

6th Circuit upholds Ohio's judicial election process

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On February 11, 2016, a three-judge panel of the 6th Circuit Court of Appeals affirmed a lower court decision that upheld Ohio's system for electing judges. [1] Under Ohio law, state judges are elected through a hybrid system. Candidates are first selected through a partisan primary election in which they are listed on their political party's ballot. The successful primary election candidates are then placed on the general election ballot, which shows no political party affiliation. For general election judicial candidates, the Ohio Revised Code section 3505.04 provides:

No name or designation of any political party nor any words, designations, or emblems descriptive of a candidate or his political affiliation, or indicative of the method by which such candidate was nominated or certified, shall be printed under or after any nonpartisan candidate's name which is printed on the ballot.

During the 2010 campaign, the Ohio Democratic Party (plaintiffs) challenged the constitutionality of this electoral system, arguing that First and Fourteenth Amendment rights were burdened by the law precluding the inclusion of judicial candidate party affiliation on the general election ballot. The district court determined that the burden was minimal and was outweighed by the state's interest in minimizing partisanship in judicial elections. The district court granted the state's motion for summary judgment and upheld Ohio's judicial election system.

On appeal, the court again considered whether the plaintiffs' First and Fourteenth Amendment rights were burdened by the prohibition in Revised Code 3505.04 and employed a balancing test to weigh "the character and magnitude of the asserted injury to the rights" of the Ohio Democratic Party and other plaintiffs against "the precise interests put forward by the State as justifications for the burden imposed" in the Revised Code.

The plaintiffs argued that voter drop off in Ohio judicial elections — which can range from 20 to 32 percent — is caused, at least in part, by the nonpartisan nature of these elections. Evidence before the district court also established that nonpartisan judicial elections have more voter drop off than other "low-information" partisan races.

In upholding the lower court's decision, the 6th Circuit Court noted that the burden on the plaintiffs' rights is minimal and although partisan affiliation is prohibited on the general election ballot, there are other ample opportunities for political parties and candidates to provide voters with information about a candidate's affiliation with and endorsement by a particular party. Political parties may endorse candidates and campaign on their behalf throughout the election season. The court also noted that the U.S. "Supreme Court has twice concluded that political parties do not have a First Amendment right to party designation of their nominees on a ballot."

The court also recognized the important state interest in minimizing partisanship in judicial elections — an interest served by the prohibition contained in Revised Code 3505.04 — "by discouraging purely party-line voting and signaling to voters that judges are responsible only to the law and not to their political parties." The plaintiffs, on the other hand, argued that the prohibition on the general election does not serve this purpose because judicial candidates are first selected on a partisan primary ballot and may continue to identify with their political party for the duration of the campaign. The 6th Circuit Court concluded, however, that Ohio's election system is consistent with an approach that acknowledges a political party's desire to want to elect their candidates, while incentivizing parties to nominate candidates that can win in a nonpartisan general election.

While the 2010 election that sparked this case has long been decided, the court's decision provides clarity as Ohio prepares to elect judges in 2016.

[1] Ohio Council 8, et al. v. Husted, No. 14-3678, decided Feb. 11, 2016.

Authors
