

TESTIMONY BY RICHARD D ROGOVIN, ESQ. – H. B. NO. 460

COMMITTEE: State and Local Government

CHAIR: Scott Wiggam

DATE: Tuesday, November 17, 2020

Thank you for this opportunity. I am Richard Rogovin, an attorney in private practice in Ohio for over 50 years. I have written numerous articles on judicial selection, and my personal views have evolved from advocating the retention election to advocating a more open and honest political election. This bill is a step in that direction and I will explain why it is important, and also why it is deficient.

First, I'd like you to bear in mind a simple phrase but one that encompasses everything we value in this country. Rule of Law. What does this mean? It means that our society is ultimately governed by the law, as interpreted and applied by our judges, and not by factions or mobs or leaders. The Rule of Law is a state of mind, it exists in the will of our citizens, is a fundamental value, and it is measured at every election.

Citizens who vote for judges are expressing their deep belief that judges represent the kind of society that is fundamentally important to them. They do this, in most cases, without any expectation of material benefit, unlike a vote for legislators who promise lower taxes, more jobs and other policy changes. Judges promise nothing but justice. Therefore, by the process of elimination, there can be no other reason to vote for a judge.

So all of us should be concerned when a large percentage of voters do not vote for judges. In fact, few judges in Ohio are elected by a majority of registered voters. Like any human activity that is abandoned, for any reason, the abandonment becomes habitual and eventually a rationalization is adopted. The one most often expressed today as to these elections by non-voters is that they are not important, because judges are not important, which leads to the belief that the system is not important because it promises but does not deliver justice for one group or another. We see evidence of this in the news.

Any solution to a problem has to start with an understanding of why it exists. In this case, the answer is nondebatable. We have known it for 108 years. It was first observed in 1912, following the "reforms" of 1911 which adopted the nonpartisan ballot. 108 years of any result proves the case. Too many voters have rejected this ballot.

This bill you are considering would permit a judge to have his political party on the ballot, just as you do. It would not require it. On the surface it seems like an improvement. If all judges exercised this right, problem solved. Most assuredly, they will not. Most who feel strong in their campaigns will not want to give any advantage to an opponent. Otherwise, they might engage in "horse trading", as the parties do when dividing up judicial seats, a reason why so many uncontested races occur: "I won't if you don't". Unwritten but remembered. It could also prove problematic if both candidates show their parties in one race and candidates in another race in the same election do not. One can imagine how confused voters will be until they say "a pox on both your houses".

So if we are going to consider allowing judges to decide when their party affiliation will appear, which is tantamount to an acknowledgement that there is nothing intrinsically wrong with this, why not simply make the law the same for all of them? Why not get rid of the nonpartisan ballot completely? After all, it is a fraudulent device because it represents to voters that judges are not affiliated with political parties, when they really are. And that is part of the Ohio Revised Code, Section 3513.07 which requires every judicial primary candidate (for all courts except municipal) to state in writing:

"I further declare that, if elected to said office or position, I will qualify therefor, and that I will support and abide by the principles enunciated by the _____ Party."

Finally, If we don't want to eliminate nonpartisan ballots for whatever reason, in the interest of legislative integrity I propose a new message for each judicial ballot::

"Judges have declared their intention to support and abide by the principles enunciated by their political parties but the legislature has decided that voters are not entitled to that information".

Baldwin's Ohio Revised Code Annotated
Title XXXV. Elections (Refs & Annos)
Chapter 3513. Primaries; Nominations (Refs & Annos)
Candidate and Candidacy

R.C. § 3513.07

3513.07 Form of declaration of candidacy; petition for candidate

Currentness

The form of declaration of candidacy and petition of a person desiring to be a candidate for a party nomination or a candidate for election to an office or position to be voted for at a primary election shall be substantially as follows:

“DECLARATION OF CANDIDACY PARTY PRIMARY ELECTION

I, (Name of Candidate), the undersigned, hereby declare under penalty of election falsification that my voting residence is in precinct of the (Township) or (Ward and City or Village) in the county of, Ohio; that my voting residence is (Street and Number, if any, or Rural Route and Number) of the (City or Village) of, Ohio; and that I am a qualified elector in the precinct in which my voting residence is located. I am a member of the Party. I hereby declare that I desire to be (a candidate for nomination as a candidate of the Party for election to the office of) (a candidate for election to the office or position of) for the in the state, district, (Full term or unexpired term ending) county, city, or village of, at the primary election to be held on the day of,, and I hereby request that my name be printed upon the official primary election ballot of the said Party as a candidate for (such nomination) or (such election) as provided by law.

I further declare that, if elected to said office or position, I will qualify therefor, and that I will support and abide by the principles enunciated by the Party.

Dated this day of,

.....

(Signature of candidate)