Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

CAPERTON ET AL. *v.* A. T. MASSEY COAL CO., INC., ET AL.

CERTIORARI TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 08–22. Argued March 3, 2009—Decided June 8, 2009

After a West Virginia jury found respondents, a coal company and its affiliates (hereinafter Massey), liable for fraudulent misrepresentation, concealment, and tortious interference with existing contractual relations and awarded petitioners (hereinafter Caperton) $50 million in damages, West Virginia held its 2004 judicial elections. Knowing the State Supreme Court of Appeals would consider the appeal, Don Blankenship, Massey's chairman and principal officer, supported Brent Benjamin rather than the incumbent justice seeking reelection. His $3 million in contributions exceeded the total amount spent by all other Benjamin supporters and by Benjamin's own committee. Benjamin won by fewer than 50,000 votes. Before Massey filed its appeal, Caperton moved to disqualify now-Justice Benjamin under the Due Process Clause and the State's Code of Judicial Conduct, based on the conflict caused by Blankenship's campaign involvement. Justice Benjamin denied the motion, indicating that he found nothing showing bias for or against any litigant. The court then reversed the $50 million verdict. During the rehearing process, Justice Benjamin refused twice more to recuse himself, and the court once again reversed the jury verdict. Four months later, Justice Benjamin filed a concurring opinion, defending the court's opinion and his recusal decision.

Held: In all the circumstances of this case, due process requires recusal. Pp. 6–20.

(a) The Due Process Clause incorporated the common-law rule requiring recusal when a judge has "a direct, personal, substantial, pecuniary interest" in a case, *Tumey* v. *Ohio*, 273 U. S. 510, 523, but this Court has also identified additional instances which, as an objec-

tive matter, require recusal where "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable," *Withrow* v. *Larkin*, 421 U. S. 35, 47. Two such instances place the present case in proper context. Pp. 6–11.

(1) The first involved local tribunals in which a judge had a financial interest in a case's outcome that was less than what would have been considered personal or direct at common law. In *Tumey,* a village mayor with authority to try those accused of violating a law prohibiting the possession of alcoholic beverages faced two potential conflicts: Because he received a salary supplement for performing judicial duties that was funded from the fines assessed, he received a supplement only upon a conviction; and sums from the fines were deposited to the village's general treasury fund for village improvements and repairs. Disqualification was required under the principle that "[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the State and the accused, denies the latter due process of law." 273 U. S., at 532. In *Ward* v. *Monroeville*, 409 U. S. 57, a conviction in another mayor's court was invalidated even though the fines assessed went only to the town's general fisc, because the mayor faced a "'possible temptation'" created by his "executive responsibilities for village finances." *Id.,* at 60. Recusal was also required where an Alabama Supreme Court justice cast the deciding vote upholding a punitive damages award while he was the lead plaintiff in a nearly identical suit pending in Alabama's lower courts. *Aetna Life Ins. Co.* v. *Lavoie*, 475 U. S. 813. The proper constitutional inquiry was not "whether in fact [the justice] was influenced," *id.*, at 825, but "whether sitting on [that] case . . . ' "would offer a possible temptation to the average . . . judge to . . . lead him not to hold the balance nice, clear and true," ' " *ibid.* While the "degree or kind of interest . . . sufficient to disqualify a judge . . . '[could not] be defined with precision, ' " *id.,* at 822, the test did have an objective component. Pp. 7–9.

(2) The second instance emerged in the criminal contempt context, where a judge had no pecuniary interest in the case but had determined in an earlier proceeding whether criminal charges should be brought and then proceeded to try and convict the petitioners. *In re Murchison*, 349 U. S. 133. Finding that "no man can be a judge in his own case," and "no man is permitted to try cases where he has an interest in the outcome," *id.*, at 136, the Court noted that the circumstances of the case and the prior relationship required recusal. The judge's prior relationship with the defendant, as well as the information acquired from the prior proceeding, was critical. In reiterating

that the rule that "a defendant in criminal contempt proceedings should be [tried] before a judge other than the one reviled by the contemnor," *Mayberry* v. *Pennsylvania*, 400 U. S. 455, 466, rests on the relationship between the judge and the defendant, *id.*, at 465, the Court noted that the objective inquiry is not whether the judge is actually biased, but whether the average judge in his position is likely to be neutral or there is an unconstitutional "'potential for bias,'" *id.,* at 466. Pp. 9–11.

(b) Because the objective standards implementing the Due Process Clause do not require proof of actual bias, this Court does not question Justice Benjamin's subjective findings of impartiality and propriety and need not determine whether there was actual bias. Rather, the question is whether, "under a realistic appraisal of psychological tendencies and human weakness," the interest "poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Withrow*, 421 U. S.*,* at 47. There is a serious risk of actual bias when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent. The proper inquiry centers on the contribution's relative size in comparison to the total amount contributed to the campaign, the total amount spent in the election, and the apparent effect of the contribution on the outcome. It is not whether the contributions were a necessary and sufficient cause of Benjamin's victory. In an election decided by fewer than 50,000 votes, Blankenship's campaign contributions—compared to the total amount contributed to the campaign, as well as the total amount spent in the election—had a significant and disproportionate influence on the outcome. And the risk that Blankenship's influence engendered actual bias is sufficiently substantial that it "must be forbidden if the guarantee of due process is to be adequately implemented." *Ibid.* The temporal relationship between the campaign contributions, the justice's election, and the pendency of the case is also critical, for it was reasonably foreseeable that the pending case would be before the newly elected justice. There is no allegation of a *quid pro quo* agreement, but the extraordinary contributions were made at a time when Blankenship had a vested stake in the outcome. Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when—without the other parties' consent—a man chooses the judge in his own cause. Applying this principle to the judicial election process, there was here a serious, objective risk of actual bias that required Justice Benjamin's recusal. Pp. 11–16.

Syllabus

(c) Massey and its *amici* err in predicting that this decision will lead to adverse consequences ranging from a flood of recusal motions to unnecessary interference with judicial elections. They point to no other instance involving judicial campaign contributions that presents a potential for bias comparable to the circumstances in this case, which are extreme by any measure. And because the States may have codes of conduct with more rigorous recusal standards than due process requires, most recusal disputes will be resolved without resort to the Constitution, making the constitutional standard's application rare. Pp. 16–20.

___ W. Va. ___, ___S. E. 2d ___, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA, THOMAS, and ALITO, JJ., joined. SCALIA, J., filed a dissenting opinion.