

No. 13-1499

IN THE
Supreme Court of the United States

LANELL WILLIAMS-YULEE,
Petitioner,

v.

THE FLORIDA BAR,
Respondent.

**On Writ of Certiorari to the
Supreme Court of Florida**

**BRIEF OF *AMICUS CURIAE*
THE CARTER CENTER
IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

Whether a rule prohibiting judicial candidates from personally soliciting campaign funds violates the First Amendment.

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INTEREST OF *AMICUS CURIAE*¹

The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, to advance peace and health worldwide. A not-for-profit, nongovernmental organization, The Carter Center has helped to improve life for people in over 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care.

The Center's Democracy Program has observed nearly 100 elections in 38 countries since 1989 and played a leading role in building consensus on standards for democratic elections based on state obligations under public international law. The Center has surveyed nearly 200 sources of public international law in order to generate public tools for assessing elections against human rights commitments. This extensive comparative research supports the argument that protection of judicial impartiality can provide an appropriate rationale for reasonably restricting expression by judicial candidates.

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represents that it authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Both the Petitioner and the Respondent have consented in writing to the filing of this brief.

SUMMARY OF ARGUMENT

Neither the importance nor the challenge of securing an effective and independent judiciary is a uniquely American phenomenon. For decades, international and regional organizations have focused on codifying principles and standards of judicial conduct, designed to improve the confidence of citizens in the tribunals of their nations. These documents make clear that promoting judicial impartiality—and, importantly, the appearance of judicial impartiality—are core interests of governments.

International norms also underscore that maintaining the public's confidence in an impartial judiciary requires judges to accept certain limits on their conduct—limits greater than those ordinarily imposed on other citizens. Among these could be limits on expressive conduct when that conduct creates an appearance of partiality or otherwise undermines the integrity of the judiciary. For at least some countries that share our legal tradition, appropriate measures have included restrictions on judicial fundraising.

Although international norms are neither dispositive nor binding in the case before this Court, *amicus* believes these norms provide important context and counsel in favor of affirming the judgment of the Florida Supreme Court. To be sure, other nations have not adopted wholesale our First Amendment jurisprudence and competitive judicial elections are not widely practiced outside the United States. But international law norms strongly reflect the compelling government interest in judicial impartiality and the need for limits on judicial fundraising.

ARGUMENT

I. INTERNATIONAL AND REGIONAL INSTITUTIONS HAVE ARTICULATED NORMS AND PRINCIPLES OF JUDICIAL INDEPENDENCE

Over several decades, international and regional organizations have developed a body of principles and guidelines for securing the independence and impartiality of the judiciary. As early as 1948, the United Nations stressed the importance of an independent judiciary. *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948). Other independent organizations also began to focus on judicial independence. What began as a series of projects by separate organizations would soon grow into a set of uniform principles.

In 1980, the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders requested the U.N. Committee on Crime Prevention and Control draft guidelines on the independence of the judiciary; that same year, a special rapporteur was appointed by the United Nations to study the independence and impartiality of judges and other legal officers. See Hon. Giovanni E. Longo, *The Human Right to an Independent Judiciary: International Norms and Denied Application Before a Domestic Jurisdiction*, 70 ST. JOHN'S L. REV. 111, 115 (2012).

Meanwhile, the International Association of Judicial Independence and World Peace (hereafter IAJIW), a group formed to promote and encourage principles of judicial independence, acted in conjunction with the International Bar Association to prom-

ulgate the New Delhi Code of Minimum Standards on Judicial Independence at the 19th International Bar Association Biennial Conference. Int'l Ass'n of Judicial Indep. and World Peace, *The New Delhi Code of Minimum Standards on Judicial Independence* (Oct. 22, 1982), available at <<http://www.jiwp.org/#!/new-delhi-declaration/c134r>>. The New Delhi Standards included a code of conduct for judicial officers and steps necessary to secure judicial independence and impartiality. *Id.* In 1983, members of the IAJIW adopted the Universal Declaration on the Independence of Justice, also known as the Montreal Declaration—a set of principles governing both international and national judges and tribunals. Int'l Ass'n of Judicial Indep. and World Peace, *Universal Declaration on the Independence of Justice* (June 10, 1983), available at <<http://www.jiwp.org/#!/montreal-declaration/c1bue>>.

The U.N. would revisit the issue of judicial independence and impartiality again when, in 1985, the United Nations General Assembly adopted the United Nations Basic Principles on the Independence of the Judiciary. *U.N. Basic Principles on the Independence of the Judiciary*, U.N. Doc. A/CONF.121/22/Rev/1 (1985).

The United Nations then supplemented the Basic Principles with concrete steps in aid of their implementation. In 1989, “guided by the desire to promote the independence and impartiality of the judiciary,” the General Assembly approved procedures for effective implementation of the Basic Principles, including requiring the Secretary-General to report every five years on the progress of observance of the Basic

Principles throughout the world. *Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary*, U.N. Doc. E/RES/1989/60 (May 24, 1989), *endorsed at* G.A. Res. 44/162, U.N. Doc. A/RES/44/162 (December 15, 1989).

The Basic Principles have served as the framework for subsequent international agreements. For example, in 2000, the Judicial Group on Strengthening Judicial Integrity [hereafter the “Judicial Integrity Group”], initially comprised of a group of Chief Justices and Superior Court Judges from around the world, decided to begin drafting an updated set of standards of judicial conduct and accountability. The Judicial Integrity Group authored the Bangalore Principles of Judicial Conduct in 2002, with judicial independence as its first principle. U.N. Economic and Social Council (ECOSOC), *U.N. Economic and Social Council Resolution 2006/23: Strengthening Basic Principles of Judicial Conduct*, U.N. Doc E/RES/2006/23 (July 27, 2006). In 2006, the United Nations Social and Economic Council passed a resolution encouraging member States to adopt the Bangalore Principles for their own judiciaries. *Id.*

The United Nations reaffirmed their commitment to judicial independence in 2003 with the adoption of the United Nations Convention Against Corruption, to which the United States is a party. The Convention specifically provides that, “[b]earing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity

and to prevent corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.” *United Nations Convention Against Corruption*, G.A. Res. 58/4, U.N. Doc. A/58/422 at art. 11(1) (2003), entered into force Dec. 14, 2005.

Several regional international bodies have developed similar standards. In 1997, a conference of Supreme Court Chief Justices from the Asia-Pacific region adopted a uniform set of standards for the protection of judicial independence, *see Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA Region* (amended 1997), *available at* <http://www.asianlii.org/asia/other/CCJAPRes/1995/1.html>, and in 1998 a group of judges, lawyers, and legal academics drafted a similar code later adopted by more than twenty Commonwealth Countries. *See* Latimer House Guidelines for the Commonwealth, art. 2 (1998), *available at* <http://www.arablegalportal.org/criminal-laws/Images/CodeLink/32.pdf>. The Statute of the Iberoamerican Judge, drafted in 2001 at a summit held in Santa Cruz de Tenerife, notes that impartiality is an indispensable condition if the exercise of jurisdictional function is to succeed. *See Statute of the Iberoamerican Judge*, Art. 7 (amended 2001), *available at* <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2014/10/Statute-Iberoamerican-Judge.pdf>.

As new international judicial bodies have been established, they have also embraced the need for judicial independence and integrity as a key central

principle. For example, in 2004 the Project on International Courts and Tribunals, in association with other groups, drafted the Burgh House Principles on the Independence of the International Judiciary. See The Centre for International Courts & Tribunals, *The Burgh House Principles on the Independence of the International Judiciary*, available at http://www.ucl.ac.uk/laws/cict/docs/burgh_final_21204.pdf (reproducing the *Burgh House Principles on the Independence of the International Judiciary*).²

Thus, decades of codification efforts by international and regional organizations have established a set of international norms of judicial conduct.

II. INTERNATIONAL NORMS UNDERSCORE STATES' COMPELLING INTEREST IN MAINTAINING PUBLIC CONFIDENCE IN THE IMPARTIAL JUDICIARY

International norms reaffirm the compelling state interest in an impartial judiciary. The International Covenant on Civil and Political Rights—which the United States has signed and ratified³—entitles

² Furthermore, IAJIW, the same organization that first promulgated both the New Delhi Standards and Montreal Declaration, released an updated set of standards in 2008. See Int'l Ass'n of Judicial Indep. & World Peace, *Mt. Scopus Approved Revised International Standards of Judicial Independence* (Mar. 19, 2008), available at <<http://www.jiwp.org/#!mt-scopus-standards/c14de>>.

³ The United States ratified the International Covenant on Civil and Political Rights in 1992, subject to reservations. 138 Cong. Rec. S4781-01 (daily ed., April 2, 1992).

criminal defendants and civil litigants “to a fair and public hearing by a competent, independent and impartial tribunal established by law.” *Int’l Covenant on Civil & Political Rights*, art. 14, para. 1, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976.

Ensuring that their judiciaries meet these standards is the responsibility of national governments, which must prescribe “rules concerning the exercise of judicial office.” *U.N. Basic Principles on the Independence of the Judiciary*, U.N. Doc. A/CONF.121/22/Rev/1 at 59 (1985). The United Nations thus requires “[a]ll States” to “adopt and implement in their justice systems the Basic Principles on the Independence of the Judiciary in accordance with their constitutional process and domestic process.” U.N. Doc. E/RES/1989/60 (May 24, 1989), *endorsed at* G.A. Res. 44/162, para. 1, U.N. Doc. A/RES/44/162 (December 15, 1989); *see also* U.N. Economic and Social Council (ECOSOC), *U.N. Economic and Social Council Resolution 2006/23: Strengthening Basic Principles of Judicial Conduct*, U.N. Doc. E/RES/2006/23 (July 27, 2006) (“[T]he primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary of each country”). It is not unusual to see subnational implementation of human rights norms in a federal system. While the United States Constitution gives exclusive authority to enter into treaties to the federal government, the United States often ratifies human rights treaties with the understanding that states and localities are responsible for implementation in areas under their jurisdiction.

See, e.g., Restatement (Third) of Foreign Relations Law of the United States § 321(b) (1987).

International documents repeatedly identify impartiality as the core characteristic of an independent judiciary. See U.N. Economic and Social Council (ECOSOC), *U.N. Economic and Social Council Resolution 2006/23: Strengthening Basic Principles of Judicial Conduct*, U.N. Doc. E/RES/2006/23 (July 27, 2006) (“Impartiality is essential to the proper discharge of the judicial office.”); *U.N. Basic Principles on the Independence of the Judiciary*, U.N. Doc. A/CONF.121/22/Rev.1 (1985) (“[J]udges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”); International Criminal Court, *Code of Judicial Ethics*, ICC-BD/02-01-05 (2005) (“Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.”); The Centre for International Courts & Tribunals, *The Burgh House Principles on the Independence of the International Judiciary*, available at http://www.ucl.ac.uk/laws/cict/docs/burgh_final_21204.pdf (reproducing the *Burgh House Principles on the Independence of the International Judiciary*) (“[J]udges shall decide cases impartially, on the basis of the facts...”).

International norms not only require national judiciaries to be free of bias—they must also eschew the *appearance* of impartiality. Simply put, “appearance is as important as reality in the performance of judicial functions,” and a “judge has the duty not only to render a fair and impartial decision, but also to

render it in such a manner as to be free from any suspicion as to its fairness and impartiality.” U.N. Economic and Social Council (ECOSOC), U.N. Economic and Social Council Resolution 2006/23: *Strengthening Basic Principles of Judicial Conduct*, U.N. Doc E/RES/2006/23 at Gen. Cmt. 110 (July 27, 2006). The Bangalore Principles, therefore, are emphatic that not only propriety, but also “the appearance of propriety, are essential to the performance of all of the activities of a judge.” *Id.* at sec. 4; *see id.* at sec. 4.1 (“A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.”); *see also* International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners Guide* at 104 (2d ed., 2007) (“A judge shall not sit in a case where a reasonable apprehension of bias on his part or conflict of interest [or] incompatibility of functions may arise.”) (quoting the Draft Universal Declaration on the Independence of Justice).

Accordingly, international norms strongly support the compelling interest of governments in maintaining the public’s confidence in an impartial judiciary.

III. INTERNATIONAL NORMS SUPPORT RESTRICTIONS ON PERSONAL JUDICIAL FUNDRAISING AS AN APPROPRIATELY TAILORED MEANS OF ADVANCING THE STATES' INTEREST IN JUDICIAL IMPARTIALITY

International norms likewise support restrictions on judicial expression as a proper means of establishing a judiciary free of partiality—or appearance thereof. They recognize that, to promote the appearance of impartiality, judges labor under restrictions that are not necessarily borne by other citizens. “As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.” U.N. Economic and Social Council (ECOSOC), *U.N. Economic and Social Council Resolution 2006/23: Strengthening Basic Principles of Judicial Conduct*, U.N. Doc. E/RES/2006/23 at sec. 4.2 (July 27, 2006).

As international norms also recognize, the judge does not shed these special restrictions upon leaving the courthouse. Instead, the judge must “ensure that his or her conduct, *both in and out of court*, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and judiciary.” *Id.* at sec. 2.2 (emphasis added). This is because “[e]verything—from a judge’s associations or business interests, to remarks that he or she may consider to be nothing more than harmless banter—may diminish the judge’s perceived impartiality.” *Id.* at Gen. Cmt. 65.

At least some of the judicial conduct that may be affected could be expressive conduct. For example, the code of judicial ethics governing judges of the International Criminal Court directs them to “exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial independence or impartiality.” International Criminal Court, *Code of Judicial Ethics*, ICC-BD/02-01-05 at art. 9.1 (2005). Thus, “[w]hile judges are free to participate in public debate on matters pertaining to legal subjects, the judiciary or the administration of justice,” the code directs them to “avoid expressing views which may undermine the standing and integrity of the Court.” *Id.* at art. 9.2.

Other international bodies have promulgated similar restrictions. According to the Inter-American Commission on Human Rights, “[t]he general principle is that judges enjoy the right to freedom of expression like other citizens, but this right may be restricted if it affects the *independence and impartiality* that they must have in the cases in which they participate.” Inter-Am. Comm’n H.R., *Guarantees for the independence of justice operators*, OEA/Ser. L/V/II, Doc 44, para. 173 (2013). See also *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, 213 U.N.T.S. 221 at art. 10(2), entered into force Sep. 3, 1953 (noting that freedom of expression may be restricted as necessary to maintain the impartiality of the judiciary).

Although the practice of popular judicial elections is not widespread outside the United States, other nations—including nations with which the

United States shares legal traditions—have placed restrictions on judges’ fundraising communications. For example, Canada’s ethical principles for judges, published by the Canadian Judicial Council in 1998, forbids judges to “solicit funds . . . or lend the prestige of judicial office to such solicitations.” Canadian Judicial Council, *Ethical Principles for Judges* (Ottawa: Canadian Judicial Council, 1998) at ch. 6, principle C1(b); see also Ontario Judicial Council, *Principles of Judicial Office for Judges* (Toronto: Ontario Judicial Council, 2013) at ch. 3, commentary (“[J]udges should not lend the prestige of their office to fund-raising activities.”); Judicial Council of British Columbia, *Code of Judicial Ethics* (Vancouver: Judicial Council of British Columbia, 1994) at rule 2.04(b) (“[J]udges should not participate in fund-raising activities.”).

These measures were enacted, in part, to combat any appearance of improper coercion. As the ethical principles note, “[a] judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.” Canadian Judicial Council, *Ethical Principles for Judges* at C.4(2). Later, the principles add that “a judge should not allow the prestige of judicial office to be used in aid of fund raising for particular causes, however worthy. This principle suggests that judges (apart from requests to judicial colleagues) should not personally solicit funds or lend their names to financial campaigns.... [W]hen a judge is directly involved in fund raising there may be a temptation for lawyers or litigants who are canvassed to try to curry favour with the judge by contributing.” *Id.* at C.6.

These comparative examples and the international norms that they reflect counsel that a limitation on a judge's fundraising activities is an appropriate means of advancing the compelling government interest in maintaining the public's confidence in an impartial judiciary.

CONCLUSION

The Court should affirm the decision of the Supreme Court of Florida. Because Canon 7C(1) of the Florida Code of Judicial Conduct is a narrowly tailored means of furthering a compelling government interest, the Court should hold that it does not violate the Constitution.

Respectfully submitted,

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