



**BEFORE THE
STATE COMMISSION ON JUDICIAL CONDUCT**

CJC Nos. 06-0129-AP AND 06-0130-AP

PUBLIC ADMONITION

**HONORABLE NATHAN L. HECHT
JUSTICE, SUPREME COURT OF TEXAS
AUSTIN, TRAVIS COUNTY, TEXAS**

During its meeting in Austin, Texas, on April 19-21, 2006, the State Commission on Judicial Conduct concluded a review of allegations against the Honorable Nathan Hecht, Justice of the Supreme Court of Texas, in Austin, Travis County, Texas. Justice Hecht was advised by letter of the Commission's concerns and provided his written response. Justice Hecht appeared with counsel before the Commission on April 19, 2006, and gave testimony. After considering the evidence before it, the Commission entered the following Findings and Conclusion:

FINDINGS OF FACT

1. At all times relevant hereto, the Honorable Nathan Hecht was a Justice on the Supreme Court of Texas in Austin, Travis County, Texas.
2. On or about October 1, 2005, Justice Hecht spoke with a White House advisor about the possible nomination of Justice Hecht's close friend, Harriet Miers ("Miers"), to replace retiring United States Supreme Court Justice Sandra Day O'Connor.

3. During that telephone conversation, Justice Hecht agreed to provide factual information to Dr. James Dobson¹ and others about Miers' experience and background, including information about her religious views and her views on abortion.
4. In a subsequent telephone conversation with White House staff, Justice Hecht discussed the probability that Miers' nomination would generate numerous media calls. In addition to agreeing to make daily reports to White House staff regarding his media activities, Justice Hecht permitted them to refer media inquiries directly to him.
5. On or about October 3, 2005, the White House officially announced Miers' nomination to the United States Supreme Court.
6. During the week following the October 3rd announcement, Justice Hecht, by his own admission, participated in approximately 120 media interviews concerning Miers' nomination. Justice Hecht also appeared on several television and radio news and talk shows to discuss Miers' nomination.
7. According to Justice Hecht, his close relationship with Miers made it impossible for him to remain silent when asked by reporters to provide factual information about Miers' background, experience, and views on religion and abortion.
8. Although he admittedly made public statements to the effect that Miers' nomination would be "good for the country" and that she would make a "good justice," Justice Hecht did not believe his actions promoted Miers' nomination.
9. In contrast to Justice Hecht's testimony before the Commission, a *Texas Lawyer* article reported that Justice Hecht's "mission" was to "defend his longtime friend" by "fill[ing] in the gaps about Miers' background and... counter[ing] some conservatives' skepticism about her qualifications to be a U.S. Supreme Court justice."
10. The article further stated that Justice Hecht's involvement was due, in part, to the desire of the White House for "Texans with polished legal credentials to step up to the plate" and "persuade Miers' detractors in Washington...that she's the right person to fill [O'Connor's] seat."
11. That article went on to describe how Justice Hecht joked that he was acting as "PR for the White House."
12. In response to the Commission's inquiry regarding the accuracy of the *Texas Lawyer* story, Justice Hecht denied that he had been "on a mission to defend [Miers] and to answer her conservative critics."

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¹ According to *Wikipedia*, "Dobson is an evangelical Christian with significant political clout, well known for mobilizing his listeners on political and ethical issues." In addition to running a nonprofit organization called *Focus on the Family*, Dobson hosts a daily radio program carried by more than 6,000 stations worldwide. His program, *Focus on the Family*, which is also carried on over 80 television stations in the United States, is heard by more than 200 million people every day in 164 countries.

13. Although Justice Hecht acknowledged he made the statement about acting as “PR for the White House,” he stressed that he had been making a joke and that it had been accurately reported as such.
14. Although he did not ask for a correction or retraction of the *Texas Lawyer* story, Justice Hecht stated that it would have been more accurate to say that he “had been swept up in the task of providing information about [Miers] to those who asked for it,” suggesting that he had no control over how his media activities would be reported or perceived.
15. In response to the Commission’s inquiry regarding the accuracy of a *New York Times* headline, which read: “Texas Justice...serves as [Miers’] spokesman,” Justice Hecht contended that the reporter’s view of his role was both inaccurate and misleading, since the justice was “simply providing information to people who called.”
16. According to Justice Hecht, the reporters with whom he spoke “did not seem to care that I was a judge.” However, in virtually every media story regarding his discussions about Miers, Justice Hecht’s credentials were widely reported and he was repeatedly identified as a Justice of the Texas Supreme Court.
17. The *New York Times* article went on to describe Justice Hecht’s prestige and influence by stating that he was an “appealing spokesman...for the right audiences” because he is “known as one of the most conservative jurists on the Texas Supreme Court.”
18. The article further noted that Justice Hecht was “so well known in [Texas] that . . . he was named by *Texas Monthly* as one of [the] 25 most powerful people in Texas politics.”
19. Although he advised the Commission that the media was inaccurate and misleading in its portrayal of his role in support of Miers’ nomination, Justice Hecht made no efforts to correct any public misperceptions about his conduct.
20. During the period in question, Justice Hecht was himself a candidate for reelection as Justice of the Texas Supreme Court, Place 6.

RELEVANT STANDARDS

1. Canon 2B of the Texas Code of Judicial Conduct states, in pertinent part: “A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others.”
2. Canon 5(2) of the Texas Code of Judicial Conduct states, in pertinent part: “A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party.”

CONCLUSION

The Commission concludes from the facts and evidence presented that Justice Hecht allowed his name and title to be used by the press and the White House in support

of his close friend, Harriet Miers, a nominee for the office of United States Supreme Court Justice. Such public support by a judicial official elected to the highest court in Texas, in the eyes of the public and the rest of the judiciary, would be construed as an endorsement of Miers' candidacy, as those terms are commonly used and understood. Because the Commission views Miers' desire for a lifetime appointment to the United States Supreme Court to be a private interest, the efforts of Justice Hecht in promoting his friend's candidacy by responding to media inquiries and assisting the White House in its efforts to convince powerful special interest groups to support her candidacy, constituted an improper use of his office and position to promote Miers' private interest.

In reaching these conclusions, the Commission recognizes that as a judicial candidate himself, Justice Hecht enjoys a much broader range of First Amendment protections for his own campaign speech than ever before. See *Republican Party of Minnesota v. White*, 536 US 765 (2002). However, neither *White* nor the numerous "free speech" cases that have followed in the wake of that case support Justice Hecht's proposition that the political activities of a judge or judicial candidate on behalf of another, as opposed to those activities that support his or her own candidacy, constitute protected campaign speech. In fact, the holding in *White* can be easily distinguished here since that case did not involve any of the restrictions on the political activity at issue in this case.

The Commission further concludes that even if a strict scrutiny test were applied in this case, both Canon 2B and Canon 5(2) would survive a constitutional challenge because they are narrowly tailored to address the State's compelling interests in promoting public confidence in an independent and impartial judiciary, free of political influence and corruption and the appearance of political influence and corruption. See *In Re Raab*, 793 N.E.2d 1287, 1291 (N.Y. 2003). As the court noted in *Raab* when addressing the constitutionality of a similar provision restricting public endorsements found in the New York Code of Judicial Conduct:

"Not only must the State respect the First Amendment rights of judicial candidates and voters but also it must simultaneously ensure that the judicial system is fair and impartial for all litigants, free of the taint of political bias or corruption, or even the appearance of such bias or corruption. In our view, the rules at issue, when viewed in their totality, are narrowly drawn to achieve these goals." *Id.* at 1292.

Based on the circumstances surrounding this matter, the Commission concludes that Justice Hecht's actions on behalf of Harriet Miers constituted persistent and willful violations of Canons 2B and 5(2) of the Texas Code of Judicial Conduct.

In condemnation of the conduct described above that violated Canons 2B and 5(2) of the Texas Code of Judicial Conduct, it is the Commission's decision to issue a **PUBLIC ADMONITION** to the Honorable Nathan Hecht, Justice of the Supreme Court of Texas, in Austin, Travis County, Texas.

Pursuant to the authority contained in Article V, Section 1-a(8) of the Texas Constitution, it is ordered that the conduct described above is made the subject of a **PUBLIC ADMONITION** by the State Commission on Judicial Conduct.

The Commission has taken this action in a continuing effort to protect public confidence in the judicial system and to assist the state's judiciary in its efforts to embody the principles and values set forth in the Texas Constitution and the Texas Code of Judicial Conduct.

Issued this 10th day of May, 2006.

ORIGINAL SIGNED BY

Honorable Monica A. Gonzalez, Chair
State Commission on Judicial Conduct