

**BEFORE THE HEARING PANEL OF THE FLORIDA JUDICIAL  
QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE,

SC2025-1663

BRONWYN C. MILLER

**OMNIBUS MOTION TO DISMISS THE NOTICE OF FORMAL CHARGES  
FILED BY THE JUDICIAL QUALIFICATIONS COMMISSION ON  
CONSTITUTIONAL GROUNDS, OR, ALTERNATIVELY, MOTION TO  
DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION OR FOR  
MORE DEFINITE STATEMENT AND TO STRIKE AND REQUEST FOR  
HEARING ON THE SAME**

COMES NOW the Honorable Bronwyn C. Miller, by and through her undersigned counsel and respectfully files this Omnibus Motion to Dismiss the Notice of Formal Charges (the "Notice") filed by the Judicial Qualifications Commission (the "JQC") on Constitutional Grounds, or Alternatively, Motion to Dismiss for Failure to State a Cause of Action or for More Definite Statement and to Strike, on the following grounds: (1) The Notice violates the First Amendment to the United States Constitution; (2) The Notice violates the Article I, Section 16 of the Florida Constitution; (3) the Notice fails to comply with Florida Rule of Civil Procedure 1.110(b); and (4) Portions of the Notice are incorrect, irrelevant, or immaterial under Florida Rule of Civil Procedure 1.140(f), and requests a hearing on the same.

I

A

The Notice carries with it grave implications for the constitutional rights of all state court judges in Florida. Up until the JQC filed its Notice against Judge Miller, it was universally settled law that “[a]ll Florida judges . . . are free to speak their minds privately, to believe in whatever particular ideas they choose,” particularly in furthering the administration of justice. In re Code of Judicial Conduct (Canons 1, 2, and 7A(1)(b)), 603 So. 2d 494, 498 (Fla. 1992). In this vein, Judges were not required to forgo all constitutional guarantees of free expression, because “public employees do not renounce their citizenship when they accept employment, and [the United States Supreme Court] has cautioned time and again that public employers may not condition employment on the relinquishment of constitutional rights.” Lane v. Franks, 573 U.S. 228, 236 (2014).

But the JQC seeks to punish Judge Miller, a nearly thirty-year public servant, for expressing constitutionally protected speech while lawfully cooperating with her past employer, Miami-Dade State Attorney Katherine Fernandez Rundle, in the postconviction proceedings of Corey Smith, a mass murderer who systematically extinguished the lives of witnesses, competitors, and disloyal employees of his racketeering enterprise, and

threatened Judge Miller's life over two decades ago. Ms. Rundle initiated the contact, and Judge Miller communicated with her solely in her capacity as the former prosecutor, one-time threat victim, witness, and otherwise concerned constituent. She never served and could never serve as the judge on Smith's case.

There was no nexus between Judge Miller's private text exchanges and her judicial role on Florida's Third District Court of Appeal. The texts had no relation whatsoever to her judicial responsibilities.

But the Investigative Panel overlooked these critical facts and bootstrapped Judge Miller's lawful cooperation in her private communications into the vagaries of the "catch-all" Canons in the Florida Code of Judicial Conduct. Casting aside the Notice's pervasive procedural deficiencies which are discussed at length below, this approach does not withstand constitutional muster.

## **B**

The JQC enjoys broad discretion and wields considerable power. A judge facing charges may accept a stipulation to avoid the financial and emotional toll exacted by litigation or due to the vagueness of the Canons, even when charges are unsubstantiated. See, e.g., Inquiry Concerning a Judge No. 2023-029 re Woolsey, 389 So. 3d 411 (Fla. 2024) (rejecting

stipulation that judge identifying herself as a “conservative” violated Canon 7 of the Rules of Judicial Conduct); Inquiry Concerning a Judge No. 2023-006 & 2023-067 Re: Hon. John B. Flynn, 397 So. 3d 39 (Fla. 2024) (rejecting stipulation that judge violated Canon 7C(3) for Patriot Club-related conduct because it was a “political organization” rather than the “political party” required to sustain a violation).

But as Voltaire is credited with famously proclaiming, “with great power comes great responsibility.” The JQC must not mechanically mete out charges. The Code expressly recognizes that even bona fide Canon violations should not automatically result in disciplinary recommendations. Instead, “[w]hether disciplinary action is appropriate, and the degree of discipline to be imposed, should be determined through a reasonable and reasoned application of the text and should depend on such factors as the seriousness of the transgression, whether there is a pattern of improper activity and the effect of the improper activity on the others or on the judicial system.” Code of Judicial Conduct, Preamble. This is consistent with Florida Judicial Qualifications Commission Rule 19. See id. (“Failure to recommend the imposition of any penalty by the prescribed affirmative vote of the Hearing Panel shall constitute a dismissal of the proceedings.”). And as an arm of

the state, the JQC must yield to constitutional considerations or run afoul of federal law. See 42 U.S.C. § 1983 (2025).

## II

In January 2024, State Attorney Ms. Rundle contacted Judge Miller and told her that she would likely be needed as a witness in the postconviction relief hearing in State v. Corey Smith.<sup>1</sup> Judge Miller had prepared and tried the Smith case over two decades earlier as an assistant state attorney at the Miami-Dade State Attorney's Office. Because Ms. Rundle contacted Judge Miller in her capacity as the former prosecutor, not a judge, and because Smith had threatened Judge Miller previously, the facts and circumstances of the underlying prosecution are material and relevant to the application of the Judicial Canons to this matter and therefore require some elaboration.

## A

In 1997, Corey Smith was charged with murdering nineteen-year-old Dominique Johnson. Johnson was shot twice in his arms and once through his temple. The shooter was approximately three inches away from Johnson

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<sup>1</sup> Ms. Rundle has been a member of The Florida Bar since 1977 and was appointed by the governor to serve as Miami-Dade County State Attorney in 1993.

at the time he perpetrated the homicide. Although several people were present, a lone witness, Cynthia Brown, identified Smith.

Smith was scheduled to be tried for Johnson's murder on July 28, 1997. Less than a week before trial, Brown was murdered. As a result, the trial prosecutor was forced to announce a nolle prosequi in the Johnson case.

An ensuing investigation revealed that Smith had ordered Brown's murder, and federal and state law enforcement officers unraveled a vast racketeering enterprise known as the John Doe Organization. Smith served at the helm, and under his leadership, witnesses and competitors were routinely murdered for the purpose of maintaining a monopoly over drug manufacturing and distribution in Liberty City.

Smith was federally indicted, tried, and sentenced for drug-related and racketeering offenses. He and seven of his cohorts were also indicted by a state grand jury. The indictment set forth fourteen counts against Smith, including the first-degree murders of Cynthia Brown, Leon Hadley, Jackie Pope, Angel Wilson, and Melvin Lipscomb, the second-degree murder of Marlon Beneby, four counts of conspiracy to commit first-degree murder on Brown, Pope, Leon Hadley, and Anthony Fail, violations of Florida RICO

(Racketeer Influenced and Corrupt Organization) Act, see section 895.01—895.06, Florida Statutes (2000), and various drug-related counts.

In the summer of 2004, Ms. Rundle approached Judge Miller, then-Training Director of the Miami-Dade State Attorney's Office, and requested she serve as one of the trial prosecutors on the case. Although the case had been pending for nearly five years and the defense had demanded a speedy trial, the State was not adequately prepared to proceed. Ms. Rundle therefore assembled a trial team consisting of Judge Miller, Jay Novick, Audrey Frank-Aponte, and George Cholakis. Now-Judge Angelica Zayas provided legal support.

Judge Miller worked around the clock in the months leading up to trial, and her mother tragically passed away approximately two weeks before the trial. She could not, however, obtain an extension of the speedy trial period, so the case proceeded as scheduled.

Judge Scott Bernstein was the presiding judge. Immediately following jury selection, co-prosecutor George Cholakis suffered an emotional breakdown and took an extended leave of absence.

Smith threatened to kill Judge Miller in recorded, sealed court-authorized wiretaps. He developed close relationships with several corrections officers, allowing him to receive unauthorized privileges, and his

former house arrest officer, who later died. He was then discovered with a homemade weapon and cell phone in his jail cell, and wiretaps further revealed that he had hatched intricate plans to break out of prison using a helicopter.

Security was a constant issue during the trial, and the trial team members, including Judge Miller, were escorted by law enforcement to and from the courthouse and parking facilities, daily. A magnetometer—a metal detector—was installed in the courtroom. Undercover detectives policed the courtroom and the corridors of the courthouse.

During trial, cooperating witnesses recognized gang members among the spectators. The gang members threatened witnesses and prosecutors by raising their fingers in the sign of a firearm. Smith's mother engaged in impermissible contact with the jury during jury selection.

City of Miami law enforcement officers were assigned to Judge Miller's home as a protective measure. Judge Miller reasonably feared for her life and that of her family members as she had been repeatedly warned by cooperating witnesses that Smith still had active criminal ties and was directing criminal activity even while incarcerated.

The facts that follow are excerpted from Smith v. State, 7 So. 3d 473 (Fla 2009).

## **B**

The John Doe Organization had been the subject of a joint state and federal task force. The task force surveillance included pen registers on several phones, followed by wiretaps on the phones of Smith and his second-in-command, Latravis Gallashaw. The wiretaps recorded calls on Gallashaw's cell phone (which was registered to Smith) and Smith's landline at his residence. These wiretap recordings and transcripts of the recordings were admitted into evidence at Smith's trial.

The state criminal conspiracy count was based on the operation of the John Doe organization, a criminal enterprise that processed, packaged, and distributed powder and crack cocaine and marijuana in the Liberty City area of Miami–Dade County over six years from July 1994 through January 1999. At its peak, the John Doe organization operated seven “holes,” locations where they distributed drugs. The holes had two names, John Doe and No Fear, to keep people from knowing that all of them belonged to one organization. The group also packaged their drugs in different colored bags to confuse the police and others about the extent of the John Doe enterprise.

Smith's trial took place in October 2005. The State, led by Judge Miller in the guilt phase, called eighty-four witnesses. The court ordered additional courtroom security for the trial, including a second magnetometer on the

seventh floor of the courthouse and required potential jurors, attorneys, and spectators to pass through the magnetometer before entering the courtroom. Two armed police officers searched all individuals, including jurors, who entered the hallway outside the courtroom. Multiple armed police officers were stationed inside and outside the courtroom. Smith was required to wear a stun belt. Spectators had to present photo identification before being admitted to the courtroom.

Numerous witnesses who had been involved in John Doe testified about the organization and operation of the seven drug holes. According to their testimony, Smith was the head of John Doe, Latravis Gallashaw was the second-in-command, and Julian Mitchell was the third. Smith started out as a member of the Lynch Mob, a drug group that predated John Doe in the same neighborhood. The leader of this group was Mark Roundtree, who was a friend and mentor to Smith. Smith opened his own drug hole across the street from his mother's house in 1994. Smith engaged in intimidation and violence to take over other drug spots or to run competitors out of business.

Each drug hole employed workers, including a “bombman” who sold the drugs, a “watchout” who looked out for the police and marketed the drugs by yelling slogans to potential customers, a “gunman” who kept the peace

and enforced the rules, and a “street lieutenant” who dropped off drugs and collected money. In addition, John Doe also employed “tablemen” who processed and packaged the drugs for street sale, “turnover lieutenants” who tracked the money to provide a count for paying the workers, and “enforcers” or “hit men” who carried out the group's violence. The employees worked regular shifts at their jobs and were paid in cash by the lieutenants. Various witnesses and documentary evidence also revealed a type of accounting system through tally sheets which enabled John Doe to keep track of how much and what kind of drugs were sold and how much money was collected and paid out. Letter codes were used to indicate the type of drug and the size of the bags. Witnesses also testified that workers at the drug holes were permitted to buy guns that they might be offered by individuals and pay for them with John Doe money. The guns were kept by the workers at the holes. That said, the workers had to get special permission to buy machine guns, which were stashed in a special location and not kept by the general drug hole workers.

When a drug unit officer attempted to conduct a controlled buy at the residence of Antonio Allen in September 1998, Allen was alerted when the officer's radio made a transmission. Allen was arrested with over 500 bags of cocaine, a .380-caliber semiautomatic gun with a four-inch barrel, and

\$922 in cash. Allen admitted the possession of these items. In September 1998, the wiretap revealed that a sack of narcotics would be delivered to the residence of Charles Clark. The search produced over 100 bags of crack cocaine, \$846 in cash, two handguns and ammunition, and rubber bands for bundling cash. The task force executed search warrants for various residences of John Doe members in late October and early November 1998. The search of Smith's mother's residence revealed two homemade grenades in the attic, a 9–millimeter pistol in Smith's room, various boxes of ammunition, magazines, and clips, a bullet-proof vest, a loaded derringer in the mother's bedroom along with \$850, drug residue in the kitchen, and a copy of the police report in the Johnson case in the nightstand of Smith's bedroom. The search of the home of Todra Smith and William Austin, Smith's sister and brother-in-law, uncovered several bricks of marijuana, hundreds of small bags of marijuana, a loaded 9–millimeter semiautomatic pistol, a .25–caliber pistol and magazine, and a variety of drug paraphernalia. The search of Latravis Gallashaw's house uncovered various paraphernalia for processing and packaging cocaine, including scales and thousands of empty bags for packaging, tally sheets of packaging and sales, two bricks of marijuana, rock, and powder cocaine, empty kilo wrappers in the garbage, and \$16,000 in cash. The search of the residence that Smith shared with his

girlfriend Crystal Boyd uncovered a radio frequency detector to detect bugs or wires, a phone guard that was supposed to detect wiretaps, a diamond-studded Rolex watch, \$500 in cash in Smith's shorts pocket, a bag containing \$185,724 in cash bundled with rubber bands, an AK-47 drum that can hold up to 75 rounds of ammunition, and a small amount of marijuana. In November 1998, a search of the Steady Mobbin' Car Wash on Northwest 17th Avenue uncovered several weapons in a locked storage room, including a .357 handgun, a Mac-10 semiautomatic handgun, a Rueger Mini-14 rifle, and a Mac-90 rifle. There was also a ski hat in the storage room.

On December 11, 1998, the John Doe “hitmen” Jean Henry, Julius Stevens, and Eric Stokes did a drive-by shooting of the Northwest 98th Street residence of Patricia Harvey, who is related to Anthony Fail. There were adults and children at the residence that day, as they were celebrating the “Soul Bowl” football game between Miami Northwest High School and Jackson High School. There were thirty-seven bullet holes in the front of the Harvey house and other bullets struck the trees in front of the house. Two of the bullets actually went through the Harvey house and struck a duplex behind it.

Based on this shooting, the crime suppression team of the Metro Dade police conducted surveillance of the residence of Eric Stokes and Jean

Henry at 1255 Northwest 100th Terrace. The officers observed black males getting into two vehicles at this location. The officers observed that the individuals in each car were armed. A white station wagon containing Julian Mitchell and Eddie Harris traveled to the west and led the officers on a high-speed chase for about ten minutes. The officers observed items being thrown from the vehicle. The chase ended at a Costco Warehouse approximately sixty blocks away. Eri Stokes, Jean Henry, and Julius Stevens left in a blue LeSabre and fled at a high speed. The three men abandoned their vehicle and then fled on foot. The police officers were able to arrest them after being alerted by a resident on 74th Street that the men were running through his house. The police found a loaded .44-caliber Colt pistol in a holster and a blue Dickie shirt that had been dumped over a fence as the men fled on foot. The police obtained court authorization for a search of the house on Northwest 100th Terrace. In Stokes' bedroom, the police found a 9-millimeter assault rifle and a bullet-proof vest. In Stevens' bedroom, they found a total of \$23,000 in cash and ammunition. A small amount of marijuana debris was found in the kitchen and living room. Numerous boxes of ammunition of different calibers were found in a garbage can.

In January 1999, the task force executed warrants for the residences of Julius Stevens and Ketrick Majors. In Stevens' house, the search

uncovered a number of boxes of ammunition and loose rounds, tally sheets, a triple-beam scale, a bullet-proof vest, a ski mask, and small bags of cocaine. In Major's house, the search uncovered empty bags for packaging drugs, an AK-47 magazine and clip, six boxes of ammunition, a box of .22-caliber long rifle rounds, and a ski mask.

### **C**

Leon Hadley was shot and killed on the morning of August 21, 1995, outside a store on the corner of 14th Avenue and 61st Street in Miami-Dade County. Hadley suffered six gunshot wounds, with a fatal wound to his head. His wounds did not show stippling, thus, he had not been shot at a close distance. Eleven shell casings and one live round were found at the murder scene. Hadley had a preexisting gunshot wound to his right leg and had a cast on his leg.

### **D**

Jackie Pope, a thirty-six-year-old deaf man who served as a lookout for John Doe was shot to death because he gave a deposition about the New Year's Eve 1997 shooting of Miami police officer Ricky Taylor. Various witnesses testified that lots of people in the neighborhood were shooting their guns in celebration of the new year. Taylor was the passenger in a marked police vehicle that was patrolling the neighborhood. He was shot from a

third-floor balcony of an apartment building at 1370 Northwest 61st Street, which was one of the John Doe drug hole locations known as the “dormitories.” Officer Taylor had a penetrating wound to the left side of his head at the hairline but survived the shooting. The crime scene technician recovered hundreds of casings from the scene. Charlie Brown, a member of John Doe, was identified as the individual who shot Officer Taylor. Brown pled guilty to the shooting and was sentenced to thirty years in prison.

## **E**

Cynthia Brown died from asphyxia after being smothered by a pillow in a room at the Tradewinds Motel at 4525 Southwest 8th Street. Brown checked into the hotel with her boyfriend, Chazre Davis, on the evening of July 23, 1998, and her body was found the next day. Brown's and Davis's prints were found on a mirror in the motel room. The medical examiner testified that Brown had petechial hemorrhages in her eyes, inside her upper lip, and on her epiglottis. Brown had small abrasions under her left nostril and on her upper lip. Her lungs were full of fluid due to pulmonary edema. She also had postmortem cuts on the left side of her neck. The bed pillow had small smears of blood on the right side from Brown's face, which was consistent with the small abrasions on her face. The medical examiner stated that all of these findings were consistent with death from asphyxia

caused by being smothered with the bed pillow. Toxicology showed that Brown had both cocaine and alcohol in her body at the time of death. Yet both the medical examiner and the forensic toxicologist testified that the levels were not life threatening, and Brown did not die from an overdose.

Brown was the sole witness against Smith in the murder of Dominique Johnson, a nineteen-year-old drug seller who was shot to death in the early morning hours of November 7, 1996, at Northwest 12th Parkway and 62nd Street. Johnson was shot twice in his arms and once through his temple. The gun was one to three inches away when Johnson was shot in the head. Johnson was transported from the scene and pronounced dead at the hospital. No gunshot residue was found on Johnson's hands, indicating that he did not fire a gun. Although several people apparently witnessed Johnson's shooting, only Cynthia Brown came forward and identified Smith as the shooter.

Smith was scheduled to be tried for Johnson's murder on July 28, 1997. David Waksman, the prosecutor in Johnson's case, testified that he had to dismiss the charges against Smith when Brown was discovered dead less than a week before the Johnson trial. Waksman testified that Brown was the State's witness in the Johnson case.

## **F**

Angel Wilson was shot multiple times with a semiautomatic assault rifle while she was driving her car down 69th Street in the early morning hours of December 1, 1998. A witness saw someone in a dark older model car with tinted windows pull up beside Wilson's vehicle and heard multiple shots. Witnesses saw or heard the vehicle speeding away from the shooting and heard a series of multiple shots in rapid succession. Seventeen shell casings were recovered from the scene. The bullets entered the driver's side of the vehicle and struck Wilson sixteen times. Six of these wounds were fatal. The bullet wounds also caused extensive tissue damage, ripping off Wilson's left breast and part of her ankle. She was also struck by metal fragments as the bullets pierced her vehicle. She died on the scene from massive internal injuries. The medical examiner testified that Wilson's lungs were "peppered" with pieces of the projectiles that fragmented in her body. A home in the vicinity was also struck by bullets that pierced the front door and struck an inside wall.

Wilson was not the intended victim of this shooting. Her boyfriend Anthony Fail was being sought by members of John Doe who intended to kill him. Wilson and Fail were together in Wilson's car just before the shooting when they arrived at the home of Fail's stepbrother James Harvey. Harvey testified that on the night of Wilson's murder a car occupied by John Doe

members Julius Stevens, Eric Stokes, Jean Henry, and “Eddie Bow” drove by his residence ten or eleven times. When Fail and Wilson arrived at Harvey's house, Harvey warned them about the car. Fail sent Wilson home because he feared for her safety. Fail learned the next morning that Wilson had been shot to death. At the penalty phase of trial, Detective Alphonso testified that Julius Stevens admitted that he and Eddie Harris had shot Wilson.

## G

Melvin Lipscomb, a twenty-two-year-old customer of John Doe, was killed in the early morning hours of August 27, 1996, at 1527 Northwest 58th Street. Lipscomb sustained eleven gunshot wounds, including three fatal shots to the head and one to his chest. At least one of the head wounds was at close range. Lipscomb also had scrapes on the right side of the face, right elbow, and right knee, indicative of falling to the pavement. Lipscomb was found face down on the pavement. Toxicology reports indicated that Lipscomb had alcohol and cocaine in his system at the time he was shot.

Witnesses testified that Lipscomb was standing in line at the 58th Street drug hole, across the street from Smith's mother's house. Lipscomb apparently broke the drug hole rules by talking loudly. He also got into an argument with Antonio Godfrey, who was a gunman at this drug hole.

Godfrey fired his gun at Lipscomb and chased him down the stairs and across the street. Julian Mitchell testified that he was the lieutenant at the hole the night that Lipscomb was killed. Mitchell saw Godfrey chasing Lipscomb and saw him shoot Lipscomb in Smith's yard across the street from the drug hole. He also testified that Smith advised Godfrey to lie low in order to avoid the police. Tricia Geter testified that Smith told her about Lipscomb's murder. Smith heard someone calling his name and pleading outside his house. When Smith came outside, his workers told him that Lipscomb had "disrespected the hole." Smith responded to "do his ass" and Godfrey shot him.

## H

Marlon Beneby died in the hospital on August 21, 1998, from complications of a gunshot wound he sustained to his upper back on July 23, 1998. Beneby was shot once in the back, and the bullet lodged in the fourth and fifth cervical vertebrae, causing him to become a quadriplegic. When Beneby arrived at the hospital, he was able to communicate, but unable to move. He also had abrasions and some blunt force injuries. Necrosis spread from his spinal cord to his brainstem, and he lost the ability to breathe in the first week after the shooting. He developed severe bronchitis in his lungs.

Beneby worked as a “bombman” for John Doe. Herbert Daniels, Eric Mitchell, Carlos Walker, Antonio Allen, and Danny Dunston all testified that Beneby was suspected of selling his own drugs at the John Doe hole. When confronted about this, Beneby blamed the tablemen Dunston and Jeffrey Bullard for supplying these drugs. When Latravis Gallashaw found out that Beneby was “stealing from the table” by selling his own drugs at the John Dole hole, he shot Beneby. Walker testified at trial that he saw the argument between Beneby and Gallashaw on the night of the shooting. Walker heard a shot, saw Beneby on the ground, and saw Gallashaw hide a gun in his waistband. After the shooting, Walker heard Beneby say, “I know I was wrong for what I did. I don't want to die.” Tyree Lampley, who was not a member of John Doe, saw Gallashaw shoot Beneby with a 9–millimeter gun. Allen testified at trial that he heard the shot as he was riding up on his bicycle and then saw Beneby on the ground. Allen also admitted that he helped move Beneby from the front yard of the house to the sidewalk and helped clean up the blood in the yard. The John Doe members who were present agreed to act as if Beneby had been riding Allen's bike when he was shot in a drive-by. The officers and emergency personnel who responded to the shooting testified that it appeared as if someone had tried to wash away blood from the scene.

Charles Clark testified at trial that Gallashaw admitted to him that he had shot Beneby. Mitchell also testified that during the time that Beneby was in the hospital Gallashaw attempted to pay Beneby to be quiet about the shooting.

## I

The jury found Smith guilty of the first-degree murders of Brown, Hadley, Pope, and Wilson, and manslaughter for the deaths of Lipscomb and Beneby, and further found Smith guilty as charged on the conspiracy and RICO counts. The jury recommended life sentences for the murders of Hadley and Pope and death sentences for the murder of Brown by a vote of ten to two and the murder of Wilson by a vote of nine to three. Among the aggravating factors in the Brown was commission of murder to hinder or disrupt the lawful exercise of a governmental function or the enforcement of laws because Brown was killed to prevent her from testifying against Smith in the Johnson murder case.

The Florida Supreme Court affirmed the convictions on direct appeal in 2009. In doing so, the court found the trial court reasonably exercised its discretion in ordering heightened security during the trial, due to the murder of witnesses, history of threats, including those involving prosecutors, and

Smith's ability to direct actors to commit crimes outside the facility while incarcerated.

### III

After the convictions were affirmed, several cooperating witnesses died. Among them was the lead witness, Julian Mitchell, who was killed in a single vehicle crash in an alley. His brother, Eric Mitchell, another significant witness, and Willie Leggett, a cooperating witness, were both murdered. The hotel worker and manager involved in the Cynthia Brown investigation died. The investigations relating to the cooperating witnesses remain unsolved.

### IV

The Florida Supreme Court later ordered a new penalty phase based on the finding that Florida's death penalty scheme was unconstitutional. See Smith v. State, 213 So. 3d 722 (Fla. 2017). Judge Andrea Wolfson was the presiding judge on remand, and Michael Von Zamft, Stephen Mitchell, and Joshua Hubner were the postconviction prosecutors.

On the eve of the penalty phase, Smith filed a postconviction relief motion and a motion to disqualify the postconviction prosecutors. The postconviction motion was grounded on recantations and late-disclosed allegations of historical prosecutorial misconduct relating to the cooperating witnesses, including the provision of food, beverages, and tobacco products

and a conjugal visit that allegedly occurred years after the trial, jointly coordinated preparation sessions, and letters prosecutors drafted and provided to federal officials detailing witnesses' cooperation efforts.

The postconviction prosecutors unsuccessfully argued that no evidentiary hearing was necessary because the motion was time-barred and successive and did not adequately allege newly discovered evidence under prevailing case law. Judge Wolfson set an evidentiary hearing solely as to the cooperation letters and the disqualification motion, but the ambit expanded after litigation began.

Ms. Rundle contacted Judge Miller and told her that it was likely she would need to testify in the postconviction hearing. Judge Miller was subsequently subpoenaed and appeared as a witness.

During her testimony, she was questioned about the provision of tobacco, food, and beverages to testifying inmates, and she referenced a written Brady disclosure that she had filed and furnished to Smith's defense team more than twenty years earlier. See Brady v. Maryland., 373 U.S. 83 (1963). She also confirmed that the trial attorneys did not prepare the witnesses together, and nobody engaged in any misconduct in her presence. The defense waived cross-examination but suggested to the prosecution in

court that the Brady disclosure was fabricated. But the disclosure was later confirmed on the trial court docket.

On March 6, 2024, Judge Wolfson issued an interim order disqualifying the three postconviction prosecutors from further involvement in the case. Although the postconviction motion had yet to be fully litigated, Judge Wolfson made the following findings:

[D]uring the hearing, it became apparent there was a serious issue regarding witness manipulation by the Assistant State Attorneys on this case-not only in the past, but also in the present. These suspicions were confirmed on the final day of argument [on the disqualification motion].

The Court received evidence regarding over 20 years of allegations of misconduct, much of which will be relevant to the Court's future ruling on the post-conviction motion.

The letters were likely not disclosed to the defense, which will undoubtedly be one of the issues facing the Court in the post-conviction relief motion.

The Court cannot help but wonder how many instances of misconduct would have been unearthed had there been more time for the defense to investigate. Nor can the Court help but think that perhaps this is one of the reasons why the State vehemently opposed the evidentiary hearing.

Judge Wolfson referred all three of the postconviction prosecutors to The Florida Bar and then restricted the State Attorney's Office from contacting nearly all witnesses who had testified by that point in the

postconviction proceedings. But Judge Miller was not subject to the no contact ruling.

The postconviction matter was reset so the defense could amend the motion. Before the motion was amended, the State formally waived the death penalty and concomitantly filed Judge Miller's text exchange with Ms. Rundle as a discovery exhibit.

The Miami Herald subsequently published the texts, along with a quote from Smith's attorneys stating that Judge Miller simultaneously played the role of prosecutor, witness, and judge, and that, in doing so, she "subverted justice." Shortly after the Herald published the original online story, Judge Miller forwarded the article to the JQC.

Smith later entered into a negotiated plea agreement and therefore the amended motion was neither filed nor litigated.

## V

Judge Miller received a Notice of Investigation and appeared before the JQC Hearing Panel on June 6, 2025. On October 23, 2025, the JQC filed its Notice.

The JQC does not quarrel with the proposition that all of the text messages were intended to be private. Judge Miller sent them from her personal mobile phone in a private setting, and she reasonably believed her

text messages were protected by work-product privilege. Indeed, that belief was corroborated by attorney experts.

Judge Miller was not forewarned that the texts would be disclosed. Nor did she intend for her communications to be publicized. Cf. In re Glickstein, 620 So. 2d 1000, 1002 (Fla. 1993) (imposing a public reprimand where judge intended to publish his letter endorsing another judge). She reasonably believed, that, consistent with case law, she was “free to speak [her] mind[] privately, to believe in whatever particular ideas [she] cho[]se” in furtherance of the administration of justice. In re Code of Judicial Conduct (Canons 1, 2, and 7A(1)(b)), 603 So. 2d at 498. ]

## VI

Involuntary publication does not vary the undisputed fact that Judge Miller’s comments were intended to remain private, consistent with her right to form and privately express opinions. See id. The publication does not strip first amendment protection. Instead, because the issues raised in the texts were of grave public importance, seeking to discipline Judge Miller “raises the spectre of the Orwellian state” and is inconsistent with fundamental constitutional considerations. United States v. Cuevas-Sanchez, 821 F.2d 248, 251 (5th Cir. 1987).

## A

The First Amendment of the Constitution prohibits the government from “abridging the freedom of speech.” U.S. Const. amend. 1. This prohibition extends to the states and their political subdivisions through the Due Process Clause of the Fourteenth Amendment. See Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 301 (2000).

The “right of freedom of speech . . . has broad scope” because “[t]he authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.” Martin v. City of Struthers, Ohio, 319 U.S. 141, 143 (1943).

While presenting a draft of the Bill of Rights to the House of Representatives in 1789, James Madison stated:

“The right of freedom of speech is secured; the liberty of the press is expressly declared to be beyond the reach of the Government; the people may therefore publicly address their representatives, may privately advise them, or declare their sentiments by petition to the whole body; *in all these ways they may communicate their will.*”

McDonald v. Smith, 472 U.S. 479, 489 (1985) (quoting 1 Annals of Cong. 738 (1789)).

Nine years later, Thomas Jefferson similarly observed: “(The First Amendment) thereby guard(s) in the same sentence, and under the same words, the freedom of religion, of speech, and of the press; insomuch, that

whatever violates either, throws down the sanctuary which covers the others, and that libels, falsehood, and defamation, equally with heresy and false religion, are withheld from the cognizance of federal tribunals.” Smith v. People of the State of California, 361 U.S. 147 n 2 (1959) (quoting 8 Jefferson, Writings (Ford ed. 1904), 464—465)). Of course, at that time, the prohibition on abridging freedom of speech did not yet apply to the states.

The First Amendment “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social change desired by the people.” Roth v. United States, 354 U.S. 476, 484 (1957). In this vein, the Supreme Court has recognized that “speech concerning public affairs is more than self-expression; it is the essence of self-government.” Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). And the Court has reiterated time and again that expression on issues of public concern occupies “the highest rung of the hierarchy of First Amendment values,” and is therefore subject to special protection. NAACP v. Claiborne Hardware Co., 458 U.S. 886, 913 (1982).

## **B**

Despite these settled principles, applying the First Amendment to public employees’ speech has been a thorny issue. For much of the twentieth century, courts universally adhered to the notion that public

employers possessed the unbridled power to restrict their employees' free expression. This view was famously summed up by Justice Holmes in his often-cited aphorism that "[while a policeman] may have a constitutional right to talk politics . . . he has no constitutional right to be a policeman." McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517, 517 (1892).

The Supreme Court significantly transformed this legal landscape in 1968. In Pickering v. Board of Education, 391 U.S. 563 (1968), the Court "declared that citizens do not surrender their First Amendment rights by accepting public employment." Lane v. Franks, 573 U.S. 228, 231 (2014). Rather, First Amendment protection is dependent upon achieving an equipoise "between the interests of the [employee], as a citizen, in commenting on matters of great public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees." Pickering, 391 U.S. at 568.

Two decades later, the Court further refined the inquiry. In Connick v. Myers, 461 U.S. 138 (1983), the Court distinguished between speech relating to matters of public concern and those bearing only on private interest in evaluating free speech protection. Id. at 150. There, an employee circulated a questionnaire to coworkers, inquiring about morale and procedures. Id. at 141, 155. Because the questionnaire was an employee

grievance over internal office policy, the Court concluded it “touched upon matters of public concern in only a most limited sense.” Id. at 154. The Court therefore concluded that it “would indeed be a Pyrrhic victory for the great principles of free expression if the Amendment’s safeguarding of a public employee’s right, as a citizen, to participate in discussions concerning public affairs were confused with the attempt to constitutionalize the employee grievance that we see presented here.” Id. at 154.

In yet another case, Garcetti v. Ceballos, 547 U.S. 410 (2006), the Court stripped public employees of their First Amendment protections for speech made pursuant to job-related duties, regardless of public interest. The Court first reasoned that “[t]he First Amendment limits the ability of a public employer to leverage the employment relationship to restrict, incidentally or intentionally, the liberties employees enjoy in their capacities as private citizens.” Id. at 419 (citing Perry v. Sindermann, 408 U.S. 593 (1972)). In this vein, “[s]o long as employees are speaking as citizens about matters of public concern, they must face only those speech restrictions that are necessary for their employers to operate efficiently and effectively.” Id. But the Court then clarified that if the speech is made in furtherance of job-related duties, the employee is not speaking as a citizen for First Amendment purposes. Id. at 421. In contrast, if the “employee spoke as a citizen on a

matter of public concern,” inquiry as to “whether the relevant government entity had adequate justification for treating the employee differently from any other member of the general public” is required. Id. at 418.

In a more recent decision, Lane v. Franks, 573 U.S. 228 (2014), the Court unanimously found that the First Amendment extended to a public employee who was disciplined for providing truthful, sworn testimony in proceedings outside the scope of his work-related duties. There, a public employee cooperated with prosecuting authorities and testified in three separate judicial proceedings as to corruption and misuse of state funds. Id. at 241. He was later disciplined for his conduct. The Court noted that the issues were of public concern, subject to First Amendment protection, because they were “fairly considered as relating to any matter of political, social, or other concern to the community’ or . . . ‘a subject of legitimate news interest, that is, a subject of general interest and of value and concern to the public,’” and therefore the employer’s actions were unconstitutional. Id. (quoting Snyder v. Phelps, 562 U.S. 443, 453 (2011)).

In a concurring opinion joined by Justices Scalia and Alito, Justice Thomas emphasized the narrow issue before the court. Id. at 247. He observed, “[t]he petitioner in this case did not speak ‘pursuant to’ his ordinary job duties because his responsibilities did not include testifying in court

proceedings, . . . and no party has suggested that he was subpoenaed as representative of his employer.” Id. Hence, he reasoned, the employee’s conduct was shielded from discipline but “[w]e . . . have no occasion to address the quite different question whether a public employee speaks as a citizen when he testifies in the course of his ordinary job responsibilities.” Id.

### C

The First Amendment rights of judges, of course, are not unfettered. Florida has compelling interests in maintaining the integrity, independence, and impartiality of the judiciary. Judges are not traditional state employees. It logically follows that just like any other state, Florida “may restrict the speech of elected judges in ways that it may not restrict the speech of other elected officials.” Scott v. Flowers, 910 F.2d 201, 212 (5th Cir. 1990) (emphasis and internal citations omitted).

But “speech about public issues . . . commands the highest level of First Amendment protection.” Williams-Yulee v. Florida Bar, 575 U.S. 433, 433 (2015). Government regulation of speech on issues of public concern is subject to strict scrutiny. Therefore, “the State may restrict the speech of a [judge] only if the restriction is narrowly tailored to serve a compelling interest.” Williams-Yulee, 575 U.S. at 442. And “it is the rare case in which a State demonstrates that a speech restriction is narrowly tailored to serve a

compelling interest.” Id. (quoting Burson v. Freeman, 504 U.S. 191, 211 (1992)).

United States Supreme Court cases involving judicial speech are sparse. In Republican Party of Minnesota v. White, 536 U.S. 765 (2002), the Court struck down a Minnesota canon of judicial conduct prohibiting a candidate for judicial office from announcing views on disputed legal or political issues. After debating the judicial meaning of “impartiality,” Justice Scalia, writing for the majority, determined the word best describes equal treatment of the parties. Id. at 777. As the Court observed,

[w]e think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in that sense. Indeed, the clause is barely tailored to serve that interest *at all*, inasmuch as it does not restrict speech for or against particular *parties*, but rather speech for or against particular *issues*. To be sure, when a case arises that turns on a legal issue on which the judge (as a candidate) had taken a particular stand, the party taking the opposite stand is likely to lose. But not because of any bias against that party, or favoritism toward the other party. *Any* party taking that position is just as likely to lose. The judge is applying the law (as he sees it) evenhandedly.

Id. at 776-77. The Court further noted, “[t]he role that elected officials play in our society makes it all the more imperative that [judges] be allowed freely to express themselves on matters of current public importance.” Id. at 781-82. And “there is practically universal agreement that a major purpose of

[the First] Amendment was to protect the free discussion of governmental affairs . . .” Id. (quoting Mills v. Alabama, 384 U.S. 214, 218 (1966)).

Justice Kennedy wrote a separate concurrence, noting,

[t]his case does not present the question whether a State may restrict the speech of judges because they are judges—for example, as part of a code of judicial conduct; the law at issue here regulates judges only when and because they are candidates. Whether the rationale of Pickering . . . and Connick . . . could be extended to allow a general speech restriction on sitting judges—regardless of whether they are campaigning—in order to promote the efficient administration of justice, is not an issue raised here.

Id. at 796 (Kennedy, J., concurring).

In another case involving the First Amendment rights of the judiciary, Williams-Yulee v. the Florida Bar, 575 U.S. 433 (2015), the Court upheld a restriction preventing judicial candidates from personally soliciting campaign contributions. Writing for the majority, Chief Justice Roberts noted that a personal solicitation instills the fear of retribution into an individual rejecting the request. Id. at 447. Concomitantly, a winning candidate might be viewed as beholden to those who contributed to the campaign. Id. Hence, the prohibition satisfied strict scrutiny as public confidence would suffer if “a judge comes to office by asking for favors.” Id.

Justice Scalia, joined by Justice Thomas, opened his vigorous dissent with, “[t]he first axiom of the First Amendment is this: As a general rule, the

State has not power to ban speech on the basis of its content. One need not equate judges with politicians to see that this principle does not grow weaker merely because the censored speech is a judicial candidate’s request for a campaign contribution.” Id. at 462 (Scalia J., dissenting). He then examined whether the prohibition satisfied the strict scrutiny necessary to regulate protected expression:

The first sign that mischief is afoot comes where the Court describes Florida’s compelling interest. The State must first identify its objective with precision before one can tell whether that interest is compelling and whether the speech restriction narrowly targets it. In White, for example, the Court did not allow a State to invoke hazy concerns about judicial impartiality in justification of an ethics rule against judicial candidates announcing their positions on legal issues. 536 U.S. at 775. The Court instead separately analyzed the State’s concerns about judges’ bias against parties, preconceptions on legal issues, and openmindedness, and explained why each concern (and each for a different reason) did not suffice to sustain the rule. Id. at 775—780.

Id. at 465.

Scalia then dispensed with the public perception argument raised in Williams-Yulee, concluding that consistent with his reasoning in White, the State had failed to identify “the slightest evidence that banning requests for contributions will substantially improve public trust in judges.” Id. at 466.

In line with these principles, the Florida Supreme Court has expressly noted that “[a]ll Florida judges are . . . free to speak their minds privately, to

believe in whatever particular ideas they choose” and pursue the administration of justice. In re Code of Judicial Conduct (Canons 1,2, and 7A(1)(b)), 603 So. 2d at 499. The court has further recognized that “our judicial code does not prohibit a candidate from discussing his or her philosophical beliefs.” See In re Woolsey, 389 So. 3d 411, 412 (Fla. 2024) (quoting In re Kinsey, 842 So. 2d 77, 88 (Fla. 2003)).

## D

As a judge on the Third District Court of Appeal, Judge Miller is required to run for retention in a countywide election; and the Canons themselves do not extinguish the free expression rights of judges or judicial candidates. For example, the commentary to Canon 3(B) provides an exception for the restrictions imposed on public comment in proceedings “in which the judge is a litigant in a personal capacity.” In this vein, the JUDICIAL ETHICS BENCHGUIDE: ANSWERS TO FREQUENTLY ASKED QUESTIONS further clarifies that judges retain free speech rights:

Since 2006, Canon 7A(3)(e)(i) has provided that a judicial candidate must not “make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.” This section is less restrictive than the former version, which prohibited a candidate from announcing his or her views on disputed legal or political issues. The commentary to Canon 7A(3)(e) states that a candidate should emphasize in any *public statement* his or her duty to uphold the law regardless of personal views.

The current language seems to take into account a judge's First Amendment speech rights and balance those against the need in society for a fair, impartial, and unbiased judiciary. The language is more narrowly tailored so that individual judges weigh the implications of their speech more on a case-by-case basis, always cognizant that, by virtue of their office, their free speech rights are not unbridled. They must be able to hear cases with an open mind and be clear in *public statements* so that the public does not fear that disputes have been prejudged without benefit of judicial process.

Blan L. Teagle, JUDICIAL ETHICS BENCHGUIDE: ANSWERS TO FREQUENTLY ASKED QUESTIONS (2020) (emphasis added).

As confirmed by the Judicial Ethics Advisory Committee ("JEAC"), such rights extend to personally advocating for or against contentious community issues. In a recent opinion, the JEAC advised the inquiring judge that judges are not restricted by the Canons from advocating against the creation of a gated community adjacent to a judge's property. Op. Fla. JEAC 2024-15 (2024). Judges are authorized to attend public meetings with legislative or executive branch officials, post signs in their yards, and wear messaged apparel, without fear of discipline. Id.

## E

In accord with this reasoning, several courts have declined to place their imprimatur on judicial disciplinary recommendations grounded on public speech on significant issues. Consistent with Garcetti, in doing so, the courts

have distinguished between speech made in the capacity as a private citizen with speech made in furtherance of judicial duties.

In one such case, Scott v. Flowers, 910 F.2d 201 (5th Cir. 1990), the Fifth Circuit disapproved judicial discipline grounded on public criticism of the county court at law and district attorney's office. There, a justice of the peace, James Scott, was disturbed about an "injustice" in the administration of the judicial system in his count. He wrote a letter to county officials in which he accused the "county court at law court and district attorney's office" of "adversely affect[ing] justice in [his] county." Id. at 203. The letter circulated in the local press and received a great deal of scrutiny. Id. at 204. The Texas Commission on Judicial Performance publicly reprimanded Justice Scott. Id. The Commission justified the reprimand on the grounds that the justice "cast public discredit upon the judiciary." Id.

Justice Scott filed suit, challenging the reprimand as an unconstitutional restraint on his freedom of speech, as guaranteed by the First Amendment. The United States District Court granted summary judgment for the Commission, but the United States Court of Appeals for the Fifth Circuit reversed. The court found the reprimand violated the First Amendment. In doing so, it observed that

we have recognized that the state may restrict the speech of elected judges in ways that it may not restrict the speech of other

elected officials. In Morial v. Judiciary Comm'n of La., 565 F.2d 295, 301 (5th Cir. 1977) (en banc) cert. denied, 434 U.S. 1013 (1978), we upheld a state statute requiring judges to resign from the bench before declaring their candidacy for an elective non-judicial office and explained that the state may regulate the speech of judges in order to preserve the impartiality of the judicial branch . . . .

We were careful to note, however, that our holding in Morial was a narrow one, turning on the fact that the resign-to-run statutes, and restriction on campaign promises, were fairly limited intrusions into the political speech of elected judges. That is “Louisiana’s resign-to-run requirement does not burden the plaintiff’s right to vote for the candidate of his choice or *to make statements regarding his private opinions on public issues outside a campaign context; nor does it penalize his belief in any particular idea. These are core first amendment values.*” Id. at 301 (emphasis added).

Unlike the statute upheld in Morial, the reprimand of Scott does infringe upon the right “to make statements . . . on public issues outside a campaign context” and thus touches upon “core first amendment values.” Accordingly, the Commission must carry a very difficult burden in order to demonstrate that its concededly legitimate interest in protecting the efficiency and impartiality of the state judicial system outweighs Scott’s first amendment rights.

We conclude the Commission has failed to carry that burden. Neither in its brief nor at oral argument was the Commission able to explain precisely how Scott’s public criticisms would impede the goals of promoting an efficient and impartial judiciary, and we are unpersuaded that they would have such a determinantal effect. Instead, we believe that those interests are ill served by casting a cloak of secrecy around the operation of the courts, and that by bringing to light an alleged unfairness in the judicial system, Scott in fact furthered the very goals the Commission wishes to promote.

Scott, 910 F.2d at 212-13.

Similarly, in Matter of Hey, 452 S.E. 2d 24 (W.Va. 1994), the West Virginia Supreme Court of Appeals determined that a judge's remarks on a radio program concerning the conduct of members of the judicial hearing board that publicly censured him for discussing details of a pending case on national television, although controversial, were constitutionally protected. In doing so, the court reasoned, "[i]t is difficult to comprehend how truthful statements or statements of opinion by a judge about a matter of public significance unrelated to a matter before him, or likely to come before him, and not otherwise specifically prohibited can ever create the appearance of impropriety." Id. at 230. The court stated:

Judicial disciplinary proceedings are subjects of the highest public concern. The media, and the public generally, are free to comment on and discuss such matters at length. See, e.g., Landmark Communications, Inc. v. Virginia, 435 U.S. 829, 838–39 (1978); see also Daily Gazette Co. v. Committee on Legal Ethics, 174 W.Va. 359, 326 S.E.2d 705 (1984) (public has right of access to disciplinary proceedings against lawyers because of the public significance involved). In such cases, where the judge himself (or herself) is the target and his professional reputation and possibly his career are at stake, fairness to him and promotion of the search for truth in the public marketplace require that he have the right to respond and defend himself in the public debate as well as in formal proceedings. That is especially so in West Virginia, where judges are elected officials. A judge depends on public opinion to remain in his job, and the public needs balanced information about its judges to make informed decisions at the polls. The formal proceedings of the Judicial Hearing Board do not, by themselves, provide an accused judge with a sufficient forum to influence public

perceptions, nor do they provide the end-all for the public's need to know about a judge's conduct.

Id. at 228-29.

In yet a third reported decision, Commission on Judicial Performance v. Wilkerson, 876 So. 2d 1006 (Miss. 2004), the Supreme Court of Mississippi held that a judge's letter to editor advocating against gay rights was constitutionally protected expression and therefore could not serve as a basis for discipline. As the court observed, extending "rights to gays and lesbians has become an important political public issue." Id. at 1011. Because using the judicial canons to impose discipline constitutes a prior restraint on a judge's right to state political views, the court noted that there was a heavy presumption of unconstitutionality. Id. at 1014. Invoking the Scott decision, the court concluded as follows:

It seems to us difficult to conclude that discussion of the rights of gays poses more of a threat to judicial integrity than Judge Scott's direct criticism of the judicial system itself. Stated another way, we find the integrity of the judiciary less threatened by Judge Wilkerson's statement about gays than by Judge Scott's constitutionally-protected statement which directly criticized the integrity of the judiciary.

Id. at 1013; cf. Matter of Gorenstein, 434 N.W. 2d 603, 608 (Wis. 1989) (finding judge's racist comments not protected speech when directed at litigants in case over which judge was presiding).

Finally, in Jenevein v. Willing, 493 F.3d 551 (5th Cir. 2007), the Fifth Circuit overturned a portion of a judicial censure order as violative of the First Amendment. After self-recusing on a high-conflict case involving purportedly spurious allegations against the judge's spouse, the judge donned his robe and convened a press conference in his chambers. He excoriated one of the lawyers on the case for engaging in questionable legal tactics and refuted the allegations that were raised regarding his spouse. The judge was censured by a judicial oversight body, and the censure was later affirmed by the district court.

To the extent that the censure rested on the content of the judge's speech, the Fifth Circuit reversed. The court applied strict scrutiny and, after observing that the judge self-recused, observed, "[t]o leave judges speechless . . . ill serves the laudable goal of promoting judicial efficiency and impartiality," and found that the narrowly tailored standard was not met "by deploying an elusive and overly-broad interest in avoiding the 'appearance of impropriety.'" Id. at 560. But the court upheld that portion of the censure dependent upon the judge's "use of the trappings of judicial office to boost his message, his decision to hold a press conference in his courtroom, and particularly stepping out from behind the bench, while wearing his judicial robe, to address the cameras." Id.

## F

The reasoning in these decisions compels the conclusion that the charges in this case do not survive strict scrutiny. The texts set forth in the Notice were all sent by Judge Miller in her capacity as an ordinary citizen in a private setting. Unlike the speech in Flowers, Judge Miller did not engage in public expression, nor did she intend for her comments to be public.<sup>2</sup> The texts were sent from a private cell phone, not from an employer-issued phone or other employer-owned device. And all were sent after Judge Miller was subpoenaed in Smith.

Judge Miller privately communicated with the State Attorney in her role as the former prosecutor, a current witness, a threat victim, and a concerned constituent. Her unique knowledge was essential to preserving the integrity of the convictions, and she was the only testifying postconviction witness with historical information who was not subject to the no contact order.

As in Jenevein, the texts were unrelated to any matter that was pending before or ever likely to come before Judge Miller. The texts bore no nexus to her official duties, and all involved an issue of great public concern. Smith

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<sup>2</sup> There do not appear to be any published opinions disciplining a judge for expressing a private view to a social friend. Nevermind on an issue of great significance unrelated to judicial duties.

was a mass murderer whose potential release presented a danger to Judge Miller individually and the community at-large. Fairness, neutrality, and exposing the correct facts were essential to ensuring the integrity of the proceedings.

Judge Miller's private communications did not bring "the trappings of judicial office." Jenevein, 493 F.3d at 560. Nothing about her office appears in the texts and she did not publicly seek to "boost [her] message" by using her office. Id.

There is no narrowly drawn compelling interest that justifies censoring Judge Miller's speech. Public safety and "[e]xposing governmental inefficiency . . . [are] matter[s] of considerable significance." Garcetti, 547 U.S. at 425. Indeed, even criticism is protected speech. See Tex v. Hill, 482 U.S. 451, 461 (1987).

Although she was not personally a litigant, Judge Miller was threatened by Smith and, like the judge in Hey, her actions were under attack. Judge Wolfson referred three prosecutors to The Florida Bar, two of whom only made legal arguments grounded on case law, and in her findings, at a minimum, she implied a degree of historical malfeasance tracing back to Judge Miller's involvement in the case. This implication precipitated a defamatory anonymous online campaign targeting Judge Miller and others.

As the Hey and Jenevein courts reasoned, because Florida has determined that its appellate judges must be retained by election, it is scarcely debatable that the integrity of a judicial candidate is a matter of great public concern. In such cases, “where the judge himself (or herself) is the target and his professional reputation and possibly his career are at stake, fairness to him and promotion of the search for truth in the public marketplace require that he have the right to respond and defend himself in the public debate as well as in formal proceedings.” Hey at 229; see also In re Amendment to the Code of Judicial Conduct—Amendments to Canon 7, 985 So. 2d 1073, 1074-75 (Fla. 2008) (Cantero, J., specially concurring) (expressing concerns about the constitutionality of regulating candidate speech criticizing jury verdicts in light of applicable strict scrutiny standard and White).

Neither unease over capital punishment nor the unvarnished nature of the texts erodes constitutional protection. Censoring speech because of disagreement with expressed views is constitutionally incompatible. “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Texas v. Johnson, 491 U.S. 397, 414 (Fla. 1989).

Accordingly, the Hearing Panel should dismiss the charges as violative of Judge Miller's First Amendment guarantee of free expression.

## VII

The Notice implicates an additional layer of constitutional protection. On November 6, 2018, the Florida electorate voted to amend Florida's Constitution to extend special protections, including the right to directly participate in legal proceedings, to crime victims. The constitutional amendment defines "victim" as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed." Art. I, § 16(b), Fla. Const.

Article 1, section 16(b) through (e) enumerates the rights of crime victims "[t]o achieve justice, ensure a meaningful role throughout the criminal and juvenile justice systems for crime victims, and ensure that crime victims' rights and interests are respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants and juvenile delinquents." Id. The amendment expressly affords victims "[t]he right to confer with the prosecuting attorney concerning any plea agreements, participation in pretrial diversion programs, release, restitution, sentencing, or any other disposition of the case." Victims are further provided "[t]he right

to be informed of all postconviction processes and procedures [and] to participate in such processes and procedures.” Id.

Chapter 960, Florida Statutes (2024), entitled “Victim Assistance” implements the constitutional protections set forth in article 1, section 16. It provides comprehensive protection for victims and guarantees witnesses the right to be free from intimidation. Like the constitutional provision, it ensures victims the right to be heard at all material stages of the proceedings. Id. This right is buttressed by Florida Rule of Appellate Procedure 9.143, which provides a procedural mechanism for crime victims to assert their position in appeals. Cumulatively, these protections grant a crime victim a status equating with that of a litigant for the purposes of Canon 3B.

As the Investigative Panel has conceded and acknowledged, Judge Miller was threatened by Smith. The threat led to an extended security detail at Judge Miller’s home and placed her in reasonable fear for her own safety and that of her family. Indeed, the Florida Supreme Court acknowledged the magnitude of prosecutorial risk as part and parcel of the justification for approving the heightened security measures imposed at the trial. Because Miller was threatened, she is constitutionally defined “victim” with a mandatory participation right. The mere fact that the State did not charge Smith with threatening her does not vary that conclusion.

Moreover, Judge Miller was compelled to testify against Smith in the postconviction proceedings. She was therefore entitled to remain free from intimidation. Her recollection was pivotal in dismantling the fabricated allegations of past prosecutorial misconduct, and, as the JQC is aware, her cooperation resurrected her historic safety fears. Smith was unrestrained and seated mere feet away from her in the courtroom when she testified. Smith had demonstrated on more than one occasion that he was capable of eliminating adverse witnesses.

All of Judge Miller's communications with Ms. Rundle involved procedures, issues, policies, and views involving the postconviction case. Judge Miller was constitutionally authorized to communicate with Ms. Rundle, and she was entitled by law to be free from intimidation. Indeed, Ms. Rundle was required to communicate with her about the case.

Disciplining a judge under these circumstances for private prosecutor communication is contrary to the Florida Constitution, statutes, and rules and threatens to chill victim participation statewide. If victims or witnesses who are judges are subject to discipline for conferring with prosecutors, no victim or witness judge will cooperate.

Moreover, using the Canons as an instrument to chill the right to confer serves no valid interest and instead compounds the unprecedented personal

safety risks faced by today’s judiciary. See Jim Ash, Florida Judges Speak Out About Threats and National Push for Judicial Safety, Florida Bar News (September 29, 2025) (“Two Florida state judges describe the death threats, harassment, and cyberstalking they endured following adverse rulings, as they join a growing call for enhanced judicial security.”); David F. Levi, Thomas B. Griffith, Paul W. Grimm, Nathan Hecht, Bridget Mary McCormack, and Suzanne Spaulding, Judges Under Siege: Threats, Disinformation, and the Decline of Public Trust in the Judiciary, *Judicature*, Vol. 108 No. 2 (2024) (“At a time of declining public trust in our courts, the growth of violence and unfair attacks against judges is raising alarm bells across the profession.”).

Accordingly, the Hearing Panel should dismiss the charges as violative of Judge Miller’s victim and witness rights under Florida law.

## VIII

The Notice further fails for lack of factual and legal sufficiency under the Florida Rules of Civil Procedure and settled case law.

### **THE NOTICE IS LEGALLY DEFICIENT**

Although they are not purely “civil” in nature, judicial disciplinary proceedings are governed by the Florida Rules of Civil Procedure. Fla. Jud. Qual. Comm’n R. 12(b) (“in all proceedings before the Hearing Panel, the Florida Rules of Civil Procedure shall be applicable except where

inappropriate of as otherwise provided by these rules.”). Florida is a “fact-pleading jurisdiction.” Horowitz v. Laske, 855 So. 2d 169, 172 (Fla. 5th DCA 2003). Florida Rule of Civil Procedure 1.110(b)(2) requires a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.” As such, it is insufficient to allege mere conclusions. See Beckler v. Hoffman, 550 So. 2d 68, 70 (Fla. 5th DCA 1989). This rule “forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoid a great deal of wasted expense to the litigants and unnecessary judicial effort.” Horowitz, 855 So. 2d at 172-73.

The Florida Constitution empowers the JQC to investigate allegations of judicial misconduct. See Art. V, § 12, Fla. Const. Upon a finding of probable cause, the JQC is authorized to file formal charges. Id. Rule 6 of the Rules of the Florida Judicial Qualifications Commission states that the notice of formal charges shall, “specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based . . .” As Justice Cantero cogently explained in dissent of In re Diaz, 908 So. 2d 334 (Fla. 2005):

Although JQC disciplinary proceedings are not criminal proceedings, we nevertheless have concluded that all judges subject to discipline must be afforded substantive and procedural due process. In re Inquiry Concerning a Judge, 357 So. 2d 172,

181 (Fla. 1978) . . . The JQC’s own rule states that the notice of formal charges “shall . . . specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based.” Fla. Jud. Qual. Comm’n R. 6(g). Thus, just as a criminal charge must allege both specific conduct and a law that the conduct violates, the JQC’s formal charge should allege conduct that violates a specific canon of judicial conduct.

Id. at 339-340 (Cantero, J., dissenting).

Here, the Notice contains 59 paragraphs of factual allegations and recites six Canons. But not a single factual allegation is tethered to a specific Canon. This “shotgun” approach is not a mere superficial deficiency; it erects an impenetrable roadblock to drafting an individualized response to each purported Canon violation. Accordingly, the Hearing Panel should dismiss the Notice as legally deficient, or at a minimum, the JQC should be compelled to provide a more definite statement under Florida Rule of Civil Procedure 1.140(e).

A final, independent basis for dismissal exists. Certain aspects of the Notice should be stricken under Florida Rule of Civil Procedure 1.140(f), to the extent they are factually incorrect, “redundant, immaterial, impertinent, or scandalous.” Id.

## **PARAGRAPH 7**

Paragraph 7 states that “[t]he ensuing postconviction litigation lasted several years.” This statement is factually incorrect. The postconviction

relief motion was filed in January 2024. It was never fully litigated and only concluded with Corey Smith's plea the following year. Hence, this assertion should be stricken or corrected.

#### **PARAGRAPH 17**

Paragraph 17 states that “[a]t that point, unless further fact issues pertaining to you arose, your participation should have ended, leaving the handling of the postconviction litigation to the State Attorney’s Office.” This statement is factually inaccurate. The postconviction motion remained pending and the defense was provided leave to amend. Judge Miller remained subject to subpoena. She was also constitutionally entitled to be informed of and participate in the proceedings and, by law, be free from intimidation. Hence, this assertion should be stricken or corrected.

#### **PARAGRAPH 24**

Paragraph 24 states that “[y]ou had conveyed to the State Attorney that you opposed the bail bond reform proposal, which was while you served on the Third District Court of Appeal.” This sentence is immaterial. Judge Miller’s personal view on the policy is irrelevant and was only provided in the context of necessary information for the State Attorney to consider in determining any preconception of the case. Hence, this assertion should be stricken.

## **PARAGRAPH 26**

Paragraph 26 states that “‘LR’ refers to Leslie Rothenberg your colleague both as an assistant state attorney at the State Attorney’s Office and as a judge on the Third District Court of Appeal.” This statement is factually incorrect. Former Judge Rothenberg was elected to the trial bench in 1992, while Judge Miller was in college, and Judge Miller was appointed to replace former Judge Rothenberg on the Third District Court of Appeal. The two were not colleagues. Instead, former Judge Rothenberg served as Ms. Rundle’s personal attorney. Hence, this assertion should be stricken or corrected.

## **PARAGRAPHS 37—39**

Paragraphs 37—39 imply that Judge Miller was involved in Mr. Gosney’s termination. This implication is factually inaccurate. She was not. Hence, this assertion must be stricken or corrected.

## **PARAGRAPH 56**

Paragraph 56 reads that “[m]ost of the communications after your February 9, 2024[,] testimony in the Smith case were initiated by you and show, over time, that you attempted to influence the way the State Attorney’s Office was handling the post-conviction litigation.” This statement is factually inaccurate. Judge Miller was not the initiator of “[m]ost of the

communications.” The JQC fails to account for communications Ms. Rundle initiated with Judge Miller both by telephone and in person. Moreover, Judge Miller’s intent was not to influence Ms. Rundle. Both knew that Ms. Rundle was not subject to influence. Ms. Rundle is an independent constitutional officer who routinely solicits a myriad of views before exercising her own independent judgment.

Indeed, the allegations are contradictory on their face, as the Notice alleges Ms. Rundle pursued a course of action inconsistent with Judge Miller’s views. And, as the Investigative Panel is aware from having reviewed purely personal text exchanges, Judge Miller and Ms. Rundle enjoyed and continue to enjoy a cordial, friendly relationship. Hence, this assertion should be stricken.

#### **PARAGRAPH 57**

Paragraph 57 reads that “[i]n these communications, you disparaged judges, other attorneys, and criminal defense lawyers generally.” This statement is factually inaccurate and facially unsupportable.

The word “disparage” means to “regard or represent as being of little worth.” Disparage, Oxford Language Online Dictionary. Judge Miller did not “regard or represent” any attorney or judge as of “little worth.” Judge Miller stated that she believed the facts set forth in the interim disqualification order

were a harbinger of things to come—that is that both Judge Sayfie and Judge Wolfson had prematurely developed an opinion on the merits of the yet-to-be litigated postconviction motion. This view was based on unsolicited, negative comments Judge Sayfie made about the case and the lead postconviction prosecutor when Judge Miller arrived at the courthouse to testify, along with factual conclusions rendered in Judge Wolfson’s order that overlapped with the postconviction merits and speculated as to unalleged, unargued misconduct and the State’s motivation for arguing against an evidentiary hearing.

Stating that judges have predetermined the merits of a dispute is not disparaging. There are numerous reported appellate opinions granting writs of prohibition or reversing disqualification denials on this basis. See, e.g., Minaya v. State, 118 So. 3d 926, 929 (Fla. 5th DCA 2013) (“Although a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not prejudge the case.”); Barnett v. Barnett, 727 So. 2d 311, 312 (Fla. 2d DCA 1999) (“While it is well-settled that a judge may form mental impressions and opinions during the course of hearing evidence, he or she may not prejudge the case.”); Koppel v. Koppel, 832 So. 2d 108, 108 (Fla. 3d DCA 2002) (“We find the motion for disqualification

should have been granted because the trial court judge's comments could indicate that she had predetermined certain factual issues . . . .”).

Further, appellate judges frequently publicly disagree in opinions with one another or the trial court and, in doing so, criticize the legal soundness of another judge's decision. Disagreement does not equate with disparagement. As the Supreme Court stated in In re Sawyer, 360 U.S. 622 (1959), this type of commentary on a court ruling is not the proper basis for discipline:

If Judge Wiig was said to be wrong on his law, it is no matter; appellate courts and law reviews say that of judges daily, and it imputes no disgrace. Dissenting opinions in our reports are apt to make petitioner's speech look like tame stuff indeed . . . . The public attribution of honest error to the judiciary is no cause for professional discipline in this country.

Id. at 635. This is consistent with Justice Black's conclusion in Bridges v. California, 314 U.S. 252 (1941), that scrutiny of judicial decisions is essential to public dialogue and does not inflict any systemic harm:

The assumption that members of the judiciary can be won by shielding judges from . . . criticism wrongly appraises the character of the American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely to the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

Id. at 270-71; see also Landmark Communications, Inc v. Virginia, 435 U.S. 829, 839 (1978) (“[T]he law gives [j]udges as persons, or courts as institutions . . . no greater immunity from criticism than other persons or institutions.”) (Frankfurter, J., dissenting) (quoting Bridges, 314 U.S. at 289)). Hence, this assertion should be stricken.

### **PROSECUTORIAL ETHICS**

Turning to the texts regarding defense attorneys, Judge Miller did not ascribe “little worth” to any group of individuals. On the contrary. Her comments accurately mirrored a well-established body of case law describing the heightened ethical standard prosecutors are required to uphold. See People v. Pautler, 35 P. 3d 571, 579 (Colo. O.P.D.J. 2001) (“Prosecutors, who are enforcers of the law, have higher ethical duties than other lawyers because they are ministers of justice, not just advocates . . .”) (citing People v. Reichman, 819 P. 2d 1035, 1038 (Colo. 1991)); State v. Brown, 605 S.E. 2d 628, fn. 1 (Ga. App. 2004) (“Although every advocate has a duty of fairness to the court, prosecutors have an even higher responsibility.”); Banks v. Thaler, 583 F.3d 295, 340 (5th Cir. 2009) (Dennis, J. dissenting) (discussing that Brady is of a “constitutional dimension imposing on prosecutors a higher duty owed by the sovereign to the courts, the public and the accuseds”). A myriad of writings support the proposition

that prosecutors and defense attorneys have different ethical standards. “The most striking difference between a prosecutor and a defense lawyer or any non-governmental lawyers is that a prosecutor is much more constrained as an advocate.” Charles W. Wolfram, *Modern Legal Ethics* § 13.10.4, at 765 (1986); see also Model Code of Professional Responsibility EC-7-13 (1980) (“The responsibility of a public prosecutor differs from that of the usual advocate...”); Monroe H. Freedman, *Understanding Lawyers' Ethics* 213 (1990) (“Special ethical rules are appropriate for prosecutors....”).

The additional and unique responsibilities of prosecutors in Florida as compared to criminal defense attorneys are further expressly recognized in The Florida Bar’s own rules:

**RULE 4-3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR** The prosecutor in a criminal case must: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; (b) not seek to obtain from an unrepresented accused a waiver of important pre-trial rights such as a right to a preliminary hearing; and (c) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

Courts and scholars alike have recognized that prosecutors have “heightened ethical obligations.” See, e.g., Commonwealth v. Clancy, 648

Pa. 179, 192 A.3d 44 (2018) (rules of professional conduct “impose heightened ethical obligations upon prosecutors”); see also L. Kurcias, A Prosecutor’s Duty to Disclose Exculpatory Evidence, 69 Fordham L. Rev. 1205, 1209. (“[T]he heightened ethical obligations of the prosecutor are meant to ensure a fair process and minimize the disparity of resources between the prosecution and defense in the criminal justice system. The ethics rules written especially for prosecutors, therefore, impose additional obligations and responsibilities on them.”); S. Gosney, A Positive Prescription for Ethical Closing Arguments, American Journal of Trial Advocacy, Vol. 42, No. 151 (2018) (highlighting heightened ethical obligations of prosecutors). To the extent the Notice refers to Mr. Gosney, Judge Miller simply parroted the Miami Herald article. Hence, these allegations should be stricken.

#### **PARAGRAPH 59**

Paragraph 59 alleges that “reasonable persons may believe that your communications were intended to be coercive towards [the State Attorney’s] official acts and substantially interfered with a fair trial or hearing.” The Notice is devoid of factual allegations supporting this conclusory statement.

In imputing a belief to a reasonable person, said person must be apprised of all the facts and circumstances. See, e.g., Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120, 128 (2d Cir. 2003). Similarly,

coercion is a term of legal significance. Black's Law Dictionary defines "coercion" as the "[c]ompulsion of a free agent by physical, moral or economic force or threat of physical force." Coercion, Black's Law Dictionary (11th ed. 2019).

Here, the Herald published the facts only through the lens of Smith's attorneys, operating under a duty to zealously advocate for his interests. NO contrary view was provided. Hence, no member of the public was fully apprised of the facts and circumstances.

Nor was the Herald or any member of the public privy to the purely personal communications between Judge Miller and Ms. Rundle that were interspersed between the texts cited by the JQC. As a result, only Judge Miller and Ms. Rundle were aware of the facts and circumstances of the communications.

Moreover, Judge Miller did not assert physical, moral, or economic force or threats. Expressing a view and participating in a free flow of information is not coercive, and the Notice itself dispels any notion of coercion, as there is no effect or intent specifically alleged. Instead, the Notice alleges that Ms. Rundle took no action aligning with Judge Miller's comments. Hence, this allegation should be stricken.

## THE CHARGES

As to the Charges section of the Notice, the Investigative Panel states that Judge Miller “neither enforced nor personally observed the high standards of conduct which preserve the integrity and independence of the judiciary.” This conclusory allegation runs the danger of “turn[ing] out to be ‘a mere thing of wax in the hands [of those who use it], which they may twist, and shape into any form they please’” and fails to survive a close examination. Williams-Yulee, 575 U.S. at 465 (Scalia, J., dissenting) (quoting 12 The Works of Thomas Jefferson 137 (P. Ford ed. 1905)).

“Integrity” and “independence” are legal terms bearing on a judge’s “ability to administer justice without fear or favor.” Williams-Yulee, 575 U.S. at 445. Integrity means “the quality of being honest and having strong moral principles; moral uprightness.” Integrity, Oxford Languages Online Dictionary (2025). As Justice Scalia observed in White, “[o]ne meaning of ‘impartiality’ in the judicial context—and of course its root meaning—is the lack of bias for or against either *party* to the proceeding. Impartiality in this sense assures equal application of the law.” Id. 536 U.S. at 775. Similarly, “independence” means being free from the control, support, or influence of others. Independence, Oxford Languages Online Dictionary (2025).

There is no fact alleged to support the conclusion that Judge Miller was dishonest or lacked strong moral principles or moral uprightness. Nor is there any supporting allegation that Judge Miller was biased or allowed her independence to succumb to the control, support, or influence of others. On the contrary, Judge Miller privately, truthfully, and forthrightly expressed her moral views and has consistently ruled neutrally in all cases.

The Charges state that “[y]our behavior failed to demonstrate respect and compliance with the law, and you did not act all times in the manner that promotes public confidence in the integrity and impartiality of the judiciary.” Judge Miller very strongly denies this conclusory, untethered statement. The Investigative Panel does not identify any law she has allegedly failed to respect or uphold, and she has always respected and complied with the law.. Nor has Judge Miller undermined the integrity or impartiality of the judiciary.

The Investigative Panel republishes quotes from Smith’s attorneys excerpted from the Miami Herald ostensibly to establish a loss of public confidence. Smith’s lawyers falsely claimed through the Herald that Judge Miller played the tripartite role of witness, prosecutor, and judge in the postconviction proceedings. They further baselessly declared that she subverted justice in the postconviction proceedings.

Judge Miller was the original prosecutor and a postconviction witness. She was not the judge, and the case would never come before her. Indeed, she recused herself in the case as soon as it came before her court, and her colleagues followed suit.

“Subvert” means “to overturn or overthrow from the foundation” or “pervert or corrupt by undermining of morals, allegiance, or faith.” Subvert Merriam Webster Online Dictionary (2025). Judge Miller did not attempt to overturn or overthrow justice or pervert or corrupt the process by undermining morals, allegiance, or faith. The opposite is true. Her actions were moral, and she sought to ensure justice was served by fully cooperating in the proceedings. She was committed to exposing the false testimony and fabricated events asserted by Smith in furtherance of his motion. Indeed, the law historically recognized the far-reaching and lasting effects of libel, which generally required only proof of actual damages, as opposed to the more fleeting tort of slander, which could demand a showing of special damages. See Charles T. McCormick, *The Measure of Damages for Defamation*, 12 N.C.L. Rev. 120, 121—22 (1934)

One cannot help seeing the irony in republishing defamatory statements and citing them as a basis for gauging public opinion. Irrespective, allowing a newspaper to serve as the barometer of public

opinion presents substantial danger. Few news outlets are empirically neutral. And here, the Herald's coverage of the Smith case included an article suggesting that despite his murderous past, he had been rehabilitated while in prison and transformed into a doting father. Contrary to the allegations, this type of coverage offends mainstream moral principles. Hence, this portion of the Notice should be stricken in its entirety.

The Charges state that “[y]ou made, while litigation was pending in a court, comments that might substantially interfere with a fair trial or hearing.” The word “[i]nterfere” is defined as “prevent[ing] (a process or activity) from continuing or being carried out properly.” Interfere, Oxford Languages Online Dictionary (2025). Judge Miller's private comments did not prevent a fair trial or fair hearing. The opposite is true. Judge Miller fully cooperated, testified under subpoena, and sought to expose the truth, all in furtherance of ensuring a fair hearing.

The Charges state that “[y]our conduct . . . [c]ast a reasonable doubt on your capacity to act impartially . . . [u]ndermined your independence, integrity or impartiality; [d]emeaned your judicial office . . . [a]nd/or would appear to a reasonable person to be coercive.” As fully discussed above, there is no connection between Judge Miller's discussions with Ms. Rundle in her capacity as a private citizen and her role as a judge or her employment-

related functions, Judge Miller coerced no one, and nobody was apprised of all of the facts and circumstances of the conversation except Ms. Rundle and Judge Miller. This charge, therefore, should be stricken.

The Charges state that Judge Miller interfered with “another’s performance of judicial duties.” Canon 5 does not contain the phrase “another’s performance.” It instead reads, “[a] judge shall conduct all of the judge’s extra-judicial activities so that they do not . . . interfere with the proper performance of judicial duties.” The prohibition is directed at “minimiz[ing] the risk of conflicts with judicial duties” in undertaking extra-judicial activities. The Canon does not lend itself to the interpretation promulgated by the Investigative Panel, and this charge should be stricken.

Judge Miller prevented no one from carrying out judicial duties. See United States v. Warlick, 742 F.2d 113, 115—16 (4th Cir. 1984) (Obstruction of the administration of justice “should not be confused with obstruction of justice. Justice may be obstructed by mere inaction, but obstruction of the administration of justice requires something more—some act that will interrupt the orderly process of the administration of justice or thwart the judicial system.”). Judge Miller had no extrajudicial contact with Judge Wolfson. Instead, she appeared in court, when required, and she fully

cooperated with the State Attorney in all respects to ensure that the remaining issues would be neutrally adjudicated.

Acting as a witness and cooperating fully with the prosecutor are not acts of interference “with the proper performance of judicial duties” or “demeaning” the judicial office. On the contrary. A refusal to cooperate might be construed as interference with the administration of justice. See, e.g., Stallion v. United States, 2019 WL 3557877 (E.D. Va. 2019) (upholding obstruction enhancement for failing to cooperate with prosecutorial authorities). But even that is debatable, as more extreme acts have been held insufficient to support an interference charge. See, e.g., In re Michael, 326 U.S. 224, 228 (1945) (“[P]erjury alone does not constitute an ‘obstruction’ [of the administration of justice] . . .”).

Judge Miller’s activities did not cast a reasonable doubt on her capacity to act impartially. There are no factual allegations to support the conclusion she was partial in her decision making, nor that she was subject to any bias or the control of others.

To the extent the Investigative Panel contends Judge Miller’s texts “[p]otentially could have led to frequent disqualification,” the Panel again strays from the text of the relevant Canon. Canon 5 provides that “[a] judge shall conduct all of the judge’s extra-judicial activities so that they do not . . .

lead to frequent disqualification of the judge.” The text does not read “potentially could have led.”

Applying a nontextual reading casts a net wide enough to ensnare all judges in the ambit of the Canon. And as the Investigative Panel is aware, Judge Miller was not subject to frequent disqualification. Hence, there is no Canon violation and the charge should be stricken as unsustainable.

WHEREFORE, Judge Miller respectfully requests that the JQC Hearing Panel declare the charges unconstitutional and **GRANT** her Motion to Dismiss the Notice of Formal Charges filed by the Judicial Qualifications Commission on Constitutional Grounds, or Motion to Dismiss for Failure to State a Cause of Action or for More Definite Statement and to Strike and hereby requests a hearing on the same.

DATED this 12th day of November, 2025.

Respectfully submitted,

s/Warren W. Lindsey

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## CERTIFICATE OF SERVICE

I hereby certify that on this 12<sup>th</sup> day of November, 2025, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court by utilizing the Florida Courts E-Filing Portal, which will send a notice of electronic filing to:

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