledge or consent, while she sat on the Kentucky Court of Appeals.<sup>5</sup> And, similarly, in the views of those organizations, Judge Cetrulo has issued a pro-abortion decision within months of being appointed to the Kentucky Court of Appeals by Governor Andy Beshear.
18. For the avoidance of all doubt, Right to Life groups, including Kentucky Right to Life and Northern Kentucky Right to Life, in addition to their endorsements, are actively supporting both Mr. Fischer and Mr. Winter's campaigns, including through word-of-mouth endorsements. Equally, right to life supporters have been actively engaged in a sign campaign for candidates that they support, putting up both the candidate's sign and their own "Choose Life" signs with it. An example of this is:

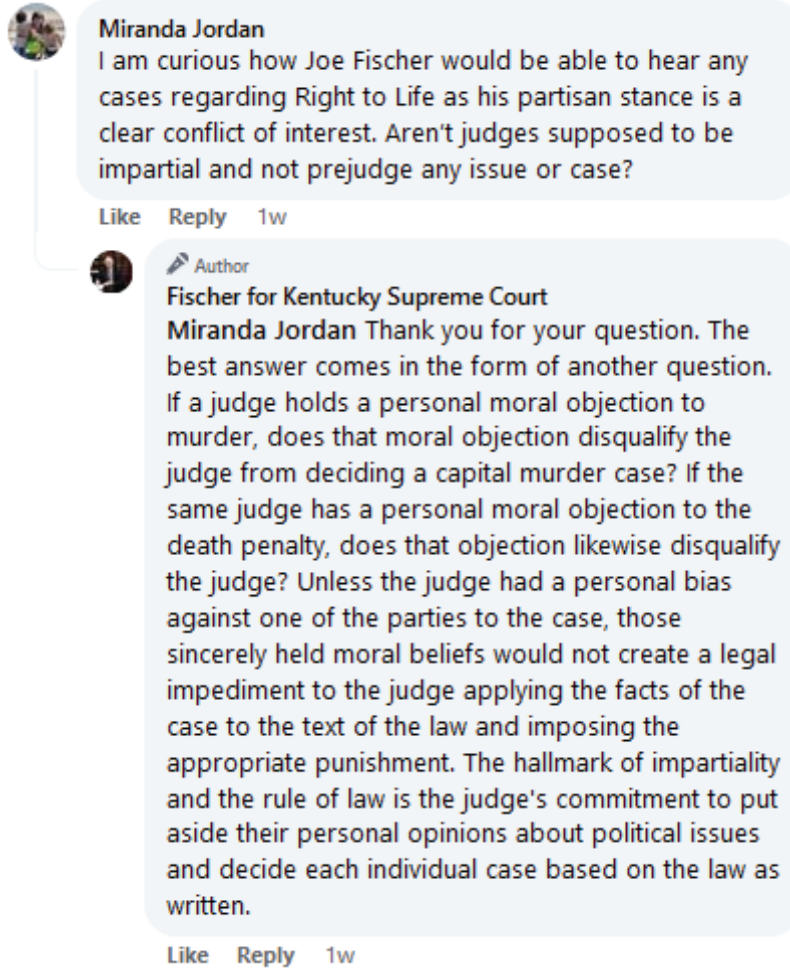
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<sup>5</sup> <https://www.cincinnati.com/story/news/politics/2014/10/27/abortion-issue-divides-supreme-court-candidates-gop/18000733/> (last visited 10/3/2022).



19. Insofar as these “Choose Life” signs are concerned, Mr. Fischer, Mr. Winter, and their respective campaign teams have not erected these “Choose Life” signs, or put them up; supporters of third party Right to Life groups have. That said, Mr. Fischer and Mr. Winter have not been shy about his endorsements from Kentucky Right to Life or Northern Kentucky Right to Life and Mr. Fischer shared a photo of one of them on his campaign Facebook page.
20. For the avoidance of all doubt, Mr. Fischer and Mr. Winter have never, in the course of their respective campaigns, made a promise or pledge to rule a particular way regarding any particular party, particular case, or particular controversy.
21. In fact, when an individual questioned Mr. Fischer on his Facebook about his past and present affiliations with Right to Life groups, this was his response (and is consistent with how he, and for that matter Mr. Winter, have each generally addressed questions about particular cases or parties):





22. Mr. Fischer has, however, made general statements about issues, has made broad pledges about his commitment to defending the rule of law and ensuring Kentucky's judicial system effectively serves all citizens of the Commonwealth, has indicated that he will not engage in judicial activism, and has underscored his understanding of the importance of the separation of powers in that it is the duty and responsibility of the legislature to make the laws, the executive to enforce the laws, and the judiciary to interpret the laws. Similarly, Mr. Winter has equally made similar statements about his commitment to the rule of law, not ever engaging in judicial activism, and his commitment to the separation of powers.

23. Mr. Fischer and Mr. Winter have both received the endorsement of various county Republican Party Executive Committees (and partisan elected officials) from within the 6<sup>th</sup>

Supreme Court District, and in the context of their campaigns have appeared before various community and political groups to speak about their platforms and qualifications, including attending certain Republican Party events on their own behalf,<sup>6</sup> but neither have used or sought the endorsements of the Republican Party or partisan elected officials in either of their campaigns, or any of their campaign materials, or in any of their public statements. Mr. Fischer has made general references to his having served two decades in the Kentucky House of Representatives, and it is common knowledge that he was a Republican member of that body. Mr. Winter's affiliation with the Republican party is equally well known.

24. On September 27, 2022, the Kentucky JCC penned a letter to Mr. Fischer. A true and accurate copy of that letter is attached as **Exhibit A**. In it, the JCC observed that it received complaints, it indicated that under SCR 4.170(1) it found that "following consideration and discussion" of the complaints "there is a basis for investigation of a matter" within its jurisdiction, and it directed Mr. Fischer to respond. In other words, that someone lodged a complaint regarding conduct that the JCC determined is a probable violation of the Kentucky Code of Judicial Conduct.

25. More specifically, the JCC's September 27, 2022 letter, made an allegation of a Rule 4.1(A)(6) violation, which provides "a judge or judicial candidate shall not... (6) publicly identify himself or herself as a nominee of a political organization."

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<sup>6</sup> In the same vein, his opponent, Justice Michelle Keller, has appeared before similar groups. Justice Keller, for instance, has given speeches to Emerge Kentucky, a Democratic Women's candidate incubation organization, and she has likewise appeared at events sponsored by both the Democratic and Republican parties. And Judge Cetrulo has attended Democratic events, as the photos of her with the Lt. Governor above depict.

26. The JCC thusly interprets Mr. Fischer’s usage of signage that indicates that he is “the conservative Republican” and his use of a generic elephant in his campaign materials, to violate that Rule 4.1(A)(6).
27. Further, the JCC’s September 27, 2022 letter, likewise made an allegation of a Rule 4.1(A)(7) violation, which provides “a judge or judicial candidate shall not... (7) seek, accept, or use endorsements from a political organization;”
28. The JCC thusly interprets Mr. Fischer’s usage of signage that indicates that he is “the conservative Republican” and his failure to disavow<sup>7</sup> endorsements he has received (but not sought or himself used) from Republican executive committees to be violative of Rule 4.1(A)(7).
29. Further, the JCC’s September 27, 2022 letter, made an allegation of a Rule 4.1(A)(13) violation, which provides “a judge or judicial candidate shall not... (13) in connection with 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 judicial office.”
30. The JCC thusly interprets Mr. Fischer’s usage of signage that indicates that he is “the conservative Republican,” his affiliation with Kentucky Right to Life and Northern Kentucky Right to Life and sharing the fact of their endorsements, and third parties putting up “Choose Life” signs with his campaign signs to be violative of that Rule 4.1(A)(13).
31. On October 3, 2022, the undersigned Counsel sent correspondence to the Kentucky Judicial Conduct Commission. A true and accurate copy of that letter is attached as **Exhibit B**.
- Among other things, that correspondence outlined, generally, the speech Mr. Fischer engaged

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<sup>7</sup> This is particularly curious in light of the commentary to the Rule in question that indicates that a candidate does not have to disavow an endorsement to avoid the “accepting” provision.

in, in Paragraphs 8 through 23 herein. It referenced the probable cause finding by the JCC, as to violations it was alleging in light of that conduct, and asked the JCC to outline any additional speech Mr. Fischer engaged in, that the JCC found as a violation, by 4:00 p.m. on October 4, 2022. The JCC did not respond, confirming that Paragraphs 8 through 23 herein constituted the basis of the complaints and action by the JCC.

32. Similarly, on September 27, 2022, the Kentucky JCC penned a letter to Mr. Winter. A true and accurate copy of that letter is attached as **Exhibit C**. In it, the JCC observed that it received complaints, it indicated that under SCR 4.170(1) it found that “following consideration and discussion” of the complaints “there is a basis for investigation of a matter” within its jurisdiction, and it directed Mr. Winter to respond. In other words, that someone lodged a complaint regarding conduct that the JCC determined is a probable violation of the Kentucky Code of Judicial Conduct.

33. Further, the JCC’s September 27, 2022 letter, likewise made an allegation of a Rule 4.1(A)(7) violation, which provides “a judge or judicial candidate shall not... (7) seek, accept, or use endorsements from a political organization;”

34. The JCC thusly interprets Mr. Winter’s usage of signage that indicates that he is “conservative” and his public statements that he is “a Republican,” and his failure to disavow<sup>8</sup> endorsements he has received (but not sought or himself used) from Republican executive committees to be violative of Rule 4.1(A)(7).

35. Further, the JCC’s September 27, 2022 letter, made an allegation of a Rule 4.1(A)(13) violation, which provides “a judge or judicial candidate shall not... (13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges,

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<sup>8</sup> This is particularly curious in light of the commentary to the Rule in question that indicates that a candidate does not have to disavow an endorsement to avoid the “accepting” provision.

promises, or commitments that are inconsistent with the impartial\* performance of the adjudicative duties of judicial office.”

36. The JCC thusly interprets Mr. Winter’s usage of signage that indicates that he is “conservative,” his public speeches that he is “a Republican,” his affiliation with Kentucky Right to Life and Northern Kentucky Right to Life, and third parties putting up “Choose Life” signs with his campaign signs to be violative of that Rule 4.1(A)(13).
37. On October 6, 2022, Counsel for Mr. Winter sent correspondence to the Kentucky Judicial Conduct Commission. A true and accurate copy of that letter is attached as **Exhibit D**. Among other things, that correspondence outlined, generally, the speech Mr. Winter engaged in, in Paragraphs 8 through 23 herein. It referenced the probable cause finding by the JCC, as to violations it was alleging in light of that conduct, and asked the JCC to outline any additional speech Mr. Winter engaged in, that the JCC found as a violation, by 5:00 p.m. on October 7, 2022. The JCC has not responded to date, confirming that Paragraphs 8 through 23 herein constituted the basis of the complaints and action by the JCC.
38. At present, Mr. Fischer and Mr. Winter face a threat of imminent enforcement action by the JCC for this First Amendment protected campaign related speech. Further, if either are not successful in their present campaigns, they intend to run for judicial office again, and again engage in the same speech.
39. However, at the present time, no formal action has been commenced by the JCC, and no formal charges have been filed against Mr. Fischer or Mr. Winter under S.C.R. 4.180.
40. Thus, no action is “pending” in state court, since no formal charges have been filed.
41. Unless enjoined, all Defendants herein will continue to enforce Rules 4.1(A)(6), 4.1(A)(7), and 4.1(A)(13) in a manner that is in contravention of Plaintiffs’ First Amendment Rights.

42. In light of the holdings in *Republic Party of Minnesota v. White*, 536 U.S. 765 (2002), *Carey v. Wolnitzek*, 614 F.3d 189, 203-204 (6th Cir. 2010), and *Winter v. Wolntizek*, 834 F. 3d 681 (6<sup>th</sup> Cir. 2016), which established that non-partisan candidates have the right to identify any affiliations with political parties including the use of “the conservative Republican,” a “conservative” or a “Republican,” and, as to issues and groups, Mr. Fischer, Mr. Winter, and their respective campaigns can likewise use endorsements of groups such as Kentucky Right to Life and Northern Kentucky Right to Life, and should not be forced to disavow endorsements received from third parties; both have the right to state their position on issues. Consequently, the threat of enforcement and/or any future enforcement action would be brought: (i) in bad faith; (ii) solely to harass Mr. Fischer and Mr. Winter, and their campaigns; and/or (iii) would be enforcing flagrantly and patently unconstitutional Judicial Conduct Rules.
43. The actions set forth herein have deprived and continue to deprive Plaintiffs of their First Amendment rights.

### **COUNT I – VIOLATION OF FIRST AMENDMENT**

#### **Part I – As Applied Challenge**

44. Plaintiffs hereby reincorporates the preceding paragraphs as if fully set forth herein.
45. Plaintiffs are citizens of the United States of America.
46. Plaintiffs have a clearly established right under the United States Constitution and its statutes to Freedom of Speech, Association, and Expression and other First Amendment guarantees.
47. Defendants, using their respective offices and acting under color of state law, violated Plaintiffs’ First Amendment Rights, which deprived Plaintiffs, who are citizens of the United States, of his rights of Free Speech and of Association, as guaranteed under the First

Amendment of the U.S. Constitution, which rights are clearly established, and therefore subjected themselves under 42 U.S.C. § 1983, to prospective injunctive relief, and declaratory relief under 28 U.S.C. § 2201.

48. The First Amendment of the U.S. Constitution provides, in relevant part, that “Congress shall make no law ... abridging the freedom of speech...” The First Amendment has been incorporated under the Fourteenth Amendment to apply to the states, including the Commonwealth of Kentucky, under *Gitlow v. New York*, 268 U.S. 652 (1925).

49. Defendants abused the authority of their respective offices and, while acting under color of law and with knowledge of Plaintiffs’ established rights, used their offices to violate Plaintiffs’ First Amendment rights.

50. The United States Supreme Court in *Republic Party of Minnesota v. White*, 536 U.S. 765 (2002), which involved a challenge to certain provisions of the Minnesota Judicial Canons, held that free speech challenges involved an application of strict scrutiny.

51. Under the strict-scrutiny test, the state has the burden to prove that the challenged clause is (1) narrowly tailored, to serve (2) a compelling state interest. *Id.* at 775. In order for the state to show that the challenged clause is narrowly tailored, it must demonstrate that it does not “unnecessarily circumscribe protected expression.” *Id.*

52. In two other cases, the Sixth Circuit examined judicial speech restrictions. *Carey*, 614 F.3d 189, 203-204; *Winter*, 834 F. 3d 681.

53. During the current election for Supreme Court Justice, Mr. Fischer, Mr. Winter, and their campaigns engaged in the speech the Sixth Circuit deemed protected in *Carey* and *Winter*, and they intend to continue to do so. A judicial candidate’s qualifications, education, experiences, associations, and memberships are highly relevant in the voters’ effort to vet the

candidates. Many voters want to become acquainted with candidates' past and present affiliations, associations, and memberships in political organizations like the Democrat and Republican parties, as well as organizations such as right to life organizations.

54. The voters perceive these memberships, affiliations, or associations as indications of the candidates' guiding philosophies and principles that influence judicial decision making. Mr. Fischer and Mr. Winter each truthfully informed the voters about their party affiliations within their campaign materials.

55. Mr. Fischer, Mr. Winter, and their campaigns did not falsely indicate that the campaign was partisan, but what they did was identify their values by Mr. Fischer truthfully acknowledging he is "the Conservative Republican," and Mr. Winter identifying himself as "conservative" in campaign literature, and "a Republican" in campaign speeches, to allow the voters to decide what impact, if any, that information should have at the ballot box. In the same vein, discussion of issues such as being pro-life, or being endorsed by Right to Life groups, is well within the ambit of protected discussion of issued under *White*, *Carey*, and *Winter*.

56. Plaintiffs seek declaratory relief, and prospective injunctive relief under 42 U.S.C. 1983 and 28 U.S.C. §§ 2201 and 2202, declaring Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) unconstitutional, as applied, to the speech and campaign activities set forth in Paragraphs 7 to 37 herein. Plaintiffs likewise seek a permanent injunction enjoining the enforcement of Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13), as applied to any and/or all of the foregoing scenarios. Plaintiffs further seek their reasonable attorney fees under 42 U.S.C. § 1988.

#### Part II – Facial Challenge

57. Plaintiffs hereby reincorporate the preceding paragraphs as if fully set forth herein.



58. In addition to the foregoing, the impermissible applications of the law are substantial when compared against any legitimate sweep of the Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13).

59. Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) are void for vagueness. For instance, Rule 4.1(A)(6) does not explain what it means to identify himself or herself as the nominee, but apparently saying “the conservative Republican” is a violation. It is unclear what other violations there may be, but apparently, expressly indicating that someone is a nominee is not the sole violation. This is also an end-run by the JCC around the holding in *Winter*, 834 F.3d 681. There are also void for vagueness problems with Rule 4.1(A)(7), since the JCC interprets and enforces it in a manner that apparently requires disavowal of third-party endorsements notwithstanding Kentucky Supreme Court commentary to the contrary, and considers the usage of “the conservative Republican,” the term “conservative” or the term “a Republican,” in campaign literature to constitute a violation. Finally, Rule 4.1(A)(13) is void for vagueness, since it prohibits the discussion of issues, even when those issues are divorced from particular parties or cases.

60. Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) fail to establish standards that are sufficient to guard against the arbitrary deprivation of liberty interests.

61. A substantial number of instances exist in which Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) cannot be applied constitutionally. For instance, it is obvious that the JCC believes a violation exists to express that a candidate is “the conservative Republican,” “conservative,” or “a Republican.”

62. Plaintiffs further seek declaratory relief, and prospective injunctive relief under 42 U.S.C. 1983 and 28 U.S.C. §§ 2201 and 2202, declaring Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule

4.1(A)(13), as interpreted by the JCC, unconstitutional on their face; Plaintiffs likewise seek a permanent injunction enjoining the enforcement of these provisions. Plaintiffs further seek their reasonable attorney fees under 42 U.S.C. § 1988.

Part III – Emergency Injunctive Relief

63. Plaintiffs hereby reincorporate the preceding paragraphs as if fully set forth herein.
64. Mr. Fischer seeks emergency relief, including a preliminary injunction or temporary restraining order, so that he can engage in the following protected speech between now and the November 8, 2022 general election, which protected speech is otherwise being chilled from Defendants’ threat of enforcement against him: (i) to permit him to truthfully say that he is “the conservative Republican;” (ii) to permit him to utilize the Republican party’s elephant symbol to denote his affiliation with that party, JE 130 notwithstanding; (iii) to permit him to use and advertise his endorsements from Kentucky Right to Life and Northern Kentucky Right to Life; (iv) to permit general references to Mr. Fischer having served two decades in the Kentucky House of Representatives; (v) to permit Mr. Fischer to continue to indicate that he is committed to defending the rule of law, ensuring Kentucky’s judicial system effectively serves all citizens of the Commonwealth, that he will not engage in judicial activism, and to continue to underscore his understanding of the importance of the separation of powers in that it is the duty and responsibility of the legislature to make the laws, the executive to enforce the laws, and the judiciary to interpret the laws; and (vi) to not require Mr. Fischer to disavow endorsements he has received from Republican Party executive committees.
65. Mr. Winter likewise seeks emergency relief, including a preliminary injunction or temporary restraining order, so that he can engage in the following protected speech between now and

the November 8, 2022 general election, which protected speech is otherwise being chilled from Defendants' threat of enforcement against him: (i) to permit him to truthfully say that he is "conservative" and "a Republican;" (ii) to permit him to use and advertise his endorsements from Kentucky Right to Life and Northern Kentucky Right to Life; (iii) to permit Mr. Winter to continue to indicate that he is committed to defending the rule of law, that he will not engage in judicial activism, and to continue to underscore his understanding of the importance of the separation of powers in that it is the duty and responsibility of the legislature to make the laws, the executive to enforce the laws, and the judiciary to interpret the laws; and (iv) to not require Mr. Winter to disavow endorsements he has received from Republican Party executive committees.

66. Mr. Fischer and Mr. Winter each likewise seek restraining order relief to prevent the initiation of a formal complaint over the foregoing protected First Amendment speech.

**WHEREFORE**, Plaintiffs demand judgment as prayed for, including:

- A. That this Court issue a declaration that Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) of the Kentucky Rules of Judicial Conduct are unconstitutional on their face because of overbreadth or vagueness;
- B. That this Court issue a declaration that Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) are unconstitutional as applied to the campaign speech identified herein;
- C. That this Court award a temporary restraining order and/or preliminary injunction, enjoining enforcement of these Rules, on an as-applied or facial basis as respects the 2022 election cycle, to permit truthful protected campaign speech as set forth in Paragraphs 64 and 65 and to enjoin the institution of formal proceedings;

- D. That this Court award permanent injunctive relief, prohibiting the further enforcement of Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) of the Kentucky Rules of Judicial Conduct, or, in the alternative, prohibiting enforcement of Rule 4.1(A)(6), Rule 4.1(A)(7), and Rule 4.1(A)(13) of the Kentucky Rules of Judicial Conduct as applied to the speech of Mr. Fischer and Mr. Winter as set forth in greater detail herein;
- E. That Plaintiffs be awarded their costs in this action, including reasonable attorney fees under 42 U.S.C. § 1988; and
- F. Such other relief as this Court shall deem just and proper.

Respectfully submitted,

/s/ Christopher Wiest

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*Attorneys for Plaintiffs*

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the foregoing upon Counsel for the Defendants, this  
7 day of October, 2022, by service of same via CM/ECF.

/s/ Christopher Wiest  
Christopher Wiest (KBA 90725)

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, Joseph Fischer, declare under penalty of perjury that I have read the foregoing Verified Complaint, and state that the factual statements therein are true and accurate to the best of my knowledge.

Executed on 10-2-22.

  
Joseph Fischer

VERIFICATION

Pursuant to 28 U.S.C. 1746, I, Robert A. Winter, Jr. declare under penalty of perjury that I have read the foregoing Amended Complaint, and state that the factual statements therein are true and accurate to the best of my knowledge.

Executed on 10/7/22.



\_\_\_\_\_  
Robert A. Winter, Jr.