SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

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April 14, 2023

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Jerrold Harris Stocks
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101 S. State Street, Suite 240
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Decatur, IL 62525

In re: Caulkins v. Pritzker
129453

Dear Jerrold Harris Stocks:

Enclosed is an order entered April 14, 2023, by Justice Rochford in the above-captioned cause.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Adam Robert Vaught
Attorney General of Illinois - Civil Division
Brian David Eck
Devon Campbell Bruce
Leigh Jacqueline Jahnig
Luke Andrew Casson
Macon County Circuit Court
Michael James Kasper
Thomas Aloysius Haine
Thomas Guy DeVore

129453

IN THE

SUPREME COURT OF ILLINOIS

Dan Caulkins, Perry Lewin, Decatur Jewelry & Antiques Inc., and Law-Abiding Gun Owners of Macon County, a voluntary unincorporated association, Appellees v. Governor Jay Robert Pritzker, in his official capacity, Kwame Raoul, in his capacity as Attorney General, Emanuel Christopher Welch, in his capacity as Speaker of the House, and Donald F. Harmon, in his capacity as Senate President, Appellants	)	Motion for Recusal/Disqualification

ORDER

Plaintiffs have filed a motion for recusal/disqualification, asking that I recuse myself from consideration of the appeal of this case. At issue is the constitutionality of portions of Public Act 102-1116 (eff. Jan. 10, 2023) (adding 5 ILCS 100/5-45.35), the Protect Illinois Communities Act (Act), specifically the Act's restrictions on the possession and sale of assault weapons and large capacity magazines. Plaintiffs set forth two bases for their motion. First, plaintiffs claim certain campaign contributions to the Elizabeth M. Rochford for Illinois Supreme Court 2022 Campaign Committee create an appearance that "undermine[s] public confidence in the independence and impartiality of the Judiciary, in the decision of the Court or otherwise informs a basis to reasonably

question impartiality free from the appearance of political influence and pressure." Second, plaintiffs claim that "statements or pledges" attributed to me, as a candidate for the Illinois Supreme Court, disclosed "a position favoring assault weapons prohibitions, an issue the reasonable candidate should have foreseen as likely for Court consideration, inconsistent with impartial performance of the adjudicative duties of the Court on the issues presented by this appeal."

Plaintiffs concede that there is no specific Illinois Supreme Court rule governing motions to recuse or disqualify members of this court. Plaintiffs state that they are presenting the motion to the court as a whole, pursuant to Illinois Supreme Court Rule 361 (eff. Feb. 1, 2023), which governs motion practice in the reviewing court. In addition, plaintiffs assert that I have a duty to consider recusal independently, even in the absence of a motion to disqualify, pursuant to Rule 2.11, comment 2, of the Illinois Code of Judicial Conduct of 2023. Ill. Code Judicial Conduct (2023) Canon 2, R. 2.11, cmt. 2 (eff. Jan. 1, 2023). Rule 2.11, comment 2, states: "A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed." *Id.*

Plaintiffs then generally cite canons 1, 2, and 4 of the Illinois Code of Judicial Conduct of 2023, and the rules and comments to those canons, as support for my recusal from this case. Plaintiffs also cite Rule 67 of the Code of Judicial Conduct (Ill. S. Ct. R. 67 (eff. Mar. 24, 1994)), which set forth authorized activities for judges and candidates. Ultimately, the gravamen of plaintiffs' motion regarding campaign contributions is that the contributions create an appearance that undermines public confidence in the impartiality of the judiciary.

Regarding the allegations concerning campaign contributions, plaintiffs do not, and cannot, allege any contributions to my campaign for the Illinois Supreme Court violated the Code of

Judicial Conduct or the Illinois Election Code. Rule 67, which was canon 7 of the Code of Judicial Conduct and the rule in effect at the time of my campaign, provided in pertinent part:

> "A candidate shall not personally solicit or accept campaign contributions. A candidate may establish committees of responsible persons to conduct campaigns for the candidate ***. Such committees may solicit and accept *reasonable campaign contributions* ***. Such committees are not prohibited from soliciting and accepting reasonable campaign contributions and public support from lawyers." (Emphasis added.) Ill. S. Ct. R. 67(B)(2) (eff. Mar. 24, 1994).

Rule 67(B)(2) did not define reasonable, but the Election Code states, in addressing judicial elections, that a political committee that is self-funding "may not accept contributions from any single person *** in a cumulative amount that exceeds $500,000 in any election cycle." Pub. Act 102-909, § 5 (eff. May 27, 2022) (adding 10 ILCS 5/9-8.5(b-5) (1.1)).

Plaintiffs do not allege that any donations to my campaign committee, which was self-funding, exceeded the limits set forth in the Election Code. Perhaps recognizing that any donations to my campaign were within Election Code limits and thus reasonable, plaintiffs argue that whether the campaign contributions "were lawful or not is immaterial to the appearance of political influence." Plaintiffs also argue that, at the time of the campaign contributions, it was "likely that the contributors would appear as counsel or parties, individually or in official capacities, on a routine and regular basis."

That contributors to my campaign committee might appear as counsel or parties before this court does not require my recusal from this case. Our supreme court rules specifically allow a judicial candidate's campaign committee to solicit and accept reasonable campaign contributions and public support from lawyers. See Ill. S. Ct. R. 67(B)(2) (eff. Mar. 24, 1994). As the United

States Court of Appeals for the Third Circuit has recognized, it is generally understood that "judicial campaigns must focus their solicitations for funds on members of the bar." *Stretton v. Disciplinary Board of the Supreme Court of Pennsylvania.*, 944 F.2d 137, 145 (3d Cir. 1991). High courts in other states in which judges are elected have held that a judge is not ethically, let alone constitutionally, required to recuse in cases where a party is represented by an attorney who has contributed to, or raised money for, the judge's reelection campaign. See *Shepherdson v. Nigro*, 5 F. Supp. 2d 305, 310-11 (E.D. Pa. 1998) (collecting cases).

Lacking any tangible basis to support their motion that I recuse myself, plaintiffs imagine bias based upon the "appearance of political influence." Under plaintiffs' "appearance of political influence" standard, however, I, along with my colleagues on the court, could be subject to a recusal motion in any case involving organizations or individuals that contributed to our campaigns. The court in *Shepherdson* explained the consequences of such a position. The court stated:

> "Absent public financing or blind funding of judicial campaigns, that a judge may preside in some cases in which a litigant's attorney contributed to the judge's campaign is an almost inevitable concomitant of the policy decision to elect judges. If a judge must recuse himself whenever a contributing attorney or member of a contributing firm enters an appearance, a candidate who succeeds in attracting contributions from a wide array of lawyers would constantly be recusing himself." *Shepherdson*, 5 F. Supp. 2d at 311.

In 2014, Illinois Supreme Court Justice Lloyd Karmeier was faced with a similar request to recuse himself from the case of *Phillip Morris USA, Inc. v. Appellate Court, Fifth District*, No. 117689 (Ill. Sept. 24, 2014). In denying the request to recuse himself, Justice Karmeier wrote:

"The claim that a judge may not hear a case because a party may have some association with a public interest group or political party that did support or may have supported the judge's candidacy has no basis in the law, would be unworkable and is contrary to the very notion of an elected judiciary. When judges are elected, as the Illinois Constitution requires, it is inevitable (and entirely appropriate) that interest groups will support judges whose judicial philosophies they believe are most closely aligned with their own views. As movant correctly points out, the system would come to a grinding halt if contributions by organizations and interest groups were sufficient to force a judge to recuse himself or herself in any case in which a member of the group was a party. An affidavit submitted by noted legal scholars Ronald Rotunda and Charles Wolfram makes the point. Adopting a policy of recusal-by-association would logically require my recusal in each and every additional case in which any member of the organizations which supported my candidacy might appear as a litigant. Similarly, other members of the Court would also be forced to not participate in cases involving members of organizations that contributed to their campaigns, including unions and legal groups. Accordingly, instead of being a rare event, disqualification would be routine and even structural. Members of the court would be prevented from hearing a substantial number of cases for the entire duration of the terms they were elected by the voters to serve, and the court's ability to do its work would be compromised." *Id.* at 10-11.

In addition to the preceding considerations, the court in *Conklin v. Warrington Township*, 476 F. Supp. 2d 458, 463 (M.D. Pa. 2007), cautioned that courts must consider whether attacks on a judge's impartiality are "simply subterfuge to circumvent anticipated adverse rulings." Similarly, the court in *In re United States*, 158 F.3d 26, 35 (1st Cir. 1998), stated:

> "A party cannot cast sinister aspersions, fail to provide a factual basis for those aspersions, and then claim that the judge must disqualify herself because the aspersions, *ex proprio vigore*, create a cloud on her impartiality. [Citations.] To hold otherwise would transform recusal motions into tactical weapons which prosecutors and private lawyers alike could trigger by manipulating the gossamer strands of speculation and surmise."

In their motion, plaintiffs do exactly that. Plaintiffs cast sinister aspersions that contributions to my campaign committee were made to influence the instant litigation. Plaintiffs provide no factual basis for those aspersions.

Plaintiffs' other ground for my recusal in this case is their claim that I made a pledge to support a contemplated assault weapons prohibition during my campaign. Such a pledge would require disqualification under Illinois Code of Judicial Conduct (2023) Canon 2, Rule 2.11(4) (eff. Jan. 1, 2023). That rule provides that a judge shall be disqualified in any proceedings where the judge, "while a judge or a judicial candidate, has made a public statement *** that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy." *Id.*

Plaintiffs, however, do not cite any such pledge. Rather, plaintiffs infer such a pledge from the endorsement I received from two political action committees (PACs). Plaintiffs claim tha,t to earn the endorsement of those PACs, I "voiced support of the organizations' top legislative priority; banning assault weapons and large-capacity magazines in Illinois." Despite this broad claim, plaintiffs do not cite any instance in which I voiced such support. In fact, I have made no public statement committing or appearing to commit to reach a particular result or rule in a particular way in the instant proceeding that would require me to recuse or disqualify myself from this case.

In sum, plaintiffs do not suggest that I am biased or partial in this matter. Rather, plaintiffs have attempted to show bias based upon inference and supposition, to create the appearance of impropriety where none exists. I have carefully considered plaintiffs' motion, and for the reasons set forth above, I deny plaintiffs' motion to recuse myself from this case.

Order entered by Justice Rochford.