The Supreme Court of Ohio

CASE ANNOUNCEMENTS

March 24, 2022

[Cite as *03/24/2022 Case Announcements #2*, 2022-Ohio-957.]

MOTION AND PROCEDURAL RULINGS

2021-1193, 2021-1198, and 2021-1210. League of Women Voters v. Ohio Redistricting Comm.

On complaints invoking this court's original jurisdiction pursuant to Article XI, Section 9 of the Ohio Constitution. On motion by respondents Senator Vernon Sykes and House Minority Leader Allison Russo to move the primary-election date. Motion denied.

Fischer, J., concurs, with an opinion.

FISCHER, J., concurring.

{¶ 1} I too would deny the motion filed by respondents Senator Vernon Sykes and House Minority Leader Allison Russo ("respondents") requesting that this court move the date of the primary election.

{¶ 2} I write separately, for the benefit of the judicial system and the legal profession, to express my sincere concern that in filing this motion and supporting memorandum, respondents' attorneys may be in violation of the Rules of Professional Conduct. I may be wrong, but it seems the motion and its attached memorandum might be in contradiction to the requirements of the Ohio Rules of Professional Conduct requiring candor toward this court.

{¶ 3} The Rules of Professional Conduct require a lawyer to be candid with courts. *See* Prof.Cond.R. 3.3(a)(2) and 8.4(c). A failure on the lawyer's part to be honest in his or her dealings with a court may result in a violation of these rules and subject the attorney to disciplinary action. As relevant to this case, under Prof.Cond.R. 3.3(a)(2), a lawyer "shall not knowingly * * * fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be

directly adverse to the position of the client and not disclosed by opposing counsel." Thus, lawyers must recognize the existence of pertinent opposing legal authorities in making their arguments to this court. *See* Prof.Cond.R. 3.3, Comment 4. A knowing failure to disclose such information may constitute "dishonesty toward the tribunal." *Id.*

{¶ 4} I am saddened, disappointed, and concerned that respondents' motion and supporting memorandum fail to mention the case law directly contrary to their position. Respondents request that this court move the date of the primary election. However, respondents fail to mention that in *League of Women Voters of Ohio v. Ohio Redistricting Commission*, ___ Ohio St.3d____, 2022-Ohio-342, ___N.E.3d___, ¶ 65-66 ("*League II*"), a case in which respondents were parties, the majority opinion clearly sets forth the fact that this court lacks the authority to alter the date of an election. The *League II* majority opinion specifically states that "[t]he General Assembly established the date of the primary election, *see* R.C. 3501.01(E)(1), and it has the authority to ease the pressure that the commission's failure to adopt a constitutional redistricting plan has placed on the secretary of state and on county boards of elections by moving the primary election, should that action become necessary." *Id.* at ¶ 66. This conclusion was emphasized in my dissenting opinion in *League of Women Voters of Ohio v. Ohio Redistricting Commission*, ___ Ohio St.3d____, 2022-Ohio-789, ___N.E.3d___, ¶ 196 ("*League III*") (Fischer, J., dissenting).

{¶ 5} As parties in *League II* and *League III*, respondents were aware of the majority opinion's resolution of the primary-election-date issue in *League II*. And the extensive coverage of these cases in the mainstream press further demonstrates that the failure to disclose the controlling authority under *League II* was possibly done knowingly. Respondents neither attempt to distinguish such a recent and well-known precedent nor argue for an exception to or a change in the law. And if a change in the current law is the basis for their argument, the respondents should have at least cited to a case such as *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 47, in support of their argument. Respondents' failure to refer to ¶ 65 or ¶ 66 of *League II* is troubling.

{¶ 6} The phrase "legal authority * * * not disclosed by opposing counsel" in Prof.Cond.R. 3.3(a)(2) is written in the past tense for a specific purpose—so that a lawyer cannot attempt to avoid his or her duty to disclose directly adverse citations in the hope that the opposing party will later disclose the directly adverse authority. A lawyer's important duty to cite directly adverse legal authority cannot and should not be "lateraled" to an opposing lawyer. The attorney, as an

officer of this court, has a duty and obligation to protect the judicial process and to disclose directly contrary authority. The failure to do so might be a violation of Prof.Cond.R. 3.3(a)(2) and might also constitute dishonesty, deceit, or misrepresentation under Prof.Cond.R. 8.4(c).

{¶ 7} This situation is extremely disappointing, and I can only hope that respondents' failure to cite to *League II* was an oversight. It is a sad day in the legal profession and this state's judicial system when lawyers do not include a simple "*but see*" citation to contrary authority in any filing in this court, or in any court.

{¶ 8} For these and many other reasons, I concur in the decision denying the motion filed by respondents.