

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 08–22

HUGH M. CAPERTON, ET AL., PETITIONERS *v.*
A. T. MASSEY COAL COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
APPEALS OF WEST VIRGINIA

[June 8, 2009]

JUSTICE KENNEDY delivered the opinion of the Court.

In this case the Supreme Court of Appeals of West Virginia reversed a trial court judgment, which had entered a jury verdict of \$50 million. Five justices heard the case, and the vote to reverse was 3 to 2. The question presented is whether the Due Process Clause of the Fourteenth Amendment was violated when one of the justices in the majority denied a recusal motion. The basis for the motion was that the justice had received campaign contributions in an extraordinary amount from, and through the efforts of, the board chairman and principal officer of the corporation found liable for the damages.

Under our precedents there are objective standards that require recusal when “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Withrow v. Larkin*, 421 U. S. 35, 47 (1975). Applying those precedents, we find that, in all the circumstances of this case, due process requires recusal.

I

In August 2002 a West Virginia jury returned a verdict that found respondents A. T. Massey Coal Co. and its

Opinion of the Court

affiliates (hereinafter Massey) liable for fraudulent misrepresentation, concealment, and tortious interference with existing contractual relations. The jury awarded petitioners Hugh Caperton, Harman Development Corp., Harman Mining Corp., and Sovereign Coal Sales (hereinafter Caperton) the sum of \$50 million in compensatory and punitive damages.

In June 2004 the state trial court denied Massey's post-trial motions challenging the verdict and the damages award, finding that Massey "intentionally acted in utter disregard of [Caperton's] rights and ultimately destroyed [Caperton's] businesses because, after conducting cost-benefit analyses, [Massey] concluded it was in its financial interest to do so." App. 32a, ¶10(p). In March 2005 the trial court denied Massey's motion for judgment as a matter of law.

Don Blankenship is Massey's chairman, chief executive officer, and president. After the verdict but before the appeal, West Virginia held its 2004 judicial elections. Knowing the Supreme Court of Appeals of West Virginia would consider the appeal in the case, Blankenship decided to support an attorney who sought to replace Justice McGraw. Justice McGraw was a candidate for reelection to that court. The attorney who sought to replace him was Brent Benjamin.

In addition to contributing the \$1,000 statutory maximum to Benjamin's campaign committee, Blankenship donated almost \$2.5 million to "And For The Sake Of The Kids," a political organization formed under 26 U. S. C. §527. The §527 organization opposed McGraw and supported Benjamin. App. 672a–673a. Blankenship's donations accounted for more than two-thirds of the total funds it raised. *Id.*, at 150a. This was not all. Blankenship spent, in addition, just over \$500,000 on independent expenditures—for direct mailings and letters soliciting donations as well as television and newspaper advertise-

Opinion of the Court

ments—“to support . . . Brent Benjamin.” *Id.*, at 184a, 186a, 200a (bold typeface omitted) (quoting Blankenship’s state campaign financial disclosure filings).

To provide some perspective, Blankenship’s \$3 million in contributions were more than the total amount spent by all other Benjamin supporters and three times the amount spent by Benjamin’s own committee. *Id.*, at 288a. Caperton contends that Blankenship spent \$1 million more than the total amount spent by the campaign committees of both candidates combined. Brief for Petitioners 28.

Benjamin won. He received 382,036 votes (53.3%), and McGraw received 334,301 votes (46.7%). App. 677a.

In October 2005, before Massey filed its petition for appeal in West Virginia’s highest court, Caperton moved to disqualify now-Justice Benjamin under the Due Process Clause and the West Virginia Code of Judicial Conduct, based on the conflict caused by Blankenship’s campaign involvement. Justice Benjamin denied the motion in April 2006. He indicated that he “carefully considered the bases and accompanying exhibits proffered by the movants.” But he found “no objective information . . . to show that this Justice has a bias for or against any litigant, that this Justice has prejudged the matters which comprise this litigation, or that this Justice will be anything but fair and impartial.” *Id.*, at 336a–337a. In December 2006 Massey filed its petition for appeal to challenge the adverse jury verdict. The West Virginia Supreme Court of Appeals granted review.

In November 2007 that court reversed the \$50 million verdict against Massey. The majority opinion, authored by then-Chief Justice Davis and joined by Justices Benjamin and Maynard, found that “Massey’s conduct warranted the type of judgment rendered in this case.” *Id.*, at 357a. It reversed, nevertheless, based on two independent grounds—first, that a forum-selection clause contained in a contract to which Massey was not a party barred the suit

Opinion of the Court

in West Virginia, and, second, that res judicata barred the suit due to an out-of-state judgment to which Massey was not a party. *Id.*, at 345a. Justice Starcher dissented, stating that the “majority’s opinion is morally and legally wrong.” *Id.*, at 420a–422a. Justice Albright also dissented, accusing the majority of “misapplying the law and introducing sweeping ‘new law’ into our jurisprudence that may well come back to haunt us.” *Id.*, at 430a–431a.

Caperton sought rehearing, and the parties moved for disqualification of three of the five justices who decided the appeal. Photos had surfaced of Justice Maynard vacationing with Blankenship in the French Riviera while the case was pending. *Id.*, at 440a–441a, 456a. Justice Maynard granted Caperton’s recusal motion. On the other side Justice Starcher granted Massey’s recusal motion, apparently based on his public criticism of Blankenship’s role in the 2004 elections. In his recusal memorandum Justice Starcher urged Justice Benjamin to recuse himself as well. He noted that “Blankenship’s bestowal of his personal wealth, political tactics, and ‘friendship’ have created a cancer in the affairs of this Court.” *Id.*, at 459a–460a. Justice Benjamin declined Justice Starcher’s suggestion and denied Caperton’s recusal motion.

The court granted rehearing. Justice Benjamin, now in the capacity of acting chief justice, selected Judges Cookman and Fox to replace the recused justices. Caperton moved a third time for disqualification, arguing that Justice Benjamin had failed to apply the correct standard under West Virginia law—*i.e.*, whether “a reasonable and prudent person, knowing these objective facts, would harbor doubts about Justice Benjamin’s ability to be fair and impartial.” *Id.*, at 466a, ¶8. Caperton also included the results of a public opinion poll, which indicated that over 67% of West Virginians doubted Justice Benjamin would be fair and impartial. Justice Benjamin again refused to withdraw, noting that the “push poll” was “nei-

Opinion of the Court

ther credible nor sufficiently reliable to serve as the basis for an elected judge’s disqualification.” *Id.*, at 483a.

In April 2008 a divided court again reversed the jury verdict, and again it was a 3-to-2 decision. Justice Davis filed a modified version of his prior opinion, repeating the two earlier holdings. She was joined by Justice Benjamin and Judge Fox. Justice Albright, joined by Judge Cookman, dissented: “Not only is the majority opinion unsupported by the facts and existing case law, but it is also fundamentally unfair. Sadly, justice was neither honored nor served by the majority.” ___ W. Va. ___, ___, ___ S. E. 2d ___, ___; App. 633a. The dissent also noted “genuine due process implications arising under federal law” with respect to Justice Benjamin’s failure to recuse himself. ___ W. Va., at ___, n. 16, ___ S. E. 2d, at ___, n. 16; App. 634a, n. 16 (citing *Aetna Life Ins. Co. v. Lavoie*, 475 U. S. 813 (1986); *In re Murchison*, 349 U. S. 133, 136 (1955)).

Four months later—a month after the petition for writ of certiorari was filed in this Court—Justice Benjamin filed a concurring opinion. He defended the merits of the majority opinion as well as his decision not to recuse. He rejected Caperton’s challenge to his participation in the case under both the Due Process Clause and West Virginia law. Justice Benjamin reiterated that he had no “‘direct, personal, substantial, pecuniary interest’ in this case.” ___ W. Va., at ___, ___ S. E. 2d, at ___; App. 677a (quoting *Lavoie, supra*, at 822). Adopting “a standard merely of ‘appearances,’” he concluded, “seems little more than an invitation to subject West Virginia’s justice system to the vagaries of the day—a framework in which predictability and stability yield to supposition, innuendo, half-truths, and partisan manipulations.” ___ W. Va., at ___, ___ S. E. 2d, at ___; App. 692a.

We granted certiorari. 555 U. S. ____ (2008).

Opinion of the Court

II

It is axiomatic that “[a] fair trial in a fair tribunal is a basic requirement of due process.” *Murchison, supra*, at 136. As the Court has recognized, however, “most matters relating to judicial disqualification [do] not rise to a constitutional level.” *FTC v. Cement Institute*, 333 U. S. 683, 702 (1948). The early and leading case on the subject is *Tumey v. Ohio*, 273 U. S. 510 (1927). There, the Court stated that “matters of kinship, personal bias, state policy, remoteness of interest, would seem generally to be matters merely of legislative discretion.” *Id.*, at 523.

The *Tumey* Court concluded that the Due Process Clause incorporated the common-law rule that a judge must recuse himself when he has “a direct, personal, substantial, pecuniary interest” in a case. *Ibid.* This rule reflects the maxim that “[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity.” The Federalist No. 10, p. 59 (J. Cooke ed. 1961) (J. Madison); see Frank, Disqualification of Judges, 56 Yale L. J. 605, 611–612 (1947) (same). Under this rule, “disqualification for bias or prejudice was not permitted”; those matters were left to statutes and judicial codes. *Lavoie, supra*, at 820; see also Part IV, *infra* (discussing judicial codes). Personal bias or prejudice “alone would not be sufficient basis for imposing a constitutional requirement under the Due Process Clause.” *Lavoie, supra*, at 820.

As new problems have emerged that were not discussed at common law, however, the Court has identified additional instances which, as an objective matter, require recusal. These are circumstances “in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.” *Withrow*, 421 U. S., at 47. To place the present case in proper context, two instances where the Court has required recusal merit further discussion.

Opinion of the Court

A

The first involved the emergence of local tribunals where a judge had a financial interest in the outcome of a case, although the interest was less than what would have been considered personal or direct at common law.

This was the problem addressed in *Tumey*. There, the mayor of a village had the authority to sit as a judge (with no jury) to try those accused of violating a state law prohibiting the possession of alcoholic beverages. Inherent in this structure were two potential conflicts. First, the mayor received a salary supplement for performing judicial duties, and the funds for that compensation derived from the fines assessed in a case. No fines were assessed upon acquittal. The mayor-judge thus received a salary supplement only if he convicted the defendant. 273 U. S., at 520. Second, sums from the criminal fines were deposited to the village's general treasury fund for village improvements and repairs. *Id.*, at 522.

The Court held that the Due Process Clause required disqualification "both because of [the mayor-judge's] direct pecuniary interest in the outcome, and because of his official motive to convict and to graduate the fine to help the financial needs of the village." *Id.*, at 535. It so held despite observing that "[t]here are doubtless mayors who would not allow such a consideration as \$12 costs in each case to affect their judgment in it." *Id.*, at 532. The Court articulated the controlling principle:

"Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." *Ibid.*

The Court was thus concerned with more than the traditional common-law prohibition on direct pecuniary inter-

Opinion of the Court

est. It was also concerned with a more general concept of interests that tempt adjudicators to disregard neutrality.

This concern with conflicts resulting from financial incentives was elaborated in *Ward v. Monroeville*, 409 U. S. 57 (1972), which invalidated a conviction in another mayor's court. In *Monroeville*, unlike in *Tumey*, the mayor received no money; instead, the fines the mayor assessed went to the town's general fisc. The Court held that "[t]he fact that the mayor [in *Tumey*] shared directly in the fees and costs did not define the limits of the principle." 409 U. S., at 60. The principle, instead, turned on the "possible temptation" the mayor might face; the mayor's "executive responsibilities for village finances may make him partisan to maintain the high level of contribution [to those finances] from the mayor's court." *Ibid.* As the Court reiterated in another case that Term, "the [judge's] financial stake need not be as direct or positive as it appeared to be in *Tumey*." *Gibson v. Berryhill*, 411 U. S. 564, 579 (1973) (an administrative board composed of optometrists had a pecuniary interest of "sufficient substance" so that it could not preside over a hearing against competing optometrists).

The Court in *Lavoie* further clarified the reach of the Due Process Clause regarding a judge's financial interest in a case. There, a justice had cast the deciding vote on the Alabama Supreme Court to uphold a punitive damages award against an insurance company for bad-faith refusal to pay a claim. At the time of his vote, the justice was the lead plaintiff in a nearly identical lawsuit pending in Alabama's lower courts. His deciding vote, this Court surmised, "undoubtedly 'raised the stakes'" for the insurance defendant in the justice's suit. 475 U. S., at 823–824.

The Court stressed that it was "not required to decide whether in fact [the justice] was influenced." *Id.*, at 825. The proper constitutional inquiry is "whether sitting on the case then before the Supreme Court of Alabama

Opinion of the Court

“would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.”” *Ibid.* (quoting *Monroeville, supra*, at 60, in turn quoting *Tumey, supra*, at 532). The Court underscored that “what degree or kind of interest is sufficient to disqualify a judge from sitting ‘cannot be defined with precision.’” 475 U. S., at 822 (quoting *Murchison*, 349 U. S., at 136). In the Court’s view, however, it was important that the test have an objective component.

The *Lavoie* Court proceeded to distinguish the state court justice’s particular interest in the case, which required recusal, from interests that were not a constitutional concern. For instance, “while [the other] justices might conceivably have had a slight pecuniary interest” due to their potential membership in a class-action suit against their own insurance companies, that interest is “too remote and insubstantial to violate the constitutional constraints.” 475 U. S., at 825–826 (quoting *Marshall v. Jerrico, Inc.*, 446 U. S. 238, 243 (1980)).

B

The second instance requiring recusal that was not discussed at common law emerged in the criminal contempt context, where a judge had no pecuniary interest in the case but was challenged because of a conflict arising from his participation in an earlier proceeding. This Court characterized that first proceeding (perhaps pejoratively) as a “one-man grand jury.” *Murchison*, 349 U. S., at 133.

In that first proceeding, and as provided by state law, a judge examined witnesses to determine whether criminal charges should be brought. The judge called the two petitioners before him. One petitioner answered questions, but the judge found him untruthful and charged him with perjury. The second declined to answer on the ground that he did not have counsel with him, as state law seemed to permit. The judge charged him with contempt.

Opinion of the Court

The judge proceeded to try and convict both petitioners. *Id.*, at 134–135.

This Court set aside the convictions on grounds that the judge had a conflict of interest at the trial stage because of his earlier participation followed by his decision to charge them. The Due Process Clause required disqualification. The Court recited the general rule that “no man can be a judge in his own case,” adding that “no man is permitted to try cases where he has an interest in the outcome.” *Id.*, at 136. It noted that the disqualifying criteria “cannot be defined with precision. Circumstances and relationships must be considered.” *Ibid.* These circumstances and the prior relationship required recusal: “Having been a part of [the one-man grand jury] process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused.” *Id.*, at 137. That is because “[a]s a practical matter it is difficult if not impossible for a judge to free himself from the influence of what took place in his ‘grand-jury’ secret session.” *Id.*, at 138.

The *Murchison* Court was careful to distinguish the circumstances and the relationship from those where the Constitution would not require recusal. It noted that the single-judge grand jury is “more a part of the accusatory process than an ordinary lay grand juror,” and that “adjudication by a trial judge of a contempt committed in [a judge’s] presence in open court cannot be likened to the proceedings here.” *Id.*, at 137. The judge’s prior relationship with the defendant, as well as the information acquired from the prior proceeding, was of critical import.

Following *Murchison* the Court held in *Mayberry v. Pennsylvania*, 400 U. S. 455, 466 (1971), “that by reason of the Due Process Clause of the Fourteenth Amendment a defendant in criminal contempt proceedings should be given a public trial before a judge other than the one reviled by the contemnor.” The Court reiterated that this rule rests on the relationship between the judge and the

Opinion of the Court

defendant: “[A] judge, vilified as was this Pennsylvania judge, necessarily becomes embroiled in a running, bitter controversy. No one so cruelly slandered is likely to maintain that calm detachment necessary for fair adjudication.” *Id.*, at 465.

Again, the Court considered the specific circumstances presented by the case. It noted that “not every attack on a judge . . . disqualifies him from sitting.” *Ibid.* The Court distinguished the case from *Ungar v. Sarafite*, 376 U. S. 575 (1964), in which the Court had “ruled that a lawyer’s challenge, though ‘disruptive, recalcitrant and disagreeable commentary,’ was still not ‘an insulting attack upon the integrity of the judge carrying such potential for bias as to require disqualification.’” *Mayberry, supra*, at 465–466 (quoting *Ungar, supra*, at 584). The inquiry is an objective one. The Court asks not whether the judge is actually, subjectively biased, but whether the average judge in his position is “likely” to be neutral, or whether there is an unconstitutional “potential for bias.”

III

Based on the principles described in these cases we turn to the issue before us. This problem arises in the context of judicial elections, a framework not presented in the precedents we have reviewed and discussed.

Caperton contends that Blankenship’s pivotal role in getting Justice Benjamin elected created a constitutionally intolerable probability of actual bias. Though not a bribe or criminal influence, Justice Benjamin would nevertheless feel a debt of gratitude to Blankenship for his extraordinary efforts to get him elected. That temptation, Caperton claims, is as strong and inherent in human nature as was the conflict the Court confronted in *Tumey* and *Monroeville* when a mayor-judge (or the city) benefited financially from a defendant’s conviction, as well as the conflict identified in *Murchison* and *Mayberry* when a

Opinion of the Court

judge was the object of a defendant's contempt.

Justice Benjamin was careful to address the recusal motions and explain his reasons why, on his view of the controlling standard, disqualification was not in order. In four separate opinions issued during the course of the appeal, he explained why no actual bias had been established. He found no basis for recusal because Caperton failed to provide "objective evidence" or "objective information," but merely "subjective belief" of bias. ___ W. Va., at ___, ___-___, ___ S. E. 2d, at ___, ___-___; App. 336a, 337a-338a, 444a-445a. Nor could anyone "point to any actual conduct or activity on [his] part which could be termed 'improper.'" ___ W. Va., at ___-___, ___ S. E. 2d, at ___-___; App. 655a-656a. In other words, based on the facts presented by Caperton, Justice Benjamin conducted a probing search into his actual motives and inclinations; and he found none to be improper. We do not question his subjective findings of impartiality and propriety. Nor do we determine whether there was actual bias.

Following accepted principles of our legal tradition respecting the proper performance of judicial functions, judges often inquire into their subjective motives and purposes in the ordinary course of deciding a case. This does not mean the inquiry is a simple one. "The work of deciding cases goes on every day in hundreds of courts throughout the land. Any judge, one might suppose, would find it easy to describe the process which he had followed a thousand times and more. Nothing could be farther from the truth." B. Cardozo, *The Nature of the Judicial Process* 9 (1921).

The judge inquires into reasons that seem to be leading to a particular result. Precedent and *stare decisis* and the text and purpose of the law and the Constitution; logic and scholarship and experience and common sense; and fairness and disinterest and neutrality are among the factors at work. To bring coherence to the process, and to seek

Opinion of the Court

respect for the resulting judgment, judges often explain the reasons for their conclusions and rulings. There are instances when the introspection that often attends this process may reveal that what the judge had assumed to be a proper, controlling factor is not the real one at work. If the judge discovers that some personal bias or improper consideration seems to be the actuating cause of the decision or to be an influence so difficult to dispel that there is a real possibility of undermining neutrality, the judge may think it necessary to consider withdrawing from the case.

The difficulties of inquiring into actual bias, and the fact that the inquiry is often a private one, simply underscore the need for objective rules. Otherwise there may be no adequate protection against a judge who simply misreads or misapprehends the real motives at work in deciding the case. The judge's own inquiry into actual bias, then, is not one that the law can easily superintend or review, though actual bias, if disclosed, no doubt would be grounds for appropriate relief. In lieu of exclusive reliance on that personal inquiry, or on appellate review of the judge's determination respecting actual bias, the Due Process Clause has been implemented by objective standards that do not require proof of actual bias. See *Tumey*, 273 U. S., at 532; *Mayberry*, 400 U. S., at 465–466; *Lavoie*, 475 U. S., at 825. In defining these standards the Court has asked whether, “under a realistic appraisal of psychological tendencies and human weakness,” the interest “poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.” *Withrow*, 421 U. S., at 47.

We turn to the influence at issue in this case. Not every campaign contribution by a litigant or attorney creates a probability of bias that requires a judge's recusal, but this is an exceptional case. Cf. *Mayberry*, *supra*, at 465 (“It is, of course, not every attack on a judge that disqualifies him from sitting”); *Lavoie*, *supra*, at 825–826 (some pecuniary

Opinion of the Court

interests are “too remote and insubstantial”). We conclude that there is a serious risk of actual bias—based on objective and reasonable perceptions—when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent. The inquiry centers on the contribution’s relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election.

Applying this principle, we conclude that Blankenship’s campaign efforts had a significant and disproportionate influence in placing Justice Benjamin on the case. Blankenship contributed some \$3 million to unseat the incumbent and replace him with Benjamin. His contributions eclipsed the total amount spent by all other Benjamin supporters and exceeded by 300% the amount spent by Benjamin’s campaign committee. App. 288a. Caperton claims Blankenship spent \$1 million more than the total amount spent by the campaign committees of both candidates combined. Brief for Petitioners 28.

Massey responds that Blankenship’s support, while significant, did not cause Benjamin’s victory. In the end the people of West Virginia elected him, and they did so based on many reasons other than Blankenship’s efforts. Massey points out that every major state newspaper, but one, endorsed Benjamin. Brief for Respondents 54. It also contends that then-Justice McGraw cost himself the election by giving a speech during the campaign, a speech the opposition seized upon for its own advantage. *Ibid.*

Justice Benjamin raised similar arguments. He asserted that “the outcome of the 2004 election was due primarily to [his own] campaign’s message,” as well as McGraw’s “devastat[ing]” speech in which he “made a number of controversial claims which became a matter of

Opinion of the Court

statewide discussion in the media, on the internet, and elsewhere.” __ W. Va., at __, and n. 29, __ S. E. 2d, at __, and n. 29; App. 673a, 674a, and n. 29; see also __ W. Va., at __–__, and nn. 35–39, __ S. E. 2d, at __–__, and nn. 35–39; App. 677a–680a, and nn. 35–39.

Whether Blankenship’s campaign contributions were a necessary and sufficient cause of Benjamin’s victory is not the proper inquiry. Much like determining whether a judge is actually biased, proving what ultimately drives the electorate to choose a particular candidate is a difficult endeavor, not likely to lend itself to a certain conclusion. This is particularly true where, as here, there is no procedure for judicial factfinding and the sole trier of fact is the one accused of bias. Due process requires an objective inquiry into whether the contributor’s influence on the election under all the circumstances “would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.” *Tumey, supra*, at 532. In an election decided by fewer than 50,000 votes (382,036 to 334,301), see __ W. Va., at __, __ S. E. 2d, at __; App. 677a, Blankenship’s campaign contributions—in comparison to the total amount contributed to the campaign, as well as the total amount spent in the election—had a significant and disproportionate influence on the electoral outcome. And the risk that Blankenship’s influence engendered actual bias is sufficiently substantial that it “must be forbidden if the guarantee of due process is to be adequately implemented.” *Withrow, supra*, at 47.

The temporal relationship between the campaign contributions, the justice’s election, and the pendency of the case is also critical. It was reasonably foreseeable, when the campaign contributions were made, that the pending case would be before the newly elected justice. The \$50 million adverse jury verdict had been entered before the election, and the Supreme Court of Appeals was the next step once the state trial court dealt with post-trial mo-

Opinion of the Court

tions. So it became at once apparent that, absent recusal, Justice Benjamin would review a judgment that cost his biggest donor's company \$50 million. Although there is no allegation of a *quid pro quo* agreement, the fact remains that Blankenship's extraordinary contributions were made at a time when he had a vested stake in the outcome. Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when—without the consent of the other parties—a man chooses the judge in his own cause. And applying this principle to the judicial election process, there was here a serious, objective risk of actual bias that required Justice Benjamin's recusal.

Justice Benjamin did undertake an extensive search for actual bias. But, as we have indicated, that is just one step in the judicial process; objective standards may also require recusal whether or not actual bias exists or can be proved. Due process “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.” *Murchison*, 349 U. S., at 136. The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process. We find that Blankenship's significant and disproportionate influence—coupled with the temporal relationship between the election and the pending case—““offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true.”” *Lavoie*, 475 U. S., at 825 (quoting *Monroeville*, 409 U. S., at 60, in turn quoting *Tumey*, 273 U. S., at 532). On these extreme facts the probability of actual bias rises to an unconstitutional level.

IV

Our decision today addresses an extraordinary situation where the Constitution requires recusal. Massey and its *amici* predict that various adverse consequences will follow from recognizing a constitutional violation here—

Opinion of the Court

ranging from a flood of recusal motions to unnecessary interference with judicial elections. We disagree. The facts now before us are extreme by any measure. The parties point to no other instance involving judicial campaign contributions that presents a potential for bias comparable to the circumstances in this case.

It is true that extreme cases often test the bounds of established legal principles, and sometimes no administrable standard may be available to address the perceived wrong. But it is also true that extreme cases are more likely to cross constitutional limits, requiring this Court's intervention and formulation of objective standards. This is particularly true when due process is violated. See, e.g., *County of Sacramento v. Lewis*, 523 U. S. 833, 846–847 (1998) (reiterating the due-process prohibition on “executive abuse of power . . . which shocks the conscience”); *id.*, at 858 (KENNEDY, J., concurring) (explaining that “objective considerations, including history and precedent, are the controlling principle” of this due process standard).

This Court's recusal cases are illustrative. In each case the Court dealt with extreme facts that created an unconstitutional probability of bias that “cannot be defined with precision.” *Lavoie*, 475 U. S., at 822 (quoting *Murchison*, 349 U. S., at 136). Yet the Court articulated an objective standard to protect the parties' basic right to a fair trial in a fair tribunal. The Court was careful to distinguish the extreme facts of the cases before it from those interests that would not rise to a constitutional level. See, e.g., *Lavoie*, *supra*, at 825–826; *Mayberry*, 400 U. S., at 465–466; *Murchison*, *supra*, at 137; see also Part II, *supra*. In this case we do nothing more than what the Court has done before.

As such, it is worth noting the effects, or lack thereof, of the Court's prior decisions. Even though the standards announced in those cases raised questions similar to those that might be asked after our decision today, the Court

Opinion of the Court

was not flooded with *Monroeville* or *Murchison* motions. That is perhaps due in part to the extreme facts those standards sought to address. Courts proved quite capable of applying the standards to less extreme situations.

One must also take into account the judicial reforms the States have implemented to eliminate even the appearance of partiality. Almost every State—West Virginia included—has adopted the American Bar Association’s objective standard: “A judge shall avoid impropriety and the appearance of impropriety.” ABA Annotated Model Code of Judicial Conduct, Canon 2 (2004); see Brief for American Bar Association as *Amicus Curiae* 14, and n. 29. The ABA Model Code’s test for appearance of impropriety is “whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” Canon 2A, Commentary; see also W. Va. Code of Judicial Conduct, Canon 2A, and Commentary (2009) (same).

The West Virginia Code of Judicial Conduct also requires a judge to “disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.” Canon 3E(1); see also 28 U. S. C. §455(a) (“Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned”). Under Canon 3E(1), “[t]he question of disqualification focuses on whether an objective assessment of the judge’s conduct produces a reasonable question about impartiality, not on the judge’s subjective perception of the ability to act fairly.” *State ex rel. Brown v. Dietrick*, 191 W. Va. 169, 174, n. 9, 444 S. E. 2d 47, 52, n. 9 (1994); see also *Liteky v. United States*, 510 U. S. 540, 558 (1994) (KENNEDY, J., concurring in judgment) (“[U]nder [28 U. S. C.] §455(a), a judge should be disqualified only if it appears that he or she harbors an aversion, hostility or disposition of a kind

Opinion of the Court

that a fair-minded person could not set aside when judging the dispute”). Indeed, some States require recusal based on campaign contributions similar to those in this case. See, e.g., Ala. Code §§12–24–1, 12–24–2 (2006); Miss. Code of Judicial Conduct, Canon 3E(2) (2008).

These codes of conduct serve to maintain the integrity of the judiciary and the rule of law. The Conference of the Chief Justices has underscored that the codes are “[t]he principal safeguard against judicial campaign abuses” that threaten to imperil “public confidence in the fairness and integrity of the nation’s elected judges.” Brief for Conference of Chief Justices as *Amicus Curiae* 4, 11. This is a vital state interest:

“Courts, in our system, elaborate principles of law in the course of resolving disputes. The power and the prerogative of a court to perform this function rest, in the end, upon the respect accorded to its judgments. The citizen’s respect for judgments depends in turn upon the issuing court’s absolute probity. Judicial integrity is, in consequence, a state interest of the highest order.” *Republican Party of Minn. v. White*, 536 U. S. 765, 793 (2002) (KENNEDY, J., concurring).

It is for this reason that States may choose to “adopt recusal standards more rigorous than due process requires.” *Id.*, at 794; see also *Bracy v. Gramley*, 520 U. S. 899, 904 (1997) (distinguishing the “constitutional floor” from the ceiling set “by common law, statute, or the professional standards of the bench and bar”).

“The Due Process Clause demarks only the outer boundaries of judicial disqualifications. Congress and the states, of course, remain free to impose more rigorous standards for judicial disqualification than those we find mandated here today.” *Lavoie, supra*, at 828. Because the codes of judicial conduct provide more protection than due process requires, most disputes over disqualification will

Opinion of the Court

be resolved without resort to the Constitution. Application of the constitutional standard implicated in this case will thus be confined to rare instances.

* * *

The judgment of the Supreme Court of Appeals of West Virginia is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.