

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

OHIO COUNCIL 8 AMERICAN	:	
FEDERATION OF STATE,	:	
COUNTY AND MUNICIPAL	:	
EMPLOYEES, AFL-CIO, et al.,	:	
	:	
Plaintiffs,	:	Case No. 1:10-cv-00504-SJD
	:	
v.	:	Judge Susan J. Dlott
	:	
SECRETARY OF STATE	:	
JENNIFER BRUNNER, et al.,	:	
	:	
Defendants.	:	

---

**MOTION TO INTERVENE OF  
OHIO ATTORNEY GENERAL RICHARD CORDRAY**

---

Ohio Attorney General Richard Cordray moves to intervene in this case pursuant to Federal Rules of Civil Procedure 24(a) and 28 U.S.C. § 2403(b) to defend the constitutionality of Ohio Revised Code §§ 3501.01(J) and 3505.04. A Memorandum in Support of this Motion is attached. Also attached is a Proposed Answer setting forth the claims and defenses of Attorney General Cordray, as required by Fed. R. Civ. P. 24(c).

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General

/s/ Richard N. Coglianesse

Richard N. Coglianesse (0066830)

\*Trial Counsel

Aaron D. Epstein (0063286)

Robert C. Moormann (0083773)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16<sup>th</sup> Floor

Columbus, Ohio 43215

(614) 466-2872; (614) 728-7592 (fax)

*Counsel for Intervening Defendant*

*Attorney General Richard Cordray*

## **MEMORANDUM IN SUPPORT**

### **INTRODUCTION**

This action, filed on July 28, 2010, challenges two Ohio statutes and two provisions of the Ohio Code of Judicial Conduct on the grounds that they impose unconstitutional ballot restrictions on judicial candidates. The two statutes in question – R.C. 3501.01(J) and R.C. 3505.04 – together have the effect of requiring judicial candidates to appear on nonpartisan ballots without the candidates' party affiliation. Ohio Attorney General Richard Cordray, as the chief legal official in the State of Ohio, now seeks leave to intervene to defend the constitutionality of R.C. 3501.01(J) and 3505.04.

### **LAW AND ARGUMENT**

#### **I. Ohio Attorney General Cordray has an unconditional statutory right to intervene in this action.**

Attorney General Cordray should be granted the right to intervene pursuant to Fed. R. Civ. P. 24(a)(1) because of the State's right to intervene in cases in which the constitutionality of

Ohio law is at issue. Rule 24(a) provides that, upon timely application, anyone shall be permitted to intervene in an action: (1) when a statute of the United State confers an unconditional right to intervene; or (2) when the person seeking to intervene claims an interest relating to the action and is so situated that the disposition of the action may impair that person's ability to protect that interest, unless existing parties adequately represent the applicant's interest. In this case, both Rules 24(a)(1) and (a)(2) support the right to intervene.

Ohio Attorney General Cordray, on behalf of the State of Ohio, has a right to intervene under Rule 24(a)(1) because 28 U.S.C. § 2403(b) confers the right to be heard on the constitutionality of Ohio law. That provision states as follows:

In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality.

28 U.S.C. § 2403(b).

Granting the Attorney General's application for intervention at this extremely early stage in the proceedings will not create any delay or prejudice to any other party's rights. Intervention is sought solely to present evidence and arguments on the constitutionality of the nonpartisan ballot provisions. As such, this Court should permit the Attorney General to intervene in order to defend the constitutionality of those provisions.

## **CONCLUSION**

For these reasons, Ohio Attorney General Cordray respectfully asks the Court to grant his Motion to Intervene in this matter.

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General

/s/ Richard N. Coglianesse

Richard N. Coglianesse (0066830)

\*Trial Counsel

Aaron D. Epstein (0063286)

Robert C. Moormann (0083773)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16<sup>th</sup> Floor

Columbus, Ohio 43215

(614) 466-2872; (614) 728-7592 (fax)

*Counsel for Intervening Defendant*

*Attorney General Richard Cordray*

**CERTIFICATE OF SERVICE**

This will certify that the foregoing *Motion to Intervene* was filed electronically on August 6, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Richard N. Coglianesse

Richard N. Coglianesse (0066830)

Assistant Attorney General

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>OHIO COUNCIL 8 AMERICAN</b>	:	
<b>FEDERATION OF STATE,</b>	:	
<b>COUNTY AND MUNICIPAL</b>	:	
<b>EMPLOYEES, AFL-CIO, et al</b>	:	
	:	
<b>Plaintiffs,</b>	:	<b>Case No. 1:10-cv-00504-SJD</b>
	:	
<b>v.</b>	:	<b>Judge Susan J. Dlott</b>
	:	
<b>SECRETARY OF STATE</b>	:	
<b>JENNIFER BRUNNER, et al</b>	:	
	:	
<b>Defendant.</b>	:	

---

**PROPOSED ANSWER OF INTERVENOR  
OHIO ATTORNEY GENERAL RICHARD CORDRAY**

---

Now comes Intervenor, Ohio Attorney General Richard Cordray, and gives the following answer to the Plaintiffs' complaint:

1. With respect to the allegations contained in Paragraph 1 of the Complaint, Admit that Ohio judges are elected by the voters of the judicial district at issue and that judges run on a non-partisan ballot in the general election. The Intervening Defendant further admits that judicial candidates may qualify for a place on the general election ballot by nomination through a partisan primary. The Intervening Defendant denies for lack of knowledge what the Plaintiffs seek to challenge in this litigation and denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. With respect to the allegations contained in Paragraph 2 of the Complaint, Intervening Defendant denies for lack of knowledge what the Plaintiffs seek to challenge or accomplish through this litigation. The Intervening Defendant further states that the Ohio Code of Judicial Conduct and the Sixth Circuit opinion in *Carey v. Wolnitzek* speak for themselves and no further response to these allegations are required.
3. With respect to the allegations contained in Paragraph 3 of the Complaint, Intervening Defendant denies for lack of knowledge what Plaintiffs seek to accomplish through this litigation or who the Plaintiffs are. The Intervening Defendant further states that the Sixth Circuit opinion in *Carey v. Wolnitzek* speaks for itself and no further response is required.
4. With respect to the allegations contained in Paragraph 4 of the Complaint, Intervening Defendant denies for lack of knowledge what Plaintiffs seek or their reasons for seeking it. Intervening Defendant further states that the remaining allegations contained in Paragraph 4 state a legal conclusion and no further response is required.
5. State that the allegations contained in Paragraph 5 state a legal conclusion and no further response is required.
6. Denies for lack of knowledge the allegations contained in Paragraph 6 of the Complaint.
7. With respect to the allegations contained in Paragraph 7 of the Complaint, denies for lack of knowledge which county Plaintiff Allen resides in and admits the remaining allegations contained in the Complaint.

8. With respect to the allegations contained in Paragraph 8 of the Complaint, denies for lack of knowledge which county Plaintiff Corrigan resides in and admits the remaining allegations contained in Paragraph 8 of the Complaint.
9. With respect to the allegations contained in Paragraph 9 of the Complaint, denies for lack of knowledge which county Plaintiff Good resides in and admits the remaining allegations contained in Paragraph 9 of the Complaint.
10. With respect to the allegations contained in Paragraph 10 of the Complaint, admits that the Ohio Democratic Party is a political party in Ohio. The Intervening Defendant denies for lack of knowledge the remaining allegations contained in Paragraph 10 of the Complaint.
11. Admits the allegations contained in Paragraph 11 of the Complaint.
12. Admits the allegations contained in Paragraph 12 of the Complaint.
13. Admits the allegations contained in Paragraph 13 of the Complaint.
14. Admits the allegations contained in Paragraph 14 of the Complaint.
15. Admits the allegations contained in Paragraph 15 of the Complaint.
16. Admits the allegations contained in Paragraph 16 of the Complaint.
17. Admits the allegations contained in Paragraph 17 of the Complaint.
18. Admits the allegations contained in Paragraph 18 of the Complaint.
19. Admits the allegations contained in Paragraph 19 of the Complaint.
20. Admit the allegations contained in Paragraph 20 of the Complaint.
21. With respect to the allegations contained in Paragraph 21 of the Complaint, states that one manner in which a judicial candidate can qualify for the general election ballot is by first winning a primary election. The Intervening

Defendant denies for lack of knowledge the remaining allegations contained in Paragraph 21 of the Complaint.

22. Denies the allegations contained in Paragraph 22 of the Complaint.
23. With respect to the allegations contained in Paragraph 23 of the Complaint, admit that the judicial candidate who gets the most votes on a general election ballot wins the office at issue. The Intervening Defendant denies for lack of knowledge the remaining allegations contained in Paragraph 23 of the Complaint.
24. States that the allegations contained in Paragraph 24 contain a legal conclusion and no further response is required.
25. States that the allegations contained in Paragraph 25 contain a legal conclusion and no further response is required.
26. States that the allegations contained in Paragraph 26 contain a legal conclusion and no further response is required.
27. Admits the allegations contained in Paragraph 27 of the Complaint.
28. Denies the allegations contained in Paragraph 28 of the Complaint.
29. Admits the allegations contained in Paragraph 29 of the Complaint.
30. Admits that Secretary Brunner certifies the form of the general election ballot for all statewide issues. Intervening Defendant further states that the remaining allegations contain legal conclusions and no further response is required.
31. States that the allegations contained in Paragraph 31 of the Complaint contain legal conclusions and no further response is required.

32. Admits the allegations contained in Paragraph 32 of the Complaint.
33. Admits the allegations contained in Paragraph 33 of the Complaint.
34. Admits the allegations contained in Paragraph 34 of the Complaint.
35. Admits the allegations contained in Paragraph 35 of the Complaint.
36. States that the allegations contained in Paragraph 36 of the Complaint state a legal conclusion and no further response is required.
37. States that the allegations contained in Paragraph 37 of the Complaint state a legal conclusion and no further response is required.
38. States that the allegations contained in Paragraph 38 of the Complaint state a legal conclusion and no further response is required.
39. States that the allegations contained in Paragraph 39 of the Complaint state a legal conclusion and no further response is required.
40. States that the allegations contained in Paragraph 40 of the Complaint state a legal conclusion and no further response is required.
41. States that the allegations contained in Paragraph 41 of the Complaint state a legal conclusion and no further response is required.
42. States that the allegations contained in Paragraph 42 of the Complaint state a legal conclusion and no further response is required.
43. Denies for lack of knowledge the allegations contained in Paragraph 43 of the Complaint.
44. Denies for lack of knowledge the allegations contained in Paragraph 44 of the Complaint.

45. Denies for lack of knowledge the allegations contained in Paragraph 45 of the Complaint.
46. Denies for lack of knowledge the allegations contained in Paragraph 46 of the Complaint.
47. Denies for lack of knowledge the allegations contained in Paragraph 47 of the Complaint.
48. Admits that voting in the 2010 general election begins on September 28, 2010 but denies for lack of knowledge the remaining allegations contained in Paragraph 48 of the Complaint.
49. Denies for lack of knowledge the allegations contained in Paragraph 49 of the Complaint.
50. Denies for lack of knowledge the allegations contained in Paragraph 50 of the Complaint.
51. Denies for lack of knowledge the allegations contained in Paragraph 51 of the Complaint.
52. Denies for lack of knowledge the allegations contained in Paragraph 52 of the Complaint.
53. Denies for lack of knowledge the allegations contained in Paragraph 53 of the Complaint.
54. Admits that voting in the 2010 general election begins on September 28, 2010 but denies for lack of knowledge the remaining allegations contained in Paragraph 54 of the Complaint.

55. Denies for lack of knowledge the allegations contained in Paragraph 55 of the Complaint.
56. Denies for lack of knowledge the allegations contained in Paragraph 56 of the Complaint.
57. Denies for lack of knowledge the allegations contained in Paragraph 57 of the Complaint.
58. Denies for lack of knowledge the allegations contained in Paragraph 58 of the Complaint.
59. Denies for lack of knowledge the allegations contained in Paragraph 59 of the Complaint.
60. Denies for lack of knowledge the allegations contained in Paragraph 60 of the Complaint.
61. Denies for lack of knowledge the allegations contained in Paragraph 61 of the Complaint.
62. Denies for lack of knowledge the allegations contained in Paragraph 62 of the Complaint.
63. Denies for lack of knowledge the allegations contained in Paragraph 63 of the Complaint.
64. Denies for lack of knowledge the allegations contained in Paragraph 64 of the Complaint.
65. Admits the allegations contained in Paragraph 65 of the Complaint.
66. With respect to the allegations contained in Paragraph 66 of the Complaint, state that the conduct of judicial candidates is governed in part by Rule

- 4.2(B)(4). The Intervening Defendant denies for lack of knowledge the remaining allegations contained in Paragraph 66 of the Complaint.
67. With respect to the allegations contained in Paragraph 67 of the Complaint state that the conduct of judicial candidates is governed in part by Rule 4.4. The Intervening Defendant denies for lack of knowledge the remaining allegations contained in Paragraph 67 of the Complaint.
68. Denies for lack of knowledge the allegations contained in Paragraph 68 of the Complaint.
69. Denies for lack of knowledge the allegations contained in Paragraph 69 of the Complaint.
70. Denies the allegations contained in Paragraph 70 of the Complaint.
71. With respect to the allegations contained in Paragraph 71 of the complaint, denies that RC 3501.01(J) or 3505.04 deny the Plaintiffs any of their rights but takes no position on the allegations concerning Rules 4.2(B)(4) or 4.4.
72. With respect to the allegations contained in Paragraph 72 of the Complaint, denies that RC 3501.01(J) or 3505.04 are overbroad or in any other way unconstitutional but takes no position on the allegations concerning Rules 4.2(B)(4) or 4.4.
73. Denies the allegations concerning RC 3501.01(J) or 3505.04 contained in Paragraph 73 of the Complaint but takes no position on the allegations concerning Rules 4.2(B)(4) or 4.4.
74. Denies the allegations contained in Paragraph 74 of the Complaint.
75. Denies the allegations contained in Paragraph 75 of the Complaint.

76. With respect to the WHEREFORE paragraph and subparagraphs, denies that the Plaintiffs are entitled to any relief whatsoever concerning their claims governing RC 3501.01(J) or 3505.04.
77. Denies each and every allegation not specifically admitted to herein.
78. WHEREFORE, having answered the Plaintiffs' complaint, Intervening Defendant raises the following defenses, including affirmative defenses.
79. The Plaintiffs have failed to state a claim against RC 3501.01(J) or 3505.04.
80. The requirement that judges in the State of Ohio run on a non-partisan ballot in the general election does not violate the Plaintiffs' constitutional rights.
81. The State of Ohio has an important and compelling interest in requiring judges to run on a non-partisan ballot in the general election.
82. The Intervening Defendant reserves the right to add additional defenses, including affirmative defenses, as this litigation proceeds.

Respectfully submitted,

RICHARD CORDRAY  
Ohio Attorney General

/s/ Richard N. Coglianesse

Richard N. Coglianesse (0066830)

\*Trial Counsel

Aaron D. Epstein (0063286)

Robert C. Moormann (0083773)

Assistant Attorneys General

Constitutional Offices Section

30 East Broad Street, 16<sup>th</sup> Floor

Columbus, Ohio 43215

(614) 466-2872; (614) 728-7592 (fax)

*Counsel for Intervening Defendant  
Attorney General Richard Cordray*

**CERTIFICATE OF SERVICE**

This will certify that the foregoing *Proposed Answer of Intervenor* was filed electronically on August 6, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Richard N. Coglianesse

Richard N. Coglianesse (0066830)

Assistant Attorney General