

THE ROLE OF THE BAR IN POLITICIZED JUDICIAL ELECTIONS

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I. INTRODUCTION

The Supreme Court of the United States has now laid it down that the First Amendment governs speech in judicial elections.¹ The immediate issue addressed by the Court was the right of a judicial candidate to speak about the candidate's own qualifications. However, the same protection clearly would extend to others addressing the subject, including opposing candidates and various interest groups and onlookers. The Court's opinion does not precisely address any limits on the content of speech in judicial elections, but we may assume that the general rules apply, particularly those applicable to "public figures." Under the rules of speech concerning "public figures, anything goes short of falsehoods uttered with "malice," whatever that is.²

The concept of malicious falsehood in the First Amendment context is not at all clear. However, I suppose—or perhaps it is only that I would like to think—that, in Oregon, that concept poses a purely theoretical issue in the context of judicial elections. The Oregon electorate is relatively sophisticated and generally fair-minded. Historically, it has not been easily misled by political lies. Hence, we may assume that politically effective speech in Oregon judicial elections will be at least minimally relevant and truthful.

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1. *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002).

2. *See Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988); *New York Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964).