

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

INSTITUTE FOR REFORMING GOVERNMENT
INC.

Plaintiff,

Case No. 2025-CV-1384

v.

MARY BETH KEPPEL, DONALD A.
DAUGHERTY, JR., ANALISE EICHER,
ROBERTA GASSMAN, JOHN T. HENDRICKS,
THOMAS HRUZ, RHONDA LANFORD,
BARBARA NOTESTEIN in their Official
Capacities as Members of the Wisconsin Judicial
Commission,

Defendants.

COMPLAINT

Plaintiff Institute for Reforming Government Inc., by its undersigned attorneys at the Wisconsin Institute for Law & Liberty, hereby alleges as follows:

INTRODUCTION

1. This case challenges Wisconsin statutes and regulations which unlawfully censor First Amendment protected speech about government officials.

2. The State of Wisconsin, through law and regulation, threatens any member of the public with punishment if they disclose that they have made allegations of judicial misconduct via requests for investigation which are filed with the Defendant Wisconsin Judicial Commission. That confidentiality requirement

continues even if those requests are denied, such that not only the judge but the Commission itself is protected from criticism.

3. Wisconsin has no compelling interest justifying this censorship. Defendants, the members of the Wisconsin Judicial Commission, should therefore be enjoined from enforcing the state's censorship scheme against Plaintiff Institute for Reforming Government Inc. and all other similarly situated persons who desire to publicly disclose the Requests for Investigation they have filed with the Wisconsin Judicial Commission.

PARTIES

4. Plaintiff Institute for Reforming Government Inc. ("IRG") is a Wisconsin nonstock corporation. IRG's mission is to encourage, educate, and inform people about the workings of all levels of government and includes promoting accountability and transparency by conducting and supporting rigorous, independent, and objective oversight.

5. Defendants Mary Beth Keppel, Donald A. Daugherty, Jr., Analise Eicher, Roberta Gassman, John T. Hendricks, Thomas Hruz, Rhonda Lanford, and Barbara Notestein are the current members of the Wisconsin Judicial Commission and are named in their official capacities only.

6. The Wisconsin Judicial Commission is created by state law and consists of nine appointed positions, although only eight are currently appointed. Wis. Stat. § 757.83.

JURISDICTION AND VENUE

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

8. Venue in this Court is proper because all events giving rise to the claims in this action occurred in this District.

STATEMENT OF FACTS

9. The Wisconsin Constitution provides that “[e]ach justice or judge shall be subject to reprimand, censure, suspension, removal for cause or for disability, by the supreme court pursuant to procedures established by the legislature by law.” Wis. Const. Art. 7, Sec. 11.

10. In furtherance of that provision, state law establishes the Wisconsin Judicial Commission along with various procedures for its operations, Wis. Stat. § 757.83 et seq, and empowers the Wisconsin Judicial Commission to promulgate additional rules for its proceedings. Wis. Stat. § 757.83(3).

11. The Wisconsin Judicial Commission is charged under state law to “investigate any possible misconduct or permanent disability of a judge or circuit or supplemental court commissioner.” Wis. Stat. § 757.85(1)(a).

12. The Wisconsin Judicial Commission “has statutory authority to initiate an investigation upon receipt of information from any reliable source alleging that a judicial official has engaged in misconduct or has a permanent disability that impairs

his or her performance.” Wisconsin Judicial Commission, 2024 Annual Report, Page 4.¹

13. Individuals can request the Wisconsin Judicial Commission investigate allegations by submitting a “Request for Investigation Form” which is published by the Wisconsin Judicial Commission.²

14. Wisconsin state law mandates that “[a]ll proceedings” before the Wisconsin Judicial Commission are confidential, unless the judicial official waives confidentiality or one of the narrow statutory exceptions applies. Wis. Stat. § 757.93(1).

15. This confidentiality requirement applies to allegations which are submitted to the Wisconsin Judicial Commission via a Request for Investigation form.

16. A Request for Investigation is resolved either by a Commission vote not to proceed or a Commission vote to proceed by further investigation, a formal complaint, or a panel hearing.

17. The Wisconsin Judicial Commission has promulgated penalties for any failure to abide by the confidentiality requirements: “The proceedings of the judicial commission prior to the filing of a formal complaint concerning misconduct or a petition concerning permanent disability are confidential, unless a written waiver of confidentiality has been made by the judge or court commissioner. If a person who

¹ Available on the Wisconsin Judicial Commission’s official website at: <https://www.wicourts.gov/courts/committees/judicialcommission/wjcannualreport2024.pdf>

² Available on the Wisconsin Judicial Commission’s official website at: <https://www.wicourts.gov/courts/committees/judicialcommission/complaintform.pdf>

makes an allegation under s. JC 4.01 or 5.01, breaches the confidentiality of the investigation, the commission may dismiss the allegation, admonish the person or take other appropriate action.” Wis. Admin. Code JC § 3.01.

18. Those confidentiality provisions continue to apply even if the Wisconsin Judicial Commission determines that there is no merit to any allegations made and does not pursue a formal investigation or file any complaint.

19. Plaintiff filed a Request for Investigation form with the Wisconsin Judicial Commission. The contents of that form are subject to the confidentiality provisions under state law and regulations.

20. The Request alleged misconduct by a sitting judge in a judicial election. The misconduct allegations did not relate to a single pending case or conduct on the bench, but only related to statements made in advertisements, press releases, and other campaign communications.

21. The Request was firmly grounded in existing Wisconsin Supreme Court precedent regarding campaign speech in judicial elections. *Wisconsin Judicial Commission v. Gableman*, 2010 WI 61 (joint opinion of C.J. Abrahamson, Js. Bradley and Crooks); 2010 WI 62 (joint opinion of Js. Prosser, Roggensack, and Ziegler).

22. The request was signed by Jacob J. Curtis, IRG’s general counsel and director of its CourtWatch program. Mr. Curtis is a licensed attorney in Wisconsin with over a decade of practice experience. Before IRG, he was chief legal counsel to the state Department of Natural Resources and outside counsel to dozens of county governments across Wisconsin, which gave him familiarity with Wisconsin’s

government ethics rules. He has advised numerous judicial candidates for circuit court judgeships.

23. The request was cosigned by Daniel Suhr, IRG's adjunct legal fellow and a frequent contributor to CourtWatch. Mr. Suhr is a licensed attorney in Wisconsin with over a decade of practice experience. He previously served as chief of staff to a lieutenant governor and as deputy legal counsel to a governor of Wisconsin, which also made him familiar with the ethics standards for state government. Particular to the rules for judicial candidates, he was a paid consultant to a state Supreme Court candidate, during which race he learned extensively about Wisconsin's rules for candidate and campaign speech for judicial offices.

24. The Plaintiff is a non-profit, non-partisan think tank whose projects include CourtWatch, an initiative intended to engage the public on the work of Wisconsin's state courts.

25. As a think tank, IRG and CourtWatch regularly engage in (non-electoral) public advocacy and discussion around judicial issues, including judicial misconduct.

26. Normally when IRG takes a major, headline worthy action like filing a Request for Investigation with the Wisconsin Judicial Commission into alleged judicial campaign misconduct, IRG would actively promote and advocate around its filing. In a typical circumstance, filing a lawsuit or testifying on a bill, IRG would build out a full package of public engagement: talk radio interviews, social media posts, a press release to journalists, and email blasts to supporters and activists.

27. IRG staff, including its general counsel and adjunct legal fellow, are regular guests on talk radio shows across Wisconsin, including WTMJ, WSAU, and WISN, to discuss matters related to the courts.

28. IRG had planned to undertake all of those activities in connection with its filing of the Request for Investigation. IRG believes that the people of Wisconsin should know that a sitting judge and recent judicial candidate—in IRG’s view—engaged in serious campaign misconduct. In IRG’s experience, such a filing would have prompted significant attention from the news media, given IRG’s credibility as a source of commentary and oversight on judicial issues through CourtWatch.

29. However, IRG refrained from undertaking its normal advocacy and publicity around its filing after its legal staff learned in the course of preparing the Request for Investigation that doing so would violate state law, and to date, IRG has not released the details of the Request for Investigation that was filed.

30. IRG’s staff decided not to proceed with its normal “roll out” of the Request for Investigation filing because of Defendant’s threat that they or their staff could be subject to admonishment or other undisclosed “appropriate action.” Wis. Admin. Code JC § 3.01.

31. Separately, IRG’s general counsel, and adjunct legal fellow are attorneys licensed in Wisconsin. They both signed the Request for Investigation to the Judicial Commission. They all had and have a reasonable fear that the Commission would refer them to the Office of Lawyer Regulation (OLR) for noncompliance with the law, which could result in suspension or other penalties for their bar license.

32. The potential for enforcement of JC § 3.01 is real. In a recent incident where a former judge publicly disclosed his Request for Investigation, four justices of the Wisconsin Supreme Court who were subject to that request wrote a letter³ to the Executive Director of the Wisconsin Judicial Commission calling the requester's disclosure a "publicity stunt," "antics," and "a partisan attempt to undermine the court's authority . . ." The four justices charged that the requester's "announcements were in direct violation of Wis. Stat. § 757.93(1)(a), which protects our confidentiality in these matters." Knowing this, Plaintiff has a justifiable fear that the Commission, the Office of Lawyer Regulation, and ultimately the Wisconsin Supreme Court would uphold enforcement action.

33. Had Plaintiffs not filed a Request for Investigation, they would not be subject to the confidentiality provisions which restrict them from releasing the details of their Request for Investigation.

34. The confidentiality provisions thus force Wisconsinites to decide whether they wish to publicly discuss alleged misconduct or whether to seek a remedy for that alleged misconduct from the Wisconsin Judicial Commission.

35. By letter dated June 13, 2025, Counsel for Plaintiff requested the Judicial Commission acknowledge that under the First Amendment, individuals who submit a "Request for Investigation" with the commission may publicly disclose the contents of such a request and discuss it publicly.

³ A copy of this letter is available on the website of the *Wisconsin Law Journal* at: <https://wislawjournal.com/wp-content/blogs.dir/1/files/2024/03/Letter-to-JC.pdf>

36. A copy of this initial request for clarification letter is filed with this complaint as Exhibit A.

37. In response, by letter dated July 10, 2025, the Executive Director of the Wisconsin Judicial Commission responded stating the “Commission is under no obligation to provide any sort of advisory opinion or stated commitment to a complainant or any other party based upon a proposed hypothetical future scenario” and “is denying” the June 13, 2025 request for clarification.

38. By letter dated July 18, 2025, the Wisconsin Judicial Commission informed Plaintiffs that they determined their Request for Investigation does not “warrant further action or consideration by the Commission” and therefore “this matter has been closed and Commission proceedings relating to it remain strictly confidential pursuant to state law.”

39. IRG wishes to ask individual members of the Wisconsin Judicial Commission on what reasoning they determined that no further action was warranted, because the letter they received provided no legal or policy reasons justifying their determination, despite the lengthy legal analysis that accompanied the original request. However, the Commission’s rules prohibit them from having those conversations—an action by a public body has been taken, an official determination has been reached, and yet the entirety of how that determination was reached is permanently shrouded in mystery, and IRG would violate the law by trying to have those conversations.

40. IRG also wishes to publicly criticize the Wisconsin Judicial Commission's determination that its Request for Investigation will not proceed to investigation and a formal complaint. Because of the rule, not only is IRG barred from publicly discussing the details of its Request for Investigation of misconduct by the judicial official, but IRG is also barred from publicly criticizing the Commission for refusing to act on its investigation with any sufficient level of detail. Again, in a normal circumstance, if IRG pushed a bill in the legislature and it failed on a floor vote, IRG would engage talk radio, social media, reporters, coalition allies, and others to discuss the legislative majority's decision and why IRG believes it made the wrong decision. But here, IRG cannot engage in free speech critical of the Commission with any level of specificity necessary to have a meaningful news story or public discussion of whether the Commission did right or wrong in its determination.

41. The inability to criticize the Commission's determination is especially aggravating because there is no appeal mechanism for a requester. If the Commission refuses to proceed with a Request for Investigation, that is the end of the road for that requester: there is no appeal to a court or other body for further review.

**CAUSE OF ACTION: 42 U.S.C. § 1983
VIOLATION OF THE FIRST AMENDMENT'S FREEDOM OF SPEECH**

42. Plaintiff realleges and incorporates the preceding allegations of the complaint.

43. The Civil Rights Act of 1871, later codified as 42 U.S.C. § 1983 and interpreted by the U.S. Supreme Court, provides that state officials "shall be liable

to the party injured in an action at law, suit in equity, or other proper proceeding” for the “deprivation of any rights, privileges, or immunities secured by the Constitution.”

44. One of those rights secured by the Constitution is the freedom of speech.

45. As incorporated by the Fourteenth Amendment, the First Amendment bars States from “abridging the freedom of speech[.]” U.S. Const. amend. I; *see Stromberg v. California*, 283 U.S. 359, 368 (1931). States most often run afoul of this right when they act in their regulatory capacity to prohibit the speech of private citizens on threat of criminal or civil punishment. *See, e.g., Counterman v. Colorado*, 600 U.S. 66, 73–82 (2023).

46. The Supreme Court has consistently found that prior restraints on free speech are presumptively invalid. *See, e.g., CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers) (“For many years it has been clearly established that any prior restraint on expression comes to this Court with a heavy presumption against its constitutional validity.” (quotations omitted)); *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 556 (1976) (noting the “special protection[s]” courts must afford against orders that impose prior restraints on free speech).

47. Moreover, overbroad regulations restricting speech are also unconstitutional. The overbreadth doctrine permits “facial invalidation” of a speech law whose “unconstitutional applications ... [are] substantially disproportionate to the statute's lawful sweep.” *United States v. Hansen*, 599 U.S. 762, 770 (2023).

48. Additionally, vague regulations restricting speech are similarly unconstitutional. This doctrine demands that statutes give “fair notice” to speakers

about what speech will run afoul of the law. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). Put another way, a law is impermissibly vague “if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits.” *Hill v. Colorado*, 530 U.S. 703, 732 (2000).

49. Finally, content-based laws or regulations are also unconstitutional. “A regulation of speech is facially content based under the First Amendment if it targets speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed.” *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (citations omitted).

50. The regulations enforced by Defendants violate all these First Amendment principles.

51. The violation is especially egregious as applied to this particular situation, where the Plaintiff wishes to discuss the campaign misconduct of a sitting public official. Speech about public officials, public affairs, and campaign conduct are at the heart of the First Amendment.

52. The violation is also particularly egregious when the government is using its coercive regulatory power to censor and stop criticism of government officials. Courts should be doubly dubious any time government uses its police powers to stop criticism of its own actions—normally courts look for extraordinary reasons like national security to justify such restraints on speech.

53. Wisconsin law prohibits the publication or other public discussion of the Request for Investigation they have filed with the Wisconsin Judicial Commission.

54. The Commission threatens to dismiss any allegations, admonish or take other “appropriate action” against anyone who breaches their confidentiality requirements.

55. These confidentiality requirements apply even in situations such as this where the Wisconsin Judicial Commission has dismissed the underlying allegations.

56. The confidentiality requirements are content-based restrictions on speech.

57. “Laws that burden political speech are subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” *Citizens United v. FEC*, 558 U.S. 340 (2010).

58. The State of Wisconsin has no compelling interest in punishing all persons who wish to speak regarding allegations they have requested the Wisconsin Judicial Commission to investigate, and this is especially true when the Wisconsin Judicial Commission has declined to take action on a request made of them.

59. The confidentiality requirements in statute are not narrowly tailored to achieve any compelling interest.

60. That is especially true as applied to this situation. The Plaintiff here does not wish to discuss a Request for Investigation concerning any particular pending case or controversy before a state court.

61. And the Plaintiff did not file a frivolous Request for Investigation—it was based in existing state law precedent and was signed by two respected, experienced attorneys with a background in government ethics and judicial elections.

62. Though the Wisconsin Judicial Commission may have an interest in confidentiality of dismissals of frivolous requests or dismissals of requests involving particular pending cases (points the Plaintiff does not concede, but only mentions to set the scope of its as-applied challenge), those confidentiality interests do not exist for a substantive request filed outside the context of any pending case.

63. The confidentiality provisions therefore violate the First Amendment, applicable to the State of Wisconsin through the Fourteenth Amendment.

64. Plaintiff has suffered, is suffering, and will continue to suffer violations of their First Amendment rights because they have been, are being, and will continue to be prevented from publishing or otherwise discussing the contents of the allegations made in the Request for Investigation they filed with the Wisconsin Judicial Commission.

65. These violations will continue until this Court grants relief.

REQUEST FOR RELIEF

Plaintiff therefore request the following relief:

A. Declare the confidentiality provisions of Wis. Stat. § 797.93 and Wis. Admin. Code JC § 3.01 are unconstitutional on their face and as applied to Plaintiff;

B. Enjoin Defendants from admonishing or otherwise punishing Plaintiff or its staff for publishing or otherwise disclosing and discussing the allegations made in their Request for Investigation;

C. Award nominal damages;

D. Award costs of litigation, including reasonable attorney fees pursuant to 42 U.S.C. § 1988; and

E. Grant any such other relief as the Court deems appropriate.

Dated: September 10, 2025

Respectfully Submitted,

WISCONSIN INSTITUTE FOR
LAW & LIBERTY

Electronically signed by
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