Touro Law Review

Volume 20
Number 1 *New York Constitutional Decisions: 2003 Compilation*

Article 12

December 2014

Court of Appeals of New York, Watson v. State Commission on Judicial Conduct

Denise Shanley

Court of Appeals of New York, Watson v. State Commission on Judicial Conduct

Cover Page Footnote

20 (1)

COURT OF APPEALS OF NEW YORK

Watson v. State Commission on Judicial Conduct[1]
(decided June 10, 2003)

The New York State Commission on Judicial Conduct determined that William Watson violated the "pledges and promises clause"[2] of New York's Rules Governing Judicial Conduct during an election campaign for City Court.[3] The Commission decided that the appropriate sanction was removal from office.[4] Watson took an appeal as of right[5] and argued that the pledges and promises clause impermissibly interfered with his constitutionally protected right of free speech under the First Amendment of the United States Constitution.[6] The New York Court of Appeals held that New York's pledges and promises clause did not violate the United States Constitution's free speech provision and that Watson violated the pledges and promises clause through his campaign literature and statements.[7] The court

---

[1] 794 N.E.2d 1 (N.Y. 2003).

[2] N.Y. COMP. CODES R. & REGS. tit. 22, § 100.5(A)(4)(d)(i) (2003) provides that "[a] judge or a non-judge who is a candidate for public election to judicial office: . . . shall not . . . make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office."

[3] *Watson*, 794 N.E.2d at 4. The Commission also found that Watson violated other sections of the code. However, the Court of Appeals declined to decide whether Watson's conduct breached those sections since, even if it had, the sanction of censure would remain the same. *Id.* at 8.

[4] *Id.* at 4.

[5] N.Y. CONST. art VI, § 22(a) provides in pertinent part: "Such judge or justice may either accept the commission's determination or make written request to the chief judge . . . for a review of such determination by the court of appeals."

[6] U.S. CONST. amend. I provides in pertinent part: "Congress shall make no law . . . abridging the freedom of speech. . . ."

[7] *Watson*, 794 N.E.2d at 8.

reasoned that the state has a compelling interest in "maintaining impartiality and the appearance of impartiality in the state judiciary."[8] Furthermore, the pledges and promises provision is narrowly tailored, only restricting a judicial candidate's speech if it gives the impression that the candidate, if elected, would favor or disfavor particular parties or groups of litigants.[9]

The Commission on Judicial Conduct charged Watson with misconduct in violation of the pledges and promises clause for statements made during his campaign for a judgeship in Lockport City Court.[10] During the campaign, Watson sent letters to law enforcement personnel asking for their support so that "a real prosecutor" could be elected to the bench. In these letters, he stated that the city was "in desperate need of a Judge who will work with the police, not against them."[11] Additionally, Watson's campaign advertisements in local newspapers claimed that, if elected, he would take the "action [the incumbents] failed to take to deter crime."[12] A newspaper article quoted Watson as stating that the city needed a judge who would work with the police and who would use bail and sentencing to deter people from committing crimes in the city of Lockport.[13]

Subsequent to a hearing before a Commission Referee, Watson admitted making the statements attributed to him, but

---

[8] *Id.* at 6.
[9] *Id.* at 7.
[10] *Id.* at 2.
[11] *Id.*
[12] *Watson*, 794 N.E.2d at 3.
[13] *Id.*

claimed that the statements were made only to emphasize his experience and qualifications as a former prosecutor and his concern over increased crime in Lockport.[14] The Referee found that Watson's statements violated the prohibition on campaign pledges and promises and that they gave the appearance that Watson would not act impartially as a judge; such statements gave the impression that Watson would not decide individual cases on their merits and that he was prejudiced against criminal defendants.[15] Watson conceded that his campaign statements did violate the prohibition on pledges and promises in a judicial election, but before the Commission decided the matter,[16] the United States Supreme Court decided *Republican Party of Minnesota v. White*.[17] In consideration of the Court's holding in *White*, the Commission refrained from issuing its determination until both sides examined the consequences of that decision on the instant case.[18] Ultimately, the Commission determined that New York's pledges and promises clause was distinguishable from the unconstitutional clause in *White* and that Watson should be removed from office.[19]

Watson appealed the Commission's determination and

---

[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] 536 U.S. 765 (2002). In *White*, the Court struck down as violative of the First Amendment an "announce clause" contained in Minnesota's Code of Judicial Conduct which prohibited candidates for judicial office from announcing their views on disputed legal or political issues. *Id.* at 788.
[18] *Watson*, 794 N.E.2d at 4.
[19] *Id.*

argued to the New York Court of Appeals that the pledges and promises rule infringed on constitutionally protected political speech in violation of the First Amendment.[20] The court held that the provision did not violate the United States Constitution since it would withstand even strict judicial scrutiny if that was the proper standard of review.[21] First, the state's asserted interests in maintaining both an impartial judiciary and the appearance of judicial neutrality are compelling state interests because "[j]udges personify the justice system upon which the public relies to resolve all manner of controversy, civil or criminal."[22] Additionally, judicial open-mindedness and the appearance of open-mindedness are essential to secure to parties the genuine opportunity to be heard.[23] Next, the court held that the provision was narrowly tailored because it only restricted candidates from making pledges and promises that reflected a positive or negative bias toward potential parties, which could compromise impartiality and the appearance of impartiality.[24] Judicial candidates were still entitled to make statements of opinion without violating the clause.[25]

---

[20] *Id.* at 5. Watson also argued that the rule was "void for vagueness" under the Due Process Clause and that it violated New York's free speech constitutional provision. However, as Watson never presented these claims to the Commission, the Court of Appeals could not hear them. *Id.* at 5 n.2.

[21] *Id.* at 6.

[22] *Id.* at 7 (citing Matter of Mazzei, 618 N.E.2d 123 (N.Y. 1993)).

[23] *Watson*, 794 N.E.2d at 7.

[24] *Id.*

[25] *See, e.g.*, Shanley v. State Commission on Judicial Conduct, 774 N.E.2d 735 (N.Y. 2002) (holding that a judicial candidate's campaign literature referring to her as a "law and order candidate" did not violate the pledges and promises provision because it was a common expression that did not compromise judicial impartiality).

Moreover, under the pledges and promises clause's plain language, candidates could make future promises as long as the future promises did not compromise impartiality or the appearance of impartiality.[26] However, the clause prevented candidates from compromising the neutrality of the judiciary by foreclosing them from making promises "that either compromise the candidate's ability to behave impartially, or to be perceived as unbiased and open-minded by the public, once on the bench."[27] Consequently, Watson's pledge to work with the police and his promises to deter and reduce crime in Lockport through judicial proceedings displayed a bias in favor of law enforcement.[28] Nevertheless, the court held that Watson's statements did not irreparably harm the public's perception of his impartiality nor that of the state judiciary and that censure, not removal, was the proper sanction.[29]

Thus, in *Watson*, the New York Court of Appeals interpreted the First Amendment as allowing narrow restrictions on a judicial candidate's political campaign speech by upholding New York's pledges and promises clause. Conversely, the United States Supreme Court recently struck down, on First Amendment grounds, a provision of Minnesota's Code for Judicial Campaign

---

[26] *Watson*, 794 N.E.2d at 6.

[27] *Id.* at 7.

[28] *Id.* at 4.

[29] *Id.* at 8. The court noted that by the time Watson appeared before the full Commission, he had served as a judge for two years and no further allegations of misconduct had been lodged against him. *Id.* at 8 n.3.

Conduct known as the "announce clause"[30] for impermissibly abridging a judicial candidate's right to comment on disputed legal and political issues.[31]

In *White*, judicial candidate Gregory Wersal sought an injunction against enforcement of the announce clause and a declaratory judgment of the clause's unconstitutionality.[32] Minnesota asserted that it had a compelling state interest in preserving the impartiality of the judiciary and the appearance of impartiality.[33] Both the district court and the Eighth Circuit Court of Appeals held that the announce clause did not violate the First Amendment.[34] The United States Supreme Court held that the clause was not narrowly tailored to serve the compelling state interest in having an actual and apparently impartial judiciary.[35]

At the outset, the Court noted that the provision was a content-based regulation on core political speech concerning "the

---

[30] MINN. CODE OF JUDICAL CONDUCT CANON 5(A)(3)(d)(i) (2000). The provision provides in pertinent part that a "candidate for a judicial office . . . shall not . . . announce his or her views on disputed legal or political issues." *Id.*

[31] *White*, 536 U.S. at 788.

[32] *Id.* at 769-70. Prior to filing the lawsuit in *White*, Wersal ran for associate justice of the Minnesota Supreme Court; his campaign literature criticized decisions of Minnesota's highest court on topics such as abortion, welfare, and crime. Wersal withdrew from the election after the Lawyer's Board accused him of violating the clause by commenting on disputed legal and political issues while campaigning for judicial office. The complaint was dismissed because the Board doubted the constitutionality of the announce clause. Wersal subsequently sought an advisory opinion from the Board on the constitutionality of the clause, to no avail. *Id.* at 768-69.

[33] *Id.* at 775.

[34] *Id.* at 770.

[35] *Id.* at 776. Narrow tailoring requires that the clause not "unnecessarily circumscrib[e] protected expression." *Id.* (citing Brown v. Hartlage, 456 U.S. 45, 54 (1982)).

qualifications of candidates for public office."[36] Although the Supreme Court did not decide what level of review should be used, the Court applied strict scrutiny based on the lower court's conclusion that this was the appropriate standard, and the parties did not dispute this finding.[37] Additionally, it held that in the judicial context, "impartiality" meant a "lack of bias for or against either *party* to the proceeding."[38] This definition of impartiality assures equal treatment to every party appearing before the court.[39] Consequently, the announce clause was not narrowly tailored to serve the state's asserted interest in maintaining an impartial judiciary for its citizens because it only prevented candidates for judicial office from speaking out about particular issues, not parties.[40]

Alternatively, impartiality with respect to the judiciary could be defined as a "lack of preconception in favor of or against a particular *legal view*."[41] However, defining impartiality in that manner is inconsequential because a lack of judicial preconception about legal issues is not a compelling state interest regardless of whether the clause actually serves that interest. Whether a judge is inclined one way or another regarding legal issues is not a "necessary component of equal justice."[42] Rather, a judge with no

---

[36] *White*, 536 U.S. at 774.
[37] *Id.*
[38] *Id.*
[39] *Id.* at 776. In asserting its compelling state interest, Minnesota claimed that maintaining an impartial judiciary was vital to due process. *Id.* at 775.
[40] *Id.* at 777.
[41] *White*, 536 U.S. at 777.
[42] *Id.*

personal philosophies on the import of broad constitutional clauses "would be evidence of a lack of qualification, not lack of bias."[43] Furthermore, besides the fact that it is inconceivable that a judge would come to the bench with no personal views regarding legal issues, an absence of viewpoint on such issues violates Minnesota's constitution, which requires that "[j]udges of the supreme court, the court of appeals and the district court shall be learned in the law."[44]

Minnesota also argued that the announce clause served the state interest in having its judiciary maintain actual and apparent open-mindedness by alleviating the pressure on a judge to rule consistently with views expressed during the candidacy.[45] Yet, the Court held that the announce clause was "woefully underinclusive" in this respect because potential candidates could espouse their views on controversial legal and political topics before declaring their candidacy and continue to do so post election with impunity.[46] Such under inclusiveness "diminish[es] the credibility of the government's rationale for restricting speech"[47] because portions of the purportedly imperative interest are left open to palpable injury.[48]

New York's pledges and promises clause is narrowly tailored to affect the state's interest because it only circumscribes

---

[43] *Id.* at 777-78.
[44] *Id.* at 778; MINN. CONST., art. VI, § 5.
[45] *White*, 536 U.S at 778-79.
[46] *Id.* at 779-80.
[47] *Id.* at 780.
[48] *Id.*

campaign statements about potential parties as opposed to the announce clause's broad restriction on statements about political leanings and legal views.[49] Additionally, while the pledges and promises clause protects judicial impartiality and the appearance of impartiality during the campaign itself, the state's compelling interest is further protected by other New York rules that apply to "injudicious comments outside the campaign context."[50] In contrast, the announce clause was deemed fatally underinclusive because it applied only during the actual campaign, but supposedly damaging commentary on disputed political and legal issues was permitted if made outside of the campaign context.[51] Although neither the Supreme Court nor the New York Court of Appeals expressly held that strict scrutiny applied to First Amendment challenges to judicial campaign speech statutes, it appears that state legislation in this area should be drafted to meet this standard.

Denise Shanley

[49] *Watson*, 794 N.E.2d at 7.
[50] *Id.*
[51] *Id.*

RIGHT TO JURY TRIAL

United States Constitution Article III, Section 2:

The Trial of all Crimes . . . shall be by Jury. . . .

United States Constitution Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . .

New York Constitution Article I, Section 1:

No member of this state shall be . . . deprived of any of the rights or privileges secured to any citizen thereof, unless by . . . the judgment of his peers. . . .