

## State Bar Goes After Stanly County DA Hopeful's Campaign Signs

**Legal analysts say Bar may be stifling Jim Phillips' free speech rights**

By Dan Way

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RALEIGH — The North Carolina State Bar circumvented the State Board of Elections, may have trampled a Stanly County candidate's constitutional rights, and possibly ran afoul of a prior U.S. Supreme Court ruling when it demanded that Jim Phillips change his campaign signs, critics allege.

The Bar warned Phillips, a registered Republican running for district attorney in a newly created judicial district, that his campaign signs violated Rules of Professional Conduct governing attorneys because the placards didn't include wording such as "vote for" or "for."

Like campaign signs posted by a host of candidates, including Supreme Court hopeful Sam Ervin IV and Court of Appeals candidate Lisa Inman, both Democrats, Phillips' signs displayed only his name and the position for which he is running.

"What they're saying is that in essence it's false advertisement," giving the impression Phillips already holds the position for which he is running, said Karmen Mock, Phillips' wife, who is helping with his campaign. She said Bar officials cited [Rule 7.1](#), which prohibits attorneys from making misleading representations to prospective clients.

Rather than engage in a protracted and costly legal fight before the May 6 primary, Phillips chose to spend campaign funds revising his signs.

*Carolina Journal* interviewed several attorneys licensed in North Carolina with election law expertise who said the Bar's findings stifled Phillips' First Amendment rights, but none would criticize the agency publicly.

Other attorneys who aren't based in the state were less reticent. "The claim that it is deceptive defies common sense," said Hans von Spakovsky, manager of the Election Law Reform Initiative and senior fellow at The Heritage Foundation.

“The Bar’s position interferes with the authority of election officials, who are responsible for enforcing state campaign rules. It is also a potential violation of the candidate’s First Amendment rights,” von Spakovsky said.

“I think the ability of bar associations to limit candidate political speech was curtailed by the [U.S.] Supreme Court in [Republican Party of Minnesota v. White](#) in 2002,” von Spakovsky said.

The court sided with an attorney whose political speech was restricted by the Minnesota Supreme Court’s so-called “announce rule.” The rule banned attorneys seeking judicial office from announcing their positions on disputed legal and political issues.

Ilya Shapiro, senior fellow in constitutional studies at the Cato Institute, agreed that there are constitutional concerns about the North Carolina Bar regulating the political speech of a candidate for elective office.

“There is a doctrine in constitutional law that says government can’t make you choose between your rights,” Shapiro said.

As a quasi-governmental agency that licenses and disciplines attorneys, the Bar’s rules may be forcing Phillips to choose between his First Amendment political speech freedoms and his ability to practice law.

“I think this is an overreach by the Bar officials. I think that the chance of someone being misled by such a sign is essentially nil,” and that “indeed there is some sort of pretext,” Shapiro said.

Rule 7.1 is “a pretty standard sort of ethical rule” that appears in bar guides around the country and whose intent is not violated by Phillips’ campaign signs, he said.

Shapiro said the Bar’s actions compare to the [Susan B. Anthony List v. Driehaus](#) lawsuit in which the U.S. Supreme Court next month is scheduled to hear arguments.

In that case, former U.S. Rep. Steve Driehaus sued the pro-life nonprofit Susan B. Anthony List, saying its planned advertising attacks against him for voting to pass the Affordable Care Act falsely accused him of supporting federal funding for abortions.

The Ohio Elections Commission blocked the ads, and Susan B. Anthony List sued on First Amendment grounds, saying the state law unconstitutionally criminalized political speech.

“That chilled their speech of not being able to advertise until after the election,” Shapiro said. The matter with the North Carolina Bar “seems very similar” in chilling political speech, he said.

“Once this is resolved, [Phillips] could file suit against the Bar just to get a declaratory judgment to say you can’t enforce Rule 7.1 in this manner,” Shapiro said.

“I’m sure there would be lawyers willing to take this case pro bono [for no fee] to get a judgment

in advance [of the next election] to stop the Bar from behaving in this manner,” he said.

Ironically, Phillips in 2012 represented (pro bono) attorney John Nance, a district court judge candidate, and won the on similar grounds.

“A grievance was filed with the state Bar against me saying that I was materially misleading the public into making them believe I was already a district court judge,” Nance said.

“What the sign said was ‘For district court judge vote for John R. Nance,’ ” Nance said. The complaint was based on the words “for” and “vote for” being smaller than the other words on his signs.

Nance lost the election in what was then a district encompassing Richmond, Anson, and Stanly counties. He is running this year for district court judge in the stand-alone Stanly County judicial district created last year by the General Assembly. Nance plans to use the same signs this year.

Nance said he enlisted Phillips’ help in getting the grievance dismissed because he had known Phillips for years.

“Lo and behold, guess what? He’s got a complaint filed against him” this election cycle, Nance said. “It’s ludicrous. ... It does get frustrating when you see the nit-pickiest things.”

Mock said the State Board of Elections first contacted them over car magnet campaign signs affixed to her husband’s personal vehicle. The elections board ruled the magnets were mobile signs and, by rule, had to contain wording they were paid for by the Phillips campaign.

After that matter was resolved, Phillips received a phone call from Anson County attorney Fred Poisson, who said as a courtesy he was informing Phillips that the Bar would be making inquiries about his campaign signs. He encouraged Phillips to contact Nichole McLaughlin, the Bar’s assistant ethics counsel, Mock said.

Mock said Poisson is a supporter and former employer of her husband’s primary opponent, Terry Clodfelter.

Elections records show Clodfelter was registered and voted in Anson County as a Democrat from May 1994 through November 2012.

Clodfelter changed his party affiliation to Republican in June 2013, days after the General Assembly created the standalone Stanly County district, and switched his address to his Stanly County lake house. The tax bill for the lake house lists Clodfelter at an Anson County address.

In one email to Mock, McLaughlin said lettering on campaign signs should be uniform — the same grievance the Bar dismissed against Nance in 2012. Mock then sent photos of signs used by Ervin, Inman, and other lawyer-candidates, showing they used the same format as Phillips’ signs.

“My advice is that Jim add sufficient language to his campaign signs to avoid misleading the public. I cannot comment on what other lawyers have done,” McLaughlin responded by email to Mock.

McLaughlin did not respond to requests from *Carolina Journal* for comment.

Kim Strach, the State Board of Elections' executive director, would not comment on whether she thought the Bar was exceeding its legal authority by taking action regarding the Phillips campaign signs. She also said there was no formal complaint on file against the Phillips campaign.

Mock said she was contacted by the elections board earlier this week. Her understanding is that no formal complaint was filed by the board because the campaign altered the signs voluntarily.

Though Mock doesn't know who filed the complaints against her husband, she had no problem characterizing the action.

“Dirty politics isn't new to me. I don't like dirty politics, and that's what's going on here,” said Mock, who has been involved in political campaigns since the mid-1970s.

“Stanly County has suffered enough” under a “good-old-boys” courthouse in the previous three-county district, Mock said. “We don't need it and we don't want Anson County's influence on us anymore.”

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