U.S. Supreme Court Upholds Florida's Judicial Campaign Rule

by Adam R. Vaught and Mary Beth Ricke

In 2009, Florida attorney Lanell Williams-Yulee mailed letters announcing her candidacy for county judge to numerous potential supporters. In the letter, Ms. Williams-Yulee asked for an "early contribution of $25, $50, $100, $250, or $500, made payable to 'Lanell William-Yulee Campaign for County Judge.'" Judges and judicial candidates are barred by Florida's ethical rules from personally soliciting campaign contributions. Because of this violation, the Florida Supreme Court reprimanded her. Ms. Williams-Yulee took the case to the U.S. Supreme Court and argued that Florida's rule violated her First Amendment free speech rights. In a 5-4 decision, the court upheld the reprimand, finding Florida's rule does not violate the First Amendment.

Canon 7C(1) of the Florida Code of Judicial Conduct states that incumbent judges or candidate for judicial office "shall not personally solicit campaign funds, or solicit attorneys for publicly stated support." This rule is based on the ABA Model Rules. Florida is one of 30 states to have adopted a solicitation ban. The validity of these rules, however, has been in question since the Florida Supreme Court's 2002 opinion in Republican Party of Minnesota v. White. In White, the Court sustained a First Amendment challenge to Minnesota's "announce rule," which barred candidates from announcing their views on judicial issues. Since White, numerous federal circuit courts found that state solicitation bans also violate the First Amendment. State supreme courts addressing this issue, however, have all found solicitation bans do not violate the First Amendment. The U.S. Supreme Court took Williams-Yulee's case to resolve the issue.

Writing for the majority, Chief Justice John Roberts found that Florida's Canon 7C(1) is the rare case that survives strict scrutiny review. Mr. Roberts recognized that while Florida's rule prohibits speech, it only prevents candidates from saying, "please give me money." Florida's interest in preserving public confidence in the integrity of its judiciary is so compelling that this rule, narrowly tailored to prevent only a personal solicitation, does not violate the First Amendment. Justice Antonin Scalia dissented, arguing, "the First Amendment is not abridged for the benefit of the Brotherhood of the Robe." Justice Samuel Alito also dissented, finding Canon 7C(1) "about as narrowly tailored as a burlap bag."

This ruling will benefit lawyers and judges, not only in Broward County, but in all 39 states that use some form of elections to select judges. In states that do not bar personal solicitations, some judges call lawyers and ask for money. Florida will be able to continue to protect lawyers and litigants from such a potentially uncomfortable situation. Likewise, judges and judicial candidates will avoid being forced into a race to the bottom against opponents who, compelled by political necessity, ask for contributions from people who may appear before them. With the U.S. Supreme Court upholding this solicitation ban, attorneys who seek a judgeship may have a harder time raising campaign cash than other attorneys who run for a seat in the state legislature and do not face the same prohibition.

Whether judicial elections are the best method for selecting judges is a question Williams-Yulee does not address. But Williams-Yulee will allow states that use judicial elections to implement narrowly tailored ethical rules to protect their judicial elections from becoming little different from legislative and executive elections. B

Adam R. Vaught is an associate in the Chicago office of the national law firm of Hinshaw & Culbertson LLP. He was lead author of the amicus brief filed by the American Bar Association in Williams-Yulee v. The Florida Bar. In 2010, he served as campaign manager for the judicial retention campaign of Illinois' chief justice. The campaign was the second-most expensive judicial retention campaign in U.S. history.

Mary Beth Ricke is an associate in the Fort Lauderdale office of the national law firm of Hinshaw & Culbertson LLP. She focuses her practice in the representation of management-side labor and employment law as well as providing clients with a wide range of legal services in commercial and business litigation.