

No. 13-1499

IN THE
Supreme Court of the United States

LANELL WILLIAMS-YULEE,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

**THE FLORIDA BAR'S RESPONSE TO
PETITION FOR WRIT OF CERTIORARI**

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**THE FLORIDA BAR'S RESPONSE
TO PETITION FOR WRIT OF CERTIORARI**

The Florida Bar submits that the Florida Supreme Court correctly determined that the challenged Canon 7C(1) of the Florida Code of Judicial Conduct complies with the First Amendment. However, The Florida Bar believes that this Court should issue its writ of certiorari to resolve the significant conflicts existing between state high courts and federal circuit courts and among federal circuit courts on this fundamental issue of constitutional rights.

The Petitioner accurately summarizes the current state of the law in which three state high courts and two federal circuit courts have held Florida's rule and materially equivalent rules in five other states to be constitutional and four federal circuits have held equivalent rules to be unconstitutional.

In addition to the conflict-driven justifications set forth by the Petitioner for this Court to grant the writ, The Florida Bar adds the following considerations:

I. The issues at the heart of the conflicts are not such that they can accommodate different interpretations and applications in different jurisdictions and judicial forums without insulting fundamental principles. In this instance, the conflicts deal with the proper balance between two compelling interests at the heart of a free and just society. The manner in which that balance is struck should be applied uniformly to all citizens in all places and before all tribunals.

II. Judicial conflicts over the issues raised by the petition are likely to increase in the foreseeable future. Over twenty states that provide for popular election of judges have rules similar to Canon 7C(1). It is reasonable to assume that federal and state courts, or both, will be called upon to adjudicate the constitutionality of those rules.

It is a virtual certainty that the existing and anticipated future conflicts will not be resolved without the intervention of this Court. A number of the courts that have adjudicated the issue have recognized the existence of conflicting state and federal decisions, but none have shown any inclination to be persuaded by those decisions. In fact, the existence of the conflicts appears to be a disincentive to resolution. In *Bauer v. Sheppard*, 620 F.3d 704 (7th Cir. 2010), the Seventh Circuit, after recognizing that its decision upholding the constitutionality of a personal solicitation rule similar to Canon 7C(1) was in conflict with decisions of the Eighth and Eleventh Circuits, concluded, “Nothing we can do here could create harmony among the circuits, so there is no reason to depart from the approach taken so recently in this circuit.” 620 F.3d at 710.

III. The Florida Bar joins the Petitioner in respectfully urging this Court to accept this case for review not only because there is a national need for resolution, but because of the particularly troublesome position in which it places The Florida Bar. Denial of the petition for certiorari would leave the decision of the Florida Supreme Court standing, but would provide The Florida Bar with little comfort. The existing indirect conflict between the decision of the Florida Supreme Court, and the decision of the Eleventh Circuit in *Weaver v. Bonner*, 309 F.3d

1312 (11th Cir. 2002), a case involving a Georgia judicial candidate, is likely to become a direct conflict when the Eleventh Circuit is inevitably called upon to adjudicate the constitutionality of Canon 7C(1) in a case involving a Florida judicial candidate. There should be no doubt, however, that The Florida Bar believes that the correct constitutional analyses are those announced by the Third and Seventh Circuits and the Florida, Arkansas and Oregon high courts, and that The Florida Bar will vigorously argue that position in the event that this case reaches the merits. A case and controversy exists and will continue to exist in this matter.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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