

**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	:	
	:	
Defendant.	:	

**TRIAL BRIEF OF INTERVENOR DEFENDANT
OHIO ATTORNEY GENERAL RICHARD CORDRAY**

Ohio Attorney General Richard Cordray, as Intervening Defendant, respectfully asks the Court to deny the motion for injunctive relief and declare that R.C. §§3505.01 and 3505.04 are constitutional. As set forth in the Attorney General’s response to the Motion for Preliminary Injunction [R.17], plaintiffs have failed to meet the burden of demonstrating that they are entitled to an injunction. R.C. §3505.04 is not in conflict with the First Amendment because it does not in any way impinge upon a candidate’s access to the ballot. Rather, it limits what the *state* will say on the ballot about the candidates competing in nonpartisan judicial races.

State and federal courts have consistently recognized that candidates have no protected free speech interest when it comes to what information appears on the ballot. *Rubin v. City of Santa Monica*, 308 F.3d 1008, 1011 (9th Cir. 2002), *Golden v. Cook County Officers Electoral Board*, No. 96-C-1283, 1996 U.S. Dist. Lexis 3264 (N.D. Ill. March 11, 1996). As noted in the Memorandum in Opposition to the Motion for Preliminary Injunction (R.17), this is so, in part,

because the ballot is speech by the *state*, not the candidate, and in part because candidates have no constitutional right to use the ballot as a forum to communicate their political messages. The Attorney General repeats and reincorporates those arguments by reference.

Additional case law demonstrates that courts are particularly disinclined to permit the use of a slogan or nickname on the ballot if the nickname or slogan communicates a political message. See, e.g. *Clifford v. Hoppe*, 357 N.W.2d 98 (S.Ct. Minn. 1984) (candidate not permitted to identify herself as “Prolife” on the ballot, because “prolife” was a statement of her position on a particular issue, not a genuine nickname); *Brown v. Jones*, 929 So.2d 169 (Ct.App.La. 2006) (slate of candidates could not use “I.Q.” on the ballot because it was recognizable shorthand for “I Quit,” and communicated a message about their intention to refuse their salaries and outsource the work if elected). The communication of a political message is precisely what disqualifies these appellations from use on the ballot, and this principle demonstrates that candidates cannot use the ballot as a political message board.

Finally, a ruling in favor of the plaintiffs may have additional unintended consequences. Under Ohio law, judges are not the only offices filled through nonpartisan elections. Nonpartisan ballots are also used to elect candidates for city and local school boards (R.C. §3513.254); the governing boards of educational service centers (R.C. §3513.255); and township trustees (R.C. §124.57), to name a few. A decision in favor of the plaintiffs, if not narrowed, could eliminate nonpartisan elections in the state of Ohio.

The recent amendments to the Judicial Canons, and specifically the comments to those amendments, further emphasize the strong governmental interest in minimizing partisanship in judicial elections. See Comments to Amended Rule 4.2 (calling the appearance and reality of an impartial and independent judiciary a “vital interest”). Permitting party designations on the

ballot would be a step in the wrong direction. For this reason, and for the legal reasons set forth in the pleadings, the Attorney General respectfully asks the Court to deny the injunction and affirm the constitutionality of Ohio Law.

Respectfully submitted,

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/s/ Richard N. Coglianesse

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CERTIFICATE OF SERVICE

This will certify that the foregoing *Trial Brief* was filed electronically on August 12, 2010. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Richard N. Coglianesse

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