

536 U.S. 765 (2002)  
REPUBLICAN PARTY OF MINNESOTA et al.

v.

WHITE, CHAIRPERSON, MINNESOTA BOARD OF JUDICIAL  
STANDARDS, et al.

I Since Minnesota's admission to the Union in 1858, the State's Constitution has provided for the selection of all state judges by popular election. - - Since 1912, those elections have been non-partisan. . . Since 1974, they have been subject to a legal restriction which states that a "candidate for a judicial office, including an incumbent judge," shall not "announce his or her views on disputed legal or political issues." Minn. Code of Judicial Conduct, Canon 5(A)(3)(d)(i) (2000).

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The Court of Appeals concluded that respondents had established two interests as sufficiently compelling to justify the announce clause: preserving the impartiality of the state judiciary and preserving the appearance of the impartiality of the state judiciary. 247 F. 3d, at 867. . . Respondents are rather vague, however, about what they mean by "impartiality." Indeed, although the term is used throughout the Eighth Circuit's opinion, the briefs, the Minnesota Code of Judicial Conduct, and the ABA Codes of Judicial Conduct, none of these sources bothers to define it. Clarity on this point is essential before we can decide whether impartiality is indeed a compelling state interest, and, if so, whether the announce clause is narrowly tailored to achieve it.

A One meaning of "impartiality" in the judicial context—and of course its root meaning—is the lack of bias for or against either party to the proceeding. Impartiality in this sense assures equal application of the law. That is, it guarantees a party that the judge who hears his case will apply the law to him in the same way he applies it to any other party. This is the traditional sense in which the term is used. See Webster's New International Dictionary 1247 (2d ed. 1950) (defining "impartial" as "[n]ot partial; esp., not favoring one more than another; treating all alike; unbiased; equitable; fair; just"). It is also the sense in which it is used in the cases cited by respondents and amici for the proposition that an impartial judge is essential to due process. . .

We think it plain that the announce clause is not narrowly tailored to serve impartiality (or the appearance of impartiality) in this sense. Indeed, the clause is barely tailored to serve that interest at all, inasmuch as it does not restrict speech for or against particular parties, but rather speech for or against particular issues. To be sure, when a case arises that turns on a legal issue on which the judge (as a candidate) had taken a particular stand, the party taking the opposite stand is likely to lose. But not because of any bias against that party, or favoritism toward the other party. Any party taking that position is just as likely to lose. The judge is

Respondents argue that the announce clause serves the interest in open mindedness, or at least in the appearance of open mindedness, because it relieves a judge from pressure to rule a certain way in order to maintain consistency with statements the judge has previously made. The problem is, however, that statements in election campaigns are such an infinitesimal portion of the public commitments to legal positions that judges (or judges-to-be) undertake, that this object of the prohibition is implausible. Before they arrive on the bench (whether by election or otherwise) judges have often committed themselves on legal issues that they must later rule upon. See, e. g., Laird, *supra*, at 831-833 (describing Justice Black's participation in several cases construing and deciding the constitutionality of the Fair Labor Standards Act, even though as a Senator he had been one of its principal authors; and Chief Justice Hughes's authorship of the opinion overruling *Adkins v. Children's Hospital of D. C.*, 261 U. S. 525 (1923), a case he had criticized in a book written before his appointment to the Court). More common still is a judge's confronting a legal issue on which he has expressed an opinion while on the bench. Most frequently, of course, that prior expression will have occurred in ruling on an earlier case. But judges often state their views on disputed legal issues outside the context of adjudication—in classes that they conduct, and in books and speeches. Like the ABA Codes of Judicial Conduct, the Minnesota Code not only permits but encourages this. See Minn. Code of Judicial Conduct, Canon 4(B) (2002) ("A judge may write, lecture, teach, speak and participate in other extra-judicial activities concerning the law . . ."); Minn. Code of Judicial Conduct, Canon 4(B), Comment. (2002) ("To the extent that time permits, a judge is encouraged to do so . . ."). That is quite incompatible with the notion that the need for openmindedness (or for the appearance of openmindedness) lies behind the prohibition at issue here.

The short of the matter is this: In Minnesota, a candidate for judicial office may not say "I think it is constitutional for the legislature to prohibit same-sex marriages." He may say the very same thing, however, up until the very day before he declares himself a candidate, and may say it repeatedly (until litigation is pending) after he is elected. As a means of pursuing the objective of openmindedness that respondents now articulate, the announce clause is so woefully under inclusive as to render belief in that purpose a challenge to the credulous. . .

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The Minnesota Supreme Court's canon of judicial conduct prohibiting candidates for judicial election from announcing their views on disputed legal and political issues violates the First Amendment.