



Iowa General Assembly

2015 Legal Updates

Legislative Services Agency – Legal Services Division

http://www.supremecourt.gov/opinions/14pdf/13-1499_d18e.pdf

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

SPEECH AND PERSONAL SOLICITATIONS IN JUDICIAL ELECTIONS

Filed by the United States Supreme Court
April 29, 2015

Williams-Yulee v. Florida Bar

No. 13-1499, 575 U.S. ____ (2015)

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Factual Background. In September 2009, Lanell Williams-Yulee (Yulee) filed required forms and oaths to qualify to run for a seat on the county court for Hillsborough County, Florida. After filing, she composed and signed a letter announcing her candidacy for the office of county court judge and mailed copies to county voters. In the letter, Yulee also stated that:

An early contribution of \$25, \$50, \$100, \$250, or \$500, made payable to 'Lanell Williams–Yulee Campaign for County Judge,' will help raise the initial funds needed to launch the campaign and get our message out to the public. I ask for your support [i]n meeting the primary election fund raiser goals. Thank you in advance for your support.

Yulee eventually lost the primary election to the incumbent judge.

Procedural Background. Following Yulee's defeat, the Florida Bar Association (Bar) filed a complaint against her for violating a rule of the Rules Regulating the Bar, requiring that judicial candidates comply with certain provisions of the Florida Code of Judicial Conduct. Under Canon 7C(1) of the Florida Code of Judicial Conduct, a candidate for a judicial office is prohibited from personally soliciting campaign funds. Yulee contested the complaint on the basis that the Bar could not discipline her for writing and distributing the campaign letter, which included her personal solicitation for campaign contributions, arguing that the First Amendment protects a judicial candidate's right to solicit campaign funds in an election.

A referee, appointed by the Florida Supreme Court to hear the complaint, recommended a finding of guilt against Yulee, issuing of a public reprimand against her, and charging her with the costs of the proceedings. The Florida Supreme Court adopted the referee's recommendation, finding that the prohibition against personal solicitation furthered the state's compelling interest in preserving the integrity of the state judiciary and in maintaining the public's confidence in the impartiality of the judicial branch. The Florida Supreme Court also found that the regulation was narrowly tailored to serve that compelling state interest. The United States Supreme Court (Court) granted certiorari.

Issue. Whether a regulation that prohibits judicial candidates from personally soliciting campaign contributions in judicial elections violates the free speech protections of the First Amendment.

Holding. The Court held that Florida's regulations prohibiting candidates from personally soliciting campaign contributions in judicial elections does not violate the free speech protections of the First Amendment.

Majority Opinion by Chief Justice Roberts. The majority opinion, authored by Chief Justice Roberts and joined by Justices Breyer, Sotomayor, and Kagan, and joined in part by Justice Ginsburg, affirmed the decision of the Florida Supreme Court, holding that judicial candidates "have a First Amendment Right to speak in support of their campaigns. States have a compelling interest in preserving public confidence in their judiciaries. When the State adopts a narrowly tailored restriction like the one at issue here, those principles do not conflict." The majority upheld Florida's First Amendment restrictions for judicial candidates under the same strict scrutiny standard adopted by the Florida Supreme

Court, and rejected an argument from the Bar to adopt the closely drawn standard, maintained in other areas of campaign finance jurisprudence since *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). In support of the regulations at issue in *Yulee*, the Court stated that it is intuitively understood that Florida's interest in maintaining public confidence in judicial integrity, neutrality, and independence would be undermined by judicial candidates asking for favors or attempting to "supplicate" campaign donors.

All justices in the majority agreed that a state's interest in preserving public confidence in its judiciary extends beyond the state's interest in preventing the appearance of corruption in the legislative and executive branches. The Court stated that "[p]oliticians are expected to be appropriately responsive to the preferences of their supporters," but noted that the same is not true of judges.

After establishing the state's compelling interest in maintaining the speech restriction in this case, the Court rejected arguments related to the tailoring of Florida's restrictions on judicial candidate speech. The Court held that the restriction was not underinclusive, finding that the solicitation ban "aims squarely at the conduct most likely to undermine public confidence in the integrity of the judiciary: personal requests for money by judges and judicial candidates," and that the restriction advances that objective. The Court further held that the personal solicitation restriction was not overinclusive and that the restrictions accomplish the State's objective through the least restrictive means. The Court stated that "banning all personal solicitations by judicial candidates is narrowly tailored" to address the concern that any personal solicitation by such a candidate would create a public appearance that undermines public confidence in the integrity of the judiciary.

Concurrence by Justice Breyer. Justice Breyer filed a separate concurrence to note his view that the Court's doctrine referring to tiers of scrutiny should serve as guidelines in analyzing the case, and should not be applied mechanically by the Court.

Concurrence by Justice Ginsburg. Justice Ginsburg filed a concurring opinion in which she stated that she would not apply an exacting scrutiny analysis to a state restricting the speech of candidates for judicial office when those regulations sensibly differentiate between candidates for political and judicial offices. Justice Ginsburg noted that states should have substantial latitude to enact campaign finance rules relating to judicial elections. After discussing the role and influence of issue-oriented organizations and political organizations in Iowa's 2010 judicial retention election, she noted that "[d]isproportionate spending to influence court judgments threatens both the appearance and actuality of judicial independence." Justice Ginsburg also opined that a state's decision to elect its judges does not require it to tolerate these risks.

Dissent by Justice Scalia. Justice Scalia filed a dissent, joined by Justice Thomas, in which he stated the general rule that the state "has no power to ban speech on the basis of its content" and noted that "this principle does not grow weaker merely because the censored speech is a judicial candidate's request for a campaign contribution." He further noted the short history of state restrictions relating to personal solicitations by judicial candidates, and highlighted prior Court decisions holding that speech enjoys the full protections of the First Amendment unless there is a widespread and longstanding tradition that ratifies its regulation.

Justice Scalia adopted the same strict scrutiny standard adopted by the majority, and accepted the majority's assertions that states have a compelling interest in maintaining the appearance of judicial impartiality and that a state's interest in regulating judicial elections is different than its interest in regulating political elections. Justice Scalia, however, found that the Florida restriction does not narrowly target concerns about impartiality. He noted that Florida's restriction against mass-mailings and other campaign solicitations do not also restrict judicial candidates from sending notes to thank donors for their contributions, undermining the state's assertion of its interest.

Justice Scalia advanced additional criticisms of the Court's opinion by finding that Florida restriction do not substantially advance its objectives, by finding that the state could use less restrictive means to achieve its objective, and by critiquing the Court's analyses on the issues of underinclusivity and overinclusivity. He concluded that "[t]he First Amendment is not abridged for the benefit of the Brotherhood of the Robe."

Dissent by Justice Kennedy. Justice Kennedy filed a separate dissent in which he agreed with the explanations and principles expounded upon in Justice Scalia's dissent. Justice Kennedy's separate dissent was authored to "underscore the irony that the very First Amendment protections judges must enforce should be lessened when a judicial candidate's own speech is at issue." In his opinion, Justice Kennedy noted that modern communication technologies allow for more robust campaign disclosure requirement systems that offer a speech-enhancing method of deterring corruption, that information from such disclosures relating to contributions and solicitations could have proven instructive to the electorate, and that "[j]udicial elections, no less than other elections, presuppose faith in democracy."

Dissent by Justice Alito. Justice Alito filed a separate dissent in which he agreed with the dissents filed by Justice Scalia and Justice Kennedy. Justice Alito's separate dissent, however, posited a more direct criticism of the Court's application of the strict scrutiny standard. He opined that if the Florida restriction "can be characterized as narrowly tailored, then narrow tailoring has no meaning, and strict scrutiny, which is essential to the protection of free speech, is seriously impaired."

Impact on Iowa. Judges and Justices of Iowa's judicial branch are not subject to direct election to the bench, but are subject instead to retention votes following a merit selection process. Similar to the Florida Canon at issue in this case, Rule 51:4.1(A)(4) of the Iowa Code of Judicial Conduct prohibits a judge or judicial candidate from soliciting funds for, paying an assessment to, or making a contribution to a political organization, a candidate for judicial retention, or a candidate for public office. The Court's decision in *Yulee* does nothing to invalidate that rule. The Court's opinion also differentiates between restrictions on speech in the context of elections, including retention elections, judicial and political elections, respectively, and supports upholding broader restrictions of speech within the context of judicial elections.

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