SUPREME COURT OF THE UNITED STATES

No. 01–521

REPUBLICAN PARTY OF MINNESOTA, ET AL., PETITIONERS *v.* SUZANNE WHITE, CHAIRPERSON, MINNESOTA BOARD OF JUDICIAL STANDARDS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[June 27, 2002]

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

Whether state or federal, elected or appointed, judges perform a function fundamentally different from that of the people's elected representatives. Legislative and executive officials act on behalf of the voters who placed them in office; "judge[s] represen[t] the Law." *Chisom* v. *Roemer,* 501 U. S. 380, 411 (1991) (SCALIA, J., dissenting). Unlike their counterparts in the political branches, judges are expected to refrain from catering to particular constituencies or committing themselves on controversial issues in advance of adversarial presentation. Their mission is to decide "individual cases and controversies" on individual records, *Plaut* v. *Spendthrift Farm, Inc.,* 514 U. S. 211, 266 (1995) (STEVENS, J., dissenting), neutrally applying legal principles, and, when necessary, "stand[ing] up to what is generally supreme in a democracy: the popular will," Scalia, The Rule of Law as a Law of Rules, 56 U. Chi. L. Rev. 1175, 1180 (1989).

A judiciary capable of performing this function, owing fidelity to no person or party, is a "longstanding Anglo-American tradition," *United States* v. *Will,* 449 U. S. 200, 217 (1980), an essential bulwark of constitutional govern-

ment, a constant guardian of the rule of law. The guarantee of an independent, impartial judiciary enables society to "withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts." *West Virginia Bd. of Ed.* v. *Barnette,* 319 U. S. 624, 638 (1943). "Without this, all the reservations of particular rights or privileges would amount to nothing." The Federalist No. 78, p. 466 (C. Rossiter ed. 1961).

The ability of the judiciary to discharge its unique role rests to a large degree on the manner in which judges are selected. The Framers of the Federal Constitution sought to advance the judicial function through the structural protections of Article III, which provide for the selection of judges by the President on the advice and consent of the Senate, generally for lifetime terms. Through its own Constitution, Minnesota, in common with most other States, has decided to allow its citizens to choose judges directly in periodic elections. But Minnesota has not thereby opted to install a corps of political actors on the bench; rather, it has endeavored to preserve the integrity of its judiciary by other means. Recognizing that the influence of political parties is incompatible with the judge's role, for example, Minnesota has designated all judicial elections nonpartisan. See *Peterson* v. *Stafford*, 490 N. W. 2d 418, 425 (Minn. 1992). And it has adopted a provision, here called the Announce Clause, designed to prevent candidates for judicial office from "publicly making known how they would decide issues likely to come before them as judges." *Republican Party of Minnesota* v. *Kelly*, 247 F. 3d 854, 881–882 (CA8 2001).

The question this case presents is whether the First Amendment stops Minnesota from furthering its interest in judicial integrity through this precisely targeted speech restriction.

I

The speech restriction must fail, in the Court's view, because an electoral process is at stake; if Minnesota opts to elect its judges, the Court asserts, the State may not rein in what candidates may say. See *ante*, at 15–16 (notion that "right to speak out on disputed issues" may be abridged in an election context "sets our First Amendment jurisprudence on its head"); *ante*, at 22 (power to dispense with elections does not include power to curtail candidate speech if State leaves election process in place); 247 F. 3d, at 897 (Beam, J., dissenting) ("[W]hen a state opts to hold an election, it must commit itself to a complete election, replete with free speech and association."); *id.*, at 903 (same).

I do not agree with this unilocular, "an election is an election," approach. Instead, I would differentiate elections for political offices, in which the First Amendment holds full sway, from elections designed to select those whose office it is to administer justice without respect to persons. Minnesota's choice to elect its judges, I am persuaded, does not preclude the State from installing an election process geared to the judicial office.

Legislative and executive officials serve in representative capacities. They are agents of the people; their primary function is to advance the interests of their constituencies. Candidates for political offices, in keeping with their representative role, must be left free to inform the electorate of their positions on specific issues. Armed with such information, the individual voter will be equipped to cast her ballot intelligently, to vote for the candidate committed to positions the voter approves. Campaign statements committing the candidate to take sides on contentious issues are therefore not only appropriate in political elections, they are "at the core of our electoral process," *Williams* v. *Rhodes,* 393 U. S. 23, 32 (1968), for they "enhance the accountability of government officials to

the people whom they represent," *Brown* v. *Hartlage,* 456 U. S. 45, 55 (1982).

Judges, however, are not political actors. They do not sit as representatives of particular persons, communities, or parties; they serve no faction or constituency. "[I]t is the business of judges to be indifferent to popularity." *Chisom*, 501 U. S., at 401, n. 29 (internal quotation marks omitted). They must strive to do what is legally right, all the more so when the result is not the one "the home crowd" wants. Rehnquist, Dedicatory Address: Act Well Your Part: Therein All Honor Lies, 7 Pepperdine L. Rev. 227, 229–300 (1980). Even when they develop common law or give concrete meaning to constitutional text, judges act only in the context of individual cases, the outcome of which cannot depend on the will of the public. See *Barnette,* 319 U. S., at 638 ("One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.").

Thus, the rationale underlying unconstrained speech in elections for political office—that representative government depends on the public's ability to choose agents who will act at its behest—does not carry over to campaigns for the bench. As to persons aiming to occupy the seat of judgment, the Court's unrelenting reliance on decisions involving contests for legislative and executive posts is manifestly out of place. *E.g.*, *ante*, at 16 (quoting *Wood* v. *Georgia,* 370 U. S. 375, 395 (1962) ("*The role that elected officials play in our society* makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance." (Emphasis added.))). See O'Neil, The Canons in the Courts: Recent First Amendment Rulings, 35 Ind. L. Rev. 701, 717 (2002) (reliance on cases involving nonjudicial campaigns, particularly *Brown* v. *Hartlage*, is "grievously misplaced"; "[h]ow any thought-

ful judge could derive from that ruling any possible guidance for cases that involve judicial campaign speech seems baffling"). In view of the magisterial role judges must fill in a system of justice, a role that removes them from the partisan fray, States may limit judicial campaign speech by measures impermissible in elections for political office. See *Buckley* v. *Illinois Judicial Inquiry Bd.*, 997 F. 2d 224, 228 (CA7 1993) ("Mode of appointment is only one factor that enables distinctions to be made among different kinds of public official. Judges remain different from legislators and executive officials, even when all are elected, in ways that bear on the strength of the state's interest in restricting their freedom of speech.").

The Court sees in this conclusion, and in the Announce Clause that embraces it, "an obvious tension," *ante*, at 21: The Minnesota electorate is permitted to select its judges by popular vote, but is not provided information on "subjects of interest to the voters," *ibid.*—in particular, the voters are not told how the candidate would decide controversial cases or issues if elected. This supposed tension, however, rests on the false premise that by departing from the federal model with respect to who *chooses* judges, Minnesota necessarily departed from the federal position on the *criteria* relevant to the exercise of that choice.[1]

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[1] In the context of the federal system, how a prospective nominee for the bench would resolve particular contentious issues would certainly be "of interest" to the President and the Senate in the exercise of their respective nomination and confirmation powers, just as information of that type would "interest" a Minnesota voter. But in accord with a longstanding norm, every Member of this Court declined to furnish such information to the Senate, and presumably to the President as well. See Brief for Respondents 17–42 (collecting statements at Senate confirmation hearings). Surely the Court perceives no tension here; the line each of us drew in response to preconfirmation questioning, the Court would no doubt agree, is crucial to the health of the Federal Judiciary. But by the Court's reasoning, the reticence of prospective

The Minnesota Supreme Court thought otherwise:

> "The methods by which the federal system and other states initially select and then elect or retain judges are varied, yet the explicit or implicit goal of the constitutional provisions and enabling legislation is the same: to create and maintain an independent judiciary as free from political, economic and social pressure as possible so judges can decide cases without those influences." *Peterson*, 490 N. W. 2d, at 420.

Nothing in the Court's opinion convincingly explains why Minnesota may not pursue that goal in the manner it did.

Minnesota did not choose a judicial selection system with all the trappings of legislative and executive races. While providing for public participation, it tailored judicial selection to fit the character of third branch office holding. See *id.*, at 425 (Minnesota's system "keep[s] the ultimate choice with the voters while, at the same time, recognizing the unique independent nature of the judicial function."). The balance the State sought to achieve—allowing the people to elect judges, but safeguarding the process so that the integrity of the judiciary would not be compromised—should encounter no First Amendment shoal. See generally O'Neil, The Canons in the Courts, *supra*, at 715–723.

II

Proper resolution of this case requires correction of the

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and current federal judicial nominees dishonors Article II, for it deprives the President and the Senate of information that might aid or advance the decision to nominate or confirm. The point is not, of course, that this "practice of voluntarily demurring" by itself "establish[es] the legitimacy of legal compulsion to demur," *ante*, at 18, n. 11 (emphasis omitted). The federal norm simply illustrates that, contrary to the Court's suggestion, there is nothing inherently incongruous in depriving those charged with choosing judges of certain information they might desire during the selection process.

Court's distorted construction of the provision before us for review. According to the Court, the Announce Clause "prohibits a judicial candidate from stating his views on any specific nonfanciful legal question within the province of the court for which he is running, except in the context of discussing past decisions—and in the latter context as well, if he expresses the view that he is not bound by *stare decisis*." *Ante*, at 7. In two key respects, that construction misrepresents the meaning of the Announce Clause as interpreted by the Eighth Circuit and embraced by the Minnesota Supreme Court, *In re Code of Judicial Conduct*, 639 N. W. 2d 55 (2002), which has the final word on this matter, see *Hortonville Joint School Dist. No. 1* v. *Hortonville Ed. Assn.,* 426 U. S. 482, 488 (1976) ("We are, of course, bound to accept the interpretation of [the State's] law by the highest court of the State.").

First and most important, the Court ignores a crucial limiting construction placed on the Announce Clause by the courts below. The provision does not bar a candidate from generally "stating [her] views" on legal questions, *ante*, at 7; it prevents her from "publicly making known how [she] would *decide*" disputed issues, 247 F. 3d, at 881–882 (emphasis added). That limitation places beyond the scope of the Announce Clause a wide range of comments that may be highly informative to voters. Consistent with the Eighth Circuit's construction, such comments may include, for example, statements of historical fact ("As a prosecutor, I obtained 15 drunk driving convictions"); qualified statements ("Judges should use *sparingly* their discretion to grant lenient sentences to drunk drivers"); and statements framed at a sufficient level of generality ("Drunk drivers are a threat to the safety of every driver"). What remains within the Announce Clause is the category of statements that essentially commit the candidate to a position on a specific issue, such as "I think all drunk drivers should receive the maximum sentence

permitted by law." See Tr. of Oral Arg. 45 (candidate may not say "'I'm going to decide this particular issue this way in the future'").

Second, the Court misportrays the scope of the Clause as applied to a candidate's discussion of past decisions. Citing an apparent concession by respondents at argument, *id.*, at 33–34, the Court concludes that "statements critical of past judicial decisions are not permissible if the candidate also states that he is against *stare decisis*," *ante*, at 5–6 (emphasis omitted). That conclusion, however, draws no force from the meaning attributed to the Announce Clause by the Eighth Circuit. In line with the Minnesota Board on Judicial Standards, the Court of Appeals stated without qualification that the Clause "does not prohibit candidates from discussing appellate court decisions." 247 F. 3d, at 882 (citing Minn. Bd. on Judicial Standards, Informal Opinion, Oct. 10, 1990, App. 55 ("In all election contests, a candidate for judicial office may discuss decisions and opinions of the Appellate Courts.")). The Eighth Circuit's controlling construction should not be modified by respondents' on the spot answers to fast-paced hypothetical questions at oral argument. *Moose Lodge No. 107* v. *Irvis,* 407 U. S. 163, 170 (1972) ("We are loath to attach conclusive weight to the relatively spontaneous responses of counsel to equally spontaneous questioning from the Court during oral argument.").

The Announce Clause is thus more tightly bounded, and campaigns conducted under that provision more robust, than the Court acknowledges. Judicial candidates in Minnesota may not only convey general information about themselves, see *ante*, at 7–8, they may also describe their conception of the role of a judge and their views on a wide range of subjects of interest to the voters. See App. 97–103; Brief for Minnesota Bar Association as *Amicus Curiae* 22–23 (*e.g.*, the criteria for deciding whether to depart from sentencing guidelines, the remedies for racial and

gender bias, and the balance between "free speech rights [and] the need to control [hate crimes]"). Further, they may discuss, criticize, or defend past decisions of interest to voters. What candidates may not do—simply or with sophistication—is remove themselves from the constraints characteristic of the judicial office and declare how they would decide an issue, without regard to the particular context in which it is presented, *sans* briefs, oral argument, and, as to an appellate bench, the benefit of one's colleagues' analyses. Properly construed, the Announce Clause prohibits only a discrete subcategory of the statements the Court's misinterpretation encompasses.

The Court's characterization of the Announce Clause as "election-nullifying," *ante*, at 17, "plac[ing] most subjects of interest to the voters off limits," *ante*, at 21, is further belied by the facts of this case. In his 1996 bid for office, petitioner Gregory Wersal distributed literature sharply criticizing three Minnesota Supreme Court decisions. Of the court's holding in the first case—that certain unrecorded confessions must be suppressed—Wersal asked, "Should we conclude that because the Supreme Court does not trust police, it allows confessed criminals to go free?" App. 37. Of the second case, invalidating a state welfare law, Wersal stated: "The Court should have deferred to the Legislature. It's the Legislature which should set our spending policies." *Ibid.* And of the third case, a decision involving abortion rights, Wersal charged that the court's holding was "directly contrary to the opinion of the U. S. Supreme Court," "unprecedented," and a "pro-abortion stance." *Id.*, at 38.

When a complaint was filed against Wersal on the basis of those statements, *id.*, at 12–15, the Lawyers Professional Responsibility Board concluded that no discipline was warranted, in part because it thought the disputed campaign materials did not violate the Announce Clause, *id.*, at 20–21. And when, at the outset of his 1998 cam-

paign, Wersal sought to avoid the possibility of sanction for future statements, he pursued the option, available to all Minnesota judicial candidates, Tr. of Oral Arg. 12–13, of requesting an advisory opinion concerning the application of the Announce Clause. App. 24–26. In response to that request, the Board indicated that it did not anticipate any adverse action against him. *Id.*, at 31–33.[2] Wersal has thus never been sanctioned under the Announce Clause for any campaign statement he made. On the facts before us, in sum, the Announce Clause has hardly stifled the robust communication of ideas and views from judicial candidate to voter.

III

Even as it exaggerates the reach of the Announce Clause, the Court ignores the significance of that provision to the integrated system of judicial campaign regulation Minnesota has developed. Coupled with the Announce Clause in Minnesota's Code of Judicial Conduct is a provision that prohibits candidates from "mak[ing] pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." Minn. Code of Judicial Conduct, Canon 5(A)(3)(d)(i) (2002). Although the Court is correct that this "pledges or promises" provision is not directly at issue in this case, see *ante*, at 4, the Court errs in overlooking the interdependence of that prohibition and the one before us. In my view, the constitutionality of the Announce Clause cannot be resolved without an examination of that interaction in light

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[2] In deciding not to sanction Wersal for his campaign statements, and again in responding to his inquiry about the application of the Announce Clause, the Board expressed "doubts about the constitutionality of the current Minnesota Canon." App. 20; *id.*, at 32. Those doubts, however, concerned the meaning of the Announce Clause before the Eighth Circuit applied, and the Minnesota Supreme Court adopted, the limiting constructions that now define that provision's scope.

of the interests the pledges or promises provision serves.

A

All parties to this case agree that, whatever the validity of the Announce Clause, the State may constitutionally prohibit judicial candidates from pledging or promising certain results. See Brief for Petitioners Republican Party of Minnesota et al. 36–37; Tr. of Oral Arg. 14–16 (petitioners' acknowledgment that candidates may be barred from making a "pledge or promise of an outcome"); Brief for Respondents 11; see also Brief for Brennan Center for Justice et al. as *Amici Curiae* 23 ("All of the parties and *amici* in this case agree that judges should not make explicit promises or commitments to decide particular cases in a particular manner.").

The reasons for this agreement are apparent. Pledges or promises of conduct in office, however commonplace in races for the political branches, are inconsistent "with the judge's obligation to decide cases in accordance with his or her role." Tr. of Oral Arg. 16; see Brief for Petitioners Republican Party of Minnesota et al. 36 ("[B]ecause [judges] have a duty to decide a case on the basis of the law and facts before them, they can be prohibited, as candidates, from making such promises."). This judicial obligation to avoid prejudgment corresponds to the litigant's right, protected by the Due Process Clause of the Fourteenth Amendment, to "an impartial and disinterested tribunal in both civil and criminal cases," *Marshall* v. *Jerrico, Inc.,* 446 U. S. 238, 242 (1980). The proscription against pledges or promises thus represents an accommodation of "constitutionally protected interests [that] lie on both sides of the legal equation." *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377, 400 (2000) (BREYER, J., concurring). Balanced against the candidate's interest in free expression is the litigant's "powerful and independent constitutional interest in fair adjudicative procedure."

Marshall, 446 U. S., at 243; see *Buckley*, 997 F. 2d, at 227 ("Two principles are in conflict and must, to the extent possible, be reconciled. . . .The roots of both principles lie deep in our constitutional heritage.").

The impartiality guaranteed to litigants through the Due Process Clause adheres to a core principle: "[N]o man is permitted to try cases where he has an interest in the outcome." *In re Murchison,* 349 U. S. 133, 136 (1955). Our cases have "jealously guarded" that basic concept, for it "ensur[es] that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Marshall*, 446 U. S, at 242.

Applying this principle in *Tumey* v. *Ohio,* 273 U. S. 510 (1927), we held that due process was violated where a judge received a portion of the fines collected from defendants whom he found guilty. Such an arrangement, we said, gave the judge a "direct, personal, substantial[, and] pecuniary interest" in reaching a particular outcome and thereby denied the defendant his right to an impartial arbiter. *Id.*, at 523. *Ward* v. *Monroeville,* 409 U. S. 57 (1972), extended *Tumey*'s reasoning, holding that due process was similarly violated where fines collected from guilty defendants constituted a large part of a village's finances, for which the judge, who also served as the village mayor, was responsible. Even though the mayor did not personally share in those fines, we concluded, he "perforce occupie[d] two practically and seriously inconsistent positions, one partisan and the other judicial." 409 U. S., at 60 (internal quotation marks omitted).

We applied the principle of *Tumey* and *Ward* most recently in *Aetna Life Ins. Co.* v. *Lavoie,* 475 U. S. 813 (1986). That decision invalidated a ruling of the Alabama Supreme Court written by a justice who had a personal interest in the resolution of a dispositive issue. The Alabama Supreme Court's ruling was issued while the justice

was pursuing a separate lawsuit in an Alabama lower court, and its outcome "had the clear and immediate effect of enhancing both the legal status and the settlement value" of that separate suit. *Id.*, at 824. As in *Ward* and *Tumey*, we held, the justice therefore had an interest in the outcome of the decision that unsuited him to participate in the judgment. 475 U. S., at 824. It mattered not whether the justice was actually influenced by this interest; "[t]he Due Process Clause," we observed, "may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties." *Id.*, at 825 (internal quotation marks omitted).

These cases establish three propositions important to this dispute. First, a litigant is deprived of due process where the judge who hears his case has a "direct, personal, substantial, and pecuniary" interest in ruling against him. *Id.*, at 824 (internal quotation marks and alteration omitted). Second, this interest need not be as direct as it was in *Tumey*, where the judge was essentially compensated for each conviction he obtained; the interest may stem, as in *Ward*, from the judge's knowledge that his success and tenure in office depend on certain outcomes. "[T]he test," we have said, "is whether the . . . situation is one 'which would offer a possible temptation to the average man as a judge [that] might lead him not to hold the balance nice, clear, and true.'" *Ward*, 409 U. S., at 60 (quoting *Tumey*, 273 U. S., at 532). And third, due process does not require a showing that the judge is actually biased as a result of his self-interest. Rather, our cases have "always endeavored to prevent even the probability of unfairness." *In re Murchison,* 349 U. S., at 136. "[T]he requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest

self-sacrifice could carry it on without danger of injustice." *Tumey*, 273 U. S., at 532.[3]

The justification for the pledges or promises prohibition follows from these principles. When a judicial candidate promises to rule a certain way on an issue that may later reach the courts, the potential for due process violations is grave and manifest. If successful in her bid for office, the judicial candidate will become a judge, and in that capacity she will be under pressure to resist the pleas of litigants who advance positions contrary to her pledges on the campaign trail. If the judge fails to honor her campaign promises, she will not only face abandonment by supporters of her professed views, she will also "ris[k] being assailed as a dissembler," 247 F. 3d, at 878, willing to say one thing to win an election and to do the opposite once in office.

A judge in this position therefore may be thought to have a "direct, personal, substantial, [and] pecuniary interest" in ruling against certain litigants, *Tumey*, 273

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[3]To avoid the import of our due process decisions, the Court dissects the concept of judicial "impartiality," *ante*, at 9–13, concluding that only one variant of that concept—lack of prejudice against a *party*—is secured by the Fourteenth Amendment, *ante*, at 9–10. Our Due Process Clause cases do not focus solely on bias against a particular party, but rather inquire more broadly into whether the surrounding circumstances and incentives compromise the judge's ability faithfully to discharge her assigned duties. See *supra*, at 13. To be sure, due process violations may arise where a judge has been so personally "enmeshed in matters" concerning one party that he is biased against him. See *Johnson* v. *Mississippi,* 403 U. S. 212, 215 (1971) *(per curiam)* (judge had been "a defendant in one of petitioner's civil rights suits and a losing party at that"). They may also arise, however, not because of any predisposition toward a party, but rather because of the judge's personal interest in resolving an issue a certain way. See *Aetna Life Ins. Co.* v. *Lavoie,* 475 U. S. 813 (1986). Due process will not countenance the latter situation, even though the self-interested judge "will apply the law to [the losing party] in the same way he [would apply] it to any other party" advancing the same position, *ante*, at 9.

U. S., at 523, for she may be voted off the bench and thereby lose her salary and emoluments unless she honors the pledge that secured her election. See Shepard, Campaign Speech: Restraint and Liberty in Judicial Ethics, 9 Geo. J. Legal Ethics 1059, 1083–1092 (1996); see *id.*, at 1088 ("[A] campaign promise [may be characterized as] a bribe offered to voters, paid with rulings consistent with that promise, in return for continued employment as a judge."); see also The Federalist No. 79, p. 472 (C. Rossiter ed. 1961) ("In the general course of human nature, a power over a man's subsistence amounts to a power over his will." (emphasis deleted)).

Given this grave danger to litigants from judicial campaign promises, States are justified in barring expression of such commitments, for they typify the "situatio[n] . . . in which experience teaches that the probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable." *Withrow* v. *Larkin,* 421 U. S. 35, 47 (1975). By removing this source of "possible temptation" for a judge to rule on the basis of self-interest, *Tumey*, 273 U. S, at 532, the pledges or promises prohibition furthers the State's "compellin[g] interest in maintaining a judiciary fully capable of performing" its appointed task, *Gregory* v. *Ashcroft,* 501 U. S. 452, 472 (1991): "judging [each] particular controversy fairly on the basis of its own circumstances," *United States* v. *Morgan,* 313 U. S. 409, 421 (1941). See O'Neil, The Canons in the Courts, *supra*, at 723 ("What is at stake here is no less than the promise of fairness, impartiality, and ultimately of due process for those whose lives and fortunes depend upon judges being selected by means that are not fully subject to the vagaries of American politics.").

In addition to protecting litigants' due process rights, the parties in this case further agree, the pledges or promises clause advances another compelling state interest: preserving the public's confidence in the integrity and

impartiality of its judiciary. See Tr. of Oral Arg. 16 (petitioners' statement that pledges or promises properly fosters "public perception of the impartiality of the judiciary"). See *Cox* v. *Louisiana,* 379 U. S. 559, 565 (1965) ("A State may . . . properly protect the judicial process from being misjudged in the minds of the public."); *In re Murchison,* 349 U. S., at 136 ("[T]o perform its high function in the best way[,] 'justice must satisfy the appearance of justice.'" (quoting *Offutt* v. *United States,* 348 U. S. 11, 14 (1954)). Because courts control neither the purse nor the sword, their authority ultimately rests on public faith in those who don the robe. See *Mistretta* v. *United States,* 488 U. S. 361, 407 (1989) ("The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship."). As the Minnesota Supreme Court has recognized, all legal systems—regardless of their method of judicial selection—"can function only so long as the public, having confidence in the integrity of its judges, accepts and abides by judicial decisions." *Complaint Concerning Winton*, 350 N. W. 2d 337, 340 (1984).

Prohibiting a judicial candidate from pledging or promising certain results if elected directly promotes the State's interest in preserving public faith in the bench. When a candidate makes such a promise during a campaign, the public will no doubt perceive that she is doing so in the hope of garnering votes. And the public will in turn likely conclude that when the candidate decides an issue in accord with that promise, she does so at least in part to discharge her undertaking to the voters in the previous election and to prevent voter abandonment in the next. The perception of that unseemly *quid pro quo*—a judicial candidate's promises on issues in return for the electorate's votes at the polls—inevitably diminishes the public's faith in the ability of judges to administer the law without

regard to personal or political self-interest.[4] Then-JUSTICE REHNQUIST's observations about the federal system apply with equal if not greater force in the context of Minnesota's elective judiciary: Regarding the appearance of judicial integrity,

> "[one must] distinguish quite sharply between a public statement made prior to nomination for the bench, on the one hand, and a public statement made by a nominee to the bench. For the latter to express any but the most general observation about the law would suggest that, in order to obtain favorable consideration of his nomination, he deliberately was announcing in advance, without benefit of judicial oath, briefs, or argument, how he would decide a particular question that might come before him as a judge." *Laird* v. *Tatum*, 409 U. S. 824, 836, n. 5 (1972) (memorandum opinion).

B

The constitutionality of the pledges or promises clause is thus amply supported; the provision not only advances due process of law for litigants in Minnesota courts, it also

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[4]The author of the Court's opinion declined on precisely these grounds to tell the Senate whether he would overrule a particular case:

"Let us assume that I have people arguing before me to do it or not to do it. I think it is quite a thing to be arguing to somebody who you know has made a representation in the course of his confirmation hearings, and that is, by way of condition to his being confirmed, that he will do this or do that. I think I would be in a very bad position to adjudicate the case without being accused of having a less than impartial view of the matter." 13 R. Mersky & J. Jacobstein, The Supreme Court of the United States: Hearings and Reports on Successful and Unsuccessful Nominations of Supreme Court Justices by the Senate Judiciary Committee, 1916–1986, 131 (1989) (hearings before the Senate Judiciary Committee on the nomination of then-Judge Scalia).

reinforces the authority of the Minnesota judiciary by promoting public confidence in the State's judges. The Announce Clause, however, is equally vital to achieving these compelling ends, for without it, the pledges or promises provision would be feeble, an arid form, a matter of no real importance.

Uncoupled from the Announce Clause, the ban on pledges or promises is easily circumvented. By prefacing a campaign commitment with the caveat, "although I cannot promise anything," or by simply avoiding the language of promises or pledges altogether, a candidate could declare with impunity how she would decide specific issues. Semantic sanitizing of the candidate's commitment would not, however, diminish its pernicious effects on actual and perceived judicial impartiality. To use the Court's example, a candidate who campaigns by saying, "If elected, I will vote to uphold the legislature's power to prohibit same-sex marriages," *ante*, at 14, will feel scarcely more pressure to honor that statement than the candidate who stands behind a podium and tells a throng of cheering supporters: "I think it is constitutional for the legislature to prohibit same-sex marriages," *ante*, at 13. Made during a campaign, both statements contemplate a *quid pro quo* between candidate and voter. Both effectively "bind [the candidate] to maintain that position after election." *Ante*, at 4. And both convey the impression of a candidate prejudging an issue to win votes. Contrary to the Court's assertion, see *ante*, at 14–15, the "nonpromissory" statement averts none of the dangers posed by the "promissory" one. (Emphasis omitted).

By targeting statements that do not technically constitute pledges or promises but nevertheless "publicly mak[e] known how [the candidate] would decide" legal issues, 247 F. 3d, at 881–882, the Announce Clause prevents this end

run around the letter and spirit of its companion provision.[5] No less than the pledges or promises clause itself, the Announce Clause is an indispensable part of Minnesota's effort to maintain the health of its judiciary, and is therefore constitutional for the same reasons.

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This Court has recognized in the past, as JUSTICE O'CONNOR does today, see *ante*, at 1–3 (concurring opinion), a "fundamental tension between the ideal character of the judicial office and the real world of electoral politics." *Chisom*, 501 U. S., at 400. We have no warrant to resolve that tension, however, by forcing States to choose one pole or the other. Judges are not politicians, and the First Amendment does not require that they be treated as politicians simply because they are chosen by popular vote. Nor does the First Amendment command States who wish to promote the integrity of their judges in fact and appearance to abandon systems of judicial selection

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[5] In the absence of the Announce Clause, other components of the Minnesota Code of Judicial Conduct designed to maintain the nonpartisan character of the State's judicial elections would similarly unravel. A candidate would have no need to "attend political gatherings" or "make speeches on behalf of a political organization," Minn. Code of Judical Conduct, Canon 5(A)(1)(c), (d), for she could simply state her views elsewhere, counting on her supporters to carry those views to the party faithful. And although candidates would remain barred from "seek[ing], accept[ing,] or us[ing] endorsements from a political organization," Canon 5(A)(1)(d), parties might well provide such endorsements unsolicited upon hearing candidates' views on specific issues. Cf. *ante*, at 3 (Minnesota Republican Party sought to learn Wersal's views so Party could support or oppose his candidacy). Those unsolicited endorsements, in turn, would render ineffective the prohibition against candidates "identify[ing] themselves as members of a political organization," Canon 5(A)(1)(a). "Indeed, it is not too much to say that the entire fabric of Minnesota's non[p]artisan elections hangs by the Announce clause thread." Brief for Minnesota State Bar Association as *Amicus Curiae* 20.

that the people, in the exercise of their sovereign prerogatives, have devised.

For more than three-quarters of a century, States like Minnesota have endeavored, through experiment tested by experience, to balance the constitutional interests in judicial integrity and free expression within the unique setting of an elected judiciary. P. McFadden, Electing Justice: The Law and Ethics of Judicial Election Campaigns 86 (1990); Brief for the Conference of Chief Justices as *Amicus Curiae* 5. The Announce Clause, borne of this long effort, "comes to this Court bearing a weighty title of respect," *Teamsters* v. *Hanke,* 339 U. S. 470, 475 (1950). I would uphold it as an essential component in Minnesota's accommodation of the complex and competing concerns in this sensitive area. Accordingly, I would affirm the judgment of the Court of Appeals for the Eighth Circuit.