

The Supreme Court of Ohio

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE
SHARON L. KENNEDY

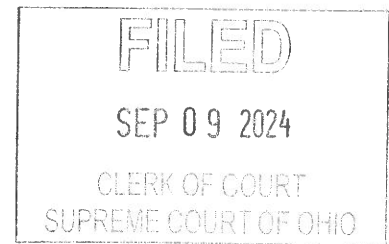
JUSTICE
JENNIFER BRUNNER

JUSTICES
PATRICK F. FISCHER
R. PATRICK DEWINE
MICHAEL P. DONNELLY
MELODY J. STEWART
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September 9, 2024

Robert Vaughn, Esq.
Clerk of Court
Supreme Court of Ohio
65 S. Front Street, 8th Fl.
Columbus, Ohio 43215



Re: Case No. 2024-1200, *State of Ohio ex rel. Citizens Not Politicians, Cara Dillon, and Annette Tucker Sutherland v. Ohio Ballot Board, Frank LaRose, Senator Theresa Gavarone, Senator Paula Hicks-Hudson, William Morgan, and Representative Terrence Upchurch*

Dear Mr. Vaughn,

On September 6, 2024, I received a request seeking my recusal from the above-captioned case. After due consideration, I find the request without merit and will continue to participate in this case.

The First Attorney General's request for my recusal is inconsistent with the Ohio Attorney General's arguments in General Yost's "Motion to Strike Putative Answer of Senator Paula Hicks-Hudson and Representative Terrence Upchurch," filed September 3, 2024. In that motion, General Yost argues that the Ohio Ballot Board is a multi-member board that speaks "through decisions reached by majority votes of their members" and not through members individually. (Motion to Strike Putative Answer of Senator Paula Hicks-Hudson and Representative Terrence Upchurch, p. 3.)

The request for my recusal has been made by an employee of the Ohio Attorney General who has newly entered an appearance only on behalf of Secretary LaRose and on the same day as the request for recusal was filed. The Ohio Attorney General has not withdrawn from the Secretary's representation and continues to represent Secretary LaRose in his official capacities as Secretary of State and through his representation of the Ohio Ballot Board. The request for recusal does not indicate that it is made on behalf of the Secretary, only that the filer is counsel for the Secretary. More problematic is that the notice of appearance and presumably the request for recusal are made contra General Yost's arguments that the actions of the Ohio Ballot Board are not the actions of

individual members, but instead are the collective actions of its members. (Motion to Strike Putative Answer of Senator Paula Hicks-Hudson and Representative Terrence Upchurch, p. 3.)

Even if the request for recusal had been made concerning the Secretary's separate duties to determine the ballot title, which it was not, contra S.Ct.R.Prac. 4.4(B)(1), requiring the request to "include[] the specific basis for the recusal request," all litigation mentioned by Mr. Blanton is specifically designated as naming the Secretary in his official capacity. (Complaint at pp. 1 and 11 at ¶ 24 and p. 34 at Count II, and Request for Recusal of Ohio Supreme Court Justice Jennifer Brunner – S.Ct.Prac.R. 4.04, Exhibit A, p. 3 at ¶ 7 and p. 5 at ¶ 15.)

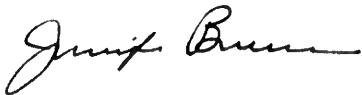
A public official sued as an individual nevertheless participates in the action in his official capacity if the remedy sought is that of compelling, restraining, or making declarations concerning performance of acts in the course of his official duties . . .

State ex rel. Estate of Miles v. Piketon, 2009-Ohio-786 at ¶ 20, 121 Ohio St. 3d 231, 235.

The facts in support of Mr. Blanton's unspecified request admit that Secretary LaRose is named in his official capacity in the federal court litigation he cites, and Exhibit A of his request indicates that the Secretary is named pursuant to his duties under R.C. 3501.05(B), (C), and (G) for prescribing the ballots of the state regarding judicial candidacies. (Request for Recusal of Ohio Supreme Court Justice Jennifer Brunner – S.Ct.Prac.R. 4.04, Exhibit A, p. 3 at ¶ 7.). In the above-referenced litigation, Secretary LaRose is named in his official capacity for a different role, in "determining the forms of ballot and prescribing the ballot title for constitutional amendments submitted to the electors." (Complaint, p. 11 at ¶ 24.)

The request for my recusal fails to indicate that recusal is appropriate, and I therefore decline to recuse and will participate in the adjudication of this action.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer Brunner", with a stylized, cursive script.

Justice Jennifer Brunner