

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO**

COLLEEN M. O'TOOLE,

and

**FRIENDS TO ELECT
COLLEEN M. O'TOOLE,**

Plaintiffs,

v.

**MAUREEN O'CONNOR,
Chief Justice, Ohio Supreme Court,**

and

**SCOTT J. DREXEL,
Disciplinary Counsel of the Ohio Supreme Court,**

and

**RICHARD A. DOVE, Director,
Board of Professional Conduct
of the Ohio Supreme Court,**

Defendants.

: Case No. 2:15-CV-1446

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: Judge _____

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**: COMPLAINT FOR TEMPORARY
: RESTRAINING ORDER,
: PRELIMINARY AND PERMANENT
: INJUNCTIONS AND
: DECLARATORY JUDGMENT**

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Now come Plaintiffs COLLEEN M. O'TOOLE and FRIENDS TO ELECT COLLEEN M. O'TOOLE and for their Complaint against the Defendants named here allege as follows:

NATURE OF ACTION

1. This is an action to vindicate core First Amendment rights of free speech and freedom of association, all of which are being infringed by certain provisions of the Ohio Code of Judicial Conduct.

2. This action seeks declaratory judgment and injunctive relief arising under the First and Fourteenth Amendments to the United States Constitution. This action challenges the constitutionality of the following provisions of the Ohio Code of Judicial Conduct:

- a. *Temporal Restriction on When a Judicial Campaign Committee May Commence Soliciting or Receiving Campaign Contributions:* Rule 4.4(E) of the Ohio Code of Judicial Conduct that prohibits, *inter alia*, the campaign committee of a judicial candidate from soliciting or receiving campaign contributions “no earlier than one hundred twenty days before the first Tuesday after the first Monday in May of the year in which the general election [for the judicial office being sought] is held”;
- b. *Regulating the Use of the Term “Judge” in Campaign Materials:* Rule 4.3(C) of the Ohio Code of Judicial Conduct (and Comment 2 thereto) that prohibits, during the course of any campaign for nomination or election to judicial office, the campaign materials issued by the campaign committee of a judicial candidate from, *inter alia*, using the title of “judge” immediately preceding or following the name of the judicial candidate unless such judicial candidate is presently a sitting judge on the specific court to which the judicial candidate-judge is seeking election;
- c. *Mandating the Use of Certain Statements When Using the Term “Judge” in Campaign Materials:* Rule 4.3(D) of the Ohio Code of Judicial Conduct that mandates that, during the course of any campaign for nomination or election to judicial office, the campaign materials of a judicial candidate seeking election to a judicial office that he or she does not currently hold from using the term “judge” unless that term “judge” appears after or below the name of the judicial candidate and is specifically accompanied by: (i) the words “elect” or “vote,” in *prominent lettering*, before the judicial candidate’s name; and/or (ii) the word “for,” in *prominent lettering*, between the name of the judicial candidate and the term “judge.” And, in term, Rule 4.6(N) of the Ohio Code of Judicial Conduct specifically defines “prominent lettering” to mean “not less than the size of the largest type used to display the title of office or the court to which the judicial candidate seeks election.”
- d. *Prohibiting the Personal Solicitation of Campaign Contributions:* Rule 4.4(A) of the Ohio Code of Judicial Conduct that prohibits, *inter alia*, judicial candidates from “personally solicit[ing] campaign contributions” with the exception, *inter alia*, of allowing such judicial candidates to “make a general request for campaign contributions when speaking to an audience of twenty or more individuals”;
- e. *Imposing Regulation of and Vicarious Liability on a Judicial Candidate for the Speech of a Third Party:* Rule 4.4(A) of the Ohio Code of Judicial Conduct mandating that a judicial candidate is legally and ethically responsible for ensuring that his or her campaign committee, a legal entity separate and distinct from the judicial candidate, complies with applicable provisions of the Code and other applicable law.

3. Attached hereto as Exhibit A are the pertinent provisions of Canon 4 of the Ohio Code of Judicial Conduct as published by the Ohio Supreme Court on its website.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, as this action arises under the First and Fourteenth Amendments to the United States Constitution; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress deprivations, under color of state law, of rights, privileges and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable relief under an Act of Congress, specifically, 42 U.S.C. § 1983, which provides a cause of action for the protection of civil and constitutional rights; under 28 U.S.C. § 2201(a) and Fed. R. Civ. P. 57 to secure declaratory relief; under 28 U.S.C. § 2202 and Fed R. Civ. 65 to secure preliminary and permanent injunctive relief; and under 42 U.S.C. § 1988, to award attorney fees and costs.

5. Venue is proper within this judicial district and division pursuant to 28 U.S.C. § 1391(b) and Local Rule 82.1, as all of the claims asserted by Plaintiffs arose within this judicial district and division.

Parties

6. Plaintiff COLLEEN M. O'TOOLE is a citizen and taxpayer of the State of Ohio.

7. Plaintiff FRIENDS TO ELECT COLLEEN M. O'TOOLE is a campaign committee registered with the Ohio Secretary of State to receive contributions and to make expenditures on behalf of Ms. O'Toole in support of her campaign for election in 2016 as a justice on the Ohio Supreme Court, and for future judicial campaigns of Ms. O'Toole.

8. The Defendants herein have various roles and responsibilities relating to the adoption and enforcement of the Ohio Code of Judicial Conduct.

9. Defendant MAUREEN O'CONNOR is the Chief Justice of the Ohio Supreme Court.

10. Defendant SCOTT J. DREXEL is the Disciplinary Counsel of the Ohio Supreme Court.

11. Defendant RICHARD A. DOVE is the Secretary to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

12. The Defendants herein are sufficient and adequate in order for the Court to afford complete relief sought herein, including declaratory judgment and prospective injunctive relief.

13. Defendants, acting under color of law in adopting, promulgating, enforcing or threatening to enforce the provisions of the Ohio Code of Judicial Conduct at issue herein have violated and threaten to violate the rights secured to the Plaintiffs by the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law, and the right to equal protection of the law.

14. Plaintiffs, as well as all other judicial candidates in the State of Ohio and their supporters, face immediate and irreparable harm and injury to the full exercise of their constitutional rights due to the direct restriction and impact of the provisions of the Ohio Code of Judicial Conduct at issue herein.

Factual Allegations and Associated Rules

15. In the State of Ohio, the judges of the supreme court, courts of appeals, courts of common pleas and all courts of record (which include municipal courts) are selected through a process of judicial elections. *See* Ohio Const., art. IV, sec. 6(B).

16. Political conduct of judicial candidates, regardless of whether such candidate is currently sitting as a member of the judiciary of the State of Ohio or whether such a candidate simply aspires to become a member of the judiciary of the State of Ohio, is governed by Canon 4 of the Ohio Code of Judicial Conduct and the associated Rules therein.

17. Plaintiff COLLEEN M. O'TOOLE is an attorney duly licensed in the State of Ohio, having been admitted to the bar in 1991.

18. Plaintiff COLLEEN M. O'TOOLE is presently a judge on Ohio's Eleventh District Court of Appeals, one of the twelve appellate district courts in Ohio.

19. Plaintiff FRIENDS TO ELECT COLLEEN M. O'TOOLE is a campaign committee that has been registered with the Ohio Secretary of State to receive contributions and to make expenditures on behalf of Judge O'Toole in her campaign for election in 2016 as a justice of the Ohio Supreme Court.

20. Plaintiff FRIENDS TO ELECT COLLEEN M. O'TOOLE previously registered with the Ohio Secretary of State to receive contributions and to make expenditures on behalf of Judge O'Toole in her prior campaigns for election as a judge on Ohio's Eleventh District Court of Appeals.

21. Pursuant to Rule 4.6(F) of the Ohio Code of Judicial Conduct, a "judicial candidate" means "a person who has made a public announcement of candidacy for judicial office, declared or filed as a candidate for judicial office with the election authority, or authorized the solicitation or receipt of contributions or support for judicial office, whichever occurred first."

22. As FRIENDS TO ELECT COLLEEN M. O'TOOLE has filed with the election authority for the election of COLLEEN M. O'TOOLE as a justice on the Ohio Supreme Court,

COLLEEN M. O'TOOLE is considered to be a "judicial candidate" and, thus, subject to the restrictions and prohibitions in Canon 4 of the Ohio Code of Judicial Conduct and the associated Rules therein, including the specific Rules at issue herein.

23. Additionally and alternatively, COOLEEN M. O'TOOLE has made a public announcement of her candidacy for election in 2016 to the Ohio Supreme Court and, in particular, that she will seek the Republican Party nomination at the primary election to be held in March 2016 for one of three seats to the Ohio Supreme Court. Additionally, COOLEEN M. O'TOOLE desires and intends to seek election to a judicial office beyond 2016.

24. As COLLEEN M. O'TOOLE has made a public announcement of her candidacy for election to the Ohio Supreme Court, COLLEEN M. O'TOOLE is considered to be a "judicial candidate" and, thus, subject to the restrictions and prohibitions in Canon 4 of the Ohio Code of Judicial Conduct and the associated Rules therein, including the specific Rules at issue herein.

25. In addition to COLLEEN M. O'TOOLE, other judges in the State of Ohio have either publicly announced or allowed it to be well-known that they too desire to seek election to the Ohio Supreme Court in 2016.

Rules 4.4(E) – Fundraising Limitation Periods

26. Plaintiffs challenge, *inter alia*, the "fundraising limitation periods" of Rule 4.4(E) of the Ohio Code of Judicial Conduct which limits the temporal period in which campaign committees, including FRIENDS TO ELECT COLLEEN M. O'TOOLE, may solicit or receive campaign contributions.

27. Rule 4.4(E) of the Ohio Code of Judicial Conduct provides:

The campaign committee of a judicial candidate may begin soliciting and receiving contributions no earlier than one hundred twenty days before the first Tuesday after the first Monday in May of the year in which the general election is

held. If the general election is held in 2012 or any fourth year thereafter, the campaign committee of a judicial candidate may begin soliciting and receiving contributions no earlier than one hundred twenty days before the first Tuesday after the first Monday in March of the year in which the general election is held....

28. The “fundraising limitation periods” of Rule 4.4(E) of the Ohio Code of Judicial Conduct applies only to the campaign committees of judicial candidates, not to the judicial candidate.

29. At the present time, FRIENDS TO ELECT COLLEEN M. O’TOOLE desires to solicit for campaign contributions, as well as to receive such campaign contributions, in support of the candidacy of COLLEEN M. O’TOOLE for election in 2016 to the Ohio Supreme Court.

30. However, due to the fundraising limitation period of Rule 4.4(E) of the Ohio Code of Judicial Conduct, FRIENDS TO ELECT COLLEEN M. O’TOOLE cannot presently solicit or receive any campaign contributions.

31. Instead, due to the fundraising limitation period of Rule 4.4(E) of the Ohio Code of Judicial Conduct, FRIENDS TO ELECT COLLEEN M. O’TOOLE must wait until 120 days before the primary election before it can even start soliciting or receiving campaign contributions.

32. In 2016, the primary election in Ohio will be held on March 8, 2016.

33. Thus, pursuant to Rule 4.4(E) of the Ohio Code of Judicial Conduct, FRIENDS TO ELECT COLLEEN M. O’TOOLE will not be able to either solicit or receive campaign contributions in support of the candidacy of COLLEEN M. O’TOOLE for election in 2016 to the Ohio Supreme Court until November 9, 2015.

34. In Ohio, the filing deadline for a declaration of candidacy and petition with the appropriate election official is ninety-days before the primary election. *See* Ohio Rev. Code § 3513.05.

35. Thus, the deadline by which COLLEEN M. O'TOOLE must file her declaration of candidacy and petition in order to be a candidate in the 2016 Republican primary is December 9, 2015.

36. Thus, FRIENDS TO ELECT COLLEEN M. O'TOOLE will only have a 30-day window in which it can solicit and raise funds before COLLEEN M. O'TOOLE will have to file her declaration of candidacy and petition in order to be a candidate for the Ohio Supreme Court in the 2016 Republican primary election.

37. Furthermore, even though FRIENDS TO ELECT COLLEEN M. O'TOOLE presently desires to communicate and to build support for the campaign effort in support of COLLEEN M. O'TOOLE through the expenditure of funds, it is prohibited from even soliciting and receiving campaign contributions to advance its message in support of COLLEEN M. O'TOOLE as a candidate for the Ohio Supreme Court in the 2016 Republican primary election.

38. However, other entities or organizations which have historically become involved in election campaigns justices of the Ohio Supreme Court have no temporal restriction imposed upon them as to when they may solicit or receive campaign contributions. These entities or organizations include political parties and political action committees.

39. Additionally, “while the solicitation and receipt of campaign contributions [imposed upon the campaign committees of judicial candidates] is limited to [the] particular time period identified in Rule [4.4(E)], expenditures of campaign funds are not time limited and thus may occur at any time during an election or non-election year provided that the expenditure is

not a solicitation of funds.” Ohio Sup.Ct., Bd of Comm’rs on Grievances & Discipline, Op. 2009-11, at 4-5; *accord* Ohio Sup.Ct., Bd of Comm’rs on Grievances & Discipline, Op. 97-6 (in interpreting similar provision in prior version of Ohio Code of Judicial Conduct, opining that “because there is no express prohibition in Canon 7, an incumbent judge’s judicial campaign committee may expend retained campaign funds outside the Canon 7(C)(4) time period for soliciting and receiving campaign funds. The expenditure must not be used to solicit campaign funds.”).

40. A true and accurate copy of Opinion No. 2009-11 issued by the Ohio Supreme Court’s Board of Commissioners on Grievances and Discipline (and as published by the Ohio Supreme Court on its website) is attached hereto as Exhibit B.

41. A true and accurate copy of Opinion No. 97-6 issued by the Ohio Supreme Court’s Board of Commissioners on Grievances and Discipline (and as published by the Ohio Supreme Court on its website) is attached hereto as Exhibit C.

42. Thus, the campaign committees of judicial candidates that have campaign funds left over from a prior judicial race may publish and disseminate campaign literature in support of their candidate at any time, just so long as such literature doesn’t solicit campaign contributions outside of the 120-day window mandated by Rule 4.4(E) of the Ohio Code of Judicial Conduct.

43. Thus, the campaign committees of judicial candidates that have campaign funds left over from a prior judicial race may expend funds that advance the candidacy of such judicial candidate in a forthcoming election through efforts such as purchasing advertisement, purchasing campaign t-shirts, purchasing tickets for various events, *etc.*, just so long as such expenditures do not expressly solicit campaign contributions outside of the 120-day window mandated by Rule 4.4(E) of the Ohio Code of Judicial Conduct

44. In addition to COLLEN M. O'TOOLE, there are at least two other, presently sitting judges who are not presently on the Ohio Supreme Court, who have been identified as candidates or potential candidates for the Ohio Supreme Court in 2016, *viz.*, Patrick DeWine and Patrick Fischer. See http://www.cleveland.com/opinion/index.ssf/2014/12/democratic_shellacking_in_ohio.html.

45. Additionally, Defendant MAUREEN O'CONNOR is presently the Chief Justice of the Ohio Supreme Court and that position is one of three positions on the Ohio Supreme Court that will be on the ballot in 2016, and she has provided indication that she will be seeking re-election.

46. Thus, at present, there are three seats on the Ohio Supreme Court that will be on the ballot in 2016 and, at a minimum, there are at least four individuals who have been identified as candidates or likely candidates for such seats.

47. According to campaign finance reports filed with the Ohio Secretary of State, all four of the candidates identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016 have active campaign committees with funds retained from prior judicial elections.

48. Thus, all four of the candidates identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016 are "judicial candidates" as defined in Rule 4.6(F) of the Ohio Code of Judicial Conduct.

49. According to a search of the campaign finance reports filed with the Ohio Secretary of State, the judicial campaign committee in support of Defendant MAUREEN O'CONNOR is known as O'Connor for Supreme Court.

50. According to a search of the campaign finance reports filed with the Ohio Secretary of State, the judicial campaign committee in support Patrick DeWine is known as DeWine for Judge.

51. According to a search of the campaign finance reports filed with the Ohio Secretary of State, the judicial campaign committee in support Patrick Fischer is known as Friends of Pat Fischer.

52. As indicated above, the judicial campaign committee in support COLLEEN M. O'TOOLE is known as FRIENDS TO ELECT COLLEEN M. O'TOOLE.

53. According to the 2014 Annual Campaign Finance Reports filed with the Ohio Secretary of State, the judicial campaign committees of the four of the candidates identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016 reported the following balances on hand as of December 31, 2014:

Campaign Committee	Balance (as of 12/31/2014)
O'Connor for Supreme Court	\$ 52,481.78
DeWine for Judge	\$ 245,493.59
Friends of Pat Fischer	\$ 21,674.37
Friends to Elect Colleen M. O'Toole	\$ 93.99

54. A true and accurate copy of the cover page of the 2014 Annual Campaign Finance Report for O'Connor for Supreme Court, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit D.

55. A true and accurate copy of the cover page of the 2014 Annual Campaign Finance Report for DeWine for Judge, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit E.

56. A true and accurate copy of the cover page of the 2014 Annual Campaign Finance Report for Friends of Pat Fischer, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit F.

57. A true and accurate copy of the cover page of the 2014 Annual Campaign Finance Report for FRIENDS TO ELECT COLLEEN M. O'TOOLE, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit G.

58. According to the 2014 Annual Campaign Finance Reports filed with the Ohio Secretary of State, the judicial campaign committees of the four candidates identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016 reported the following total expenditures during 2014:

Campaign Committee	2014 Expenditures
O'Connor for Supreme Court	\$ 7,629.75
DeWine for Judge	\$ 5,332.39
Friends of Pat Fischer	\$ 497.50
Friends to Elect Colleen M. O'Toole	\$ 25.00

59. Thus, the percentage of campaign funds available to the judicial campaign committees of the four candidates identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016 in comparison to the two judicial campaign committees with the largest balances is:

Campaign Committee	Balance January 1, 2015	Percentage of O'Connor	Percentage of DeWine
O'Connor for Supreme Court	\$ 52,481.78	100.00%	21.38%
DeWine for Judge	\$ 245,493.59	467.77%	100.00%
Friends of Pat Fischer	\$ 21,674.37	41.30%	8.83%
Friends to Elect Colleen M. O'Toole	\$ 93.99	0.18%	0.04%

60. A true and accurate copy of the 2014 expenditure report for O'Connor for Supreme Court, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit H.

61. A true and accurate copy of the 2014 expenditure report for DeWine for Judge, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit I.

62. A true and accurate copy of the 2014 expenditure report for Friends of Pat Fischer, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit J.

63. A true and accurate copy of the 2014 expenditure report for FRIENDS TO ELECT COLLEEN M. O'Toole, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit K.

64. The last judicial election in which Defendant MAUREEN O'CONNOR was a candidate was in November 2010.

65. Thus, the first campaign finance report filed by O'Connor for Supreme Court after the 2010 election cycle, *i.e.*, that would not include any activity from the 2010 election was the 2012 Annual Campaign Finance Report.

66. A true and accurate copy of the cover page of the 2012 Annual Campaign Finance Report for O'Connor for Supreme Court, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit L.

67. As indicated on the cover page of the 2012 Annual Campaign Finance Report for O'Connor for Supreme Court, *i.e.*, Exhibit L, following the 2010 election, O'Connor for Supreme Court had a balance on hand as of December 31, 2011, of \$77,267.78.

68. As indicated above, *see* paragraphs 39-41, the judicial campaign committee of a sitting judge may expend campaign funds in support of its designated candidate even during non-election years.

69. Thus, even though MAUREEN O'CONNOR was not a candidate appearing on any ballot in 2012 and 2013, O'Connor for Supreme Court expended \$24,786.00 (\$77,267.78 minus \$52,481.78) during those two years.

70. A true and accurate copy of the 2012 expenditure report for O'Connor for Supreme Court, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit M.

71. A true and accurate copy of the 2013 expenditure report for O'Connor for Supreme Court, as published on the website of the Ohio Secretary of State, is attached hereto as Exhibit N.

72. O'Connor for Supreme Court was able to expend \$24,786.00 during 2012 and 2013 even though MAUREEN O'CONNOR was not a candidate appearing on any ballot in those years because "while the solicitation and receipt of campaign contributions is limited to a particular time period identified in Rule [4.4(E)], expenditures of campaign funds are not time limited and thus may occur at any time during an election or non-election year provided that the expenditure is not a solicitation of funds." Ohio Sup.Ct., Bd of Comm'rs on Grievances & Discipline, Op. 2009-11.

73. Similarly, with respect to campaign efforts relative to all four individuals identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016, their respective judicial campaign committees can presently expend funds they have already accumulated in support of such efforts.

74. "[T]he use of funds to support a political candidate is 'speech'." *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, ____ (1990).

75. However, because Rule 4.4(E) of the Ohio Code of Judicial Conduct imposes a temporal restriction on when campaign committees for judicial candidates can even solicit or

receive campaign funds, the ability of such campaign committees to presently engage in core political speech, as well as the amount of such core political speech, are directly limited and constrained by the amount of funds such committees have retained from a prior judicial election.

76. Because FRIENDS TO ELECT COLLEEN M. O'TOOLE is presently prohibited from soliciting or receiving any campaign contributions due to the temporal restriction and prohibition in Rule 4.4(E) of the Ohio Code of Judicial Conduct, FRIENDS TO ELECT COLLEEN M. O'TOOLE is limited to spending its balance, as of December 31, 2014, of \$93.99 in support of the candidacy of COLLEEN M. O'TOOLE for election to the Ohio Supreme Court in 2016.

77. And while the campaign committees of other judicial candidates who are also seeking or contemplating running for the Ohio Supreme Court in 2016 are under the same temporal limitation as to when they can solicit or receiving campaign contributions, because such campaign committees have significantly more retained funds from prior judicial races than FRIENDS TO ELECT COLLEEN M. O'TOOLE, those other campaign committee are able to engage and do engage in significantly more speech in support of their respective candidates utilizing a significantly lesser percentage of their retained funds.

78. The percentage of retained funds expended in 2014 by the campaign committees of the four candidates identified thus far as candidates or likely candidates for seats on the Ohio Supreme Court in 2016 is as follows:

Campaign Committee	Balance January 1, 2014	2014 Expenditures	Percentage
O'Connor for Supreme Court	\$ 60,061.53	\$ 7,629.75	12.7%
DeWine for Judge	\$ 250,825.97	\$ 5,332.39	2.1%
Friends of Pat Fischer	\$ 22,171.87	\$ 497.50	2.2%
Friends to Elect Colleen M. O'Toole	\$ 118.99	\$ 25.00	21.0%

79. When judicial campaign committees have little to no retained funds from a prior judicial race, such as FRIENDS TO ELECT COLLEEN M. O'TOOLE, Rule 4.4(E) of the Ohio Code of Judicial Conduct operates as a *de facto* prohibition upon the expenditure of campaign funds outside of the 120-day fundraising-period allowed by Rule 4.4(E) of the Ohio Code of Judicial Conduct.

80. For only campaign committees of judicial candidate with retained funds from prior judicial races are able to spend campaign funds in favor of their respective judicial candidates; campaign committees with little to no retained funds, such as FRIENDS TO ELECT COLLEEN M. O'TOOLE, are essentially stifled outside of the 120-day fundraising-period allowed by Rule 4.4(E) of the Ohio Code of Judicial Conduct in comparison to the judicial campaign committees with significant retained funds.

81. For Rule 4.4(E) of the Ohio Code of Judicial Conduct has the effect of cutting off *all sources* of campaign financing up until 30 days prior to the petition-filing deadline.

82. The disparity in retained funds, together with the temporal restriction imposed by Rule 4.4(E) of the Ohio Code of Judicial Conduct, operates to advance and to favor the core political speech of judicial campaign committees with significant retained funds over the core political speech of judicial campaign committees with little to no retained funds.

83. But “virtually every means of communicating ideas in today’s mass society requires the expenditure of money.” *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

84. Thus, “[a] restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.” *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

85. Additionally, “[b]lanket prohibitions on campaign contributions during particular pre-election periods of time are also generally unconstitutional.” *Zeller v. Florida Bar*, 909 F.Supp. 1518, 1526 (N.D. Fla. 1995).

86. Rule 4.4(E) of the Ohio Code of Judicial Conduct violate the rights secured to the Plaintiffs by the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law, and the right to equal protection of the law.

87. Rule 4.4(E) of the Ohio Code of Judicial Conduct violates, facially and as applied to FRIENDS TO ELECT COLLEEN M. O’TOOLE, the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law and the right to equal protection of the law.

Rule 4.3(C) – Prohibition on Use of the Term “Judge” in Campaign Materials

88. Plaintiffs also challenge, *inter alia*, Rule 4.3(C) of the Ohio Code of Judicial Conduct, including Comment 2 thereto, which regulates and imposes prohibitions on the use of the term “judge” in campaign materials.

89. Rule 4.3(C) of the Ohio Code of Judicial Conduct provides:

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements on radio or television or in a newspaper or periodical, electronic communications, a public speech, press release, or otherwise, shall not *knowingly* or with reckless disregard do any of the following:

...

(C) Use the title of a public office or position immediately preceding or following the name of the *judicial* candidate, when the judicial candidate does not hold that office or position.

90. And Comment 2 to Rule 4.3(C) of the Ohio Code of Judicial Conduct provides:

A sitting judge, who is a judicial candidate for a judicial office other than the court on which he or she currently serves, violates Rule 4.3(C) if he or she uses the title “judge” without identifying the court on which the judge currently serves.

91. Throughout the campaign efforts of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate campaign literature which refers to COLLEEN M. O'TOOLE as “Judge” without also including the mandatory identification of the court on which she currently serves.

92. Throughout the campaign efforts of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate campaign literature which incorporates the term “judge” as a verb (in the context of meaning “to evaluate”) in advocating the election of COLLEEN M. O'TOOLE.

93. Throughout the campaign efforts of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate campaign literature which incorporates the term “justice” as a noun (in the sense of meaning the maintenance or administration of what is just by law, and not in the sense of a title or position) in advocating the election of COLLEEN M. O'TOOLE.

94. Such statements in campaign literature or otherwise that FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate are anticipated to include, but not limited to, the following:

Judge Colleen O'Toole
Ohio Supreme Court

O'Toole
Justice
Ohio Supreme Court

O'Toole
Ohio Supreme Court

Justice

Justice
O'Toole
Ohio Supreme Court

Judge O'Toole
to the Ohio Supreme Court

Elect Judge O'Toole
to the Ohio Supreme Court

Judge O'Toole
for the Ohio Supreme Court

95. In order to comply with the prohibition of Rule 4.3(C) of the Ohio Code of Judicial Conduct, and Comment 2 thereto, FRIENDS TO ELECT COLLEEN M. O'TOOLE would have to alter its speech in campaign literature so that the foregoing speech would be required:

Eleventh District Court of Appeals Judge Colleen O'Toole
Ohio Supreme Court

Judge Colleen O'Toole of the Eleventh District Court of Appeals
Ohio Supreme Court

Eleventh District Court of Appeals Judge O'Toole
to the Ohio Supreme Court

Judge O'Toole of Eleventh District Court of Appeals
to the Ohio Supreme Court

Elect Eleventh District Court of Appeals Judge O'Toole
to the Ohio Supreme Court

Judge Colleen O'Toole of the Eleventh District Court of Appeals
Ohio Supreme Court

Elect Judge O'Toole of the Eleventh District Court of Appeals
to the Ohio Supreme Court

Eleventh District Court of Appeals Judge O'Toole
for the Ohio Supreme Court

Judge O'Toole of the Eleventh District Court of Appeals

for the Ohio Supreme Court

96. In support of the campaign efforts of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE does not desire to publish and disseminate campaign literature, including yard signs, which specifically identifies the court on which COLLEEN M. O'TOOLE currently serves.

97. But for the prohibition in Rule 4.3(C) of the Ohio Code of Judicial Conduct, and Comment 2 thereto, FRIENDS TO ELECT COLLEEN M. O'TOOLE would not publish campaign literature, including yard signs, which specifically identifies the court on which COLLEEN M. O'TOOLE currently serves.

98. But for the prohibition in Rule 4.3(C) of the Ohio Code of Judicial Conduct, and Comment 2 thereto, FRIENDS TO ELECT COLLEEN M. O'TOOLE would publish campaign literature, including yard signs, which contain the speech set forth above.

99. Throughout her campaign efforts to seek election to the Ohio Supreme Court in 2016, COLLEEN M. O'TOOLE desires to be able to introduce herself as "Judge" without also including the mandatory identification of the court of which she currently serves, *i.e.*, without being compelled by government dictate to alter her core political speech.

100. But in order to comply with the prohibition of Rule 4.3(C) of the Ohio Code of Judicial Conduct, and Comment 2 thereto, COLLEEN M. O'TOOLE would have to introduce herself as "Judge Colleen O'Toole of the Eleventh District Court of Appeals" or "Eleventh District Court of Appeals Judge Colleen O'Toole".

101. And throughout her campaign efforts to seek election to the Ohio Supreme Court in 2016, COLLEEN M. O'TOOLE desires to be able to distribute literature published by FRIENDS TO ELECT COLLEEN M. O'TOOLE that refer to her as "Judge" without also including the

mandatory identification of the court of which she currently serves, *i.e.*, without being compelled by government dictate to alter its core political speech.

102. The mandate and prohibition within Rule 4.3(C) of the Ohio Code of Judicial Conduct and Comment 2 thereto violates, facially and as-applied to FRIENDS TO ELECT COLLEEN M. O'TOOLE and COLLEEN M. O'TOOLE, the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law and the right to equal protection of the law.

103. For “the First Amendment guarantees freedom of speech, ‘a term necessarily comprising the decision of both what to say and what *not* to say.’” *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 481 (1997)(quoting *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 796-97 (1988)).

104. The mandate and prohibition within Rule 4.3(C) of the Ohio Code of Judicial Conduct, and Comment 2 thereto, constitutes government-compelled speech in violation of the First Amendment to the United States Constitution.

105. For “freedom of speech prohibits the government from telling people what they must say.” *Agency Ibr Dev. v. Alliance for Open Soc’y Int’l*, ___ U.S. ___, ___, 133 S.Ct. 2321, 2327 (2013).

106. The mandate and prohibition within Rule 4.3(C) of the Ohio Code of Judicial Conduct, and Comment 2 thereto, constitutes a content-based restriction upon the exercise core political speech under the First Amendment to the United States Constitution.

107. For “[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech.” *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 795 (1988).

108. And “the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

109. Despite any putatively altruistic justification which may be posited by Defendants to justify the mandate and prohibition within Rule 4.3(C) of the Ohio Code of Judicial Conduct, including Comment 2 thereto, “[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 348 (1995).

110. Instead, “the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. [For] if there be any danger that the people cannot evaluate the information and arguments advanced by [a party], it is a danger contemplated by the Framers of the First Amendment.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 791-92 (1978).

111. Thus, “Government is forbidden to assume the task of ultimate judgment, lest the people lose their ability to govern themselves. The First Amendment rejects the highly paternalistic approach of statutes...which restrict what the people may hear.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.31 (1978).

Rule 4.3(D) – Mandating Font Size on Political Campaign Literature

112. Plaintiffs also challenge, *inter alia*, the regulation by Rule 4.3(D) of the Ohio Code of Judicial Conduct which mandates certain language and minimum font sizes be utilized on campaign materials.

113. Rule 4.3(D) of the Ohio Code of Judicial Conduct provides:

During the course of any campaign for nomination or election to judicial office, a judicial candidate, by means of campaign materials, including sample ballots, advertisements on radio or television or in a newspaper or periodical, electronic communications, a public speech, press release, or otherwise, shall not *knowingly* or with reckless disregard do any of the following:

...

(D) Use the term “judge” when the judicial candidate is not a judge unless that term appears after or below the name of the judicial candidate and is accompanied by either or both of the following:

- (1) The words “elect” or “vote,” in prominent lettering, before the judicial candidate’s name;
- (2) The word “for,” in prominent lettering, between the name of the judicial candidate and the term “judge;”

114. And, in turn, Rule 4.6(N) of the Ohio Code of Judicial Conduct specifically defines “prominent lettering” to mean “not less than the size of the largest type used to display the title of office or the court to which the judicial candidate seeks election.”

115. Based upon information and belief, Rule 4.3(D) of the Ohio Code of Judicial Conduct applies not only to the campaigns of judicial candidates who are not presently sitting as a judge, but also to the political campaigns of sitting judges seeking election to a court on which the judge does not currently serve.

116. Thus, Rule 4.3(D) of the Ohio Code of Judicial Conduct is applicable to the judicial campaign of COLLEEN M. O’TOOLE in seeking election to the Ohio Supreme Court, including the speech of FRIENDS TO ELECT COLLEEN M. O’TOOLE.

117. In political campaigns, the key information sought to be communicated to the voters via campaign literature, including yard signs, is, first and foremost, the candidate’s name.

118. In political campaigns, the second key information sought to be communicated to the voters via campaign literature, including yard signs, is the office to which the candidate is seeking election.

119. In political campaigns, the use of the words “elect”, “vote” or “for” in campaign literature, including yard signs, is not a significant priority and, thus, the size of such words is minimized in comparison to both the name of the candidate and the office being sought

120. Thus, any information on yard signs other than the candidate’s name and the office being sought is minimized so as to not interfere with the content of the key message being communicated, *i.e.*, the candidate’s name and the office being sought.

121. In fact, one company selling campaign yards signs announces on its website (<http://www.yardsigns.org/campyardsigns.html>) that “[a] successful Campaign Yard Sign will clearly display your Name and the Office you are running for... If a person cannot read your last name and the office you are running for at 30 yards away, you will waste a lot of funds on yard signs.”

122. Thus, campaign signs are designed to communicate the message of campaign committees so as to promote and emphasize the name of their respective candidate and the office being sought, as indicated in the following examples:



123. Pursuant to Rule 4.3(D) of the Ohio Code of Judicial Conduct, the foregoing examples of campaign signs are or would be in violation of the Rule and would subject the candidates therein to prosecution for violation of the Ohio Code of Judicial Conduct and/or the Ohio Rules of Professional Conduct.

124. Throughout the campaign efforts of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate campaign literature, including yard signs, that advocates the election of COLLEEN M. O'TOOLE without making the words "elect", "vote" or "for" at least the same size as the office to which she seeks election, *i.e.*, the "Ohio Supreme Court".

125. In support of the current campaign of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desire to emphasize in some or all of its campaign literature, including yard signs, two key messages: (i) the name of its candidate, *i.e.*, Colleen O'Toole; and (ii) the office to which she seeks election, *i.e.*, the Ohio Supreme Court.

126. To mandate that FRIENDS TO ELECT COLLEEN M. O'TOOLE include on campaign literature, including signs, the words "elect", "vote" or "for" in a font size that is the same or larger than the title of office or the court to which COLLEEN M. O'TOOLE is seeking election results in sacrificing the area devoted to the desired message of FRIENDS TO ELECT COLLEEN M. O'TOOLE and, as such, diminishes that message in favor of the speech mandated by Rule 4.3(D) of the Ohio Code of Judicial Conduct

127. In support of the current campaign of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE does not desires to publish and disseminate (and would not publish or disseminate, but for Rule 4.3(D) of the Ohio Code of Judicial Conduct) campaign literature, including yard signs, that uses the words "elect", "vote" or "for" in a font size that is the same or larger than the title of office or the court to which COLLEEN M. O'TOOLE is seeking election, *i.e.*, the Ohio Supreme Court.

128. To compel FRIENDS TO ELECT COLLEEN M. O'TOOLE to publish and disseminate campaign literature, including yard signs, that use the term “judge” with the words “elect”, “vote” or “for” in a font size that is the same or larger than the title of office or the court to which COLLEEN M. O'TOOLE is seeking election, *i.e.*, the Ohio Supreme Court, the focus and content of the message FRIENDS TO ELECT COLLEEN M. O'TOOLE is altered by governmental mandate and fiat.

129. In support of her current campaign to seek election to the Ohio Supreme Court in 2016, COLLEEN M. O'TOOLE desires to disseminate campaign literature, including yard signs, published by FRIENDS TO ELECT COLLEEN M. O'TOOLE that advocate her election without making the words “elect”, “vote” or “for” at least the same size as the office to which she seeks election, *i.e.*, the “Ohio Supreme Court”.

130. The mandate within Rules 4.3(D) and 4.6(N) of the Ohio Code of Judicial Conduct violates, both facially and as-applied to FRIENDS TO ELECT COLLEEN M. O'TOOLE and COLLEEN M. O'TOOLE, the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law and the right to equal protection of the law.

131. For “the First Amendment guarantees freedom of speech, ‘a term necessarily comprising the decision of both what to say and what *not* to say.’” *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 481 (1997)(quoting *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 796-97 (1988)).

132. The mandate and prohibition within Rule 4.3(D) of the Ohio Code of Judicial Conduct constitutes government-compelled speech in violation of the First Amendment to the United States Constitution.

133. For “freedom of speech prohibits the government from telling people what they must say.” *Agency Ibr Dev. v. Alliance for Open Soc’y Int’l*, ___ U.S. ___, ___, 133 S.Ct. 2321, 2327 (2013).

134. The mandate and prohibition within Rule 4.3(D) of the Ohio Code of Judicial Conduct constitutes a content-based restriction upon the exercise core political speech under the First Amendment to the United States Constitution.

135. For “[m]andating speech that a speaker would not otherwise make necessarily alters the content of the speech.” *Riley v. National Federation of the Blind of North Carolina*, 487 U.S. 781, 795 (1988).

136. And “the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all.” *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

137. Despite any putatively altruistic justification which may be posited by Defendants to justify the mandate and prohibition within Rule 4.3(D) of the Ohio Code of Judicial Conduct, “[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 348 (1995).

138. Instead, “the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. [For] if there be any danger that the people cannot evaluate the information and arguments advanced by [appellants, it is a danger contemplated by the Framers of the First Amendment.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 791-92 (1978).

139. Thus, “Government is forbidden to assume the task of ultimate judgment, lest the people lose their ability to govern themselves. The First Amendment rejects the highly paternalistic approach of statutes... which restrict what the people may hear.” *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.31 (1978).

Rule 4.4(A) – Personal Solicitation Prohibition

140. Plaintiffs also challenge, *inter alia*, the regulation within Rule 4.4(A) of the Ohio Code of Judicial Conduct which prohibits judicial candidates from personally soliciting campaign contributions.

141. Rule 4.4(A) of the Ohio Code of Judicial Conduct provides:

A judicial candidate shall not personally solicit campaign contributions, except as expressly authorized in this division, and shall not personally receive campaign contributions.... A judicial candidate may solicit campaign contributions in the following manner:

- (1) A judicial candidate may make a general request for campaign contributions when speaking to an audience of twenty or more individuals;
- (2) A judicial candidate may sign letters soliciting campaign contributions if the letters are for distribution by the judicial candidate’s campaign committee and the letters direct contributions to be sent to the campaign committee and not to the judicial candidate;
- (3) A judicial candidate may make a general request for campaign contributions via an electronic communication that is in text format if contributions are directed to be sent to the campaign committee and not to the judicial candidate.

142. Based upon information and belief, the personal solicitation prohibition of Rule 4.4(A) of the Ohio Code of Judicial Conduct does not prohibit a judicial candidate from personally soliciting an individual to serve as a “bundler” of campaign contributions, *i.e.*, to be a

person who solicits and/or gathers contributions from many different individuals or entities with the goal or purpose of raising or gathering at least a certain targeted level of accumulated contributions, and then presents the accumulated contributions (or “bundle”) to a campaign committee in one lump sum.

143. Based upon information and belief, the personal solicitation prohibition of Rule 4.4(A) of the Ohio Code of Judicial Conduct does not prohibit a judicial candidate from personally soliciting potential contributions *not to contribute* to the opponent of the judicial candidate or any other judicial candidate.

144. Throughout the campaign efforts of COLLEEN M. O'TOOLE to seek election to the Ohio Supreme Court in 2016, COLLEEN M. O'TOOLE desires to personally solicit for campaign contributions from individuals, political action committees and political parties, and to do so in a manner other than those contained within the three exceptions to Rule 4.4(A) of the Ohio Code of Judicial Conduct.

145. However, in light of and due to the prohibition within Rule 4.4(A) of the Ohio Code of Judicial Conduct, COLLEEN M. O'TOOLE will not engage in any personal solicitation for campaign contributions from individuals, political action committees and political parties, less she subject herself to disciplinary proceedings as an attorney, judge and judicial candidate.

146. “Prohibiting candidates from asking for money suppresses speech in the most conspicuous of ways and, in the process, favors some candidates over others-incumbent judges (who benefit from their current status) over non-judicial candidates, the well-to-do (who may not need to raise any money at all) over lower-income candidates, and the well-connected (who have an army of potential fundraisers) over outsiders.” *Carey v. Wolnitzek*, 614 F.3d 189, 204 (6th Cir. 2010).

147. The personal solicitation prohibition of Rule 4.4(A) of the Ohio Code of Judicial Conduct violates, both facially and as-applied to FRIENDS TO ELECT COLLEEN M. O'TOOLE and COLLEEN M. O'TOOLE, the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law and the right to equal protection of the law.

148. Additionally, the personal solicitation prohibition of Rule 4.4(A) of the Ohio Code of Judicial Conduct violates, both facially and as-applied to FRIENDS TO ELECT COLLEEN M. O'TOOLE and COLLEEN M. O'TOOLE, the constitutionally protected rights of freedom of speech and association of potential contributors to receive information and ideas directly from judicial candidates, including a direct and personal request from a judicial candidate for a campaign contribution.

149. For “[i]t is now well established that the Constitution protects the right to receive information and ideas.” *Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

Rule 4.4(A) – Vicarious Liability for Speech of Others

150. Plaintiffs also challenge, *inter alia*, the regulation and potential vicarious liability imposed upon a judicial candidate (including COLLEEN M. O'TOOLE) by a provision within Rule 4.4(A) of the Ohio Code of Judicial Conduct.

151. Rule 4.4(A) of the Ohio Code of Judicial Conduct provides, in pertinent part:

[A] judicial candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

152. Thus, if a campaign committee in support of a judicial candidate (including FRIENDS TO ELECT COLLEEN M. O'TOOLE) should engage in core political speech that violates some provision of the Ohio Code of Judicial Conduct, the judicial candidate (including

COLLEEN M. O'TOOLE) will personally be subject to prosecution under the Ohio Code of Judicial Conduct.

153. Accordingly, a campaign committee is, as a result of this provision of Rule 4.4(A) of the Ohio Code of Judicial Conduct, automatically placed between the Scylla of engaging in the full exercise of its First Amendment right of core political speech that happens or may happen to run afoul of some provision of the Ohio Code of Judicial Conduct resulting in the candidate it supports being subject to prosecution under the Code, and the Charybdis of foregoing and chilling the full exercise of its First Amendment right of core political speech in order to ensure the candidate it supports is not subjected to prosecution for the violation by the campaign committee of some provision of the Ohio Code of Judicial Conduct.

154. But a campaign committee of a candidate for public office, including a candidate seeking election to a judicial office, is a legal entity, separate and distinct from the candidate. *See Strategy Group for Media, Inc. v. Sue Lowden & Sue Lowden for U.S. Senate*, 2013-Ohio-1330 ¶¶41-51 (Ohio App. 5th Dist. 2013).

155. Thus, the provision of Rule 4.4(A) of the Ohio Code of Judicial Conduct that imposes responsibility on the judicial candidate for the core political speech of a third party, *i.e.*, the campaign committee: (i) imposes vicarious liability upon such judicial candidate for the speech of third parties; and/or (ii) effectuates a chill and self-censorship on core political speech by the campaign committee, all in violation of the First and Fourteenth Amendments to the United States Constitution.

156. At present, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to solicit and receive campaign contributions in support of the candidacy of COLLEEN M. O'TOOLE for election in 2016 to the Ohio Supreme Court.

157. However, if FRIENDS TO ELECT COLLEEN M. O'TOOLE was to presently solicit or receive campaign contributions in support of the candidacy of COLLEEN M. O'TOOLE for election in 2016 to the Ohio Supreme Court, it would violate the temporal restriction upon when campaign contributions may be received by any judicial campaign committee as restricted in Rule 4.4(E) of the Ohio Code of Judicial Conduct (prohibiting, *inter alia*, the campaign committee of a judicial candidate from soliciting or receiving campaign contributions “no earlier than one hundred twenty days before the first Tuesday after the first Monday in May of the year in which the general election [for the judicial office being sought] is held”).

158. Thus, so as to not violate the prohibition in Rule 4.4(E) of the Ohio Code of Judicial Conduct that, in turn, would subject COLLEEN M. O'TOOLE to prosecution under the Ohio Code of Judicial Conduct and/or the Ohio Rules of Professional Conduct, FRIENDS TO ELECT COLLEEN M. O'TOOLE has forgone any effort to solicit campaign contributions.

159. But the solicitation of contributions by a campaign committee constitutes core political speech. *See Carey v. Wolnitzek*, 614 F.3d 189, ___ (6th Cir. 2010)(a prohibition on soliciting campaign contributions “flatly prohibits *speech*, not donations, based on the topic (solicitation of a contribution”).

160. During the course of the campaign for electing justices to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate campaign literature which: (i) refers to COLLEEN M. O'TOOLE as “Judge” without also including the mandatory identification of the court on which she currently serves; (ii) incorporates the term “judge” as a verb (in the context of meaning “to evaluate”) in advocating the election of COLLEEN M. O'TOOLE; and (iii) incorporates the term “justice” as a noun (in

the sense of meaning the maintenance or administration of what is just by law, and not in the sense of a title or position) in advocating the election of COLLEEN M. O'TOOLE, and in so doing, to include statements the same or similar to those identified above.

161. However, if FRIENDS TO ELECT COLLEEN M. O'TOOLE were to publish and disseminate such campaign literature in support of the candidacy of COLLEEN M. O'TOOLE for election in 2016 to the Ohio Supreme Court, it would violate Rule 4.3(C) of the Ohio Code of Judicial Conduct and Comment 2 thereto.

162. Thus, so as to not violate the prohibition in Rule 4.3(C) of the Ohio Code of Judicial Conduct and Comment 2 thereto that, in turn, would subject COLLEEN M. O'TOOLE to prosecution under the Ohio Code of Judicial Conduct and/or the Ohio Rules of Professional Conduct, FRIENDS TO ELECT COLLEEN M. O'TOOLE has forgone and will forgo any effort to publish or disseminate such campaign literature.

163. During the course of the campaign for electing justices to the Ohio Supreme Court in 2016, FRIENDS TO ELECT COLLEEN M. O'TOOLE desires to publish and disseminate campaign literature, including campaign signs, that advocates the election of COLLEEN M. O'TOOLE but without making the words "elect", "vote" or "for" at least the same size as the office to which COLLEEN M. O'TOOLE seeks election, *i.e.*, the "Ohio Supreme Court".

164. However, if FRIENDS TO ELECT COLLEEN M. O'TOOLE were to publish and disseminate such campaign literature, including campaign signs, in support of the candidacy of COLLEEN M. O'TOOLE for election in 2016 to the Ohio Supreme Court, it would violate Rule 4.3(D) of the Ohio Code of Judicial Conduct.

165. Thus, so as to not violate the prohibition in Rule 4.3(D) of the Ohio Code of Judicial Conduct thereto that, in turn, would subject COLLEN M. O'TOOLE to prosecution under the Ohio Code of Judicial Conduct and/or the Ohio Rules of Professional Conduct, FRIENDS TO ELECT COLLEEN M. O'TOOLE has forgone and will forgo any effort to publish or disseminate such campaign literature, including campaign signs, that advocates the election of COLLEEN M. O'TOOLE without making the words "elect", "vote" or "for" at least the same size as the office to which COLLEEN M. O'TOOLE seeks election, *i.e.*, the "Ohio Supreme Court".

166. The imposition of vicarious liability upon a judicial candidate for the speech of a third party imposed pursuant to Rule 4.4(E) of the Ohio Code of Judicial Conduct violates, both facially and as-applied to FRIENDS TO ELECT COLLEEN M. O'TOOLE and COLLEEN M. O'TOOLE, the First and Fourteenth Amendments to the United States Constitution, including the right to free speech, the right of association, the right to due process of law and the right to equal protection of the law.

167. The imposition of vicarious liability upon a judicial candidate for the speech of a third party imposed pursuant to Rule 4.4(E) of the Ohio Code of Judicial Conduct violates, both facially and as-applied to FRIENDS TO ELECT COLLEEN M. O'TOOLE and COLLEEN M. O'TOOLE, unconstitutionally chills the speech of FRIENDS TO ELECT COLLEEN M. O'TOOLE through engaging in self-censorship so as to create potential disciplinary action against its supported candidate.

WHEREFORE, Plaintiffs request that this Court:

A. issue a declaratory judgment that the provisions of the Ohio Code of Judicial Conduct at issue herein violate the First and Fourteenth Amendments to the United States Constitution, both facially and/or as applied to the Plaintiffs;

B. issue a temporary restraining order, preliminary injunction and permanent injunction enjoining the Defendants herein, and all those acting under their direction and authority, from undertaking any enforcement actions of the foregoing provisions of the Ohio Code of Judicial Conduct at issue herein or from finding any violations with respect to the foregoing provisions of the Ohio Code of Judicial Conduct for any conduct undertaken while such an injunction is in place:

C. award Plaintiffs reasonable costs, expenses and attorney fees, pursuant to 42 U.S.C. 1988 or as otherwise authorized by law;

D. award such other and further relief as this court shall deem just and reasonable.

Respectfully submitted,

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