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Last month, a regulation protecting **judicial** integrity survived a close shave with the U.S. **Supreme Court**. In a 5-4 decision, the **court** ruled that Florida may forbid its **judicial** candidates (many of whom are incumbent judges) to personally solicit campaign donations from potential donors (most of whom are lawyers and potential litigants likely to appear before them).

Similar bans exist in most of the 39 states holding **judicial elections** — including Oregon, whose **Supreme Court** decision on the matter was quoted approvingly in the high **court's** opinion, and whose attorney general filed a brief with the **court** supporting the constitutionality of the ban.

According to Florida law, solicitation of campaign donations is allowed only through committees established by the candidates, and not by the candidates themselves. Admittedly, candidates may know exactly who donated and how much, and may even write thank-you notes to the donors; but personal appeals — with their accentuated danger of reward or retaliation — can be forbidden.

As the **Supreme Court** put it: "The identity of the solicitor matters, as anyone who has encountered a Girl Scout selling cookies outside a grocery store can attest. When the **judicial** candidate himself asks for money, the stakes are higher for all involved. The candidate has ... placed his name and reputation behind the request."

The opinion was joined by the four liberal justices, plus Chief Justice John Roberts (the same uncommon configuration that saved the Affordable Care Act in 2012). Its message was clear: Judges are not politicians, and **judicial elections** are not political **elections**. Thus, restrictions that would violate the First Amendment if imposed on political election campaigns are allowed in regard to **judicial elections**.

This claim was rejected by the four dissenting justices. They thought that **judicial elections** should be treated like any other political election.

"(T)he First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office," wrote Justice Anthony Kennedy for himself and for Justice Samuel Alito, thereby implying that a judge is a political operative.

Justice Antonin Scalia, joined by Justice Clarence Thomas, went further: "A free society, accustomed to electing its rulers, does not much care whether the rulers operate through statute and executive order, or through **judicial** distortion of statute, executive order, and constitution," he wrote. "The prescription that judges be elected probably springs from the people's realization that their judges can become their rulers."

In other words, judges are wont to impose their policy preferences through the manipulation of

statutory and constitutional interpretation, and **judicial elections** come to assure that these **judicial** policy preferences are at least aligned with the policy preferences of the electorate. **Judicial elections** are therefore political **elections** par excellence (since they are about the policy preferences of the candidates), and should therefore be treated as such.

This is a cynical and dangerous view of judges and the **judicial** process. It questions the professional integrity of America's judges, and mocks the attempt to preserve that integrity.

Thankfully, this view was rejected by the **Supreme Court** — albeit on the strength of a single vote.

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