

Supreme Court Takes Up Judicial Candidates' First Amendment Rights

The U.S. Supreme Court, in a 5-4 decision, clarified how to balance the First Amendment rights of judicial candidates with the public's right to a fair and impartial judiciary in its decision in *Republican Party of Minnesota v. White* on June 27, 2002.

"The question presented," according to Justice Scalia's majority opinion, "is whether the First Amendment permits the Minnesota Supreme Court to prohibit candidates for judicial elections . . . from announcing their views on disputed legal and political issues." The Court held that "[t]he Minnesota Supreme Courts canon of judicial conduct prohibiting ...[such views]... violates the First Amendment."

While this decision may afford much more campaign latitude for judges facing a contested election, Justice Scalia was very careful to note that in all states where judges face such elections, the canons of judicial conduct, "separately prohibit judicial candidates from making pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office—a prohibition that is not challenged [in the decision] and on which we express no view." Judicial candi-

dates should be very careful to note this distinction.

Justice Scalia observed that the Constitution makes judicial elections permissive and noted that many, including our Founding Fathers, oppose such elections. He stated, "[T]he greater power to dispense with elections altogether does not include the lesser power to conduct elections under conditions of state-imposed voter ignorance. If the State chooses to tap the energy and the legitimizing power of the democratic process, it must accord the participants in that process the First Amendment rights that attach to their roles" (citation omitted).

It is notable that four justices in dissent adopted the view pressed in an amicus brief for the Conference of Chief Justices, which urged the Court to decide the case "in a way that preserves the state's flexibility to balance First Amendment concerns against other constitutional commitments to the due process rights of litigants and the independence of the judiciary within a system of separated government powers." 

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