

U.S. Supreme Court weighs Delaware case about politics and judgeships

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Was a lawyer who sued Delaware over a constitutional provision requiring the governor to split judicial nominations between the two major political parties sincere when he said he would take any judgeship?

That was among the questions U.S. Supreme Court Justices had on Monday as the nation's top court kicked off its October term with oral arguments over Delaware's constitutional provision requiring a political balance among state court judges.

Attorneys representing Gov. John Carney believe there is no sincerity in James Adams' desire to be a judge as they argued to keep the provision in place.

"He's really interested here in pursuing a theory that he read about in the law review and not really getting a judgeship," Michael McConnell, one of the attorney's representing Carney, told the justices.

Adams, a former Democrat who later registered as unaffiliated, filed a federal lawsuit in 2017 challenging the political balance requirement claiming it excluded candidates based on their political affiliation.

A federal appeals court sided with Adams last year, ruling the provision violates the First Amendment.

Carney, however, asked the nation's top court in September 2019 to hear the matter and rule on whether the First Amendment invalidates a constitutional provision that limits judges affiliated with any one political party to no more than a "bare majority" on Delaware's Superior, Chancery and Supreme courts.

During the nearly hour-long hearing, it was brought up that Adams had previously said he would like to serve as a judge in any Delaware court. Yet Adams never applied for any of the judgeships, even before switching party affiliations, McConnell told the court.

"His big problem is that his actions do not line up with his words," he said.

Justice Elena Kagan asked McConnell if it would be "completely futile" to apply for a judgeship under the provision.

"As long as this constitutional provision is in effect, and he's an independent, he's not going to get a position," she said. "So why would we insist that he has to file an application?"

McConnell said that Adams, or anyone affiliated with a third party, could apply to be a judge on Family Court or Court of Common Pleas, which do not have this provision.

Adams' attorney, David Finger, was also asked about his client's willingness to serve as a judge.

"Your client said that he was interested in serving as a judge on any court and yet there were several opportunities for him to apply to judgeships for which he was qualified and he didn't do it," Chief Justice John G. Roberts Jr. asked Finger. "So why shouldn't we not take his standing assertions as serious?"

Finger responded by saying his client may have been in error when saying that. Finger also said Adams was not looking for judgeships while working for the Department of Justice.

It wasn't until leaving that department that he wanted to become a judge.

"There are a number of factors, which are outside the record ..., which affected his decisions," Finger said. "He does want to. There may have been intervening factors that prevented him from doing that."

No decision was taken following Monday hearing, which was done remotely. The arguments were originally scheduled to be heard in March, but the coronavirus pandemic canceled that hearing.

The issue has gained some attention outside the First State since nearly two-thirds of Fortune 500 companies are incorporated in Delaware, making the state's courts a prime venue to arbitrate corporate law.

Earlier this year, the Brennan Center, a nonpartisan law and policy institute, filed a brief siding with Carney. The center argued that the history behind the bare majority provision makes clear the framers of Delaware's Constitution sought to preserve the public's confidence in the integrity of the judiciary and avoid single-party entrenchment in the judicial branch.

The Cato Institute, a libertarian think tank, filed a brief in support of Adams arguing Delaware unconstitutionally discriminates against those who are not members of the two main political parties. "The Supreme Court should make clear that the work of a judge is not dependent on political interests and that supposed concerns over 'political balance' may not be used to justify partisan tests for judicial office," according to Cato's website.