AMERICAN COLLEGE
OF TRIAL LAWYERS

WHITE PAPER

Judicial Endorsements and the First Amendment:

The Implications of the Ohio Supreme Court's Holding That the Canon of Judicial Ethics Rule Barring Such Endorsements Is Unconstitutional

American College of Trial Lawyers
Rule of Law Committee

October 2026

AMERICAN COLLEGE OF TRIAL LAWYERS

Mission Statement

The American College of Trial Lawyers strives to preserve and enhance trial practice, civility, professionalism, and the administration of justice through support of an independent judiciary, the rule of law, trial by jury, and access to justice.

The College is an invitation-only fellowship of exceptional trial lawyers from the United States and Canada who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism, and collegiality.

American College of Trial Lawyers
(949) 752-1801 • www.actl.com

Copyright © 2026 American College of Trial Lawyers. All Rights Reserved.

AMERICAN COLLEGE OF TRIAL LAWYERS

Board of Regents

Chancellor-Founder

Hon. Emil Gumpert
(1895-1982)

Officers

John A. Day, President
Sandra A. Forbes, President-Elect
Catherine M. Recker, Treasurer
Jeffrey E. Stone, Secretary
Richard H. Deane, Jr., Immediate Past President

Regents

Donna M. Melby, Region 1
William P. Keane, Region 2
Steven W. Fogg, Region 3
Carolyn J. Fairless, Region 4
Robert T. Adams, Region 5
J. Cal Mayo, Jr., Region 6
Eugene K. Pettis, Region 7
Terri L. Mascherin, Region 8
James D. Curphey, Region 9
Kearns Davis, Region 10
Gregory K. Wells, Region 11
Ellen Epstein Cohen, Region 12
David E. Ross, Region 13
Richard M. Strassberg, Region 14
Bernard Amyot, Ad. E., Region 15

AMERICAN COLLEGE OF TRIAL LAWYERS

Rule of Law Committee

Officers

Matthew E. Fishbein, General Committee Chair
Larry H. Krantz, General Committee Vice Chair
John Robbins Wester, Immediate Past Chair
J. Cal Mayo, Jr., Regent Liaison to the Committee

Members

L. Randall Bishop
Charles P. Boring
Daniel T. Brier
Ty Cobb
P. Clarkson Collins, Jr.
W. Neil Eggleston
Susan M. Holden
David R. Johnson
James Scott Kreamer
Roberto Martinez
A. Howard Matz
Matthew Milne-Smith
Kenneth J. Montgomery
Anna Reeves Olson
Hon. Carolyn S. Ostby
Thomas C. Riney
Kimberly A. Svendsen
William W. Taylor III
Kent E. Thomson
Kathleen M. Trafford
T. John Ward
Buckner Wellford
Mary Virginia York
Blair C. Yorke-Slader, K.C.
Hon. Jack Zouhary

Table of Contents

A. Introduction 1

B. The Judicial Canon of Ethics 2

C. The Ohio Supreme Court Decision 3

D. The Dissent 5

E. Decisions in Other Jurisdictions: Past and Present. 6

F. Conclusion. 8

Approved by the Board of Regents October 2026

A. Introduction

Over fifteen years ago, The American College of Trial Lawyers ("the College") issued a white paper opposing contested elections for the selection and retention of judges in all instances.[1] Asserting that "the 'appearance of impartiality' is critical to judicial independence," the College argued that "contested judicial elections, including retention elections, create an unacceptable risk that improper and deleterious influences of money and politics will be brought to bear upon the selection and retention of judges."

Despite the College's concern, the number of states having contested judicial elections has increased since then,[2] and courts have expanded the constitutional right of judicial candidates to express their views on topical issues as long as they do not involve matters that are before the court or likely to become so.[3] Until now, however, all states have adopted and enforced a version of Rule 4.1(a)(3) of the American Bar Association ("ABA") Canons of Judicial Ethics which holds that "a judge or judicial candidate shall not . . . publicly endorse or oppose a candidate for any public office" unless it is the same judicial office for which he or she is running (the "Endorsement Rule"). The College strongly supports the Endorsement Rule as crucial to ensuring the independence of the judiciary by insulating judicial selection from the political process.

The unanimous acceptance of the Endorsement Rule changed unexpectedly in a recent decision by the Ohio Supreme Court. In that case, the Court dismissed a disciplinary sanction against a judge for endorsing a candidate for a judicial position and determined—without being asked and without the issue being briefed by the parties—that the Endorsement Rule violated the First Amendment to the United States Constitution. *Disciplinary Counsel v. Rudduck,* Slip Opinion No. 2026-Ohio-1126 (Apr. 2, 2026).

While the Ohio Supreme Court's decision has so far been an outlier, in recent months constitutional challenges have been brought against the Endorsement Rule

1 https://www.actl.com/wp-content/uploads/2024/11/White_Paper_on_Judicial_Elections.pdf.

2 *See* Zoe Merriman and Alicia Bannon, *How State Judges are Selected,* Brennan Center for Justice (Apr. 21, 2026), https://www.brennancenter.org/our-work/research-reports/how-state-judges-are-selected.

3 *See, e.g., Fischer v. Thomas,* 176 F.4th 470, 481 (6th Cir. 2026) (addressing Kentucky's "commitments clause" and concluding that "candidates have a constitutional right to take a position on the 'issues of the day' without giving explicit pledges about how they will rule").

in two other states. Although neither of these challenges succeeded, the College is concerned that, if courts in other states follow the Ohio Court's reasoning and find the Rule unconstitutional, it will eliminate a crucial check on the appearance of impartiality and undermine the public's confidence in the independence of the judiciary. In this White Paper, we trace the development of Rule 4.1 and its underpinnings, review the Ohio Court's decision and discuss the troubling implications of the decision.

B. The Judicial Canon of Ethics

The ABA adopted the Canons of Judicial Ethics in 1924, and has revised them several times since then, most recently in 2010.[4] Canon 4 states that "A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary." Pursuant to this canon, the ABA promulgated Rule 4.1(a)(3), which provides that "a judge or judicial candidate shall not . . . publicly endorse or oppose a candidate for any public office" (the "Endorsement Rule"). Until the decision of the Ohio Supreme Court, every state with a similar version of the Endorsement Rule had enforced their provision without issue.[5]

The motivating principles of the Endorsement Rule are set forth clearly in the commentary to Rule 4.1. The Rule recognizes that "judge[s] play[] a role different from that of a legislator or executive branch official[, in that they] make[] decisions based upon the law and the facts of every case"—as opposed to "making decisions based upon the expressed views or preferences of the electorate."[6] To further this interest, the commentary instructs that "judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure."[7] As to Paragraph (A)(3) in particular, the commentary provides that the Endorsement Rule exists "to prevent [judges] from abusing the prestige of judicial office to advance the interests of others."[8] The commentary also makes

4 CANONS OF JUD. ETHICS Canon 28 (AM. BAR ASS'N 1924); CODE OF JUD. CONDUCT (AM. BAR ASS'N 1972); CODE OF JUD. CONDUCT (AM. BAR ASS'N 2010).

5 [***NOTE:*** we have not been able to locate a comprehensive 50-state survey on this issue, but at least in the news coverage of the *Rudduck decision,* Ohio news sources describe the landscape this way, i.e., Ohio now stands alone on the Endorsement Rule.]

6 CODE OF JUD. CONDUCT at Rule 4.1 cmt. [1] (AM. BAR ASS'N 2020).

7 *Id.*

8 *Id.* at cmt. [4].

clear that there is no "family exception" to the Endorsement Rule: "A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office."[9]

The Canons and their Rules are crucial to maintaining an impartial judiciary—free from quid pro quo transactions between and among candidates, political parties, and donors (as well as the appearance of such), and free from other forms of political influence. If judicial candidates were free to endorse other candidates (judicial or otherwise), they would be little different from candidates for legislative and executive offices, who are by the very nature of those offices caught up in the political thicket.

C. The Ohio Supreme Court Decision

The Ohio Supreme Court decision in *Rudduck* arose from the initiation of disciplinary proceedings by the Court's Office of Disciplinary Counsel against former Judge John William Rudduck, who was then serving as a Clinton County Common Pleas judge. In 2023, his son, Brett Rudduck, ran for a seat on the Clinton County Municipal Court. During his son's campaign, Judge Rudduck engaged in activity on his personal Facebook page through which he supported his son's candidacy, including tagging Facebook posts endorsing Brett, sharing many of Brett's campaign posts, and in one instance posting on his Facebook page a lengthy essay defending himself and members of his family, including Brett, from accusations of misconduct.

Following a hearing, a panel of the Ohio Board of Professional Conduct determined that Judge Rudduck had endorsed Brett's candidacy and that his conduct violated Rule 4.1(A)(3) of the Ohio Code of Judicial Conduct (Ohio's Endorsement Rule) as well as Rules 1.2 and 1.3, which require judges to "act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and to avoid impropriety and the appearance of impropriety," and prohibit judges from "abusing the prestige of the judicial office to advance the personal or economic interests of the judge or others," respectively.

9 CODE OF JUD. CONDUCT at Rule 4.1 cmt. [5] (AM. BAR ASS'N 2020).

Under Ohio procedure, the Panel's disciplinary decisions, following review by the full Board, are required to be reviewed by the Ohio Supreme Court.[10] On review, Judge Rudduck joined with the Panel's disciplinary counsel in filing a "joint waiver of objections," thereby conceding the report's factual findings and legal conclusions and waiving any constitutional challenges to the Code or its enforcement against him.

Despite Judge Ruddock's waiver, and without asking the parties to brief the issue, the Ohio Supreme Court on April 2, 2026, overturned the Disciplinary Panel's findings against Judge Rudduck and ruled that Ohio's Endorsement Rule violated the First Amendment to the United States Constitution. In an opinion authored by Chief Justice Sharon Kennedy and joined by four other justices,[11] the Court determined that it was "obligated in the first instance to ensure that the rules [of the Code] comport with constitutional guarantees," and accordingly considered whether "Rudduck's actions implicate[d] the First Amendment and . . . whether he [could] be disciplined for violating the judicial-conduct rules."

After acknowledging that Judge Rudduck's postings on Facebook were, indeed, endorsements of his son's campaign, in violation of the Endorsement Rule, the Court concluded that a rule prohibiting a sitting judge's public endorsement of a candidate for political office is "a content-based prohibition on speech" which "burdens core political speech" and is therefore protected under the First Amendment unless the state can demonstrate a compelling state interest under the "strict scrutiny" test.

The Court examined whether the purported interests served by the Endorsement Rule in maintaining the "independence, integrity, or impartiality of the judiciary" were compelling state interests. It concluded that "it [was] not obvious that [the Endorsement Rule] meaningfully advances the interest in impartiality as between litigants, or the appearance of bias for or against a litigant." The Court found such an interest applicable "only when the endorsed or opposed candidate for public office is also a party to a case before the judge or likely will be," and, as such, the Rule was overinclusive by prohibiting endorsement of or opposition to candidates "who would likely never be litigants before the judge[.]" The Court also determined

10 Ohio Gov. Bar. R. V.(12)(K) (providing that "[i]f the Board determines that [discipline] is merited, the Board shall file a certified report of its proceedings, including its findings of fact, conclusions of law, and recommended sanction, with the clerk of the Supreme Court"); *Id.* § (17)(D) (providing that "[a]fter consideration of a matter submitted to it, the Supreme Court shall enter an order as it finds proper").

11 One of the justices did not participate in the decision.

that the Endorsement Rule was not the least restrictive alternative, because subsequent recusal or disqualification of a judge through other Rules issued pursuant to the Code (or other provisions of Ohio law) exists to remedy any issues of impartiality or appearance thereof.

The Court further found that the structural independence of the judiciary from the other branches of government is not a sufficiently compelling interest to justify restrictions on speech, and that the Rule was overinclusive and more restrictive than necessary in serving the interest of a judge's personal independence.

The Court reached a similar conclusion as to the Rule's interest in maintaining the integrity of the judiciary. Citing the U.S. Supreme Court's decision in *Federal Election Commission v. Cruz* 596 U.S. 289, 305 (2022), holding that the "only . . . permissible ground for restricting political speech[is] the prevention of quid pro quo corruption or its appearance," the Ohio Court concluded that the Endorsement Rule "does not regulate that type of speech" and is not the least restrictive alternative because it was not limited to prohibiting endorsements "that amount[] to corruption or that leads to the appearance of corruption" because "an endorsement is not inherently corrupt." The Court concluded that because the Endorsement Rule "cannot survive strict scrutiny," the Disciplinary Panel's complaint against Judge Rudduck must be dismissed.[12]

Despite its holding, the Court closed its opinion with "a word of caution" to sitting judges, stating that "[J]udges must be cognizant of how their actions appear to the public," and advising that "it would have been far more prudent for Rudduck to have abstained from posting about his son's candidacy on social media and thereby avoided any question of the propriety of his actions."

D. The Dissent

Justice Patrick F. Fischer issued a scathing dissent. First, he criticized the majority for even considering the constitutional implications of the Endorsement Rule when neither party had raised the issue or had the opportunity to brief it. He then addressed the majority's "flawed constitutional analysis." Relying on precedent

12 And given that Rudduck's purported violation of the Endorsement Rule was the premise for the purported violation of Rule 1.2, the court dismissed that claim for the same reasons. As for the purported violation of Rule 1.3, the court dismissed that claim for lack of clear and convincing evidence.

from his own court, the Sixth Circuit, and the U.S. Supreme Court, he concluded that "[t]he State's interests in promoting judicial integrity and public confidence in the judiciary are without a doubt compelling state interests." The Endorsement Rule furthers those interests by ensuring that judicial campaigns and elections proceed in such a manner "so as not to damage the actual and perceived integrity of state judges and the bar."

He rejected the majority's finding that the rule is not the most restrictive alternative, observing that the rule is focused on "a particular person" not "a judge's ability to speak on issues," and as such, is "aimed [] at . . . preventing judges from publicly inserting themselves into the campaigns of others," which "put[s] into question" the impartiality of the judge. He also rejected the majority's finding that subsequent recusal or disqualification of a judge would adequately ensure the State's interest in promoting judicial impartiality or the appearance thereof. Positing a hypothetical in which "all the sitting judges on a court of common pleas publicly endorse a candidate for county prosecutor and then that candidate is eventually elected and sworn into office," he noted that every judge on that court would be required to recuse themselves, resulting in a situation in which "the politician judge will be disqualified so often that he will have the equivalent of a paid vacation, while other judges must work extra to protect litigants' entitlement to expeditious decisions." (quoting *Bauer v. Shepard,* 620 F.3d 704, 713 (7th Cir. 2010)).

Justice Fischer also took issue with the majority's reliance on campaign finance cases like *Cruz* and disputed the majority's generalization that endorsements are not always the result of corruption or a quid pro quo exchange. He observed that endorsements "are often the result of political back-scratching," and, as such, "handing out a political endorsement is rarely a selfless act."

Finally, Justice Fischer doubted the effectiveness of the majority's "word of caution," calling it "all bark and no bite." He concluded that "[c]hipping away at our judicial-conduct rules will inevitably mean lowering our ethical standards."

E. Decisions in Other Jurisdictions: Past and Present

Prior to the Ohio Supreme Court's *Rudduck* decision, other courts had uniformly rejected First Amendment challenges to the Endorsement Rule. *See Winter v. Wolnitzek,* 834 F.3d 681 (6th Cir. 2016); *Wolfson v. Concannon,* 811 F.3d 1176 (9th Cir.

2016) (en banc); *Siefert v. Alexander,* 608 F.3d 974 (7th Cir. 2010); *Bauer v. Shepard,* 620 F.3d 704 (7th Cir. 2010).

In *Winter,* the Sixth Circuit upheld Kentucky's Endorsement Rule against a First Amendment challenge, recognizing that, compared to other constitutionally suspect canons or rules (such as those prohibiting judges from making political contributions), Endorsement Rules are "differ[ent]" in that they "permissibly 'addresses a judge's entry into the political arena on behalf of his partisan comrades.'" *Winter,* 834 F.3d at 691 (quoting *Seifert,* 608 F.3d at 984). *Seifert* spoke to the uniqueness of endorsements compared to other forms of political speech in this regard: "[O]ffering an endorsement is less a judge's communication about his qualifications and beliefs than an effort to affect a separate political campaign, or even more problematically, assume a role as political powerbroker." *Seifert,* 608 F.3d at 984. Because an endorsement serves to benefit the recipient rather than the giver, the Seventh Circuit in *Seifert* had no difficulty concluding that Endorsement Rules are entitled to "a more deferential approach" in the analysis of government prohibition of endorsements as political speech. *Id.*

In the aftermath of *Rudduck,* challenges to the constitutionality of the Endorsement Rule have been raised in Georgia and Kentucky. Though both have been unsuccessful, they raise the concern that litigants may attempt to piggyback on *Rudduck* and bring constitutional challenges to the Rule in other states. In May, in response to a motion to stay an injunction against Georgia's Endorsement Rule, along with other ethical rules, the Eleventh Circuit Court of Appeals concluded that Georgia's Judicial Qualifications Commission made "a substantial case" for the merits of its argument that the rules did not violate the Constitution. *Jordan v. Darrisaw,* No. 26-11705, 2026 WL 1392536, at *3 (11th Cir. May 17, 2026).

In *Jordan,* two candidates for the Supreme Court of Georgia appeared in television advertisements with each other supporting the other's candidacy and made public appearances together doing the same. *See Jordan v. Darrisaw,* No. 1:26-CV-57 (LAG), 2026 WL 1383383, at *5 (M.D. Ga. May 18, 2026) (district court's recitation of the at-issue statements in the television advertisement implicating the Endorsement Rule, including, "[w]e're running for Georgia Supreme Court to fight for what's fair," and "[w]e'll fight for you"). The district court concluded, *inter alia,* that the Endorsement Rule was "ambiguous and fail[ed] to provide fair notice as applied" to the candidates and, accordingly, the candidates were entitled to a preliminary injunction against

the issuance of public statements by the Georgia Judicial Qualifications Commission concerning the initiation of an investigation into their statements. *Id.* at *13.

The Eleventh Circuit, however, specifically pointed to the "weight of analogous precedent" in reaching its decision to stay the injunction issued by the district court four days before the relevant judicial election (despite *Fischer's* recent issuance). The Eleventh Circuit declined to rule on the merits of the candidates' claims, given the procedural posture of the case when presented to the court, but indicated that the Endorsement Rule (and other rules challenged by the candidates) would likely survive the candidates' constitutional challenge. Justice Thomas, presented with the candidates' motion to stay the Eleventh Circuit's vacatur, denied it. *Jordann v. Darrisaw,* 224 L. Ed. 2d 849 (2026) (Thomas, Circuit Justice).

In the other recent case challenging the constitutionality of Rule 4.1(a)(3), the Sixth Circuit, while upholding the judicial candidates' as-applied constitutional challenge to other ethical rules, declined to address the constitutionality of Kentucky's Endorsement Rule since the candidates had not been cited for violation of that rule. *Fischer v. Thomas,* No. 25-5385, 2026 WL 1296146 (6th Cir. May 12, 2026)).

F. Conclusion

Popular election of judges has by its very nature resulted in bringing judicial selection into the political process. Needing to get their names and views before the voting public, judicial candidates must raise money and communicate their views on topical issues. But where courts have recognized that such activities are forms of speech protected under the First Amendment, the nature of a political endorsement is significantly different. If judges were allowed to use their stature to promote candidates for office, they would risk giving the appearance that they were beholden to political backscratching. Tellingly, every court, apart from the Ohio Supreme Court, has recognized this distinction in upholding the constitutionality of their respective states' version of the Endorsement Rule.

The College supports those decisions and strongly believes that Endorsement Rules serve as important guardrails in ensuring the public's confidence in the judiciary's impartiality. If challenges are brought to Endorsement Rules in other states, the College urges those states to oppose such challenges and for courts to reject Ohio's example and uphold the constitutionality of those rules.