STATE OF MICHIGAN

IN THE SUPREME COURT

In re Hon. Kahlilia Yvette Davis 36th District Court	MSC No. 161134 Formal Complaint No. 101

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RESPONDENT'S MOTION FOR RECONSIDERATION

Respondent files this Motion for Reconsideration only as to that portion of this Court's Order, [see Appendix "A,"] issued on June 23, 2023, that is set forth in the second paragraph on the first page of the Order and on the Conclusion on page 6.

As occurred on June 17, 2020, Respondent was suspended by this Court on an interim basis. Thereafter, on June 23, 2023, this Court added to the to the suspension of June 17, 2020, an additional conditional suspension of six years, commencing on June 23, 2023. This Court's Order further stated that "Should respondent be elected or appointed to judicial office during that time, she 'will nevertheless be debarred from exercising the power and prerogatives of the office until at least the expiration of the suspension.'"

Accordingly, Respondent's 3 years of suspension, plus the 6 years of conditional suspension, results in a suspension of 9 years, during which time she has been, and will

be, continue to be prevented from exercising the power and prerogatives of judicial office. Moreover, the language of the Order suggests that such that Respondent could be prevented from ever becoming a judge again in this State.

However, as was set forth by this Court, the following was stated:

> Nonetheless, a permanent injunction might implicate the right of the voters of Michigan to choose those who would hold judicial office. As our Brother Levin correctly observes, the recommended injunction would "prevent the electorate from ever again effectively exercising the franchise in favor of a particular person". That suffrage is bestowed by our Constitution. Const.1963, art. 2, s 1; art. 6, ss 2, 8, 12, 16. Section 4 should be construed, if possible, to harmonize with other constitutional provisions. We agree, therefore, that § 4 **does not comprehend the power to permanently enjoin a person from holding judicial office.** [Emphasis supplied.]
>
> n.18 This is consistent with the fact that **neither of our coordinate branches of government is constitutionally authorized to permanently enjoin a person from holding judicial office.** Even in the case of the most extreme civil sanction that can be inflicted upon a judge impeachment the penalty "shall not extend further than removal from office". Const.1963, art. 11, s 7. [Emphasis supplied.]

Matter of Probert, 411 Mich 210, 232–233, 308 NW2d 773, 780 (1981).

The *Probert* matter resulted in the following findings by the Judicial Tenure Commission and this Court's decision regarding Probert's discipline.

The commission elaborated its findings as follows:

> "(1) As to the first general category, we adopt, as fully supported by the record, the findings that respondent wrongfully: thwarted

the right of criminal defendants to appointed counsel; denied defendants the right to reasonable bail and perverted the bail process to unsuitable and improper purposes; denied defendants the right to an appeal bond; routinely denied the clear statutory right of misdemeanants to post a ten percent bond; and habitually abused his contempt power. Respondent's extrajudicial confiscation of weapons, however well motivated, constituted an act of judicial lawlessness. Under the same general category, respondent's refusal to obey an order of a superior court was an act of insubordination and conduct clearly prejudicial to the administration of justice. See In the *Matter of Bennett*, 403 Mich. 178, 267 N.W.2d 914 (1978).

"Concerning the allegation in paragraph the proofs showed respondent's unlawful acceptance in the Jacobs case of a guilty plea to a felony written on an appearance ticket. This is an action without any jurisdiction or justification and is a serious disregard of proper procedure. It pales by comparison to respondent's subsequent alteration of court and police records, his perjury in the court records, and his falsification of judicial records, all in an effort to cover up his misconduct.

"We find that the foregoing misconduct evaluated in its totality constitutes conduct clearly prejudicial to the administration of justice, misconduct in office, and persistent failure to perform judicial duties as proscribed by Const.1963, art. 6, s 30, and GCR 1963, 932.4.

"(2) With regard to the second general category, we make the following observations: respondent improperly used his judicial office to benefit his friends and court employees. He abused the processes of the court, including his contempt power, to obtain a material benefit for the nephew of his court constable. In a similar manner, he procured an employment test for his friend, and assisted her in preparing answers in advance of the test. * * *

"We find that this constitutes misconduct in office and conduct clearly prejudicial to the administration of justice within the purview of Const.1963, art. 6, s 30, and GCR 1963, 932.4.

"(3) As to the third general category, conduct giving rise to impropriety and the appearance of impropriety, we find respondent's public intoxication and associated misconduct to be a grave breach of his responsibilities. * * *

"Respondent's drunkenness as proven did not involve his activities on the bench. However, his notorious, flagrant, and boorish behavior in the bars around Wyoming, Michigan, created a public spectacle, and doubtless scandalized the community. Thereby, he violated his duty to behave, 'in a sense * * * as though he is always on the bench'. *Bennett, supra*.

"We find that his behavior failed to avoid impropriety and its appearance and was conduct clearly prejudicial to the administration of justice within the meaning of Const.1963, art. 6, s 30, and GCR 1963, 932.4. We find further that respondent's

conduct aforesaid was such as to bring his office into disrepute.

"(4) As to respondent's gross lack of judicial temperament and impartiality, there are two general areas of misconduct. The first is respondent's injudicious behavior during arraignments and sentencings. The concrete examples of misconduct are legion and are fully and adequately discussed in the report of the master. Frequently, respondent interjected extraneous matters into the proceeding and made it appear that his determination in the case rested on them. He bullied and badgered defendants. In a number of cases as proven, the judge brandished his peculiar conceptualization of the relationship between the court and the police, referring to 'my police officers'. Particularly shocking conduct appears in *People v. Joseph Bouwhuis*, and its companion cases. There, he told the defendants that there were 'pimps, murderers and homosexuals out at the Kent County Jail' and the defendants would be 'some fresh meat for them'. Respondent's frequent statements at arraignments, as in that particular case, that the defendants 'don't need an attorney, but need a miracle worker instead' necessarily suggested that respondent had prejudged their case.

"In *People v. Gary Schultz*, respondent referred to the defendant as a 'little bastard' from the bench. In *People v. Charles Sharpe*, respondent's demeaning, sarcastic remarks about the defendant's admitted homosexuality made it obvious that Judge Probert sentenced him not for what he did, but for what he was.

> "Another aspect of respondent's partiality and unjudicial temperament manifested itself during the preliminary examinations or trials in *People v. Gary Bolot*; *People v. Scott Selkirk*; *People v. Thomas McKellar*; *People v. Alan Metzger* and *People v. Nicholas Busser*. In the most crude and overbearing way, respondent interfered with the normal course of these proceedings and sought to obtain the desired result without the formality of a trial. Under these circumstances, respondent, like Judge Del Rio, himself improperly coerced guilty pleas. *Del Rio* (400 Mich.), 702 (256 N.W.2d 727).
>
> "We find this to be misconduct in office and conduct clearly prejudicial to the administration of justice, in contravention of the provisions of Const.1963, art. 6, s 30, and GCR 1963, 932.4."

A review of the record reveals that the findings of the commission are amply supported. Further, respondent has filed no objection to the master's report upon which they are based. We therefore adopt the findings of fact and conclusions of law in the quoted portions of the commission's opinion.

To sum up, we find, as did the commission, that respondent's actions, taken as a whole, constitute conduct clearly prejudicial to the administration of justice, misconduct in office, and persistent failure to perform judicial duties, all proscribed by Const. 1963, art. 6, s 30, and GCR 1963, 932.4.

Certainly, this egregious misconduct and judicial perfidy warrant the imposition of disciplinary measures. This Court cannot ignore respondent's acts, not only because they violate the laws of this state, but also because, as stated in *Del Rio*:

> "(T)he real issue in this case (is) the preservation of the integrity of the judicial system.
>
> "The functions and decisions of a judge have an incalculable impact on the community at large. A citizen's experience with the law is often confined to contact with the courts. Therefore, it is important not only that the integrity of the judiciary be preserved but that the appearance of that integrity be maintained." *Del Rio*, 725, 256 N.W.2d 727.
>
> The foregoing analysis applies with equal force to respondent.
>
> Accordingly, in light of the nature and extent of his misconduct as documented by the commission, and pursuant to GCR 1963, 932.25, we hereby censure Charles V. Probert and impose a five-year conditional suspension without pay effective the date of this decision. Should he regain judicial office during that time, Mr. Probert will nevertheless be debarred from exercising the power and prerogatives of the office until at least the expiration of the suspension. Pursuant to GCR 1963, 866, the clerk of the Court is ordered to issue final process immediately upon release of this opinion.

Id, 411 Mich at 234–237, 308 NW2d at 780–782.

Obviously, Probert engaged in a plethora of improper conduct. Such conduct by Probert was so outrageous as to far exceed that for which Judge Davis has been disciplined. Probert engaged in (1) thwarting the right of criminal defendants to appointed counsel; (2) denying defendants the right to reasonable bail; (3) denying defendants the right to an appeal bond; (4) routinely denying defendants the clear

statutory rights of misdemeanants to post a ten percent bond; (5) habitually abusing his contempt power; (6) insubordination of a superior court and conduct clearly prejudicial to the administration of justice; (7) alteration of court and police records; (8) engaging in perjury in court records; (9) falsification of judicial records; (10) using his judicial office to benefit his friends and court employees; (11) engaging in public intoxication; (12) boorish behavior and creating a public spectacle; (13) bullying and badgering defendants; (14) referring to defendants as "pimps, murderers, and homosexuals" and that defendants would be "some fresh meat for them" at the Kent County Jail; (15) that defendants "don't need an attorney, but need a miracle workers instead," suggesting that Probert has prejudiced their cases; (16) Probert referred to a defendant as a "little bastard;" (17) in another case, Probert demeaned a defendant who admitted to being a homosexual, making it obvious that Probert sentenced him not for what he did, but for what he was; and (18) Probert improperly coerced a defendant to take a guilty plea.

Judge Davis did not engage anywhere near what Probert did. However, for all of Probert's egregious conduct, he was subjected to a censure and a 5-year conditional suspension, whereas Judge Davis has been subjected to a 3-year interim suspension starting on June 17, 2020, and, on top of that, a 6-year conditional suspension. Thus, Judge Davis has been subjected to a full suspension from June 17, 2020, to the end of

June 23, 2029—a total of 9 years, during which time she is barred from serving in a judicial office. Even Probert was not subjected to that.[1]

Relief Requested

For the reasons stated herein, it is requested that this Court reconsider the length of the conditional suspension and reduce the same to an amount less than that imposed on Probert, given the larger punishment bestowed upon Judge Davis.

Dated: July 10, 2023

SCHWARTZ, PLLC

By:

/s/ Michael Alan Schwartz

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[1] It should be noted that although Probert was subjected to a 5-year conditional suspension, he did not undergo an interim suspension. At the minimum, Judge Davis's interim suspension would have been in effect on December 31, 2022. However, the interim suspension still would be in effect, unless she would be able to commence in a judicial office between January 1, 2023 and June 23, 2023. Since this Court would be unlikely to allow Judge Davis to serve in such judicial office between January 1, 2023 and June 23, 2023 (such as being a visiting judge), as if she were not suspended for that time period, the suspension would still in effect until June 23, 2023, at which the 6-year conditional suspension then came into effect. Thus, in actuality, at present Judge Davis is under suspension, whether it be interim or conditional, so as to prevent her from judicial office for the full 9-year suspension. It is apparent that the punishment of Judge Davis is much worse than that imposed on Probert. Is there as reason for Judge Davis to suffer a greater suspension than Probert did?

CERTIFICATE OF COMPLIANCE

I, MICHAEL ALAN SCHWARTZ, does hereby certify and states the following:

1. I am the sole owner of SCHWARTZ, PLLC, and I prepared the Motion for Reconsideration for review by the Michigan Supreme Court.

2. The Motion for Reconsideration prepared by me complies with print type requirements.

3. I relied upon the word count of the word processing system that I used to prepare the Motion for Reconsideration, using Times Roman size that is 13 point font.

4. The word processing system that I utilized counted the number of words in the Motion for Reconsideration as 2244.

/s/ Michael Alan Schwartz
MICHAEL ALAN SCHWARTZ, P-30938

Appendix “A”

Order

Michigan Supreme Court
Lansing, Michigan

June 23, 2023

161134

In re KAHLILIA Y. DAVIS, JUDGE
36TH DISTRICT COURT

SC: 161134
Formal Complaint No. 101

BEFORE THE JUDICIAL TENURE COMMISSION

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On March 1, 2023, this Court held oral argument concerning the findings of fact and recommendation of the Judicial Tenure Commission (the Commission) in this matter. Judicial tenure cases are presented to this Court on recommendation of the Commission, but the authority to discipline judicial officers rests solely with this Court. Const 1963, art 6, § 30. The Commission's findings of fact, conclusions of law, and recommendations for discipline against respondent Kahlilia Davis, former 36th District Court judge, are reviewed de novo. *In re Gorcyca*, 500 Mich 588, 613 (2017).

We adopt in part the recommendations made by the Commission. We impose a six-year conditional suspension without pay on respondent effective on the date of this decision. Should respondent be elected or appointed to judicial office during that time, she "will nevertheless be debarred from exercising the power and prerogatives of the office until at least the expiration of the suspension." *In re Probert*, 411 Mich 210, 237 (1981). See also *In re Konschuh*, 507 Mich 984 (2021). We reject as moot the Commission's recommendation that we remove respondent from office because respondent no longer holds judicial office as of January 1, 2023.[1]

I. FINDINGS OF MISCONDUCT

The Commission has set forth several allegations of misconduct in its second amended complaint. A preponderance of the evidence[2] supports our findings that respondent engaged in the following misconduct:

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[1] The Secretary of State removed respondent from the 2022 general election ballot because she incorrectly stated on her affidavit of identity that she had paid all outstanding late fees. See *Davis v Secretary of State*, unpublished order of the Court of Appeals, entered August 22, 2022 (Docket No. 362455); *Davis v Secretary of State*, opinion and order of the Court of Claims, issued June 1, 2022 (Case No. 22-000072-MB).

[2] See *In re McCree*, 495 Mich 51, 68-69 (2014) (" 'Findings of misconduct must be supported by a preponderance of the evidence.' "), quoting *In re Haley*, 476 Mich 180, 189 (2006).

- Count I: Respondent abused her contempt powers in at least two cases, *Detroit Real Estate v Hayes*, 17-307300-LT and *Sanders v Thomas*, 17-321869-LT. Respondent failed to engage in proper contempt hearings, forced parties to pay illegal punitive sanctions in civil actions, and unlawfully put a process server in jail based on a civil-contempt finding. Respondent violated MCR 9.104(1); MCR 9.202(B); Code of Judicial Conduct, Canon 3(A)(1); Code of Judicial Conduct, Canon 3(A)(3); Code of Judicial Conduct, Canon 3(A)(12); and Code of Judicial Conduct, Canon 3(A)(14).

- Count II: Respondent summarily dismissed or adjourned multiple cases because a party used a certain process server respondent believed was dishonest without making factual findings that process had not been served. When admonished to stop taking these actions by the Chief Judge of the 36th District Court, respondent instead pretextually dismissed cases, misapplying the law to get to the result she wanted—not the result that was just or required. Respondent violated MCR 9.104(1) and (2); MCR 9.202(B); Code of Judicial Conduct, Canon 2(A) and (B); Code of Judicial Conduct, Canon 3(A)(1); Code of Judicial Conduct, Canon 3(A)(4); and Code of Judicial Conduct, Canon 3(A)(14).

- Count III: Respondent obstructed court administration by failing to comply with a performance-improvement plan issued to her by the Chief Judge, by intentionally refusing to follow the orders of the Chief Judge; and by sending ominous Bible verses to the Chief Judge, the court administrator, and the regional court administrator that, when read in the context of respondent's e-mails, were insulting, discourteous, disrespectful, and threatening.[3]

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[3] For example, respondent sent e-mails to her supervisors and colleagues that stated the following:

1. "Sovereign Lord, my strong deliverer, you shield my head in the day of battle. Do not grant the wicked their desires, Lord; do not let their plans succeed. Those who surround me proudly rear their heads; may the mischief of their lips engulf them. May burning coals fall on them; may they be thrown into fire, into miry pits, never to rise. Psalm 140:7-10."

2. "But the cowardly, the unbelieving, the vile, the murderers, the sexually immoral, those who practice magic arts, the idolaters and all liars – they will be consigned to the fiery lake of burning sulfur. This is the second death. Revelation 21:8."

Respondent violated MCR 9.202(B)(2); Code of Judicial Conduct, Canon 3(A)(3); Code of Judicial Conduct, Canon 3(A)(14); and Code of Judicial Conduct, Canon 3(B)(1).

- Count IV: Respondent intentionally disconnected the videorecording equipment in Courtroom 340 and purposefully failed to maintain a record of proceedings in her courtroom for a period of weeks. Respondent violated MCR 9.104(1) and (2); MCR 9.202(B); Code of Judicial Conduct, Canon 2(A) and (B); Code of Judicial Conduct, Canon 3(B)(1); and MRPC 8.4(c).

- Count V: Respondent created unauthorized recordings of the proceedings in her courtroom on her personal cell phone. Respondent violated Code of Judicial Conduct, Canon 3(A)(11).

- Count VI: Respondent parked in a handicap loading zone at a gym[4] and placed a placard in her window to convey that she was there on the authority of the Detroit Police Department and Mayor Mike Duggan. The placard conveyed that she was there "On Official Business," stating that "[t]his vehicle shall not be cited or impounded under penalty of law." Respondent did not have authority to display the placard and was not at the gym on official business for the Detroit Police Department. After a third-party's car was blocked in and the police were called, respondent attempted to use her status as a judge to avoid any citation—flashing her judge's badge at the responding officer. Respondent violated MCR 9.104(2) and (3); MCR 9.202(B); and Code of Judicial Conduct, Canon 1.

- Count VII: Respondent made material misrepresentations to the Commission as it investigated her misconduct by lying about disconnecting the video equipment in her courtroom. Respondent violated MCR 9.104(2) and (3); MCR 9.202(B); MCR 9.230(B)(2); Code of Judicial Conduct, Canon 2(A); Code of Judicial Conduct, Canon 2(B); and MRPC 8.4(b).

We do not find, as the Commission did, that respondent published the illicit recordings of her courtroom proceedings to Facebook Live (Count V). We agree with

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Moreover, after the Regional Court Administrator met with respondent and her attorney and asked that she stop sending these messages, she sent him an e-mail that stated, in part, "You brood of vipers, how can you who are evil say anything good?"

[4] The parking area at issue was the striped area immediately adjacent to the parking spaces reserved for individuals with disabilities. It is intended to be a loading and unloading zone for those in wheelchairs or with other mobility-assistive equipment. It is not a parking space.

respondent that this allegation was not proven by a preponderance of the evidence. See *In re McCree*, 495 Mich 51, 68-69 (2014).

II. ANALYSIS

A. THE *BROWN* FACTORS FAVOR SUSPENSION

Misconduct is not viewed in a vacuum. The cumulative effect and pervasiveness of respondent's misconduct convinces this Court to accept the Commission's recommendation of the appropriate sanction to the extent it is consistent with this order. This Court uses—among other tools—the seven factors enunciated in *In re Brown*, 461 Mich 1291, 1292-1293 (2000), to determine appropriate sanctions for misconduct. Those factors are:

> (1) misconduct that is part of a pattern or practice is more serious than an isolated instance of misconduct;
>
> (2) misconduct on the bench is usually more serious than the same misconduct off the bench;
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> (3) misconduct that is prejudicial to the actual administration of justice is more serious than misconduct that is prejudicial only to the appearance of propriety;
>
> (4) misconduct that does not implicate the actual administration of justice, or its appearance of impropriety, is less serious than misconduct that does;
>
> (5) misconduct that occurs spontaneously is less serious than misconduct that is premeditated or deliberated;
>
> (6) misconduct that undermines the ability of the justice system to discover the truth of what occurred in a legal controversy, or to reach the most just result in such a case, is more serious than misconduct that merely delays such discovery;
>
> (7) misconduct that involves the unequal application of justice on the basis of such considerations as race, color, ethnic background, gender, or religion are more serious than breaches of justice that do not disparage the integrity of the system on the basis of a class of citizenship. [*Id.*]

Six of the seven *Brown* factors favor a severe sanction here. To begin, the misconduct was part of a pattern or practice. This was shown by the continued abuse of contempt powers in two different cases, the multiple summary dismissals of cases in which

a particular process server respondent did not trust was used (even after being instructed to stop doing so by her Chief Judge), the intentional disconnection of the authorized recording equipment, and the recording of the proceedings in respondent's courtroom on her personal cell phone.

With regard to the second *Brown* factor, much of respondent's misconduct was done while she was "on the bench." Her abuse of contempt powers; summary dismissals; menacing, discourteous, and disrespectful e-mails to colleagues; disconnection of the recording equipment; and impermissible recording of court proceedings on a personal device all constitute "on the bench" conduct. Whether something occurs "on the bench" is not literal, but rather depends on whether the conduct occurs in that person's capacity as a judge. See *In re Barglind*, 482 Mich 1202, 1203 (2008); *In re Chrzanowski*, 465 Mich 468, 469-470, 490 (2001).

Further, respondent's misconduct actually impacted and prejudiced the administration of justice (*Brown* factors 3 and 4), because it involved the dismissal of potentially meritorious claims; the inability of parties to properly appeal decisions simply because there was no transcription or recording from which to generate a transcript; the failure to conduct proper contempt proceedings, including unlawfully jailing a party; and the improper recording of proceedings before the court on respondent's personal cell phone. The misconduct additionally undermined the ability of the justice system to discover the truth of what occurred in a legal controversy or to reach the most just result (*Brown* factor 6) in those cases for the same reasons.

Much of respondent's misconduct was premeditated, as shown by the multiple witnesses who testified that she purposefully engaged in conduct directly contrary to the Chief Judge's instructions and contrary to the interests of justice. As just one example, when told specifically that she could not dismiss cases simply because the process server was someone she did not particularly trust, respondent stated: "I don't care what the chief judge or anybody else at this court says. This is my courtroom. And if you have a problem, anybody can take it to the JTC . . . ." This conduct was not spontaneous; it was premeditated (*Brown* factor 5). Respondent also purposefully engaged in further premeditated misconduct by recording proceedings on her personal cell phone.

The only *Brown* factor not at issue in this case is the seventh factor: unequal application of justice based on protected characteristics. There are no allegations that respondent treated individuals unequally on the basis of any protected characteristics.

B. THE FIRST AMENDMENT DOES NOT PRECLUDE A SANCTION FOR RESPONDENT'S CONDUCT

As a final matter, respondent argues that she was exercising her rights to free speech and religion when she sent Bible verses to her supervisors, fellow judges, and court staff,

purportedly as a means of complying with the Chief Judge's order that she report her arrival to the courthouse every day, and therefore, she should not be disciplined for this behavior. The Special Master in this case referred to the e-mails as "Biblical passages" without addressing their contents and found that the incendiary e-mails were excusable due to "high conflict" relationships between respondent and the Chief Judge and the other recipients of the e-mails. We disagree. The Bible verses quoted by respondent were, in the context of respondent's e-mails, clearly intended to be insulting, discourteous, disrespectful, and menacing toward the recipients. The e-mails also reflect a failure to demonstrate the professionalism demanded of judges.

The right of free speech generally entitles a person to, among other things, protection from government persecution based on speech. See *Stromberg v California*, 283 US 359, 368-369 (1931).[5] The goal of disciplinary proceedings is not punitive; rather, it is to "restore and maintain the dignity and impartiality of the judiciary and to protect the public." *In re Ferrara*, 458 Mich 350, 372 (1998). Freedom of speech is not the freedom from all consequences for one's actions. Moreover, a "judge must . . . accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly." Code of Judicial Conduct, Canon 2(A). The First Amendment does not provide government employees carte blanche to engage in conduct that amounts to "insubordination" that "interfere[s] with working relationships." See *Connick v Myers*, 461 US 138, 151-152, 154 (1983); see also *id.* at 163 n 3 (Brennan, J., dissenting). This type of conduct is certainly beyond the pale for a member of our judiciary. Respondent's refusal to simply convey that she had arrived at work as required by the Chief Judge's order amounted to insubordination and clearly interfered with multiple working relationships.

III. CONCLUSION

For the foregoing reasons, we conclude that respondent engaged in repeated, deliberate misconduct that besmirched the judiciary's reputation and prejudiced the administration of justice. The nature and pervasiveness of respondent's misconduct requires the highest condemnation and harshest sanction. Given respondent is no longer on the bench, we hold that a six-year conditional suspension without pay is an appropriate sanction, with the suspension barring respondent from serving in a judicial office during that period.

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[5] Of course, the right is not "absolute," and the government may exercise its police power to punish those who "abuse" their freedom of speech. *Stromberg*, 283 US at 368-369.

CAVANAGH, J. (*concurring*).

I agree with the majority's factual findings and conclusions regarding misconduct. Moreover, as I have said before, I recognize that this Court held in *In re Probert*, 411 Mich 210 (1981), that it has the authority to impose a conditional suspension on one who is no longer a judge, and I agree with the majority that assuming the Court has such authority, a six-year conditional suspension without pay is a proportionate sanction for respondent's misconduct. However, this practice has dubious foundations, and I remain open to reconsidering it. See *In re Brennan*, 504 Mich 80, 121-123 (2019) (CLEMENT, J., concurring); *In re Konschuh*, 507 Mich 984 (2021) (CAVANAGH, J., concurring).

CLEMENT, C.J., joins the statement of CAVANAGH, J.

STATE OF MICHIGAN
MI Supreme Court

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IN RE KAHLILIA Y. DAVIS, JUDGE	161134

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