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NEWSLETTER

Supreme Court Upholds Judicial Campaign Finance Restrictions; Effect May Be Limited

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Thirty nine states elect some or all of their judges through various forms of partisan, or non-partisan or retention elections. State laws as well as judicial codes of conduct impose restrictions on judicial campaigns including methods on how candidates may solicit and accept contributions.

Last month, the United States Supreme Court decided *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656 (Apr. 29, 2015), a challenge to a provision of Florida's Code of Judicial Conduct that prohibits judicial candidates from personally soliciting campaign funds. The petitioner was disciplined by the Florida Supreme Court for signing and distributing a letter requesting campaign funds in connection with her campaign for a Florida judgeship. The petitioner appealed her punishment to the United States Supreme Court.

Writing for the Court, Chief Justice John Roberts upheld the solicitation ban as consistent with the First Amendment. Noting first that the restriction was subject to "exacting scrutiny," the Chief Justice concluded that the ban was narrowly tailored to serve a compelling government interest. The Court identified the compelling interest as maintaining "public confidence in judicial integrity" and determined that the ban was sufficiently narrowly tailored to satisfy this level of scrutiny. In reaching the conclusion that the restriction was narrowly tailored, the Court determined that only a "narrow slice" of speech was prohibited and pointed out that judicial candidates have plenty of other means under Florida law to raise and spend money during the campaign including sending a signed thank you letter to each contributor. Judicial candidates also may establish campaign committees to solicit contributions on the candidates' behalf.

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Four Justices dissented. Justice Scalia, writing the principal dissent, asserted that the majority had not shown that the solicitation ban substantially advances the state's interest in maintaining judicial integrity. Moreover, the dissenters argued that the ban is both over and under-inclusive in the conduct the state regulates to achieve its stated purpose. The availability of less restrictive options, such as banning only solicitations from litigants who might appear before the court, meant that the Florida rule restricts more speech than is necessary.

Although *Williams-Yulee* represents somewhat of a departure from the Court's campaign finance jurisprudence over the last decade, it is unlikely to unsettle the framework the Court has established in assessing the constitutionality of campaign finance laws. As it has done when assessing other restrictions on political speech, the Court applied exacting scrutiny to Florida's solicitation ban. Moreover, the Court explicitly stated that the government's interest in ensuring public confidence in an impartial judiciary "extends beyond" the government's interest in preventing the appearance of corruption in executive and legislative elections. This is so because elected officials are expected to be responsive to supporters while judges most certainly are not. In short, this case is unlikely to mark a change in direction of the Court's approach to most campaign finance cases that enter its docket.

Nevertheless, as the dissent points out, the distinction between political speech during judicial election campaigns and speech made in connection with executive and legislative branch campaigns raises some significant questions about how states can restrict speech without running afoul of the First Amendment. Some states may see this decision as a green light to apply stricter campaign finance regulations to judicial candidates and campaigns. On the other hand, the Chief Justice seems to limit the scope of speech bans just to solicitations and only by judicial candidates. Time will tell whether this case is a unique First Amendment outlier or a mischievous basis for more campaign regulation.