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Attorney for Plaintiff Mark French

**UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
GREAT FALLS DIVISION**

Mark French,)	
)	Case No. _____
Plaintiff,)	
)	
v.)	VERIFIED COMPLAINT FOR
)	DECLARATORY AND
Edward McLean, in his official capacity as)	INJUNCTIVE RELIEF
Chair of Montana's Judicial Standards)	
Commission; Blair Jones, in his official)	
capacity as a member of Montana's Judicial)	
Standards Commission; Victor Valgenti, in)	
his official capacity as a member of)	
Montana's Judicial Standards Commission;)	
John Murphy, in his official capacity as a)	
member of Montana's Judicial Standards)	
Commission; Sue Schleif, in her official)	
capacity as a member of Montana's Judicial)	
Standards Commission;)	
)	
Defendants.)	

COMES NOW Plaintiff Mark French, who alleges the following:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §§1331, 1343, 42 U.S.C. §1983, and the First and Fourteenth Amendments to the United States Constitution.

2. Venue for this action properly lies in the Great Falls Division of the District of Montana because Defendant John Murphy resides within the Great Falls Division.

PARTIES

3. Plaintiff Mark French resides in Sanders County in the State of Montana.

4. Defendant Edward McLean is a district court judge for the State of Montana and chairs Montana's Judicial Standards Commission. Plaintiff is informed, believes, and thereon alleges that Defendant McLean resides in Missoula County in the State of Montana.

5. Defendant Blair Jones is a district court judge for the State of Montana and is a member of Montana's Judicial Standards Commission. Plaintiff is informed, believes and thereon alleges that Defendant Jones resides in Stillwater County in the State of Montana.

6. Defendant Victor Valgenti is a member of Montana's Judicial Standards Commission. Plaintiff is informed, believes and thereon alleges that Defendant Valgenti resides in Missoula County in the State of Montana.

7. Defendant John Murphy is a member of Montana's Judicial Standards Commission. Plaintiff is informed, believes and thereon alleges that Defendant Murphy resides in Cascade County in the State of Montana.

8. Defendant Sue Schleif is a member of Montana's Judicial Standards Commission. Plaintiff is informed, believes and thereon alleges that Defendant Schleif resides in Pondera County in the State of Montana.

STATEMENT OF FACTS

9. On December 12, 2008, the Montana Supreme Court adopted the Montana Code of Judicial Conduct (Code).

10. The Code applies to judges and candidates for judicial offices. This includes justices of the peace as well as candidates seeking that office.

11. Candidates who violate the Code and are subsequently elected to office are subject to discipline imposed by the Montana Judicial Standards Commission once they assume office. This can include imposition of an admonishment, private reprimand, public reprimand, censure, suspension, or removal from office.

12. Under Rule 4.1(A)(7, of the Code, a judicial candidate shall not "seek, accept, or use endorsements from a political organization, or partisan or independent non-judicial office-holder or candidate."

13. Mark French is a candidate for justice of the peace in Sanders County.

14. The other candidate in the race is Judge Donald Strine, who currently serves as the county's justice of the peace and is running for reelection.

15. Kathleen French, who is Mark French's wife, chairs the Sanders County Republican Central Committee (Committee).

16. The Committee is the Republican Party's county-level organization for Sanders County and, in accordance with Mont. Code Ann. § 13-38-105, has filed a copy of its bylaws with the election administrator.

17. Pursuant to its bylaws, the Committee scheduled a candidate forum for August 7, 2014, for local candidates to appear and seek a possible endorsement from the Committee.

18. On August 4, 2014, Katy French, on behalf of the Committee, invited her husband and Judge Strine to the forum. She informed both that they would be permitted to make speeches and the Committee would consider endorsing one of them.

19. Judge Strine initially accepted the invitation but ultimately declined to appear at the forum.

20. Mark French attended the forum and informed the Committee that because of Rule 4.1(A)(7) of the Code, he was unwilling to seek the Committee's endorsement at that time. He requested the Committee postpone endorsing a

candidate for justice of the peace until it meets in October. The Committee agreed.

21. Mark French intends to seek the Committee's endorsement in October 2014 if this Court enjoins enforcement of Rule 4.1(A)(7).

22. If the Committee endorses him, French intends to accept the endorsement and include it in his campaign literature and discuss it during face-to-face campaigning.

23. Several public officials and candidates for public office are willing to consider endorsing French if he seeks their endorsement.

24. French will not do so, however, because of the prohibition in Rule 4.1(A)(7).

25. In the event French loses the election on November, 4, 2014, to Judge Strine, he will file for the office of justice of the peace again in 2018 when the next election for Sanders County Justice of the Peace occurs.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF - 42 U.S.C. § 1983

26. All previous paragraphs are incorporated by reference.

27. Rule 4.1(A)(7) of Montana's Code of Judicial Conduct prohibits judicial candidates such as Mark French from seeking, accepting, or using

endorsements from political parties or from non-judicial elected officials or candidates.

28. The Montana Judicial Commission threatens to discipline any judicial candidate who violates the Code and is subsequently elected.

29. Rule 4.1(A)(7) is a content-based restriction on speech and association and therefore subject to strict scrutiny. *Citizens United v. F.E.C.*, 558 U.S. 310, 340 (2010).

30. This prohibition cannot satisfy strict scrutiny because the State has no compelling interest in prohibiting judicial candidates from seeking, accepting or using endorsements from political parties and non-judicial elected officials or candidates.

31. Rule 4.1(A)(7) therefore violates the Free Speech Clause of the First Amendment to the United States Constitution as made applicable to state and local governments through the Due Process Clause of the Fourteenth Amendment.

32. French is suffering a violation of his right to freedom of speech and association under the First Amendment because Rule 4.1(A)(7) is preventing him from seeking, accepting or using endorsements from political parties and non-judicial elected officials or candidates.

33. French will continue to suffer a violation of his rights until this Court grants relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff Mark French requests the following relief from this Court:

- a) Declare that Rule 4.1(A)(7) of the Montana Code of Judicial Conduct unconstitutional.
- b) Enjoin Defendants from enforcing Rule 4.1(A)(7);
- c) Award Plaintiff nominal damages against Defendants;
- d) Award Plaintiff costs of litigation, including reasonable attorneys' fees and expenses, pursuant to 42 U.S.C. § 1988; and
- e) Grant such other relief to which Plaintiff may be entitled, or as this Court deems necessary and proper.

Respectfully submitted,

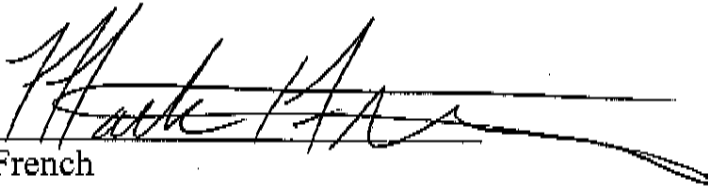
DATED: August 19, 2014

/s/ Matthew G. Monforton
Matthew G. Monforton
Attorney for Plaintiff

Verification By Mark French

1. I am the Plaintiff in this matter.
2. I have personal knowledge of the allegations set out in this Complaint and, if called as a witness, I could and would competently testify as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint are true and correct.

Executed on August 19, 2014, in Paradise, Montana

A handwritten signature in black ink, appearing to read 'Mark French', is written over a horizontal line.

Mark French
Declarant