



Georgia Won't Seek Judicial Solicitation Ban Despite High Court OK'ing It

Greg Land, Daily Report

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U.S. Supreme Court

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The chairman of Georgia's judicial ethics agency said the U.S. Supreme Court's decision upholding a Florida ban on judges and judicial candidates personally soliciting campaign contributions appears unlikely to spur Georgia to reinstate its own such ban.

In 2002, the U.S. Court of Appeals for the Eleventh Circuit struck down Georgia's rule, which had been challenged by a candidate seeking to oust then-Chief Justice Leah Ward Sears four years earlier. But Florida, although covered by the Eleventh Circuit, retained its ban. It was challenged by judicial candidate Lanell Williams-Yulee after she was reprimanded by the Florida Supreme Court for signing a campaign fundraising letter when she was running for a Hillsborough County judgeship.

On Wednesday, a splintered Supreme Court upheld Florida's ban, with Chief Justice John Roberts writing that the prohibition did not unduly trample candidates' rights to free expression.

"Judicial candidates have a First Amendment right to speak in support of their campaigns," Roberts wrote. "States have a compelling interest in preserving public confidence in their judiciaries. When the state adopts a narrowly tailored restriction like

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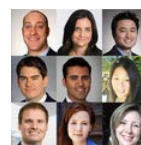
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the one at issue here, those principles do not conflict. A state's decision to elect judges does not compel it to compromise public confidence in their integrity."

Lester Tate, chairman of the Georgia Judicial Qualifications Commission, said the state's experience since its ban on personal fund-raising was lifted has not noticeably diminished public confidence in its judges. Tate was among the members of a committee, including representatives from each of the state's court divisions, that crafted revisions to the Georgia Code of Judicial Conduct that are under consideration by the Georgia Supreme Court, and he said no such bar is among them.

"We specifically did not include a ban on personal solicitations because we felt like it left incumbent judges at a tremendous disadvantage," he said. "Arguably, I guess we could ban [nonincumbent] candidates as well, but it's just difficult—if you're going to have elected judges—to tell them they can't ask for money."

But plaintiffs attorney Ken Shigley, who like Tate is a former president of the State Bar of Georgia, said the ban is worth revisiting in Georgia.

"For all reasons stated by the Supreme Court, a ban on direct solicitation of campaign contributions by judges and judicial candidates is important for confidence in the integrity and neutrality of the judicial system," Shigley said via email. "If a judge could directly solicit a contribution from a lawyer who has cases before that judge, many lawyers would feel that they could ill afford to say no. Such direct solicitations would create an impression of justice for sale. As bad drives out good, good judges could be forced to play that game or lose their judgeships in expensive election campaigns. It would be a slippery slope toward total undermining of any confidence in the elected judiciary."

In the wake of the U.S. Supreme Court's Citizens United decision, said Tate, "tremendous amounts of money are pouring into campaigns, and it makes it very difficult to compete."

Tate said that, unlike states such as West Virginia and Alabama where judicial races are partisan and can run into the millions of dollars, "Georgia has had a much better experience. In our nonpartisan system, you need to have bipartisan support. Typically, that involves getting prominent people from both parties to help solicit support, and it's difficult to have a campaign fundraiser when the candidate's not involved."

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There has been no problem in allowing sitting judges to solicit funds in a contested election, he said.

"We didn't want to come up with a solution when we didn't have a problem," Tate said.

He noted that the revised canons, which have not yet been published for public comment, ultimately will be subject to approval by the Georgia Supreme Court.

"The JQC can recommend, but we just enforce the canons—it's ultimately a question for the Supreme Court. But I don't see a lot of emphasis on it; if we'd had a lot of problems, with judges calling cases for lawyers who donated, that would be different," said Tate.

Georgia Supreme Court Chief Justice Hugh Thompson said via email that the court was aware of Wednesday's U.S. high court decision, "and we are in the process of redoing our canons and rules as they relate to elections. The rules should be completed soon, although we have not yet put them out for public comment. I assure you that our rules will follow the law."

State Bar of Georgia General Counsel Paula Frederick said the bar has taken no position on the issue.

Cobb County Superior Court Judge Mary Staley, president of the Council of Superior Court Judges, said the council has not been following the issue.

Staff Writer Kathleen Baydala Joyner contributed to this article.

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