

Cynthia Westcott Rice, Chief Judge
Ohio Court of Appeals Judges' Association

Opponent Testimony
HB 149

I am here today on behalf of the Ohio Court of Appeals Judges' Association. We conducted a poll of all our members to determine what, if any, position we should take regarding this bill. The comments we received unanimously opposed the increased politicizing of judicial races by adding party affiliation to the ballot.

Judges from several appellate districts reached out to me personally to express their concerns regarding "political blowback" should they openly oppose this bill. They conveyed their entire courts opposition to this bill but all the judges on their courts were hesitant to take a personal position in open opposition. Fair and impartial courts independent of political faction are crucial to the checks and balances of our political system. This censorship of judges due to perceived political consequences demonstrates why this bill is a bad idea.

Judges are different. Judicial campaigns are regulated by the Code of Judicial Conduct to protect the public's confidence in the impartiality of the judiciary. Judges pride themselves on being able to set aside their personal views to fairly and impartially decide a case based upon the law and the facts before them. Judges do not advance policy positions of a specific political party. They are not elected based upon their political ideology. Consequently, when a person appears before the court, they are not asked to identify their party affiliation to be judged accordingly.

You have heard opposition testimony from the Ohio State Bar Association, the Ohio Association for Justice, and Justice Pfeifer on behalf of the Ohio Judicial Conference. Those who work closest to the judiciary believe the party designation on the ballot is not relevant information for a voter to use in making an informed decision when voting for a judge or justice. That testimony has outlined a concern that it is misleading to voters to imply that the party affiliation in any way effects judicial performance.

Ohio has partisan primaries which disclose candidates' party affiliation so informed voters would be aware of their judicial candidates at the primary stage and, thus, truly informed voters, would vote for the candidate they deem most fit. Uninformed voters, while not always voting for judicial candidates under the current system because of the lack of designation, would simply "knee-jerk" vote for the party candidate with whom they affiliate. This is undesirable because we should not, as a matter of policy want to stack our courts with individuals, who may or may not be qualified, simply because they have a "R" or a "D" by their name. Party designations would undermine the goal of electing the most qualified and experienced judges by inviting an under- or uninformed-voter to simply check the box based on an abstraction that does not, under any circumstances, reveal a candidate's merit.

Many voters relied on the internet during the 2020 election because Covid kept them from participating in traditional candidate forums. The Judicial Votes Count.org website was designed to provide voters with pertinent information about judicial candidates. Mr. Green from the Bliss Institute pointed out that 10's of thousands of people used the website. Judges should be chosen based on their education, experience and background. Judicial Votes Count provides extensive information on judicial candidates to interested voters. We can increase voter participation in judicial races by telling voters where they can get the information they need. But we should not mislead them into thinking that the only information they need is the D or R. This approach conveys to voters that the decision making of judges is driven by their party affiliation instead of the law.

Ohio's appellate courts decide cases based upon the law as established by the legislature and the Ohio Supreme Court. Appellate judges must follow the rule of law. Conflicts in the law are resolved exclusively by the Ohio Supreme Court. It would be more intellectually honest for the legislature to require a party designation to the Ohio Supreme Court races because political ideology influences that court's decisions.

Ohio's current practice of making judicial races nonpartisan in the general election was challenged in *Ohio Council 8 AFSME, AFL-CIO v. Brunner*, 24F.Supp.3d 680 (2014). The Southern District of Ohio Court held that "a state's broad power to regulate elections includes the ability to decide whether or not to allow candidates to use the general election ballot as a forum for expressing their party affiliation so long as the permission extends equally to all the candidates."

HB 149, as currently proposed, will be subject to constitutional challenge as a violation of the Equal Protection Clause because similarly situated judicial candidates for different courts are being treated differently.

OCAJA Poll Results

"I think the OJC should oppose. Party affiliation is wholly irrelevant to the work of a judge. This change would only encourage uninformed voting in judicial elections (voting for an irrelevant party designation), rather than informed voting based on qualifications. While our current system- which includes a partisan primary- is not ideal, these bills don't solve anything. They just create more problems. If passed, they will surely politicize, and thereby delegitimize, the judicial branch in the eyes of the public. And there is no intellectually-honest reason for distinguishing between appellate/supreme court and the trial court judges."

Strongly opposed.

"Doing so would be further politicizing judges after the events of the last four years."

"Definitely opposed to it."

"Without going into a rant, I strongly oppose the further politicizing of our profession."

"This is politics at its finest and wrong on so many levels to only single out OSC and COA races."

Retired judge- "What a shame this is even being considered."

"I see no reason to exclude lower courts from any change,"