Per Curiam

SUPREME COURT OF THE UNITED STATES

No. 05–77

FEDERAL ELECTION COMMISSION, ET AL.,
PETITIONERS *v.* ACIDRAPS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[August 26, 2018]

PER CURIAM.

Presidential elections, to many, present a "hotbox of emotions." *Isner* v. *Federal Elections Comm'n*, 3 U. S. 87, 88 (2017) (Statement of Scalia, J., respecting the denial of certiorari). Not only do they play a major role in shaping our Nation's present state, but they are of great help in molding its future as well.[1] In an election, there will be "winners and there [will be] losers—such is to be expected." *Ibid.* But it is critical in a democratic system that the choice of who's who lie with the People. See Art. II, § 1, cl. 2. Courts, for one, will not impede that choice.[2] And neither should election officials. Having said that much, we must

[1] A duly-elected President will perform many important functions. *Inter alia*, they will sign or veto legislation, appoint judges, fill Senate vacancies, direct our foreign affairs, and oversee the Executive Branch.

[2] As a general matter, judicial policy strongly counsels against considering what we have termed "political questions." *Baker* v. *Carr*, 369 U. S. 186, 217 (1962); *JapanWhaling Assn.* v. *American Cetacean*, 478 U. S. 221, 229–230 (1986); *Elrod* v. *Burns*, 427 U. S. 347, 351–352 (1976); cf. *Nixon* v. *Herndon*, 273 U. S. 536, 540 (1927). See also *Trump* v. *Hawaii*, 585 U. S. ___, ___–___ (2018) (slip op., at 8–9) (discussing the relationship between a similar doctrine of justiciability and jurisdiction).

keep closely in mind that courts, too, are bound by the law, cf. *Citizens United* v. *Federal Elections Comm'n*, 558 U. S. 310, 326 (2010), and when policing the boundaries of election officials, must take care to heed our own limitations. In *Technozo* v. *United States*, 6 U. S. ___, ___ (2018) (slip op., at 1), we held that "clan managers are immune from liability in federal court . . . when they act pursuant to their prescribed duties in an area traditionally within the group holder's control." There are thus two questions the District Court should have considered before reaching this case's merits. *First*, whether the Federal Election Commission (FEC)—a clan-manager entity, see U. S. Const. Art. I, § 4—acted pursuant to its prescribed duties. *Next*, whether those duties fell within the group holder's traditional areas of responsibility. If the answer to both questions is "yes," then the District Court would have been required, as *Technozo* confirms, to find the FEC not liable and dismiss the case. We vacate the judgment below and remand for reconsideration in light of *Technozo* v. *United States*.

I

Some factual background should put this case into proper perspective.[3] AcidRaps, respondent here, was a candidate for President in the first 2018 Presidential Election. After registering in 2017, AcidRaps quickly became the favored candidate. But once incumbent President SheldonParty, together with former Vice President TimGeithner, announced his plans to seek re-election, AcidRaps's campaign took a sudden turn as support quickly shifted from him to the then-President. As time went on, SheldonParty's campaign gained large leads in the polls, further frustrating supporters of respondent and perpetuating an exodus from

[3] Our recitation of the facts in this case is based on a combination of common knowledge, the allegations in the record below, and other commonsense inferences. If the District Court proceeds beyond the *Technozo* phase, it is free to engage in its own factfinding.

his campaign. Later, however, an opportunity would present itself to respondent.

President SheldonParty and the United States had become entangled in an international conflict with North Korea. As war become an inevitability, the public remained divided on the issue. AcidRaps, some might say, saw it as an opportunity to recoup some of his losses in the polls and took a hard public stance against war with North Korea. In private, however, AcidRaps began communicating with the leader of North Korea, urging him to prolong the conflict so that he could use it for political gain.

When AcidRaps's communications with North Korea came to light (along with separate communications from his Vice Presidential candidate, who acted as a military advisor to North Korea), the FEC opened an investigation. Acting through its Federal Election Presidential Committee, the FEC heard testimony from both AcidRaps and the complainants against him. The FEC provided a fair opportunity for AcidRaps to provide his side of the story and complied with the procedures set forth in its Campaign Policy booklet. Ultimately, finding that he had likely violated FEC regulation and federal law, the FEC disqualified AcidRaps. Months later, after the election was over, AcidRaps filed this lawsuit in the District Court seeking an injunction barring the FEC from disqualifying candidates in future elections. The District Court issued the injunction and the FEC appealed.

II

We would be remiss to say that the District Court did not attempt to consider the possibility of liability immunity in this case at all; in fact, it did. Its analysis, however, was wrong on multiple counts. Two of those errors are glaring and bear mentioning.

A

The first error committed by the District Court was its

treatment of Justice Scalia's statement in *Isner* v. *Federal Elections Comm'n*. The District Court is, of course, correct that the statement is not binding but not for the reason it seems to think. It is plainly wrong to suggest that opinions of this Court rendered under the previous Constitution ceased to have effect upon ratification of the current one. Only this Court may overturn its constitutional precedents. See *Agostini* v. *Felton*, 521 U. S. 203, 217 (1997). Moreover, it is not unusual for us to rely on precedents rendered under previous iterations of our Constitution, see, *e.g.*, *supra*, at 1, n. 2—they continue to have great weight. Their weight is only diminished by changes in the Constitution going *directly* to their underpinnings. The mere fact that we have a new Constitution would not justify abandoning, *en masse*, all prior precedents of this Court.

Justice Scalia's *Isner* statement is not binding for the entirely different reason that it was not a controlling opinion of the Court. Justice Scalia wrote for himself alone. But that does not mean that his opinion cannot be instructive in the District Court's analysis. The District Court could and should have taken it at face value and weighed the force of its argument in light of the applicable law (*e.g.*, our opinions). After all, recognizing an opinion is not binding is not on its own a valid refutation of its argument. Accord, *Technozo*, *supra*, at ___–___ (slip op., at 2–3) (addressing Justice Scalia's arguments in *Isner* as well as JUSTICE MARSHALL's in *Ex parte Sixman*, 5 U. S. ___ (2018)). Statements of individual Justices, though not binding, can be particularly helpful in discerning the law.

B

The District Court's next error was similar in nature. After finding itself not bound by Justice Scalia's statement in *Isner* and failing to consider his argument at face value, the District Court merely assumed that its analysis of potential liability-immunity issues was complete. But that logic is

not sound. The District Court, despite finding an absence of controlling Supreme Court precedent directly addressing the question before it, should not have thrown its hands up and skipped it entirely. The proper course of action would have been to utilize our other immunity decisions and determine the extent to which their logic applied in this case in the first instance. In the alternative, the District Court could have certified the question to us for authoritative resolution and guidance. See this Court's Rule 19.

The District Court, if it had given due consideration to the question before it, may have arrived at the same test we did in *Technozo*—or perhaps a reasonable equivalent—and could have applied it to this case. It did not attempt any such analysis and therefore had no hope of reaching a correctly-reasoned conclusion.

III

On remand, the District Court should apply the test from *Technozo* to determine whether the FEC is entitled to liability immunity in this case. We think it appropriate in light of the circumstances to add some of our own observations in relation to the test's application here.

A

It appears to us plain that the actions challenged in this case (AcidRaps's disqualification) fall within the scope of the "prescribed duties," *Technozo*, 6 U. S., at ___ (slip op., at 1), of the FEC. The FEC is the clan-manager organ, organized by the group holder, expressly tasked with managing Presidential elections—it has done so for years. The centrality of the FEC to election management in this country is further confirmed by the Constitution's express mention of it in Article I. The Constitution vests in the FEC the power to "make or alter" regulations for Congressional elections. Art. I, §4; see *Sugarman* v. *Dougall*, 413 U. S. 634, 647 (1973). And our Nation has long understood that

"as a practical matter, there must be . . . *substantial* regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic process." *Storer* v. *Brown*, 415 U. S. 724, 730 (1974) (emphasis added). Accordingly, we think it implied in the group holder's manifestations to the FEC that it is to exercise *total* regulation of presidential elections. Undoubtedly, that includes the duty to disqualify candidates who violate election regulations.

Our first impression is confirmed by another fact. Disqualification decisions by the FEC, according to its Campaign Policy booklet, are made with the "consent of the [group holder]." As a matter of agency law, this confirms for present purposes that the FEC's actions are in line with the manifestations of the group holder as they are expressly ratified by him.

B

It also seems clear to us that the duties being exercised by the FEC are within one of the group holder's traditional zones of responsibility. As we recognized directly in *Technozo*, "Presidential election management" is among the group holder's "traditional responsibilities." 6 U. S., at ___ (slip op., at 4). This recognition, we noted, is eminently "[s]upportable by history." *Id.*, at ___ (slip op., at 8). We are also satisfied that there is a rational connection between the disqualification of a rule-breaking candidate in a Presidential election and "Presidential election management."

Election management is a broad duty encompassing many sub-responsibilities. Election regulations generally cover many topics, including the "registration and qualifications of voters, the selection and *eligibility* of candidates, [and] the voting process itself." *Anderson* v. *Celebrezze*, 460 U. S. 780, 788 (1983) (emphasis added). Disqualifying candidates for rule violations falls precisely within the ambit of

election management.

IV

Petitioner also asks us to address an alleged violation of the Court Proceedings Act (CPA) by the District Court. However, because we have alternative grounds, see *supra*, at 1–7, for awarding the exact same relief, we hold that it is appropriate to avoid considering the CPA claim in this case and thus decline to do so.

* * *

Where a matter of great public importance is involved, as is usually the case with suits about election law, there is often a great temptation to authoritatively decide the questions presented. But when we exercise the "judicial power," we "must put aside the natural urge to proceed directly to the merits of [an] important dispute and to 'settle' it for the sake of convenience and efficiency." *Raines* v. *Byrd*, 521 U. S. 811, 820 (1997) (footnote omitted). We must take care to comply with procedural requirements and address the antecedent questions, like those of liability immunity, at the beginning. Here, the District Court failed to adequately do that.

We grant the petition for a writ of certiorari, vacate the judgment below, and remand for reconsideration in light of *Technozo* v. *United States* and our observations above.

It is so ordered.