

October 31, 2022

Re: False Advertising from the Republican State Leadership Committee

Dear Station Manager:

I am legal counsel for the Ohio Democratic Party. I write with regard to an advertisement by the Republican State Leadership Committee ("RSLC"). The text of the advertisement is attached. This advertisement is a gross oversimplification to the point that it is deliberately false, misleading and deceptive, and knowingly misstates the legal rulings of Justice Jennifer Brunner, and Judges Terri Jamison and Marilyn Zayas. The Ohio State Bar Association ("OSBA") has asked the RSLC to take down the advertisement, as it "grossly oversimplifies their (Democrats') opinions just to score political points" and "serves to erode public trust and confidence in the judiciary." Their letter to the RSLC is attached. While we agree with OSBA's opposition to the misleading advertisement, we have no faith that the RSLC will take down the advertisement themselves. However, stations like yours have FCC licensing requirements to adhere to, which are grounded by the public interest against misleading political advertisements. For these reasons, your station should refuse to continue to air this advertisement.

The RSLC advertisement makes several factual assertions that are false, misleading, and/or deceptive. To begin, the advertisement mischaracterizes the *DuBose* case with this accusation: "Jennifer Brunner and Democrat justices on the Ohio Supreme Court ruled in favor of lowering an alleged murderer's bail." First, this statement is deliberately false, as it was a bipartisan decision by the Ohio Supreme Court to lower the unconstitutionally excessive bail at issue from \$1,500,000 to \$500,000 for a defendant that had no financial means to pay<sup>1</sup>. Additionally, the Ohio Supreme Court's decision took no issue with a 24-hour lockdown enforced by electronic monitoring for DuBose, among other restrictions<sup>2</sup>.

Next, the advertisement accused Judge Marilyn Zayas of throwing out a murder conviction. In fact, Judge Zayas was part of a majority decision that set aside an aggravated murder conviction but only to set the matter for a new trial for murder or felony murder, because prosecutors failed to demonstrate that the defendant acted with "prior calculation and design" as required by law<sup>3</sup>. The advertisement wants the viewer to draw the conclusion that Judge Zayas set a murdered free, when the truth is far from RSLC's mischaracterization.

Last, Judge Jamison was accused of writing an opinion that "would have thrown out evidence of drugs seized legally by police." This is flat out false, as Judge Jamison's dissenting opinion in the referenced matter was that the drugs were seized *illegally* because they were obtained

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<sup>1</sup> See *DuBose v. McGuffey*, 2022-Ohio-8, 168 Ohio St. 3d 1, 10, 195 N.E.3d 951, 960.

<sup>2</sup> Affirming a "24-hour lockdown enforced by electronic monitoring, he could have no direct or indirect contact with the victim's family, and he had to surrender his passport." *DuBose v. McGuffey*, 2022-Ohio-8, 168 Ohio St. 3d 1, 3, 195 N.E.3d 951, 955

<sup>3</sup> See "Ohio Bar condemns ad attacking Democratic state Supreme Court nominees" <https://ohiocapitaljournal.com/2022/10/31/ohio-bar-condemns-ad-attacking-democratic-state-supreme-court-nominees/>.

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without a search warrant. Every assertion in this ad was intentionally designed to deliberately mislead and deceive voters, and accordingly, we ask you to cease airing it.

Additionally, I must point out the following concerning the media's responsibility with regard to blatantly false, misleading, or deceptive ads like this one.

Unlike candidates for office, independent political organizations like RSLC do not have a "right to command the use of broadcast facilities." *See CBS v. DNC*, 412 U.S. 94, 113 (1973). Because you need not air this advertisement, your station bears responsibility for its content when you do grant access. *See Felix v. Westinghouse Radio Stations*, 186 F.2d 1, 6 (3rd Cir.), *cert. denied*, 314 U.S. 909 (1950).

Moreover, you have a duty "to protect the public from false, misleading or deceptive advertising." *Licensee Responsibility With Respect to the Broadcast of False, Misleading or Deceptive Advertising*, 74 F.C.C.2d 623 (1961). Failure to prevent the airing of "false and misleading advertising" may be "probative of an underlying abdication of licensee responsibility" that can be cause for the loss of a station's license. *Cosmopolitan Broad. Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978).

The advertisement by RSLC is false, misleading, and deceptive, and we demand that you refuse to continue to air it.

We can be reached at (216) 282-6732 or at [scott@hubaydougherty.com](mailto:scott@hubaydougherty.com) if you have any questions regarding this letter. Please contact us to inform us of your decision. Thank you for your attention to this matter.

Very truly yours,



Scott M. Hubay, Esq.  
Ohio Democratic Party, Legal Counsel

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RLSC Advertisement Transcript:

**NARRATOR:** Outrageous bail rulings risk our safety, yet Jennifer Brunner and Democrat justices on the Ohio Supreme Court ruled in favor of lowering an alleged murderer's bail. Judge Marilyn Zayas... She voted to dismiss the murder conviction of a man found guilty of killing in cold blood. Judge Terri Jamison... She would have thrown out evidence of drugs seized legally by police. Let's stop these reckless judges. Keep soft on-crime judges like Brunner, Zayas and Jamison off the bench.



October 27, 2022

Republican State Leadership Committee  
1201 F Street, NW, SUITE 675  
Washington, DC, 20004

Via email: [contact@rslc.gop](mailto:contact@rslc.gop), [press@rslc.gop](mailto:press@rslc.gop)

To Whom It May Concern:

The Judicial Election Advertising Monitoring Committee of the Ohio State Bar Association (the “Committee”) met this week to consider a complaint about a television ad paid for and distributed by the Republican State Leadership Committee Judicial Fairness Initiative. As is the custom of our Committee, we are notifying you of the Committee’s finding. We will also notify the three judges mentioned in the ad and the other candidates for Supreme Court, as well as release this letter to the Ohio news media.

Our Committee, working on behalf of the Ohio State Bar Association, considers written complaints regarding *“Campaign advertising that impugns the integrity of the judicial system, the integrity of a candidate for the Supreme Court or erodes public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.”*

### **Findings**

The Committee determined that the ad you authorized entitled “[Bail](#),” which criticizes Justice Jennifer Brunner, Judge Marilyn Zayas and Judge Terri Jamison as being “reckless” and “soft on crime” for their opinions in select and highly-nuanced criminal cases, violates the Committee standards and serves to erode public trust and confidence in the judiciary.

Ads like these perpetuate what we believe to be widespread misperceptions about the role of judges in our system of government. Judges are often called upon to make unpopular decisions to uphold the rule of law. Our society decided several generations ago that this was the best way to protect the constitutional rights we all enjoy. While we are all free to disagree with a law or find fault in a judge’s legal reasoning, it is misleading and a disservice to voters to grossly oversimplify their opinions just to score political points.

While this ad is the subject of the complaint before us, we are encouraging Ohio voters to be wary of any ads that paint judicial candidates with such a broad brush. Every case on which a judge rules has different facts and circumstances that must be considered in determining the outcome of a case, regardless of public opinion. This is the foundation of judicial independence, which regardless of our personal political views, we should all be striving to uphold.

**Call to Action**

We ask that you discontinue the ad in question or revise it to provide more clarity and context for the cases you reference. While we support your constitutional right to vigorously make the case for the candidates you support for our state's highest court, we encourage you to do so without using misleading terms or rhetoric that further damage public trust in the independence, integrity and impartiality of our judicial system.

Sincerely,

A handwritten signature in black ink that reads "Paul Hervey". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Paul Hervey, Esq.  
Chair, Ohio State Bar Association  
Judicial Election Campaign Advertising Committee

cc: Justice Jennifer Brunner  
Judge Marilyn Zayas  
Judge Terri Jamison  
Justice Sharon Kennedy  
Justice Patrick Fischer  
Justice Patrick DeWine  
Ohio News Media