SCOTUS says ruling in Dela. judiciary case won't affect Article III standing precedent

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(Reuters) - The U.S. Supreme Court ruled Thursday in Carney v. Adams (2020 WL 7250101) that a Delaware lawyer named James Adams did not meet constitutional standing requirements to establish his right to sue the state of Delaware over its bipartisan judicial appointment process. Because Adams did not have a right to bring the challenge, the Supreme Court reversed a 2019 decision in which the 3rd U.S. Circuit Court of Appeals struck down Delaware state constitutional provisions designed to balance court appointments between Democrats and Republicans.

The Supreme Court's 8-0 decision, written by Justice Stephen Breyer (with Justice Amy Coney Barrett not participating), emphasized that Adams' standing was the beginning and end of its analysis. Adams never applied for a Delaware judgeship. He was a registered Democrat until 2017 and said the judgeships he might have applied for in those years were reserved for Republicans. After he dropped his affiliation as a Democrat, he said, he did not apply for a judicial appointment because only Democrats and Republicans are permitted to hold positions on the top courts.

The Supreme Court's precedent on Article III standing requires plaintiffs to show they've suffered a particular, concrete harm. It's not enough to allege for plaintiffs to allege harm from an abstract public interest, even if that alleged harm is as serious as the First Amendment violation Adams claimed Delaware committed in restricting judicial appointments. The Supreme Court has ruled that a plaintiff does not actually have to be turned down for a job or a contract to bring a constitutional challenge. In 1995's Adarand Construction v. Pena (515 U.S. 200), for instance, the court found Article III standard for a subcontractor suing over race-based contract allocations because the subcontractor said its history showed it would surely bid on a new contract in the next year. Similarly, the justices ruled in 1993's Associated General Contractors v. Jacksonville (508 U.S. 656) that an association of contractors had standing to sue over contract allocations because they were "ready and able" to bid.

Adams said that he, too, was "ready and able" to apply for a judgeship in Delaware but did not because it would have been futile. The primary evidence in the record to back his assertion was deposition testimony and an interrogatory answer in which Adams said he would apply for any judgeship he believed he was qualified for.

Delaware's counsel, Michael McConnell of Wilson Sonsini Goodrich & Rosati, told the Supreme Court during oral argument in October that Adams had no concrete plan to apply and therefore did not have standing under the court's seminal ruling in 1992's Lujan v. Defenders of Wildlife (504 U.S. 555). But Chief Justice John Roberts and Justice Elena Kagan, as I reported at

the time, pushed back, citing the court's "ready and able" precedent. Justice Kagan asked why the court should require Adams to fill out paperwork for a job he knew he wouldn't get. Justice Brett Kavanaugh echoed the point: "You keep saying he hasn't applied," he told McConnell. "Of course, he hasn't applied. He's not eligible. And that's the point."

Thursday's unanimous opinion, obviously, managed to assuage those concerns about consistency with precedent. Justice Breyer emphasized that the decision was "highly fact-specific," and should not be read as a departure or modification of the court's previous rulings on standing, including the contractor cases. The record here, Justice Breyer wrote, showed scant evidence beyond Adams' statements that he was actually "ready and able" to apply for judgeships before he filed his constitutional challenge. He did not try for positions he might have been eligible for as a Democrat before he left the party, the opinion said. He was retired between 2015 and 2017. And when he returned to active bar status in 2017 and dropped his Democratic affiliation, he sued almost immediately.

"Adams did not show that he was 'able and ready' to apply for a vacancy in the reasonably imminent future (and) has not sufficiently differentiated himself from a general population of individuals affected in the abstract by the legal provision he attacks," Justice Breyer wrote. "If we were to hold that Adams' few words of general intent — without more and against all contrary evidence — were sufficient here to show an 'injury in fact,' we would significantly weaken the longstanding legal doctrine preventing this court from providing advisory opinions at the request of one who, without other concrete injury, believes that the government is not following the law."

Adams counsel David Finger of Finger & Slanina said Adams has since filed for three judicial openings even though, under Delaware's rules, he could not be appointed as an independent. Finger said Adams intends to relaunch his challenge, arguing that his rejected applications give him Article III standing.

Delaware counsel McConnell did not immediately respond to my email.

References

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