***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.

**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?

**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 and burdened 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 to strictly scrutinize such restrictions. Under this approach, the Lawyers Board needed to prove that the “announce clause” was narrowly tailored –carefully and precisely drafted – to serve a compelling 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.

The case was returned to the Eighth Circuit Court of Appeals, where it used the Supreme Court’s guidance in applying the strict scrutiny test and found that two other sections of the Code of Judicial Conduct violated the First Amendment. One section prohibited the judicial candidate from engaging in “partisan–activities” (the “partisan-activities clause”), which meant identifying themselves as members of political organizations, attending political gatherings and accepting political endorsements. The other section barred judicial candidates from personally asking for campaign contributions (“solicitations clause”).

**CONCLUSION:** The decisions of the US Supreme Court and the Eighth Circuit Court of Appeals in this case open wide the options judicial candidates have in order to sell themselves to the voters. The Supreme Court noted the tension that previously existed between the Minnesota Code of Judicial Conduct requiring judicial elections and the “announce clause” which placed off limits most subjects of interest to the voters. The First Amendment does not allow a state to leave the principle of elections in place while preventing candidates from discussing what the elections are about.