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***Republican Party of Minnesota v. White, 536 U.S. 765 (2002)***

Argued: March 26, 2002

Decided: June 27, 2002

**FACTS:** Article VI, Section 7 of the Minnesota Constitution provides that all judges in the state are elected to six-year terms. Judges must conduct themselves according to the Minnesota Code of Judicial Conduct. Canon 5 of the Code requires that candidates for judicial offices, including incumbents, not announce their views on disputed legal or political issues. This prohibition is referred to as the “announce clause.” The First Amendment of the US Constitution provides that no law shall abridge the freedom of speech.

In 1996, Minnesota lawyer Greg Wersal ran as a candidate for an associate justice position on the Minnesota Supreme Court. While campaigning, he distributed literature critical of the Court’s decisions on crime, welfare and abortion. The Minnesota Lawyers Professional Responsibility Board (Lawyers Board) filed an ethical complaint claiming Wersal violated Canon 5, even though the Board questioned whether the “announce clause” was constitutional. Because of the uncertain state of the “announce clause,” and fearful of an ethical violation, Wersal withdrew from the 1996 judicial race.

In 1998, Wersal again ran for an associate justice position on the Court. He asked the Lawyers Board if it would enforce the “announce clause.” The Board did not answer directly, instead it asked Wersal to submit a list of the announcements he planned to make. Wersal then filed suit in federal district court seeking a declaration that the “announce clause” violated the First Amendment. The District Court and the Eighth Circuit Court of Appeals found that the Code’s clause did not violate the First Amendment. The US Supreme Court decided to review the case.

*Note about the name of the case: The Republican Party of Minnesota was a plaintiff along with Mr. Wersal (they argued they could not properly support or oppose him without knowing his views) and Suzanne White was the chairperson of the Minnesota Board of Judicial Standards, the group trying to limit Mr. Wersal’s campaign speech.*

**ISSUE:** Does the First Amendment protect candidates for judicial office from regulations that prevent them from announcing their views on disputed legal and political issues?

**ARGUMENTS FOR WERSAL:** The First Amendment protection of free speech applies to him as he campaigns for judicial office. The limitations on his speech mean that he cannot talk about disputed issues that voters want to know about when electing judges.

**ARGUMENTS FOR WHITE:** Judicial elections are different from other elections, because judges are required to be impartial when they hear cases. The “announce clause” is needed to ensure that judges do not comment about issues that may come before them if they become a judge. In other words, the clause ensures that judges are not telling the public how they will decide certain cases that might come before them.

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**DECISION:** On a 5-4 vote, the US Supreme Court reversed the decisions of the District Court and the Court of Appeals. It ruled that the “announce clause” was unconstitutional because it violated the First Amendment. The “announce clause” prohibited speech based on its content or message and restricted a category of speech that is at the core of First Amendment freedoms – speech about the qualifications of candidates for public office.

The proper test of constitutionality is “strictly scrutinize.” Under this approach, the Lawyers Board needed to prove that the “announce clause” was narrowly tailored –carefully and precisely drafted – to serve a compelling, or very important, state interest.

Although the lower federal courts had accepted the Board’s justification for Canon 5-- preserving the state judiciary’s impartiality and ensuring the appearance of that impartiality-- the Supreme Court determined the “announce clause” failed the strict scrutiny test. The “announce clause” was not narrowly crafted to preserve impartiality. The court explained that impartiality is a lack of bias for or against any party in a court proceeding. The “announce clause” restricted speech for or against particular issues.

The Court also ruled that pursuing this impartiality was not a “compelling” state interest. The Court found it virtually impossible, and not desirable, to find a judge who does not have any preconceptions about the law. The Lawyers Board did not convince the Supreme Court that statements made during an election campaign are uniquely destructive of open-mindedness in court proceedings.

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