No.

In the Supreme Court of the United States

LANELL WILLIAMS-YULEE,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a rule of judicial conduct that prohibits candidates for judicial office from personally soliciting campaign funds violates the First Amendment.

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Petitioner Lanell Williams-Yulee respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Florida in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (App., *infra*, 1a-18a) is not yet reported in the Southern Reporter but is available in the Westlaw database at 2014 WL 1698373. The referee's report (App., *infra*, 19a-25a) and order on recommendation (App., *infra*, 26a-30a) are not reported.

JURISDICTION

The final judgment of the Supreme Court of Florida was entered on May 1, 2014. This Court's jurisdiction rests on 28 U.S.C. § 1257.

CONSTITUTIONAL AMENDMENT AND CANON OF CONDUCT INVOLVED

Canon 7C(1) of the Florida Code of Judicial Conduct provides, in relevant part, that:

> A candidate, including an incumbent judge, for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy.

The First Amendment, as incorporated against the States by Section 5 of the Fourteenth Amendment (*Gitlow* v. *New York*, 268 U.S. 652, 666 (1925)), provides, in relevant part, that the States "shall make no law * * * abridging the freedom of speech."

STATEMENT

This case presents an important and frequently recurring question of law that has divided the lower courts: Does a rule of conduct that prohibits candidates for judicial office from personally soliciting campaign donations violate the First Amendment? Thirty-nine States provide for the selection or retention of judges by popular vote. And—consistent with the American Bar Association's Model Code of Judicial Conduct—nearly every such State has adopted a rule prohibiting judicial candidates from personally soliciting campaign contributions.

One such provision is Canon 7C(1) of the Florida Code of Judicial Conduct. In this case, Petitioner Lanell Williams-Yulee stood as a candidate for County Court Judge in Hillsborough County, Florida. Shortly after she registered as a judicial candidate, petitioner drafted and signed a mass-mail letter announcing her candidacy and seeking campaign contributions. See App., *infra*, 31a-32a. The Florida Supreme Court publicly sanctioned and imposed costs on petitioner for violating Canon 7C(1), rejecting her First Amendment challenge to the rule.

The lower courts are deeply and expressly divided over the question whether rules like Canon 7C(1) violate the First Amendment. The federal courts of appeals for the Third and Seventh Circuits and the highest courts of Arkansas, Oregon, and (in this case) Florida have held that such laws do *not* violate the First Amendment. By contrast, the federal courts of appeals for the Sixth, Eighth, Ninth, and Eleventh Circuits have held that they *do*.

Proper resolution of the question presented is a matter of tremendous practical importance. Judicial

elections are a frequent occurrence, and rules like Canon 7C(1) play a central role in almost every such contest. It therefore should come as no surprise that rules like Canon 7C(1) are frequently enforced by bar authorities and just as frequently challenged by candidates for judicial office. Yet cases that neatly present the issue for review by this Court are rare, often arising in the context of prospective suits that are complicated by concerns over ripeness or mootness.

Beyond that, there is little doubt that the Florida Supreme Court's decision in this case is wrong. Canon 7C(1) is a content- and speaker-based restriction on political speech; such laws rarely survive strict judicial scrutiny, and this one should not. Immediate review is therefore warranted.

A. Factual background

Petitioner stood as a candidate for County Court Judge in Hillsborough County, Florida, which includes the city of Tampa. App., *infra*, 3a. On September 4, 2009, she signed a mass-mail campaign fundraising letter in which she personally solicited campaign contributions. *Id.* at 31a-32a. After announcing her candidacy, the letter explained that "[a]n early contribution of $25, $50, $100, $250, or $500, made payable to 'Lanell Williams-Yulee Campaign for County Judge', will help raise the initial funds needed to launch the campaign and get our message out to the public." *Id.* at 32a. The letter concluded with petitioner's signature. *Ibid.* At the time petitioner signed the letter, there were no other announced candidates for the judgeship. *Id.* at 3a.

B. Procedural background

Respondent filed a complaint against petitioner in the Supreme Court of Florida, alleging (insofar as

relevant here) a violation of Canon 7C(1) of the Florida Code of Judicial Conduct. App., *infra*, 2a.

1. The matter was referred to a referee (akin to a magistrate), who recommended a finding of guilt. App., *infra*, 19a-30a. Observing that Canon 7C(1) applies by its terms only to elections "between competing candidates," petitioner testified that she had read the canon as not applying to candidates in uncontested races. *Id.* at 27a. But the referee rejected that interpretation, holding that the words "between competing candidates" are "used to describe the *type* of judicial office where the prohibition would apply," and not the case-by-case circumstances of any particular race. *Id.* at 27a-28a (emphasis added). Thus, while finding that petitioner's violation of the canon was based on a good faith mistake as to its meaning, the referee recommended a finding of guilt because "the reason for violation" is irrelevant. *Id.* at 28a.

With respect to discipline, the referee found that petitioner had no prior disciplinary history; had no dishonest or selfish motive; made a timely and good faith effort to rectify her misconduct; and was fully cooperative with the disciplinary board. App., *infra*, 22a-23a. The referee accordingly recommended that petitioner receive a public reprimand and pay the costs of the proceedings. *Id.* at 23a-24a.

2. The Florida Supreme Court approved the referee's findings of fact and recommendation of guilt against petitioner "for personally soliciting campaign contributions in violation of Canon 7C(1) of the Florida Code of Judicial Conduct." App., *infra*, 1a. In do-

ing so, the court rejected Yulee's argument that Canon 7C(1) violates the First Amendment.[1]

The court began by acknowledging that, because "Canon 7C(1) clearly restricts a judicial candidate's speech," it "must be narrowly tailored to serve a compelling state interest." App., *infra*, 7a. But the court quickly held that "Florida has 'a compelling state interest in preserving the integrity of [its] judiciary and maintaining the public's confidence in an impartial judiciary,'" observing that "other state supreme courts that have addressed the constitutionality of judicial ethics canons similar to Florida's Canon 7C(1) have reached the same conclusion." *Id.* at 7a, 10a.

As for narrow tailoring, the court explained that "personal solicitation of campaign funds, even by mass mailing, raises an appearance of impropriety and calls into question, in the public's mind, the judge's impartiality." App., *infra*, 11a. The canon "is narrowly tailored," the court concluded, because candidates still may "utilize a separate campaign committee to engage in the task of fundraising" on their behalves, thereby "leaving open, ample alternative means for candidates to raise the resources necessary to run their campaigns." *Id.* at 15a.

In reaching that conclusion, the court explained that Canon 7C(1) is "similar to Canons 4.1(A)(8) and 4.4 of the American Bar Association Model Code of Judicial Conduct" and that "[a] majority of states have enacted similar provisions" and "every state

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[1] The court rejected the referee's recommendations concerning a separate alleged violation respecting certain statements made to a reporter. App., *infra*, 2a, 15a-16a. Petitioner was found guilty of violating only Canon 7C(1).

supreme court that has examined the constitutionality of comparable state judicial ethics canons has concluded that these types of provisions are constitutional." App., *infra*,11a-13a. The court acknowledged, however, that "the federal courts," "whose judges have lifetime appointments and thus do not have to engage in fundraising," "are split." *Id*. at 13a n.3.

Chief Justice Polston and Justice Canady dissented in part without opinion. App., *infra*, 18a.

REASONS FOR GRANTING THE PETITION

This case presents the question whether a rule of conduct that prohibits candidates for judicial office from personally soliciting campaign donations violate the First Amendment. In conflict with the Sixth, Eighth, Ninth, and Eleventh Circuits, but in agreement with the Third and Seventh Circuits and the highest courts of Arkansas and Oregon, the Florida Supreme Court held that it does not.

That decision should not stand. Aside from deepening a recognized conflict among the lower courts, it departs from this Court's settled First Amendment precedents and chills speech by candidates for public office, with respect to whom "the First Amendment has its fullest and most urgent application." *Eu* v. *San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989). The issue arises in hundreds of elections for judicial office held throughout the Nation every year. And this case presents a suitable vehicle with which to resolve the conflict. Further review accordingly is warranted.

A. There is a deep and acknowledged conflict over the question presented

The decision below exacerbates a well-established conflict among both state supreme courts and the federal courts of appeals. This division of authority is especially pernicious because federal and state courts are in disagreement within overlapping territorial jurisdictions; the constitutional status of Canon 7C(1), for example, now turns on whether it is raised by respondent in an enforcement proceeding in state court (where it will be held valid under the Florida Supreme Court's decision in this case) or instead challenged prospectively by a judicial candidate in a civil action in federal court (where it will be held to violate the Constitution under the Eleventh Circuit's conflicting precedent). Only this Court can rectify this untoward result.

1. Here, the Florida Supreme Court held that Canon 7C(1) is narrowly tailored to achieve the compelling state interest of ensuring an impartial judiciary. App., *infra*, 1a-15a.

The **Seventh Circuit** reached a similar conclusions in *Bauer* v. *Shepard*, 620 F.3d 704 (7th Cir. 2010) and *Siefert* v. *Alexander*, 608 F.3d 974 (7th Cir. 2010). In those cases, sitting judges challenged the personal solicitation bans of Wisconsin and Indiana, respectively. The Seventh Circuit upheld the prohibitions against First Amendment attack, reasoning that each "solicitation ban is drawn closely enough to the state's interest in preserving impartiality and preventing corruption to be constitutional." *Siefert*, 608 F.3d at 990; *accord Bauer*, 620 F.3d at 710.

The **Arkansas Supreme Court** came to the same conclusion in *Simes* v. *Arkansas Judicial Dis-*

cipline and Disability Commission, 247 S.W.3d 876 (Ark. 2007). There, a sitting judge was censured for personally soliciting contributions to his reelection campaign. In rejecting the judge's First Amendment attack on Arkansas's personal solicitation ban, the Arkansas court concluded that Akansas's ban is "narrowly tailored" to the State's "compelling" interest in avoiding "the appearance of impropriety or impartiality." *Id*. at 881, 884.

The **Third Circuit** upheld Pennsylvania's ban on personal solicitations in *Stretton* v. *Disciplinary Board of Supreme Court of Pennsylvania*, 944 F.2d 137 (3d Cir. 1991). There, the plaintiff "wishe[d] to send a letter over his signature soliciting money" in support of his campaign for judicial office but was prevented from doing do by a rule indistinguishable from Canon 7C(1). *Id*. at 145. The Third Circuit upheld the rule against First Amendment challenge: "A compelling state interest is present," the court explained, "and the means currently employed are narrowly tailored to further it." *Id*. at 146.

Finally, the **Oregon Supreme Court** held that Oregon's prohibition on the "[p]ersonal solicitation of campaign funds by a candidate for judicial office" likewise is constitutional. *In re Fadeley*, 802 P.2d 31, 32 (Or. 1990) (per curiam). That case, like this one, involved the public censure of a candidate who "personally solicited campaign finance pledges from" the public. *Id*. at 33. The court recognized that "seeking donations to support a campaign for elective office (including judicial office) is a form of speech" and "political expression," but reasoned that the personal solicitation ban passed strict scrutiny because "the means chosen to carry out the state's purpose are the least intrusive possible." *Id*. at 44.

2. In square conflict with the decisions of the Third and Seventh Circuits and the supreme courts of Arkansas, Florida, and Oregon, four other federal courts of appeals have held that personal solicitation bans fail strict scrutiny and therefore violate the First Amendment.

Most recently, the **Ninth Circuit**, in *Wolfson* v. *Concannon*, 2014 WL 1856390 (9th Cir. May 9, 2014), pet. for reh'rg filed (9th Cir. June 6, 2014), held unconstitutional Arizona's personal solicitation ban, which, like Florida Canon 7C(1), prohibits candidates for judicial office from "personally solicit[ing] or accept[ing] campaign contributions other than through a campaign committee." *Id.* at *8. Although recognizing that "Arizona, like every other state, has a compelling interest in the reality and appearance of an impartial judiciary" (*id.* at *1), the court concluded that "[t]he lack of narrow tailoring is obvious here" (*id.* at *8). Arizona's personal solicitation ban "is unconstitutional as applied to non-judge judicial candidates," the court concluded, "because it restricts speech that presents little to no risk of corruption or bias towards future litigants and is not narrowly tailored to serve those state interests." *Ibid.*

That holding is in line with the **Sixth Circuit**'s recent decision in *Carey* v. *Wolnitzek*, 614 F.3d 189 (6th Cir. 2010). There, the court addressed the constitutionality of Kentucky's personal solicitation ban, which, like the ban in *Wolfson* and this case, provides that "a candidate for judicial office shall not solicit campaign funds, but may establish committees of responsible persons to secure and manage the expenditure of funds for the campaign and to obtain public statements of support for the candidacy." *Id.* at 195. Like the Ninth Circuit in *Wolfson*, the Sixth

Circuit in *Carey* concluded that the ban "serves Kentucky's compelling interest in an impartial judiciary." *Id.* at 204. But, in the Sixth Circuit's view, the "[t]he solicitation clause is overbroad and thus invalid on its face." *Id.* at 207. While a solicitation ban limited to "one-on-one solicitations or solicitations from individuals with cases pending before the court" might be "narrowly tailored," the court explained, one that applies "to mass-mailing solicitations or speeches to a large audience" is not. *Id.* at 206.

The **Eighth Circuit** reached the same conclusion in *Republican Party of Minnesota* v. *White*, 416 F.3d 738 (8th Cir. 2005) (en banc) (*White II*), in an en banc opinion issued on remand from this Court's decision in *Republican Party of Minnesota* v. *White*, 536 U.S. 765 (2002) (*White I*). Like the other courts, the Eighth Circuit agreed that judicial impartiality is "a state interest that is compelling." *White II*, 416 F.3d at 753. But, it concluded, a blanket ban on personal solicitations is overbroad: Minnesota's "proscriptions against a candidate personally signing a solicitation letter or making a blanket solicitation to a large group, does not advance any interest in impartiality." *Id.* at 765-766. The personal solicitation ban thus "do[es] not survive strict scrutiny" and "violate[s] the First Amendment." *Id.* at 766.[2]

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[2] The Eight Circuit thought it relevant that the Minnesota rules (1) required contributions, however solicited, to be made to a campaign committee and (2) "prevent[ed] a candidate from knowing the identity of contributors" to the committee. *White II*, 416 F.3d at 765-766. That admittedly is not true of the Florida scheme. And following *White II*, Minnesota promulgated a more narrowly-tailored rule allowing for, among other things, candidate signatures on mass-mail solicitation letters; the Eighth Circuit upheld the revised rule in *Wersal* v. *Sexton*, 674 F.3d 1010 (8th Cir. 2012) (en banc).

Finally, the **Eleventh Circuit** invalidated Georgia's personal solicitation ban in *Weaver* v. *Bonner*, 309 F.3d 1312, 1322 (11th Cir. 2002). Like Florida Canon 7C(1), Georgia "Canon 7(B)(2) prohibits judicial candidates from personally soliciting campaign contributions and from personally soliciting publicly stated support, but allows the candidate's election committee to engage in these activities." *Id*. at 1322. "In effect," according to the Eleventh Circuit, "candidates are completely chilled from speaking to potential contributors." *Ibid*. The Georgia canon "fails strict scrutiny because it completely chills a candidate's speech * * * while hardly advancing the state's interest in judicial impartiality at all." *Id*. at 1323.

3. The conflict described above is expressly recognized: According to the Florida Supreme Court, the lower courts "are split" (app., *infra*, 13a n.3); and according to the Seventh Circuit, there is a "conflict among the circuits" (*Bauer*, 620 F.3d at 710). And, indeed, there is little doubt that if the constitutionality of Canon 7C(1) had been litigated in federal court in the Sixth, Eighth, Ninth, or Eleventh Circuits, the canon would have been invalidated. That observation is particularly troubling because, as we noted earlier, Florida is located *within* the Eleventh Circuit.[3]

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[3] It is not in fact certain that that the Seventh Circuit or the supreme courts of Arkansas and Oregon would align with the Florida Supreme Court in this case. Unlike here (and in *Stretton*), *Bauer*, *Siefert*, *Simes*, and *Fadeley* involved solicitations by *sitting* judges. In the Ninth Circuit's view, the constitutional balance may differ in cases involving incumbent candidates as compared with "non judge candidates." *Wolfson*, 2014 WL 1856390, at *8; see also *id*. at *17 (Berzon, J., concurring). But we are skeptical of any constitutional distinction between incumbents and non-incumbents, which would subject competitors in a single election to different First Amendment rules.

For these reasons, the Court should grant review without further delay. The conflict is clear and developed, and the courts that have addressed the question presented have done so in thoroughly reasoned opinions. Further percolation of the issue is therefore unlikely to shed any additional light on the various aspects of the debate. Given the entrenched disagreement among them, moreover, the lower courts cannot themselves "create harmony" on the question presented. *Bauer*, 620 F.3d at 710. Only this Court's intervention can restore uniformity to the application of the First Amendment in this important context.

B. The question is cleanly presented here and is a matter of great importance

The petition should be granted for the additional reasons that the question presented is a matter of tremendous day-to-day importance, and this case is an ideal vehicle for resolving it. Judicial elections are common, and proper resolution of the question presented affects virtually every such election.

1. At least 39 States have some form of popular election for judges.[4] Among those 39 States, 30 have promulgated laws or rules of conduct prohibiting judicial candidates from personally soliciting campaign

[4] In Connecticut, Delaware, Hawaii, Maine, Massachusetts, New Hampshire, New Jersey, Rhode Island, South Carolina, Vermont, and Virginia, all general-jurisdiction judges are appointed by the governor or legislature, either for life or initially for a term, subject to periodic reconfirmation by the governor or legislature. See *Carey*, 614 F.3d at 214-217.

contributions in one form or another.[5] Among those 30 personal solicitation bans, 22 are the same sort of stand-alone, blanket prohibition as Canon 7C(1).[6]

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[5] The States that hold judicial elections in some form or another and permit judicial candidates to solicit campaign contributions personally are Alabama and Texas, which hold partisan elections; Georgia, Montana, Nevada, and North Carolina, which hold nonpartisan elections; and California, Kansas, and Maryland, which hold retention elections. See *Carey*, 614 F.3d at 214-217; Iowa Code of Jud. Cond. 51:4.1(A)(8); S.D. Code of Jud. Conduct, Canon 5(A)(1)(e).

[6] See Alaska Code of Jud. Conduct, Canon 5C(3); Ariz. Code of Jud. Conduct, Rule 4.1(A)(6); Ark. Code of Jud. Conduct, Rule 4.1(A)(8); Colo. Code of Jud. Conduct, Rule 4.1(A)(8); Fla. Code of Jud. Conduct, Canon 7C(1); Ill. Code of Jud. Conduct, Canon 7B(2); Ind. Code of Jud. Conduct, Rule 4.1(A)(8); Iowa Code of Jud. Cond. 51:4.1(A)(8); Ky. Sup. Ct. R. 4.300, Canon 5(B)(2); La. Code of Jud. Conduct, Canon 7D(1); Mich. Code of Jud. Conduct, Canon 7B(2)(a); Miss. Code of Jud. Conduct, Canon 5C(2); Neb. Code of Jud. Conduct, Rule 5-304.1(A)(8); Okla. Code Jud. Conduct, Canon 4.1(A)(8); Oregon Code of Jud. Conduct, Rule 5.1(A)(2); Pa. Code of Jud. Conduct, Canon 7B(2); S.D. Code of Jud. Conduct, Canon 5(A)(1)(e); Tenn. Code of Jud. Conduct, Rule 4.1(A)(8); Utah Code of Jud. Conduct, Rule 4.2(B)(2); Wash. Code of Jud. Conduct, Rule 4.1(A)(7); W. Va. Code of Jud. Conduct, Canon 5C(2); Wis. Code of Jud. Conduct, Rule 60.06(4).

The relevant authorities in Idaho, Minnesota, Missouri, New Mexico, North Dakota, Ohio, and Wyoming have adopted solicitation rules for judicial candidates that vary from Florida's stand-alone blanket ban. Some prohibit personal solicitations and *also* prohibit committees from informing candidates of who has contributed. See Idaho Code of Jud. Conduct, Canon 5C(2); Wyo. Code of Jud. Conduct, Rule 4.2(B)(4)-(5). Others provide exceptions for solicitations by mail or to large audiences, family members, sitting judges, and the like. See Minn. Code of Jud. Conduct, Rules 4.1(A)(6), 4.2(B)(3); Mo. Code of Jud. Conduct, Canon 2-4.1(B); N.M. Code of Jud. Conduct, Rule 21-800; N.D. Code of Jud. Conduct, Rule 4.6; Ohio Code of Jud. Conduct, Rule 4.4(A).

That should come as no surprise; Canon 7C(1) and rules like it are consistent with the ABA's Model Code of Judicial Conduct. See app., *infra*, 11a & n.1.

And recent data show that there are hundreds of judicial elections every year. In 2011 and 2012, for example, there were elections for 75 open seats for state high court judgeships in 35 States. Linda Casey, *Courting Donors: Money in Judicial Elections, 2011 and 2012* (Mar. 18, 2014) (permanently archived at http://perma.cc/6G8C-QCUM). Two hundred and forty-three intermediate appellate court races were decided in 29 States over the same two-year period. *Ibid*. Predictably, laws like Canon 7C(1) are thus frequently enforced in published decisions[7] and also frequently subjected to constitutional challenge.[8] Resolution of this petition is therefore a matter of frequently recurring importance.

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[7] See, *e.g.*, *In re Sanders*, 777 N.W.2d 134 (Mich. 2010); *In re Disciplinary Proceedings Against Kessler*, 789 N.W.2d 744 (Wis. 2010); *In re Singletary*, 967 A.2d 1094 (Pa. Ct. Jud. Disc. 2008); *In re Cannizzaro*, 901 So. 2d 1035 (La. 2005); *Disciplinary Counsel v. O'Neill*, 815 N.E.2d 286 (Ohio 2004); *In re King*, 857 So. 2d 432 (La. 2003); *In re Tennant*, 516 S.E.2d 496 (W. Va. 1999); *In re Mendez*, 450 S.E.2d 646 (W. Va. 1994); *In re Discipline of Hopewell*, 507 N.W.2d 911 (S.D. 1993); *In re Karr*, 387 S.E.2d 126 (W. Va. 1989); *In re Hotchkiss*, 327 N.W.2d 312 (Mich. 1982).

[8] In addition to *Wolfson*, *Carey*, *Siefert*, *Bauer*, *Simes*, *White II*, *Weaver*, and *Fadeley*, see, *e.g.*, *Platt* v. *Bd. of Comm'rs*, No. 1:13-cv-435 (S.D. Ohio Jan. 6, 2014), appeal docketed No. 14-3037 (6th Cir. Jan. 13, 2014); *Ohio Council 8 Am Fed'n of State, Cnty., & Mun. Emps.* v. *Brunner*, 912 F. Supp. 2d 556 (S.D. Ohio 2012); *Wersal*, 674 F.3d 1010, 1016 (2012); *Republican Party of Minn.* v. *Kelly*, 247 F.3d 854 (8th Cir. 2001), rev'd, 536 U.S. 765 (2002); and *Nicholson* v. *State Comm'n on Judicial Conduct*, 409 N.E.2d 818 (N.Y. 1980) (per curiam).

2. Although the question presented arises often, suitable vehicles with which to address it are rare. This case offers such a vehicle.

The Florida Supreme Court expressly reached and clearly decided the federal constitutional issue, and none of the relevant facts is in dispute. And this case involves a mass mailing by a non-judge candidate—precisely the kind of innocuous communication that the Sixth, Eighth, and Ninth Circuits expressly agree is protected by the First Amendment. See *Wolfson*, 2014 WL 1856390 at *8; *Carey*, 614 F.3d at 206; *White II*, 416 F.3d at 765-766.

Moreover, the Florida Supreme Court held that petitioner's solicitation letter violated Canon 7C(1), and it disciplined her with a public reprimand as a result. "Public reprimands are serious sanctions" (*Miss. Comm'n on Judicial Performance* v. *Brown*, 761 So. 2d 182, 185 (Miss. 2000) (en banc)), entailing substantial "stigma" for those subject to them (*The Florida Bar* v. *Stein*, 471 So.2d 36, 37 (Fla. 1985)). Petitioner also was required to pay $1,860.30 in costs because she was adjudged guilty. App., *infra*, 25a. Thus there is no doubt that a live controversy will persist throughout the remainder of this appeal, with the constitutionality of Canon 7C(1) as the sole remaining issue.

By contrast, the question presented more often arises in the context of *prospective* suits involving requests for declaratory and injunctive relief, which rarely offer clean vehicles for review. Such suits typically include broadside challenges to a litany of candidate speech restrictions, including not just personal solicitation bans, but also political endorsement

bans and political speech bans.[9] We are unaware of any prospective suit that has challenged a personal solicitation ban alone. Prospective challenges are also complicated by concerns over ripeness on the one hand, and mootness on the other.[10]

This case suffers from none of the same problems. Here, the constitutionality of the personal solicitation ban is presented independently, in the context of an adjudication of guilt and imposition of sanctions that guarantee an ongoing controversy.

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[9] In *Wolfson*, for example, the plaintiff challenged five different provisions of the Arizona Code of Judicial Conduct. 2014 WL 1856390, at *1-*2. Multiple rules were challenged in *Carey*, *Siefert*, *Bauer*, and *White II*, as well. Thus, in *Bauer*, the plaintiff filed a petition for a writ of certiorari presenting *fourteen* questions for review by this Court, only two of which were related to the personal solicitation ban. See Pet. for a Writ of Cert. i-iii, *Bauer* v. *Shepard*, 2010 WL 3777218 (U.S. Sept. 24, 2010), cert. denied, 131 S. Ct. 2872 (2011).

[10] See, *e.g.*, *Wersal*, 674 F.3d at 1018-1019 (challenge not ripe), cert. denied, 133 S. Ct. 209 (2012); *Carey*, 614 F.3d at 196 (addressing whether the plaintiff "file[d] his claims too early, making them unripe for judicial review, or too late, making them moot"); *Bauer*, 620 F.3d at 708 (similarly addressing ripeness and mootness).

In *Wolfson*, the district court initially dismissed the case as moot because the plaintiff lost his election. See *Wolfson* v. *Brammer*, 2009 WL 102951, at *1-*3 (D. Ariz. 2009). The Ninth Circuit later reversed the district court's dismissal because Wolfson had expressed, in 2008, an "inten[t] to seek elected judicial office in the future." *Wolfson* v. *Brammer*, 616 F.3d 1045, 1054 (9th Cir. 2010). It is unclear whether that claim remains true today; Wolfson ran for judicial office in 2006 and 2008, but he apparently has not run since. See Opening Br. 3, *Wolfson* v. *Concannon*, No. 11-17634 (9th Cir. Feb. 8, 2012).

C. Canon 7C(1) violates the First Amendment

Although the clean presentation of a question of significant practical importance implicating a deep, pervasive split among the lower courts is sufficient reason for the Court to grant certiorari, the need for review is especially acute in this case because the decision below is manifestly wrong.

1. The First Amendment prohibits laws "abridging the freedom of speech," which, "'as a general matter * * * means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.'" *Ashcroft* v. *ACLU*, 535 U.S. 564, 573 (2002) (quoting *Bolger* v. *Youngs Drug Prods. Corp.*, 463 U.S. 60, 65 (1983)). Campaigns for elected office are at the "core" of the First Amendment; "[i]ndeed, the First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu*, 489 U.S. at 223.

In this context, as in all others, "any restriction based on the content of the [regulated] speech must satisfy strict scrutiny," meaning that it "must be narrowly tailored to serve a compelling government interest." *Pleasant Grove City, Utah* v. *Summum*, 555 U.S. 460, 469 (2009). Here, there is no denying that personal solicitation bans like Canon 7C(1) "are content- and speaker-based restrictions on political speech" that expressly limit what a candidate may say in the course of his or her campaign. *Wolfson*, 2014 WL 1856390, at *4. There is equally no denying that "[s]trict scrutiny [therefore] applies to this First Amendment challenge." *Ibid.*; see also, *e.g.*, *Carey*, 614 F.3d at 198 ("[s]trict scrutiny applies"); *White II*, 416 F.3d at 764 ("strict scrutiny is clearly invoked").

The court below recognized as much: because Canon 7C(1) "clearly restricts a judicial candidate's speech," it "must be narrowly tailored to serve a compelling state interest." App., *infra*, 7a.[11]

2. "[I]t is the rare case in which [this Court has] held that a law survives strict scrutiny" (*Burson* v. *Freeman*, 504 U.S. 191, 211 (1992)), and this case is not one of those rare ones. "To survive strict scrutiny, * * * a State must do more than assert a compelling state interest—it must demonstrate that its law is necessary to serve the asserted interest" (*id.* at 199) and "that it does not 'unnecessarily circumscribe protected expression'" (*White I*, 536 U.S. at 775 (quoting *Brown* v. *Hartlage*, 456 U.S. 45, 54 (1982)). Respondent cannot come close to making that showing.

The lower court concluded that "protecting the integrity of the judiciary, as well as maintaining the public's confidence in an impartial judiciary, represent compelling State interests capable of withstanding constitutional scrutiny." App., *infra*, 10a. Though there are many ways to understand the "meaning of 'impartiality' in the judicial context," the meaning that the personal solicitation ban is intended to serve "is the lack of bias," which is associated with the State's interest in "assur[ing] equal application of the law." *White I*, 536 U.S. at 775-776. Impartiality in

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[11] The Seventh Circuit characterized Wisconsin's personal solicitation ban as "a campaign finance regulation" that is "reviewed under the framework set forth in *Buckley v. Valeo*," which requires only "'closely drawn' scrutiny." *Seifert*, 608 F.3d at 988. We are unaware of any other court to have followed the Seventh Circuit's lead on that score, and respondent did not argue before the lower court that anything other than strict scrutiny should apply here. Regardless, any additional confusion among the lower courts concerning the standard of review counsels further in favor of granting the petition.

this sense "guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party." *Id.* at 776.

There is little doubt that impartiality, so understood, is a compelling state interest—but Canon 7C(1) both "does too much, [and] does too little, to advance" it. *Carey*, 614 F.3d at 201. On the one hand, it does too *much* because "the canon prohibits a range of [indirect] solicitations, including speeches to large groups and signed mass mailings," that "present little or no risk of undue pressure or the appearance of a quid pro quo." *Id.* at 205. The "reproduction of a candidate's signature on a contribution letter will not magically endow him or her with a power to divine, first, to whom that letter was sent, and second, whether that person contributed to the campaign or balked at the request." *White II*, 416 F.3d at 765. Thus "[n]o one could reasonably believe that a failure to respond to a signed mass mailing asking for donations would result in unfair treatment in future dealings with the judge." *Carey*, 614 F.3d at 205. The same is true of speeches "to large assemblies of voters." *White II*, 416 F.3d at 765.

On the other hand, a personal solicitation ban does too *little* because, "[a]lthough the candidate *himself* may not solicit donations, his campaign *committee* may." *Carey*, 614 F.3d at 205 (emphasis added). "[I]f impartiality or absence of corruption is the concern, what is the point of prohibiting judges from *personally* asking for solicitations or signing letters, if they are free to know who contributes and who balks at their *committee's* request" in their stead? *Wolfson*, 2014 WL 1856390, at *8 (emphasis added). As the Eleventh Circuit succinctly concluded, "[the] risk [of bias] is not significantly reduced by

allowing the candidate's agent to seek these contributions and endorsements on the candidate's behalf rather than the candidate seeking them himself." *Weaver*, 309 F.3d at 1322-1323. That is especially so because, although "the clause prevents judicial candidates from saying 'please, give me a donation,' it does *not* prevent them from saying 'thank you' for a donation given." *Carey*, 614 F.3d at 205 (emphasis added). See, *e.g.*, Judicial Ethics Opinion 2007-2, 162 P.3d 985 (Okla. Jud. Eth. Adv. Panel 2007) (advising that a judicial candidate may write personal "thank you" notes to contributors).

The proof of the pudding is in the eating. The West Virginia Code of Judicial Conduct contains a rule substantially identical to Florida Canon 7C(1). See W. Va. Code of Jud. Conduct, Canon 5C(2). Yet this Court, in *Caperton* v. *A.T. Massey Coal Co.*, 556 U.S. 868 (2009), held that certain donations to a West Virginia candidate's campaign committee and a separate political action committee—donations that were *not* alleged to violate West Virginia's personal solicitation ban—created "a serious risk of actual bias" all the same. *Id.* at 884.

The Florida Supreme Court's contrary reasoning is unpersuasive. In its view, "personal solicitation of campaign funds, *even by mass mailing*, raises an appearance of impropriety and calls into question, in the public's mind, the judge's impartiality." App., *infra*, 11a (emphasis added). But apart from citing a handful of conclusory statements of other courts (*id.* at 8a-10a), the Florida Court gave no real explanation for why that is so. And while it was correct to note that petitioner "was not completely barred from soliciting campaign funds" because she could "utilize a separate campaign committee to engage in the task

of fundraising" (*id.* at 15a), the establishment of a committee—as we have just explained—does little if anything to promote the appearance or actuality of impartiality. See *Carey*, 614 F.3d at 205; *Weaver*, 309 F.3d at 1322-1323. Cf. *Caperton*, *supra*.

3. Against this backdrop, "[t]he lack of narrow tailoring is obvious." *Wolfson*, 2014 WL 1856390, at *8. Indeed, even the Seventh Circuit agreed that personal solicitation bans like Canon 7C(1) are overbroad. *Bauer*, 620 F.3d at 710. The court was not troubled by that conclusion, however, because it believed that "[i]t is the nature of rules to be broader than necessary in some respects." *Ibid.* But that is not the standard when it comes to the First Amendment. The animating purpose of the narrow-tailoring requirement is "to ensure that speech is restricted no further than necessary to achieve the [State's asserted] goal, for it is important to assure that legitimate speech is not chilled or punished." *Ashcroft* v. *ACLU*, 542 U.S. 656, 666 (2004). Otherwise, "[m]any persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation, will choose simply to abstain from protected speech, harming not only themselves but society as a whole." *Virginia* v. *Hicks*, 539 U.S. 113, 119 (2003) (citation omitted).

The risk of chilling is evident in this case. Apart from directly "suppress[ing] speech in the most conspicuous of ways" (*Carey*, 614 F.3d at 204), personal solicitation bans encourage candidates for judicial office to censor themselves in communications of every sort for fear that what they say may be taken as a solicitation of financial support. For example, the Kentucky Ethics Commission has interpreted Kentucky's solicitation ban to cover any communication in which

a candidate may happen to make her "wants or desires" for campaign contributions "known," regardless whether the communication is a "personal appeal" or an "advertisement." Judicial Ethics Opinion JE-42 (Eth. Comm. Ky. Jud. 1983) (permanently archived at http://perma.cc/77FU-Z7YG). Thus, as the Eleventh Circuit put it, candidates subject to solicitation bans "are completely chilled from speaking to potential contributors" in any way. *Weaver*, 309 F.3d at 1322. Some prospective candidates may even be discouraged from running for judicial office at all. Cf. *White II*, 416 F.3d at 746 ("Wersal, fearful that other complaints might jeopardize his opportunity to practice law, withdrew from the race.").

More generally, personal solicitation bans favor "incumbent judges (who benefit from their current status) over non-judicial candidates, the well-to-do (who may not need to raise money at all) over lower-income candidates, and the well-connected (who have an army of potential fundraisers) over outsiders." *Carey*, 614 F.3d at 204. That is not an outcome this Court should countenance.

That is not to say that state interest at issue here is unimportant. But "[i]t is the general practice of electing judges, not the specific practice of judicial campaigning, that gives rise to impartiality concerns." *Wolfson*, 2014 WL 1856390, at *6 (quoting *Weaver*, 309 F.3d at 1320); see also *White I*, 536 U.S. at 792 (O'Connor, J., concurring) ("If the State has a problem with judicial impartiality, it is largely one the State brought upon itself by continuing the practice of popularly electing judges."). And it goes without saying that "if a State opts to select its judges through popular elections, it must comply with the First Amendment in doing so." *Carey*, 614 F.3d at

210. By the same token, "[u]nless the pool of judicial candidates is limited to those wealthy enough to independently fund their campaigns, * * * the cost of campaigning requires judicial candidates to engage in fundraising." *White I*, 536 U.S. at 789-790 (O'Connor, J., concurring). Yet that is no justification for suppressing constitutionally protected speech. In other words, Florida "cannot have it both ways"; it may not choose both to "elect its judges" and also to prohibit candidates for judicial office from undertaking the constitutionally-protected practices that elections, by their nature, entail. *Geary* v. *Renne*, 911 F.2d 280, 294 (9th Cir. 1990) (en banc) (Reinhardt, J., concurring). The Florida Supreme Court's contrary conclusion rests on the "notion that the special context of electioneering justifies an *abridgment* of the right to speak"; that, of course, "sets [this Court's] First Amendment jurisprudence on its head." *White I*, 536 U.S. at 781.[12]

[12] Because a substantial number of its applications are unconstitutional, Canon 7C(1) is overbroad and violates the First Amendment on its face. See *Carey*, 614 F.3d at 207 ("The solicitation clause is overbroad and thus invalid on its face."). If the Court concludes that facial invalidation is not called for here, Canon 7C(1) is, at minimum, invalid as applied to petitioner, who is a non-judge candidate who merely signed a mass-mailing. See *Wolfson*, 2014 WL 1856390, at *8 ("The solicitation clause is invalid as applied to non judge candidates.").

CONCLUSION

The petition should be granted.

Respectfully submitted.

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APPENDICES

APPENDIX A

SUPREME COURT OF FLORIDA

No. SC11-265

THE FLORIDA BAR,
Complainant,
v.
LANELL WILLIAMS-YULEE,
Respondent.

[May 1, 2014]

PER CURIAM.

We have for review a referee's report recommending that the Respondent, Lanell Williams-Yulee, be found guilty of professional misconduct. The referee recommended that the Respondent receive a public reprimand as a sanction. We have jurisdiction. *See* art. V, § 15, Fla. Const.

For the reasons explained below, we approve the referee's findings of fact and recommendation that the Respondent be found guilty of violating Rule Regulating the Florida Bar 4-8.2(b) (Judicial and Legal Officials, Candidates for Judicial Office; Code of Judicial Conduct Applies) for personally soliciting campaign contributions in violation of Canon 7C(1) of the Florida Code of Judicial Conduct. We therefore reject the Respondent's constitutional challenge to the ban imposed by Canon 7C(1) on a judicial candi-

date's personal solicitation of campaign contributions, and hold that the Canon is constitutional because it promotes the State's compelling interests in preserving the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary, and that it is narrowly tailored to effectuate those interests.

We disapprove the referee's findings of fact and recommendation of guilt regarding the Respondent's alleged violation of rules 3-4.3 (Misconduct and minor misconduct) and 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another). We approve the referee's recommended sanction of a public reprimand.

FACTS

The Florida Bar filed a complaint against the Respondent, alleging that she engaged in misconduct in violation of the Rules Regulating the Florida Bar. A referee was appointed, but the proceedings were stayed pending this Court's disposition of Inquiry Concerning a Judge, N. James Turner, No. SC09-1182, which involved the same First Amendment constitutional challenge to Canon 7C(1) that the Respondent raised before the referee and has now raised on review. Ultimately, however, this Court declined to decide the First Amendment issue in that case. *See In re Turner*, 76 So. 3d 898, 901 (Fla. 2011).

Following this Court's resolution of Turner, the stay was lifted and the referee heard the Respondent's motion challenging the sufficiency of the complaint on the dual bases of delay and the constitutionality of Canon 7C(1). The referee denied the Re-

spondent's motion. After holding hearings, the referee submitted a report to the Court, making the following factual findings and recommendations.

In September 2009, the Respondent became a candidate for County Court Judge, Group 10, Hillsborough County, Florida. On September 4, 2009, the Respondent signed a campaign fundraising letter, in which she personally solicited campaign contributions. The Respondent admitted to having reviewed and approved the letter.

At the time she signed the letter, no other candidate for the judgeship had been announced. In addition to soliciting campaign contributions, the letter stated that the Respondent served the "community as Public Defender," though her correct title was "assistant public defender." The letter also included a link to the Respondent's website, which correctly referenced her work history as an assistant public defender.

The referee found "that the term public defender is widely used to refer to the specific attorney assigned to a case and not necessarily the elected public defender." A newspaper article published on November 3, 2009, included the Respondent's representation to a reporter that there was no incumbent in the judicial race for which the Respondent was running.

Before the referee, The Florida Bar alleged that the Respondent's campaign manager incorrectly posted on the Respondent's campaign website that the Respondent was "judge elect," even though the Respondent had never been a judge and had not been elected. The referee rejected the Bar's argument, finding "that the Respondent took reasonable action

in directing the campaign manager to obtain her approval prior to making any changes to her website." The referee also found that the Respondent "did not order, have knowledge of, or ratify the campaign manager's actions" regarding the posting of "judge elect."

Based upon the foregoing facts, the referee recommended that the Respondent be found guilty of violating Rules Regulating the Florida Bar 3-4.3 (Misconduct and minor misconduct), 4-8.2(b) (Judicial and Legal Officials, Candidates for Judicial Office; Code of Judicial Conduct Applies), and 4-8.4(a) (a lawyer shall not violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another). The referee recommended that the Respondent be found not guilty of violating rule 4-5.3(b) (Responsibilities Regarding Nonlawyer Assistants; Supervisory Responsibility), which the Bar alleged the Respondent had violated based on the campaign manager's inaccurate posting on the website.

Regarding the solicitation of campaign funds in her letter signed September 4, 2009, the referee rejected the Respondent's testimony that she understood Canon 7C(1) of the Code of Judicial Conduct would apply only if there were another candidate in the judicial race. Canon 7C(1) provides in pertinent part as follows: "A candidate . . . for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds. . . ." In finding that the Respondent violated Canon 7C(1), the referee stated that "[i]t is clear that the use of 'election between competing candidates' is used to describe the type of judicial office where the prohibition would apply."

In addressing the Respondent's statement to the newspaper reporter, the referee found that the Respondent misrepresented the fact that there was no incumbent in the judicial race for which she was running. Further, the referee found that the Respondent's misrepresentation was published in a newspaper article on November 3, 2009.

With respect to discipline, the referee considered the Respondent's personal history, finding that the Respondent was admitted to The Florida Bar in 1991 and does not have any prior disciplinary history. Additionally, the referee found no aggravating factors and found the following mitigating factors: absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify consequences of misconduct; and full and free disclosure to disciplinary board or cooperative attitude toward proceedings. The referee consequently recommended that the Respondent receive a public reprimand and awarded costs to The Florida Bar in the amount of $1,860.30.

ANALYSIS

The Respondent seeks review of the referee's factual finding that she made a misrepresentation to a reporter; the referee's recommendations of guilt as to rules 3-4.3, 4-8.2(b), and 4-8.4(a); and the referee's recommended discipline, which calls for a public reprimand and payment of costs to The Florida Bar.

This Court's standard of review for evaluating a referee's factual findings is limited, and if a referee's findings of fact are supported by competent, substantial evidence in the record, this Court will not reweigh the evidence and substitute its judgment for that of the referee. *See Fla. Bar v. Frederick*, 756 So.

2d 79, 86 (Fla. 2000). The Court has repeatedly stated that the referee's factual findings must be sufficient under the applicable rules to support the recommendations as to guilt. *See Fla. Bar v. Shoureas*, 913 So. 2d 554, 557-58 (Fla. 2005).

Violation of Rule 4-8.2(b)

The Respondent first challenges the referee's recommendation that she be found guilty of violating rule 4-8.2(b) (Judicial and Legal Officials, Candidates for Judicial Office; Code of Judicial Conduct Applies). With respect to this rule violation, the Respondent does not challenge the referee's factual findings. Instead, the Respondent admits that she signed the letter soliciting campaign funds, but attempts to justify her misconduct by explaining that she signed the letter while under the impression that Canon 7C(1) did not apply to her since, at the time she signed the letter, there was no other candidate in the race.

The Respondent now understands that the prohibition against solicitation by a judicial candidate applied to her. Nevertheless, even though the Respondent admits that Canon 7C(1) applied to her, she asserts that the referee's recommendation of guilt is incorrect because Canon 7C(1) is unconstitutional in that it limits a judicial candidate's right to engage in free speech by prohibiting a judicial candidate from directly soliciting campaign contributions.

Canon 7C(1) provides in pertinent part as follows:

> A candidate . . . for a judicial office that is filled by public election between competing candidates shall not personally solicit campaign funds, or solicit attorneys for publicly

> stated support, but may establish committees of responsible persons to secure and manage the expenditure of funds for the candidate's campaign and to obtain public statements of support for his or her candidacy. Such committees are not prohibited from soliciting campaign contributions and public support from any person or corporation authorized by law.

On its face, Canon 7C(1) prohibits a judicial candidate from personally soliciting campaign contributions.

This Court recognizes that by prohibiting judicial candidates from personally soliciting campaign contributions, Canon 7C(1) clearly restricts a judicial candidate's speech. Therefore, in order to be constitutional and not in violation of the First Amendment, Canon 7C(1) must be narrowly tailored to serve a compelling state interest. *See Firestone v. News-Press Publ'g Co.*, 538 So. 2d 457, 459 (Fla. 1989) ("Restrictions on first amendment rights must be supported by a compelling, governmental interest and must be narrowly drawn to insure that there is no more infringement than is necessary.").

As this Court has previously stated, Florida has "a compelling state interest in preserving the integrity of [its] judiciary and maintaining the public's confidence in an impartial judiciary." *In re Kinsey*, 842 So. 2d 77, 87 (Fla.2003) (citing In re Code of Judicial Conduct (Canons 1, 2, & 7A(1)(b)), 603 So. 2d 494, 497 (Fla. 1992)). Florida is certainly not alone in this regard. Other state supreme courts to address the constitutionality of judicial ethics canons comparable to Canon 7C(1) have held that similar State interests are compelling. *See Simes v. Ark. Judicial Discipline*

& Disability Comm'n, 368 Ark. 577, 247 S.W.3d 876, 881 (2007); *In re Dunleavy*, 838 A.2d 338, 351 (Me. 2003); *In re Fadeley*, 310 Or. 548, 802 P.2d 31, 41 (1990).

Over twenty years ago, the Oregon Supreme Court, in upholding a judicial ethics canon similar to Florida's Canon 7C(1), stated that the compelling State interest served by the solicitation restriction

> is the state's interest in maintaining, not only the integrity of the judiciary, but also the appearance of that integrity. The persons most actively interested in judicial races, and the persons who are the most consistent contributors to judicial campaigns, are lawyers and potential litigants. The impression created when a lawyer or potential litigant, who may from time to time come before a particular judge, contributes to the campaign of that judge is always unfortunate. Although many or most lawyers may act with pure motives, viz., to ensure a qualified judiciary and to ensure vigorous public debate, the outside observer cannot but think that the lawyer or potential litigant either expects to get special treatment from the judge or, at the least, hopes to get such treatment. It follows that, if it is at all possible to do so, the spectacle of lawyers or potential litigants directly handing over money to judicial candidates should be avoided if the public is to have faith in the impartiality of its judiciary.

In re Fadeley, 802 P.2d at 41.

More recently, the Arkansas Supreme Court, in addressing the constitutionality of a judicial ethics

canon comparable to Canon 7C(1), echoed the concerns articulated by the Supreme Court of Oregon, holding that Arkansas' solicitation ban served two separate compelling State interests: (1) ensuring judicial impartiality, and (2) ensuring the public's trust and confidence in the integrity of the judicial system by avoiding the appearance of impropriety. *See Simes*, 247 S.W.3d at 881-82.

As to the first State interest, ensuring judicial impartiality, the Arkansas Supreme Court stated as follows:

> Certainly the state has a compelling interest in diminishing the possibility that judges, once in office, will be pressured to decide issues in favor of those who financially supported their campaign. Therefore, in addition to impartiality as it goes to bias, we conclude that the open-mindedness of judges is a sufficient compelling state interest.

Id. at 881.

With respect to the second compelling State interest, avoiding the appearance of impropriety, the Arkansas court explained as follows:

> The state certainly has a compelling interest in the public's trust and confidence in the integrity of our judicial system. Allowing a judge to personally solicit or accept campaign contributions, especially from attorneys who may practice in his or her court, not only has the possibility of making a judge feel obligated to favor certain parties in a case, it inevitably places the solicited individuals in a position to fear retaliation if they fail to financially support that candidate. Attorneys

> ought not feel pressured to support certain judicial candidates in order to represent their clients. In addition, the public should be protected from fearing that the integrity of the judicial system has been compromised, forcing them to search for an attorney in part based upon the criteria of which attorneys have made the obligatory contributions.

Id. at 882. These decisions illustrate that other state supreme courts that have addressed the constitutionality of judicial ethics canons similar to Florida's Canon 7C(1) have reached the same conclusion that this Court reached in *In re Kinsey*, 842 So. 2d at 87—that protecting the integrity of the judiciary, as well as maintaining the public's confidence in an impartial judiciary, represent compelling State interests capable of withstanding constitutional scrutiny.

Therefore, in light of this Court's prior holding that Florida has a compelling interest in protecting the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary—a holding that is bolstered by the broad acceptance of comparable compelling State interests by other state supreme courts—we conclude that Canon 7C(1), which furthers these goals, serves compelling State interests. The constitutionality of Canon 7C(1) thus turns on whether the Canon is narrowly tailored to serve these compelling State interests.

The United States Supreme Court has stated that a government regulation is narrowly tailored "if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988). The Respondent contends that Canon 7C(1) fails to satisfy the nar-

rowly tailored requirement, particularly in the context of a mass mailing letter. We disagree.

First, the Respondent's argument ignores that this process includes a candidate's direct receipt of funds. Moreover, personal solicitation of campaign funds, even by mass mailing, raises an appearance of impropriety and calls into question, in the public's mind, the judge's impartiality. Thus, "[t]o protect the independence of the judiciary, the right of judges to engage in political activity has been restricted." *In re Code of Judicial Conduct (Canons 1, 2, & 7A(1)(b))*, 603 So. 2d at 497.

Canon 7C(1), which contains provisions similar to Canons 4.1(A)(8) and 4.4 of the American Bar Association Model Code of Judicial Conduct,[1] is de-

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[1] Canon 4.1 of the American Bar Association Model Code of Judicial Conduct states in pertinent part: "[e]xcept as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not: . . . personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4." A.B.A. Model Code of Judicial Conduct, Canon 4.1(A)(8).

> Further, Canon 4.4, which governs the use of campaign committees, states as follows:
>
> (A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.
>
> (B) A judicial candidate subject to public election shall direct his or her campaign committee:
>
> (1) to solicit and accept only such campaign contributions as are reasonable, in any event not to exceed, in the aggregate, $[insert amount]

signed to insulate judges from directly engaging in fundraising activity by allowing the establishment of campaign committees, through which judges can raise campaign funds without direct participation. A majority of states have enacted similar provisions.[2]

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from any individual or $[insert amount] from any entity or organization;

(2) not to solicit or accept contributions for a candidate's current campaign more than [insert amount of time] before the applicable primary election, caucus, or general or retention election, nor more than [insert number] days after the last election in which the candidate participated; and

(3) to comply with all applicable statutory requirements for disclosure and divestiture of campaign contributions, and to file with [name of appropriate regulatory authority] a report stating the name, address, occupation, and employer of each person who has made campaign contributions to the committee in an aggregate value exceeding $[insert amount]. The report must be filed within [insert number] days following an election, or within such other period as is provided by law.

A.B.A. Model Code of Judicial Conduct, Canon 4.4.

[2] With respect to judicial races involving either an opposed election or retention with active opposition, the majority of states require that the solicitation for judicial campaign funds be conducted through a campaign committee. See, e.g., Alaska Code of Jud. Conduct, Canon 5C(3); Ariz.Code of Jud. Conduct, Canon 4, R. 4.1(A)(6); Ark.Code of Jud. Conduct, Canon 4, R. 4.2(B)(1); Colo.Code of Jud. Conduct, Canon 4, R. 4.3(A); Conn.Code of Jud. Conduct, Canon 5A(4); Idaho Code of Jud. Conduct, Canon 5C(2); Ill.Code of Jud. Conduct, Canon 7B(2); Ind.Code of Jud. Conduct, Canon 4, R. 4.4(A); Iowa Code of Jud. Conduct, Canon 4, R. 51:4.4(A); Ky.Code of Jud. Conduct, Canon 5B(2); La.Code of Jud. Conduct, Canon 7C(2)(b); Me.Code of Jud. Conduct, Canon 5C(3); Mich.Code of Jud. Conduct, Canon

Further, every state supreme court that has examined the constitutionality of comparable state judicial ethics canons has concluded that these types of provisions are constitutional, as one of a constellation of provisions designed to ensure that judges engaged in campaign activities are able to maintain their status as fair and impartial arbiters of the law. *See Simes*, 247 S.W.3d at 884; *In re Dunleavy*, 838 A.2d at 351; *In re Fadeley*, 802 P.2d at 44.[3] One such state is Oregon, which, like Florida, requires judicial candidates to establish and raise money through

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7B(2)(b); Minn.Code of Jud. Conduct, Canon 4, R. 4.4(A); Miss.Code of Jud. Conduct, Canon 5C(2); Mo.Code of Jud. Conduct, Canon 4, R. 2-4.2(B); Mont.Code of Jud. Conduct, Canon 4, R. 4.4(A); Neb.Code of Jud. Conduct, Canon 4, R. 5-304.1(A)(8); N.M.Code of Jud. Conduct, Canon 4, R. 21-404A; N.Y.Code of Jud. Conduct, Canon 5(A)(5); N.D.Code of Jud. Conduct, Canon 4, R. 4.6; Ohio Code of Jud. Conduct, Canon 4, R. 4.4(A); Okla. Code of Jud. Conduct, Canon 4, R. 4.4(A); Or.Code of Jud. Conduct, R. 4-102(D); Pa.Code of Jud. Conduct, Canon 7B(2); S.C.Code of Jud. Conduct, Canon 5C(2); Tenn.Code of Jud. Conduct, Canon 4, R. 4.4; Utah Code of Jud. Conduct, Canon 4, R. 4.2(B)(2); Vt.Code of Jud. Conduct, Canon 5C(3); Wash.Code of Jud. Conduct, Canon 4, R. 4.4; W. Va.Code of Jud. Conduct, Canon 5C(2); Wis.Code of Jud. Conduct, R. 60.06(4); Wyo.Code of Jud. Conduct, Canon 4, R. 4.2(B)(4).

[3] As to the federal courts that have considered this issue—whose judges have lifetime appointments and thus do not have to engage in fundraising—the federal courts are split. Several federal courts have held that laws similar to Canon 7C(1) are constitutional. *See Wersal v. Sexton*, 674 F.3d 1010 (8th Cir. 2012); *Bauer v. Shepard*, 620 F.3d 704 (7th Cir. 2010); *Siefert v. Alexander*, 608 F.3d 974 (7th Cir. 2010); *Stretton v. Disciplinary Bd. of S.Ct. of Pa.*, 944 F.2d 137 (3d Cir. 1991). Conversely, other federal courts have held that laws similar to Canon 7C(1) are unconstitutional. *See Carey v. Wolnitzek*, 614 F.3d 189 (6th Cir. 2010); *Weaver v. Bonner*, 309 F.3d 1312 (11th Cir. 2002).

campaign committees rather than allowing direct solicitation.

In addressing the constitutionality of Oregon's judicial canon, the Oregon Supreme Court reviewed why campaign committees are necessary, explaining as follows:

> So long as judges are chosen by the electoral process, it will be impossible to deny lawyers and potential litigants the right to give to campaigns or to deny judges the right to seek contributions. Both activities are too important in the scheme of things to permit either to be forbidden outright. Some other, less intrusive method is needed.
>
> [The canon] is that method. It permits the judge to obtain funds to carry out a campaign but eliminates the specter of contributions going from the hand of the contributor to the hand of the judge. The limitation on the ability to raise funds need not cause the campaign to suffer, if the judge picks good people for his or her campaign finance committee. It is true that the committee, however well suited to the task, may have trouble obtaining as much as the judge might have raised by personal buttonholing, but that is the point.

In re Fadeley, 802 P.2d at 41 (citations omitted). In addressing whether the canon was narrowly tailored, the Oregon Supreme Court explained that its canon did not sweep too broadly because under the Oregon Code of Judicial Conduct, "[s]olicitation of funds by a surrogate of the judge's choice is permissible; only

personal solicitation by the judge is foreclosed." *Id.* at 44.

The same reasoning applies in this case. Under Canon 7C(1), the Respondent was not completely barred from soliciting campaign funds, but was simply required to utilize a separate campaign committee to engage in the task of fundraising. In other words, Canon 7C(1) is narrowly tailored because it seeks to "insulate judicial candidates from the solicitation and receipt of funds while leaving open, ample alternative means for candidates to raise the resources necessary to run their campaigns." *Simes*, 247 S.W.3d at 883.

We conclude that Canon 7C(1) promotes the State's compelling interests in preserving the integrity of the judiciary and maintaining the public's confidence in an impartial judiciary, and that it is narrowly tailored to effectuate those interests. Therefore, we hold that Canon 7C(1) is constitutional, and we approve the referee's recommendation that the Respondent be found guilty of violating rule 4-8.2(b).

Violation of Rules 3-4.3 and 4-8.4(a)

Next, the referee recommended that the Respondent be found guilty of violating rules 3-4.3 and 4-8.4(a) for making a misrepresentation to a reporter. We conclude that this recommendation is not supported by competent, substantial evidence in the record. *See Frederick*, 756 So. 2d at 86.

At issue is the following sentence included in a newspaper article published on November 3, 2009: "On Tuesday, [Respondent] Williams-Yulee told a Times reporter there was no incumbent for the position she's seeking, though County Judge Dick Greco, Jr. currently holds it." The Bar did not present the

reporter's testimony at the hearing, and the Respondent testified that she had told the reporter that there was an incumbent but that he had not announced his candidacy. We conclude that the statement from the newspaper article, standing alone, is insufficient evidence to support the referee's recommendation as to guilt and, therefore, we disapprove the referee's recommendation with respect to rules 3-4.3 and 4-8.4(a).

Discipline

The Respondent also seeks review of the referee's recommended discipline, which calls for the Respondent to receive a public reprimand. The Respondent argues that she should not be sanctioned because she did not violate the Bar rules. In contrast, the Bar argues that the referee recommended the appropriate sanction in this case.

In reviewing a referee's recommended discipline, this Court's scope of review is broader than that used to review the referee's findings of fact because, ultimately, it is this Court's responsibility to order the appropriate sanction. *See Fla. Bar v. Anderson*, 538 So. 2d 852, 854 (Fla. 1989); *see also* art. V, § 15, Fla. Const. At the same time, however, this Court will generally not second-guess the referee's recommended discipline, as long as the recommended discipline has a reasonable basis in existing case law and the Florida Standards for Imposing Lawyer Sanctions. *See Fla. Bar v. Temmer*, 753 So. 2d 555, 558 (Fla. 1999).

The referee found that the Respondent's conduct was negligent, as opposed to being intentional. Thus, standards that address negligence apply to this case.

Standards 6.13[4] and 7.3,[5] which both pertain to public reprimands, support the referee's recommendation.

In addition, case law indicates that this Court has imposed a public reprimand in circumstances where the misconduct is neither continuous nor involves an intentional pattern of deceit. *Compare Fla. Bar v. Cocalis*, 959 So. 2d 163, 167-68 (Fla. 2007) (concluding that the respondent's isolated misconduct warranted only a public reprimand), *with Fla. Bar v. Miller*, 863 So. 2d 231, 235 (Fla. 2003) (concluding that the respondent's continuous and intentional pattern of deceit was more egregious than the circumstances under which the Court has approved a public reprimand), *and Fla. Bar v. Forrester*, 818 So. 2d 477, 484 (Fla. 2002) (concluding that the respondent's conduct did not involve an isolated instance of neglect or a lapse in judgment warranting a public reprimand, but instead involved intentionally concealing an exhibit and misrepresenting its whereabouts). This Court has also imposed a public reprimand where there is an absence of prior misconduct. *See, e.g.*, *Cocalis*, 959 So. 2d at 168 (noting that the respondent had "no previous disciplinary record"); *Fla. Bar v. Shannon*, 398 So. 2d 453, 454 (Fla.1981)

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[4] Florida Standard for Imposing Lawyer Sanctions 6.13 states in pertinent part that "[p]ublic reprimand is appropriate when a lawyer is negligent either in determining whether statements or documents are false. . . ."

[5] Florida Standard for Imposing Lawyer Sanctions 7.3 provides in part that "[p]ublic reprimand is appropriate when a lawyer negligently engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to . . . the public, or the legal system."

(stating that the "Respondent has no record of past professional misconduct").

Moreover, the referee found no aggravating factors and four mitigating factors: absence of a prior disciplinary record; absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify consequences of misconduct; and full and free disclosure to disciplinary board or cooperative attitude toward proceedings. Based upon the facts in this case, the standards, and established case law, we conclude that the referee's recommended sanction of a public reprimand is appropriate.

CONCLUSION

Accordingly, we approve the referee's findings of fact and recommendation of guilt with respect to rule 4-8.2(b), disapprove the referee's findings of fact and recommendation of guilt with respect to rules 3-4.3 and 4-8.4(a), and approve the referee's recommended discipline. By publication of this opinion, Lanell Williams-Yulee is hereby publicly reprimanded.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Lanell Williams-Yulee in the amount of $1,860.30, for which sum let execution issue.

It is so ordered.

PARIENTE, LEWIS, QUINCE, LABARGA, and PERRY, JJ., concur.

POLSTON, C.J., and CANADY, J., concur in part and dissent in part.

APPENDIX B

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, ***Complainant*,** **v.** **LANELL WILLIAMS-YULEE,** ***Respondent.***	**Case No. SC11-265** **TFB File No. 2010-10,624(6A)**

REPORT OF REFEREE

I. SUMMARY OF PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct disciplinary proceedings herein according to Rule 3-7.6, Rules of Discipline, the following proceedings occurred:

On February 8, 2011, The Florida Bar filed its Complaint against the Respondent. On June 20, 2011, the Referee's Motion to Stay Proceedings was granted and on February 3, 2012 the Referee's Motion to Lift Stay was granted. On March 2, 2012, the Respondent's Motion to Determine Sufficiency of Complaint was heard and an order was entered on March 19, 2012 finding sufficiency to proceed. On April 13, 20112, a final hearing was held in this matter and on April 24, 2012 an Order gin Recommendation of Guilt. On May 11, 2012 a hearing was held on the issue of sanctions. All of the aforementioned

pleadings, responses thereto, exhibits received into evidence and this Report constitute the record in this c4se and are forwarded to the Supreme Court of Florida.

The following attorneys appeared as counsel for he parties:

For The Florida Bar: Jodi A. Thompson

For Respondent: Ernest Myers

Respondent participated fully in this proceeding.

II. FINDINGS OF FACT

A. Jurisdictional Statement. The Respondent is, and at all times mentioned during the investigation was a member of The Florida Bar, subject to the jurisdiction and Disciplinary Rules of the Supreme Court of Florida.

B. Narrative of the Case.

On or about September 2009, the Respondent became a candidate for County Court Judge, Group 10, Hillsborough bounty, Florida. On September 4, 2009, the Respondent signed a campaign fundraising letter wherein the Respondent personally solicited campaign contributions. The Respondent admitted that she reviewed and approved the September 4, 2009 letter. The Respondent testified that prior to approving the letter she reviewed Canon 7C(1) of the Code of Judicial Conduct regarding solicitation of funds. However, the Respondent testified that she interpreted the Canon to only apply if there was another candidate in the race. At the time the solicitation letter was sent no other candidate had been announced. Canon 7C(1) states that the prohibition of personal solicitation of campaign funds apply to any candidate for "judicial office that is filled by public election be-

tween competing candidates." It is clear that the use of "election between competing candidates" is used to describe the type of judicial office where the prohibition would apply.

The Respondent misrepresented to a newspaper reporter that there was no incumbent in the judicial race for which she was running. An article published November 3, 2009 refers to the misrepresentation by the Respondent. I note that the Respondent raised for the first time at the sanctions hearing, subsequent to the Order on Recommendation of Guilt, the issue of the reporter not testifying to the statements that were made by the Respondent. The Respondent argued that without the testimony of the reporter, The Florida Bar did not meet its burden. The November 3, 2009 article was admitted into evidence. I do not feel it is appropriate to address this claim at this time since the argument was raised in the closing comments during the sanction proceeding and the Florida Bar did not have an opportunity to respond.

The Florida Bar alleged that in a September 4, 2009 letter, the Respondent stated she served the "community as Public Defender" and not an assistant public defender, which was her correct title. I find that the term public defender is widely used to refer to the specific attorney assigned to a case and not necessarily the elected public defender. Based on this common use of the term public defender it is not likely that the public would be misled by its use in this case. Additionally, the letter contained a link to the Respondent's website which contained a correct reference to her work history as an assistant public defender. I find this conduct is not a violation of the Rules.

Finally, it was alleged that the Respondent's campaign manager incorrectly posted that the Respondent was "judge elect" when she had not never been a judge and had not been elected. I find that the Respondent took reasonable action in directing the campaign manager to obtain her approval prior to making any changes to her website. Pursuant to Rule 4-5.3(b), a lawyer may be held responsible for the conduct of a On-lawyer's actions if the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved. The Respondent did not order, have knowledge of, or ratify the campaign manager's action. I find this conduct is not a violation of the Rules.

III. RECOMMENDATION AS TO GUILT

It is recommended that the Respondent be found **GUILTY** of violating Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-8.2(b) (Judicial and Legal Officials; Candidates for Judicial Office; Code of Judicial Conduct Applies); and Rule 4-8.4(a) (Misconduct-a lawyer shall not violated or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another). It is recommended that the Respondent be found **NOT GUILTY** of violating Rule 4-5.3(b) (Responsibilities Regarding Non-lawyer Assistants; Supervisory Responsibility).

IV. AGGRAVATING AND MITIGATING FACTORS

Aggravating Factor:	None
Mitigating Factors:	9.32(a) (absence of a prior disciplinary record);
	9.32(b) (absence of a dishonest or selfish motive) —

(The parties agree that the misconduct was not calculated to benefit Respondent personally.);

9.32(d) timely good faith effort to make restitution or to rectify misconduct;

9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

V. RECOMMENDATION AS TO DISCIPLINARY MEASURES TO BE APPLIED

I recommend that the Respondent be found guilty of misconduct justifying disciplinary measure, and that she be disciplined by:

A. Public Reprimand.

I note that the Respondent argued that she: has already received punishment due to the various negative articles written about her actions in the 2009 campaign and that there was no actual harm to the public. However, the Respondent's actions may have caused harm to the public's faith in the judicial election process. I also note that the Respondent testified that she assured her clients who called with concerns due to the recent newspaper article about the instant proceedings that there would be no problems with her representation and nothing was going on. I do not see how the Respondent could make such assurance with the instant proceedings and possible sanctions still pending. The Respondent also testified that she is currently running as a judicial candidate once again while these proceedings are still pending.

B. Payment of The Florida Bar's costs in these proceedings.

VI. Personal History and Past Disciplinary Record:

Prior to recommending discipline pursuant t4 Rule 3-7.6(m)(l), I considered the following:

A. Personal History of Respondent:

Age: 48

Date Admitted to Bar: April 24, 1991

Prior Discipline: None

B. Aggravating Factors: None

C. Mitigating Factors: 9.32(a) (absence of a prior disciplinary record);

9.32(b) (absence of dishonest or selfish motive) — (The parties agree that the misconduct was not calculated to benefit Respondent personally.);

9.32(d) timely good faith effort to make restitution or to rectify consequences of misconduct;

9.32(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

VI. Costs: I find the following costs were reasonably incurred by The Florida Bar:

Administrative costs pursuant to Rule 3-7.6(q)(1)(I)	$1,250.00
Florida Bar Counsel Costs	$15.30
Court Reporter Costs	$595.00
Clark Reporting Service	
TOTAL	$1860.30

I recommended that the foregoing itemized costs be charged to the Respondent and that interest at the statutory rate accrue and become payable beginning 30 days after the judgment in this case becomes final unless a waiver is granted by the Board of Governors of The Florida Bar.

Dated this 12 day of June, 2012.

/s/
Honorable Chris Helinger, Referee
Sixth Judicial Circuit
14250 49th Street North
Clearwater, Florida 33762

APPENDIX C

IN THE SUPREME COURT OF FLORIDA
(Before a Referee)

THE FLORIDA BAR, ***Complainant*,** **v.** **LANELL WILLIAMS-YULEE,** ***Respondent*.**	**Case No. SC11-265** **TFB File No. 2010-10,624(6A)**

ORDER ON RECOMMENDATION OF GUILT

THIS CAUSE came before this Referee pursuant to an order issued by the Supreme Court of Florida, dated February 21, 2011, and a subsequent administrative order issued by Chief Judge J. Thomas McGrady, dated March 1, 2011, the latter of which appointed the undersigned judge to act as referee in the above-styled matter. An evidentiary hearing occurred on April 13, 2012 where testimony and arguments were heard. Following consideration of the pleadings, evidence, and argument, this Referee finds as follows:

The Florida Bar argues that the Respondent violated various Rules Regulating the Florida Bar based upon four acts. At the conclusion of the submission of evidence, the Respondent moved for a diversion of the disciplinary action to a practice and professionalism enhancement program as authorized in Rule 3-5.3(h)(2), Rules Regulating The Florida Bar. The

Rules allow for a diversion if the conduct alleged to have been committed is not more serious than minor misconduct. This Referee cannot find that a violation of the Judicial Canons regarding the election process would ever be a minor misconduct. Therefore, the Respondent's motion for a diversion to a practice and professionalism enhancement program is **DENIED**.

The Florida Bar and the Respondent each presented one witness, the Respondent, Lanell Williams-Yulee. Each act that is the basis for the violations shall be address individually below.

1. The Respondent signed a campaign letter personally soliciting campaign contributions.

The Florida Bar alleges that on or about September 2009, the Respondent became a candidate for County Court Judge, Group 10, Hillsborough County, Florida. On September 4, 2009, the Respondent signed a campaign fundraising letter wherein the Respondent personally solicited campaign contributions. The Respondent admits that she reviewed and approved the September 4, 2009 letter. The Respondent further testified that prior to approving the letter she reviewed Canon 7C(1) of the Code of Judicial Conduct regarding solicitation of funds. However, the Respondent testified that she interpreted the Canon to only apply if there was another candidate in the race. At the time the solicitation letter was sent no other candidate had been announced. Canon 7C(1) states that the prohibition of personal solicitation of campaign funds apply to any candidate for "judicial office that is filled by public election between competing candidates." It is clear that the use of "election between competing candidates" is used to describe the type of judicial office where the prohibi-

tion would apply. Based on Respondent's testimony this Referee does not doubt that the Respondent violated the Canon based on an ignorance of the meaning of the Canon; however, no matter the reason for violation, the Respondent violated Rule 4-8.2(b), which requires attorneys running for judicial office to comply with the applicable provision of the Florida Code of Judicial Conduct. A finding of **GUILT** is recommended on this violation.

2. The Respondent made a misrepresentation to the press that there was no incumbent for the judicial seat for which she was running.

The Florida Bar alleges that the Respondent misrepresented to a reporter that there was no incumbent in the judicial seat for which she was running when in fact it was occupied by a judge who had not announced his candidacy. The Respondent argues that at the time she spoke with the reporter the sitting judge had not announced his candidacy for the race; however, this is irrelevant because the fact that there was a sitting judge in that seat meant there was an incumbent even though his candidacy had not been announced. A finding of **GUILT** is recommended on this violation.

3. The Respondent indicated on a campaign letter that she had served as "Public Defender" rather than assistant public defender.

In the September 4, 2009 letter, the Respondent stated she served the "community as Public Defender." The Bar alleges this was a misrepresentation and was misleading because it might cause people to believe the Respondent was the elected public de-

fender and not an assistant public defender. The Respondent presented several news articles, attorney advertisements, as well as a rule and a Florida case where the assistant public defender was referred to as a public defender. The term public defender is widely used to refer to the specific attorney assigned to a case and not necessarily the elected public defender. Based on this common use of the term public defender it is not likely that the public would be misled by its use in this case. Additionally, the letter contained a link to the Respondent's website which contained a correct reference to her work history as an assistant public defender. A finding of **NO GUILT** is recommended on this violation.

4. The Respondent's campaign manager posted information on the Respondent's website incorrectly referring to her as "judge-elect."

The Florida Bar alleges Respondent failed to properly supervise her campaign manager who incorrectly posted that she was "judge elect" when she had not never been a judge and had not been elected. The Respondent testified that she directed her campaign manager to seek approval for any changes to the website; however, without her knowledge or approval the campaign manager posted the term "judge elect" to refer to the Respondent. The Respondent was notified by a reporter of the webpage posting of the incorrect term and the Respondent took action to have it removed within an hour. The Respondent took reasonable action in directing the campaign manager to obtain her approval prior to making any changes to her website. Pursuant to Rule 4-5.3(b), a lawyer may be held responsible for the conduct of a non-lawyer's actions if the lawyer orders or, with the

knowledge of the specific conduct, ratifies the conduct involved. The Respondent did not order, have knowledge of, or ratify the campaign manager's action. A finding of **NO GUILT** is recommended on this violation.

RULES VIOLATED

As discussed above it is this Referee's recommendation that two of the four acts above constitute the basis of violations of the Rules Regulating the Florida Bar. Based on the findings above and a standard of clear and convincing evidence, it is recommended that the Respondent be found guilty of violating Rule 3-4.3 (Misconduct and Minor Misconduct); Rule 4-8.2(b) (Judicial and Legal Officials; Candidates for Judicial Office; Code of Judicial Conduct Applies); and Rule 4-8.4(a) (Misconduct-a lawyer shall not violated or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another).

Dated this 24 day of April 2012.

/s/
Honorable Chris Helinger, Referee
Sixth Judicial Circuit
14250 49th Street North
Clearwater, Florida 33762

APPENDIX D

LANELL WILLIAMS-YULEE

Reply to Tampa Post Office Box 340031
Tampa, Florida 33694
email: lwilliams94@verizon.net
www.vote4vulee.com

"Bringing Diversity to the Judicial Bench"

RE: Elect Lanell Williams-Yulee For County Court Judge Group 10 and Campaign Fundraiser

Dear Friend:

I have served as a public servant for this community as Public Defender as well as a Prosecutor for the past 18 years. Having been involved in various civic activities such as "The Great American Teach In," Inns Of Court, Pro Bono Attorney, Metropolitan Ministries outreach program, as well as a mentor for various young men and women residing within Hillsborough County, I have long worked for positive change in Tampa. With the support of my family, I now feel that the time has come for me to seek elected office. I want to bring fresh ideas and positive solutions to the Judicial bench. I am certain that I can uphold the Laws, Statutes, Ordinances as prescribed by the Constitution Of the State Of Florida as well as the Constitution of the United States Of America.

I am confident that I can serve as a positive attribute to the Thirteenth Judicial Circuit by running for County Court Judge, Group 10. To succeed in this effort, I need to mount an aggressive campaign. I'm inviting the people that know me best to join my

campaign and help make a real difference. An early contribution of $25, $50, $100, $250, or $500, made payable to "Lanell Williams-Yulee Campaign for County Judge", will help raise the initial funds needed to launch the campaign and get our message out to the public. I ask for your support In meeting the primary election fund raiser goals. Thank you in advance for your support.

Sincerely,

/s/ _____

Lanell Williams-Yulee, Esq.

Political Advertisement paid for and approved by Lanell Williams-Yulee, Nonpartisan, for County Judge, Group 10