WILL: Lawsuit against U.S. Sen. Johnson, congressmen an attempt to penalize protected speech

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The News: Attorneys at the Wisconsin Institute for Law & Liberty (WILL) filed an amicus brief encouraging the dismissal of a federal lawsuit, Stencil v. Johnson, because it targets for penalty speech protected by the First Amendment. The lawsuit attempts to disqualify Senator Ron Johnson and other Republican Members of Congress from the ballot largely for social media posts, interviews, and other speech that occurred around the 2020 election and its aftermath. The speech under challenge is clearly protected by the First Amendment.
The Quote: WILL Deputy Counsel, Anthony LoCoco, said, “This attempt to penalize free speech is not only embarrassing, but dangerous. The court should dismiss this lawsuit and send a clear message that American democracy is best protected when we can all speak freely without fear of government sanction.”
Background: In March 2022, a group of Wisconsin plaintiffs filed a federal lawsuit against U.S. Senator Ron Johnson, Rep. Tom Tiffany, and Rep. Scott Fitzgerald asking the court to disqualify them from holding office. The complaint alleges that Section 3 of the 14th Amendment, a provision that bars those who “have engaged in insurrection or rebellion” from holding federal office, should apply to the Senator and Congressmen because of the events surrounding January 6, 2021. But the complaint almost entirely targets protected speech about the 2020 election and its aftermath by Johnson, Tiffany, and Fitzgerald, including social media posts and interviews.
Some examples of the speech that the plaintiffs want to penalize include:

- “Americans want a transparent process that counts every legally cast ballot.”
- “This is about the integrity of our system. Every legal vote must be counted, credible complaints of fraud and irregularities must be investigated, and legitimate legal challenges must be heard and addressed by our independent

judiciary."

- "I share the concern of my Republican colleagues that we don't want Congress coming in here and overturning the election or disenfranchising voters. I understand that. But we also can't just dismiss these legitimate concerns."

This speech, whether you agree or disagree with it, is clearly protected by the First Amendment. In fact, the lawsuit's proposed rule that anyone who questions how an election in the United States is run is barred from holding public office is utterly foreign to our constitutional order. The Plaintiffs' case is exceptionally weak and deserves to be dismissed.
The amicus brief was filed in the U.S. District Court of the Eastern District of Wisconsin on Friday.
Read More:

- WILL Amicus Supporting Motion to Dismiss, May 13, 2022

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