

## **SUMMARY**

James Bopp, Jr.

Anita Y. Woudenberg

**JAMES MADISON CENTER FOR FREE SPEECH**

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### **Rule 5.02(d)**

The James Madison Center for Free Speech organizes its analysis of Rule 5.02 (d) into three parts: 1) “with respect to cases, controversies, or issues that are likely to come before the court,” 2) “make pledges, promises or commitments,” and 3) “that are inconsistent with the impartial performance of the adjudicative duties of the office.”

In regard to the language “with respect to cases, controversies, or issues that are likely to come before the court,” in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002) the U.S. Supreme Court stated ““there is almost no legal or political issue that is unlikely to come before a judge of an American court, state or federal, of general jurisdiction.”” This statement suggests that the predictive ability suggested by the proposed language is not truly available. At best, it is vague. Additionally, if the language is meant to limit the “pledges and promises” clause, it unintentionally suggests that pledges and promises may be made if a case is not likely to come before a court.

Regarding the language “make pledges, promises or commitments,” the James Madison Center finds it unclear how a pledge or promise is different from a commitment. It sees the use of “commits” language as either vague or unconstitutionally overbroad. The Center notes that the phrase “that are inconsistent with the impartial performance of the adjudicative duties of the office.” lacks sufficient concreteness to offer any real direction to judicial candidates on what can be said and not said.

The James Madison Center suggests using the following language: “Judges Cannot “Promise Certain Results in Particular Cases.” They note that this language gives judicial candidates sufficient notice as to what is prohibited under the canons.