

Courts and the 2020 Elections: Partisans for Truth and the Rule of Law

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*Free, fair elections are the lifeblood of our democracy. Charges of unfairness are serious. But calling an election unfair does not make it so. Charges require specific allegations and then proof. We have neither here.*¹

Courts across the United States—state and federal—consistently rejected efforts to upend the 2020 presidential election based on unsupported allegations of fraud or other illegality. They showed their commitment to the rule of law and their vital role in providing forums where claims are resolved based on evidence and reasoned debate. But while courts are a necessary bulwark for our democracy, events since November 2020 have underscored that we cannot rely on courts alone. In a time of increasing partisanship and the use of disinformation to undermine trust in government and other institutions, we must work to strengthen our courts, not only in their adjudicatory role, but also as exemplars of how we should distinguish fact from fantasy in addressing our nation’s challenges.

The 2020 election was a remarkable success in many ways. Despite a global pandemic and restrictions on public gatherings, a record-breaking number of people voted.² Turnout increased nationwide, in both red and blue states, and across demographic groups, with the greatest proportional gain among those ages 18 to 34. Some 69 percent of those voting took advantage of opportunities to vote early or by mail. That 155 million citizens successfully cast their votes during a public health emergency is a testament to both their commitment and the extraordinary dedication of election officials and volunteers nationwide.

That President Donald Trump would attack the election results even before they were announced is also remarkable but not surprising. No presidential candidate previously had disputed an election’s outcome by asserting baseless claims of widespread fraud. But Trump had a track record of attacking the integrity of elections, as illustrated in 2016 by his tweeting that an opponent “didn’t win the Iowa primary, he stole it,” and later suggesting he would not accept the results of the general election if he lost.³ In 2020, he repeatedly used the word “rigged” in tweets referring to the upcoming election.⁴ When the U.S. Supreme Court declined in late October 2020 to prevent Pennsylvania from accepting ballots mailed by Election Day but received thereafter, Trump responded on social media by saying this “very dangerous” decision “will allow rampant and unchecked cheating and will undermine our entire systems of laws. It will also induce violence in the streets.”⁵

After election returns reflected that Joe Biden had won several swing states, Trump supporters filed a flurry of lawsuits seeking to delay or undo the certification of the results. Nearly 60

lawsuits were filed, largely concentrated in Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin.⁶ Trump's supporters won a victory in a Pennsylvania trial court, which ruled that certain mail-in ballots could not be counted for first-time voters who did not confirm their identity by November 9.⁷ But the Trump challenges failed in every other case.

The legal challenges failed because judges were not guided by their own political affiliations, but instead honored their pledges to decide cases fairly, based on the facts and the law, and—in the words of the oath of office for federal judges—“without respect to persons.”⁸ Another factor is that different standards apply to claims made in courtrooms as compared to postings on social media. Court rules (such as Rule 11 of the Federal Rules of Civil Procedure) and the ethical rules governing lawyers bar pursuing lawsuits that lack a reasonable basis in fact or law. Many of the legal challenges to the election were voluntarily dismissed or withdrawn shortly after their filing, which may reflect the lawyers' recognition of their futility.

The post-election litigation proceeded in phases tied to a state's certification of its electoral results, and multiple lawsuits were often concurrently under way in state and federal courts. After November 3, election results generally were first certified at the county level, followed by a state-level certification that included the selection of presidential electors. Deadlines loomed. Under the Electoral Count Act of 1887, state court decisions by December 8 on disputes over the selection of electors could be binding on Congress in its counting of electoral votes.⁹ On December 14, electors would meet in their respective states to cast their votes.¹⁰ Given these deadlines, the 2020 post-election lawsuits generally involved expedited proceedings and requests for injunctions.

Arizona is illustrative. The first lawsuit attempted to block the certification of results for Maricopa County, which has most of the state's voters and Biden won by some 45,000 votes (he won statewide by 10,457 votes).¹¹ Under Arizona law, hand-count audits were conducted to check machine tabulations. The audits were based on samples of votes cast by mail (as most votes are in Arizona) and at voting centers, which were used in place of precinct polling places due to the pandemic. A sample of more than 7,000 ballots showed the machines performed flawlessly. On November 12, however, Arizona's Republican Party sued in the state superior court contending the hand counts needed to be performed on samples based on precincts. One week later, the court dismissed the lawsuit, noting that the audit procedures had been lawfully established before the election and the requested relief was beyond the court's authority.¹²

Maricopa County proceeded to certify its election results on November 23 by a unanimous vote of its Board of Supervisors, which had four Republican members and one Democrat. Before the vote, an attorney for the county noted that a Trump campaign lawyer had acknowledged in court that there was no proof of fraud that would have changed the election's outcome, and the board's Republican chair said, “there was no proof of fraud or misconduct in the election and he was confident that voters were provided with a fair election.”¹³

Arizona's statewide election canvass took place on November 30. Based on the certified results from Maricopa and Arizona's 14 other counties, the secretary of state and the governor

certified the selection of presidential electors for Biden.¹⁴ That same day, Kelli Ward, the chair of Arizona's Republican Party and an elector candidate for Trump, filed an election contest in the superior court. Arizona, like many other states, allows post-certification actions to contest elections on specified grounds.¹⁵ This lawsuit, *Ward v. Jackson*, contended the election should be set aside based on misconduct by election officials, illegal votes, and an erroneous vote count.¹⁶

Notably, the plaintiffs in *Ward v. Jackson* did not identify systemic or widespread fraud or other election misconduct. Instead, they contended that party-designated election observers were not allowed sufficient access at ballot-processing locations and that errors were made in verifying signatures for mail-in ballots or in duplicating ballots that otherwise could not be machine tabulated. The trial court rejected the claim related to election observers as untimely because the procedures had been identified well before the election. The court also allowed the inspection of some 1,600 duplicate ballots and held an expedited evidentiary hearing on December 2 and 3. While some inconsequential errors were identified in duplicating ballots, there was no evidence of intentional misconduct. The trial court rejected the challenge, and the Trump supporters promptly appealed to the Arizona Supreme Court.

Arizona's Supreme Court expedited the case and affirmed the trial court's ruling on December 8. The court, which comprised six Republican justices and one Independent, noted in its unanimous ruling that "[t]he challenge fails to present any evidence of 'misconduct,' 'illegal votes' or that the Biden Electors 'did not in fact receive the highest number of votes for office,' let alone establish any degree of fraud or a sufficient error rate that would undermine the certainty of the election results."¹⁷

While *Ward v. Jackson* moved quickly through the state courts, Trump supporters filed another action in the U.S. district court on December 3. This lawsuit in some ways echoed *Ward* but also more broadly asked the court to "set aside" the election results because they were so riddled with fraud and illegality as to undermine their legitimacy.¹⁸ The district court dismissed this complaint within a week, issuing a lengthy order noting numerous procedural and substantive flaws that included the plaintiffs' lack of standing, other jurisdictional bars, and the failure to plead fraud with the requisite particularity. The district court observed, "Allegations that find favor in the public sphere of gossip and innuendo cannot be a substitute for earnest pleadings and procedure in federal court. They most certainly cannot be the basis for upending Arizona's 2020 General Election."¹⁹

Across the nation, state and federal courts similarly rejected challenges by Trump supporters. Federal courts in Georgia, Michigan, and Wisconsin refused to block the certification of results in those states.²⁰ On December 8, the Nevada Supreme Court unanimously affirmed a trial court's ruling rejecting an election contest after an evidentiary hearing.²¹ That same day, the U.S. Supreme Court declined to upset a November 25 decision of the Pennsylvania Supreme Court, which had rejected as untimely a challenge to the state legislature's 2019 authorization of mail-in ballots.²² These actions followed rulings by the U.S. district court in Pittsburgh and the U.S. Court of Appeals for the Third Circuit rejecting challenges to how Pennsylvania had

used election observers or allowed voters to correct technical errors in mail-in ballots.²³ Michigan’s Supreme Court declined to review lower court decisions rejecting Trump challenges to the election results, and the Wisconsin Supreme Court refused to invalidate more than 220,000 ballots cast in two counties.²⁴

On December 7, the Texas Attorney General took the bootless step of asking the U.S. Supreme Court to block Georgia, Michigan, Pennsylvania, and Wisconsin from voting in the Electoral College or, alternatively, to order the legislatures in those states to appoint presidential electors in place of those picked by the voters.²⁵ Although this lawsuit complained about “significant and unconstitutional irregularities” in how the identified states had conducted their elections, and asserted that “these flaws cumulatively preclude knowing who legitimately won the 2020 election,” it did not identify evidence of widespread fraud or misconduct. Instead, it complained that voting procedures meant to help people to vote—such as expanded mail-in or early voting—had impermissibly been adopted by courts or election officials rather than state legislatures as required by the Constitution.²⁶ After this action was filed, Trump tweeted that “We will be INTERVENING in the Texas (plus many other states) case. This is the big one,” and he sought to intervene and file his own bill of complaint.²⁷

The Supreme Court summarily rejected Texas’s challenge on December 14, noting that Texas lacked standing to challenge “the manner in which another state conducts its election.”²⁸ Trump responded that day by tweeting, “The Supreme Court really let us down,” and “No Wisdom, No Courage!”—views he later repeated in tweets and other settings.²⁹

The vote of the Electoral College also occurred on December 14. The electors met in their respective states and cast their votes based on the previously certified results, yielding a 306–232 victory for President Biden. But litigation challenging the 2020 results continued. Texas congressman Louie Gohmert, along with the Trump elector candidates from Arizona, sued Vice President Mike Pence in federal court in Texas. That lawsuit asked the court to declare portions of the Electoral Count Act of 1887 unconstitutional and to order that Pence could determine which states’ electoral votes to count when Congress convened on January 6 for the tally. On January 1, 2021, the district judge—a Trump appointee—dismissed the action for lack of standing.³⁰

Litigation over the outcome of the 2020 presidential election extended for nearly two months without success for the Trump campaign. Judges at every level—from state courts of limited jurisdiction to the U.S. Supreme Court—rejected the challenges. The judges based their decisions not on partisanship, but instead on the merits of the legal arguments and the evidence presented. Judge Stephanos Bibas rightly observed both that “fair and free elections are the lifeblood of democracy” and that “calling an election unfair does not make it so.”³¹ Because questions about the integrity of elections directly affect the legitimacy of our government, it is critical that a democracy have forums where disputes over election outcomes can be resolved based on evidence and reasoned discourse. Courts perform this role by deciding cases in a nonpartisan way based on legal rules set before the votes are counted. Such a process exemplifies the rule of law. As citizens, we should be proud of how our courts—under

intense scrutiny and time constraints—upheld democracy by rejecting unsupported claims of fraud or impropriety.

The 2020 election also reminds us that while courts play a vital role, they cannot alone preserve democracy or the rule of law. False claims that the election was “stolen” may have failed in court, but they still prompted a violent mob to invade the Capitol on January 6 seeking to prevent Congress from performing its constitutional duty of counting the electoral votes. Courts could not curtail an attempted insurrection; instead, it took law enforcement officers and the National Guard to restore order, thus allowing Congress to reconvene and certify President Biden’s election.

Courts operate within the framework of legal rules. As Alexander Hamilton observed, the judiciary has “neither force nor will but merely judgment, and must ultimately depend on the executive arm even for the efficacy of its judgments.”³² A poignant historical reminder is the integration of Little Rock’s Central High School in September 1957. After a district court ordered that Black students be admitted, a mob of protesters surrounded the school to block their entry. President Dwight D. Eisenhower responded by deploying the U.S. Army’s 101st Airborne Division to enforce the district court’s order. Escorted by soldiers, the students—immortalized as the Little Rock Nine—bravely entered school under a barrage of threats and racial epithets. In televised remarks, the president explained his actions, noting, “the cornerstone of our liberties” is that “we are a nation in which laws, not men, are supreme.”³³ He recognized the president’s constitutional responsibility to see to the faithful execution of the laws. “The very basis of our individual rights and freedoms rests upon the certainty that the president . . . will support and insure the carrying out of the decisions of the Federal Courts.” The alternative, Eisenhower noted, is mob rule and anarchy.

We saw anarchy on January 6 with a president who viewed his responsibilities very differently than did President Eisenhower. On December 26, 2020, Trump tweeted that the Supreme Court had been “totally incompetent and weak on the massive Election Fraud that took place in the 2020 Presidential Election.”³⁴ He claimed to have “absolute PROOF” that widespread voter fraud occurred during the November election but said that the Supreme Court doesn’t “want to see it.” Since leaving office, Trump has continued to complain that the Supreme Court “didn’t have courage to act.”³⁵ Remarks like these undermine the rule of law by attacking the legitimacy of the judiciary. Repeated false claims of election fraud by Trump and other public figures also undermine the legitimacy of our government more broadly, with surveys showing that a third of the public continues to believe these unsupported claims.³⁶

Although courts acted commendably in the 2020 post-election litigation, we should be clear-eyed about the ongoing challenges. First, we should oppose efforts to undermine the independence and fairness of courts by making judicial selection processes more partisan or by adopting measures seeking to discourage judges from making decisions that may be unpopular with the elected branches of government. Experience around the world, in countries such as Turkey, Peru, Argentina, Poland, and Venezuela, teaches that aspiring autocrats not only have attacked the legitimacy of elections, but also have sought to undermine the judiciary as a

neutral arbiter—by packing courts with loyalists, intimidating or removing judges, and restructuring or even eliminating courts.³⁷

We also should recognize that courts will continue to be targeted by disinformation campaigns using social media. These efforts, some originating in Russia or other foreign countries, seek to undermine confidence in courts (and the rule of law) by mischaracterizing judicial decisions and attacking the integrity or competence of judges.³⁸ National security experts and the National Center for State Courts have called attention to this threat.³⁹ Some state courts have established task forces to identify ways to counter disinformation, which could include both responses to specific disinformation campaigns and proactive efforts to provide accessible and accurate information about court cases and broader efforts to educate journalists and the public about the courts.⁴⁰ Also helpful are the recommendations of the ABA Standing Committee on the American Judicial System, which has identified ways that bar associations can help counter false or unfair attacks on the courts.⁴¹ Courts cannot respond alone, and such attacks reflect a broader use of disinformation to sow division and undermine democratic institutions.

Courts do have the power, however, to respond to disinformation by lawyers, and it is important that they do so. Lawyers are governed by rules of professional conduct that distinguish truth from falsehood and evidence from mere assertion. The rules forbid lawyers from making false statements to judges or others.⁴² Rules and statutes also bar the filing of claims for improper purposes or without a reasonable basis in fact or law. Such rules proscribe baseless lawsuits filed to stir up distrust of election results, but this article does not comment on whether any lawyers who challenged the 2020 election engaged in sanctionable conduct. The more general point is that enforcing these rules governing lawyers is essential for preserving the integrity of court proceedings and the legitimacy of judicial decisions. Courts cannot serve as effective forums for distinguishing truth from falsehood if lawyers can make unsupported or misleading statements without consequence.

Finally, courts can serve as examples of how contested claims can be evaluated based on a nonpartisan consideration of evidence and reasoned analysis. Judges advance this goal in particular cases by fairly assessing the facts, respectfully evaluating conflicting viewpoints, and transparently explaining their findings and conclusions. While judges have limited ability to defend their decisions outside their written opinions, they can and should engage in public discussions about the nature of the judicial process and how judicial decision-making differs from legislative or executive action.⁴³ In a time of increasing partisanship on many issues dividing our nation, it is vitally important that we uphold our courts as partisans for truth and the rule of law.

Endnotes

[1.](#) Donald J. Trump for President, Inc. v. Sec’y of Pa., 830 F. App’x 377, 380 (3d Cir. 2020).

[2.](#) Jacob Fabina, Record High Turnout in 2020 General Election, U.S. Census Bureau (Apr. 29, 2021).

3. See *By the Numbers: President Donald Trump’s Failed Efforts to Overturn the Election*, USA Today (Jan. 26, 2021), <https://www.census.gov/library/stories/2021/04/record-high-turnout-in-2020-general-election.html> (identifying six prior elections that Trump claimed had been “rigged” or “stolen”); Steven Levitsky & Daniel Ziblatt, *How Democracies Die* 61 (2018).
4. *By the Numbers*, *supra* note 3.
5. Taylor Hatmaker, *Twitter Hides Trump Tweet Attacking Supreme Court’s Decision on Pennsylvania Ballots*, TechCrunch (Nov. 2, 2020), <https://techcrunch.com/2020/11/02/twitter-trump-pennsylvania-tweet-mail-in-voting-supreme-court>. See *Pa. Dem. Party v. Boockvar*, 238 A.3d 345 (Pa. 2020), *cert. denied sub nom. Republican Party of Pa. v. Degraffenreid*, 141 S. Ct. 732 (2021).
6. *By the Numbers*, *supra* note 3.
7. Jeremy Roebuck, *Pa. Appellate Court Sides with Trump in Fight over ID Deadlines for Voters, Tossing Small Number of Ballots*, Phila. Inquirer (Nov. 12, 2020), <https://www.inquirer.com/news/pennsylvania-election-trump-lawsuits-legal-challenges-id-mail-ballots-commonwealth-court-20201112.html>.
8. 28 U.S.C. § 453. See ABA Model Code of Jud. Conduct r. 2.4(B) (judges “shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment”); Code of Conduct for Fed. Judges Canon 2(b) (noting that judges “should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment”).
9. 3 U.S.C. § 5.
10. *Id.* § 7.
11. *Ariz. Sec’y of State, State of Arizona 2020 Official Canvass* (Nov. 30, 2020).
12. See *Arizona Republican Party v. Fontes*, No. CV2020014553 (Maricopa Cnty. Superior Ct. Dec. 21, 2021).
13. Jen Fifield, *Maricopa County Board of Supervisors Votes Unanimously to Certify Election Results*, *Ariz. Rep.* (Nov. 20, 2020), <https://www.azcentral.com/story/news/politics/elections/2020/11/20/maricopa-county-supervisors-meet-consider-certifying-election-results/6362991002>.
14. *State of Arizona 2020 Official Canvass*, *supra* note 11.
15. *Ariz. Rev. Stat.* §§ 16-672, 673.
16. *Ward v. Jackson*, 2020 WL 8617817 (Ariz. Dec. 8, 2020), *cert. denied*, 141 S. Ct. 1381 (2021).
17. *Ward*, 2020 WL 8617817 at *2, quoting *Ariz. Rev. Stat.* § 16-672.
18. *Bowyer v. Ducey*, 506 F. Supp. 3d 699, 706 (D. Ariz. 2020).
19. *Id.* at 724.
20. *Wood v. Raffensperger*, 501 F. Supp. 3d 1310 (N.D. Ga.), *aff’d*, 981 F.3d 1307 (11th Cir. 2020), *cert. denied*, 141 S. Ct. 1379 (2021); *King v. Whitmer*, 505 F. Supp. 3d 720 (E.D. Mich. 2020), *appeal dismissed*, No. 20-2205, 2021 WL 688804 (6th Cir. Jan. 26, 2021); *Feehan v. Wis. Elections Comm’n*, No. 20-CV-1771-PP, 2020 WL 7250219 (E.D. Wis. Dec. 9, 2020), *appeal dismissed*, No. 20-3396, 2020 WL 9936901 (7th Cir. Dec. 21, 2020).
21. *Law v. Whitmer*, 477 P.3d 1124 (table), 2020 WL 7240299 (Nev. Dec. 8, 2020).
22. *Kelly v. Pennsylvania*, 141 S. Ct. 950 (Mem.) (2020). The Court on January 1 refused to expedite consideration and on February 22 denied the petition for certiorari. *Kelly v. Pennsylvania*, 141 S. Ct. 1044 (2021) (Mem.); 141 S. Ct. 1449 (Mem.) (2021).

- [23.](#) Donald J. Trump for President, Inc. v. Boockvar, 502 F. Supp. 3d 899 (M.D. Pa.), *aff'd sub nom.* Donald J. Trump for President, Inc. v. Sec'y of Pa., 830 F. App'x 377 (3d Cir. 2020), and *appeal dismissed sub nom.* Signed v. Sec'y of Pa., No. 20-3384, 2021 WL 807531 (3d Cir. Jan. 7, 2021).
- [24.](#) Costantino v. City of Detroit, 950 N.W.2d 707 (Mich. 2020); Trump v. Biden, 951 N.W.2d 568 (Wis. 2020), *cert. denied*, 141 S. Ct. 1387 (2021).
- [25.](#) Mot. for Leave to File Orig. Complaint, Texas v. Pennsylvania, U.S. Sup. Ct. No. 220155 (Dec. 7, 2020).
- [26.](#) See U.S. Const. art. II, § 1 (providing that each state shall appoint presidential electors "in such Manner as the Legislature thereof may direct").
- [27.](#) Mot. to Intervene by Donald J. Trump, *Texas v. Pennsylvania*, U.S. Sup. Ct. No. 220155.
- [28.](#) Texas v. Pennsylvania, U.S. Sup. Ct. No. 220155 (Dec. 11, 2021). Seven justices joined in denying Texas's motion to file a bill of complaint and dismissing all other motions as moot. Justices Samuel Alito and Clarence Thomas separately reaffirmed their view that the Court cannot reject a bill of complaint in cases within its original jurisdiction but said they would not grant other relief.
- [29.](#) *Trump Lashes Out at Supreme Court After Texas Election Lawsuit Rejected*, CBS (Dec. 12, 2020), <https://www.cbsnews.com/news/trump-supreme-court-texas-lawsuit-election>; Jonathan Easley, *Trump: Supreme Court Should Be Ashamed for Not Reversing Biden Win*, The Hill (Mar. 16, 2021), <https://thehill.com/homenews/news/543543-trump-supreme-court-should-be-ashamed-for-not-overturning-election>.
- [30.](#) Gohmert v. Pence, 2021 WL 17141 (E.D. Tex.), *aff'd*, 832 F. App'x 349 (5th Cir. 2021).
- [31.](#) Donald J. Trump for President, Inc. v. Sec'y of Pa., 830 F. App'x 377, 380 (3d Cir. 2020).
- [32.](#) The Federalist No. 78, at 471 (Alexander Hamilton) (Clinton Rossiter ed., 1961).
- [33.](#) A video of President Eisenhower's remarks is at <https://www.c-span.org/video/?434366-1/president-eisenhower-speech-rock>.
- [34.](#) James Crowley, *Trump Attacks FBI, DOJ, Supreme Court and GOP Senators in Twitter Tirade*, Newsweek On-line (Dec. 26, 2020), <https://www.newsweek.com/trump-attacks-doj-fbi-supreme-court-gop-senators-mitch-mcconnell-twitter-1557376>.
- [35.](#) John Fritze, *Supreme Court Refuses to Take Up Trump Suit About Wisconsin Election Results*, USA Today (Mar. 8, 2021), <https://www.usatoday.com/story/news/politics/2021/03/08/supreme-court-declines-hear-trump-election-claim-wisconsin/4628242001>.
- [36.](#) *Public Supports Both Early Voting and Requiring Photo ID to Vote*, Monmouth Univ. Polling Inst. (June 21, 2020), https://www.monmouth.edu/polling-institute/reports/monmouthpoll_us_062121.
- [37.](#) Levitsky & Ziblatt, *supra* note 3, at 78–81, 83.
- [38.](#) See Suzanne Spaulding & Devi Nair, *Beyond the Ballot: How the Kremlin Works to Undermine the U.S. Justice System*, Ctr. for Strategic & Int'l Studies (May 1, 2019), <https://www.csis.org/analysis/beyond-ballot-how-kremlin-works-undermine-us-justice-system>.
- [39.](#) See *id.*; *Combating Disinformation Campaigns Against the Courts*, Nat'l Ctr. for State Courts, @ the Center Newsl. (Oct. 21, 2021), <https://www.ncsc.org/newsroom/at-the-center/2020/combating-disinformation-campaigns-against-the-courts>.

[40.](#) Ariz. Sup. Ct. Task Force on Countering Disinformation, Final Report 10-11 (Oct. 1, 2020).

[41.](#) ABA Standing Comm. on the Am. Judicial Sys., Rapid Response to Fake News, Misleading Statements, and Unjust Criticism of the

Judiciary (2018), <https://www.americanbar.org/content/dam/aba/administrative/american-judicial-system/2018-rapid-response-to-fake-news.pdf>.

[42.](#) *See, e.g.*, ABA Model Rules of Pro. Conduct rr. 3.3 (prohibiting false statements of law or fact to tribunal), 4.1 (barring false statements of law or fact to others), 8.2 (barring false statements about qualifications or integrity of judges), 8.4 (defining misconduct to include dishonesty and misrepresentations).

[43.](#) Rule 2.10(a) of the ABA Model Code of Judicial Conduct bars judges from making any public statement that might reasonably be expected to affect the outcome or impair the fairness of pending cases, and this rule trumps the limited authority in Rule 2.10(e) for judges to respond to allegations in the media or otherwise regarding their conduct in a matter.