

Judicial Integrity: Should Judges Decide Cases Involving Their Major Campaign Contributors?

March 9, 2023 6:30-8 p.m.
Online via Zoom



Speakers

- Matt Rothschild, Executive Director of Wisconsin Democracy Campaign. Rothschild is the author of [12 Ways to Save Democracy in Wisconsin](#), published by the University of Wisconsin Press (2021). Prior to joining the Democracy Campaign, Rothschild worked at The Progressive magazine for 32 years. For most of those, he was the editor and publisher of The Progressive.
- Louis Butler, Retired Wisconsin Supreme Court Justice. As the first African American to serve on the Wisconsin Supreme Court (2004-2008), Butler participated in decisions that have had significant legal impacts in the State of Wisconsin.

Moderator

- Erin Everett is a member of LWVDC and is the copywriter on the State Bar of Wisconsin's marketing team. She has taught courses in criminal law, constitutional law, and legal research and writing. In 2013, she began working as a continuing legal education program planner at the State Bar of Wisconsin.

Discussion Questions

- What is the effect of campaign contributions from outside organizations on the Wisconsin Supreme Court election?
- What issues can cause or appear to cause a judicial conflict of interest?
- What impact does an apparent conflict of interest have on the justice system in Wisconsin?
- What are some possible solutions to the problem of conflicts of interest in our court system?
- How can LWV members bring attention to the issue of conflicts of interest in our court system?

The League's Position

Money in Politics: Support campaign finance/MIP regulations that enhance political equality for all citizens, ensure transparency, protect representative democracy from distortion by undisclosed contributions and big money, and combat corruption and undue influence in government. Support campaign spending that is restricted but not banned. Support public financing, full disclosure, abolishing super PACs, and creating an effective enforcement agency.

https://www.lwv.org/sites/default/files/2023-02/LWV_ImpactOnIssues2022-2024.pdf

Support for a system of justice that assures adults and juveniles prompt and equal treatment before the law. [Administration of Justice | MyLO](#)

Resources

Conflicts of Interest, Ethics, and the Courts

Problems seen in the Wisconsin Supreme Court

LWVWI has identified nine issues of concern with the current Wisconsin Supreme Court.

[FINAL- LWVWI ADVOCACY ISSUES .pdf](#)

Strengthening our state courts

The LWVWI explains the importance of the Wisconsin Supreme Court election, how campaign finance has increased dramatically over the past decade, and how the lack of rules for withdrawing from court cases (recusal) has negatively affected the court ethics.

[Ethics - State Courts Handout](#)

Campaign Contributions in the Wisconsin Supreme Court Election

The Wisconsin Democracy Campaign published the top donors in the 2023 Wisconsin Supreme Court campaign as of January 19, 2023.

[Check Out the Latest Top Donors to the Wisconsin Supreme Court Candidates](#)

[Special Interests Set Record Spending as Protasiewicz, Kelly Advance in High Court Race - Wisconsin Democracy Campaign](#)

[The Rise of Dark Money Is a Threat to Judicial Independence | Brennan Center for Justice](#)

Former Wisconsin judges request recusal overhaul

In 2017, 54 retired Wisconsin judges formally asked the Wisconsin Supreme Court to establish a rule requiring recusal or disqualification of a sitting judge who has received a significant campaign contribution from a party to the case.

[WisBar News: Retired Judges Request New Recusal Rules for Campaign Contributions:](#)

[Clean Up the Courts - Wisconsin Democracy Campaign](#)

[Clarence Thomas, recusal, and Wisconsin](#)

Cases and Rules:

Caperton v. A.T. Massey Coal Co., 556 U.S. 86, 8848 (2009)

<https://supreme.justia.com/cases/federal/us/556/868/>

Although a state may adopt standards for disqualifying judges that are stricter than those required by the U.S. Constitution, a judge's decision to disqualify him/herself must, at the very least, meet the requirements of the Constitution's Due Process Clause. The U.S. Supreme Court held that it violates due process for a judge to hear a case involving a person who 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 inquiry centers on the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election."

The American Bar Association (ABA) Model Code of Judicial Conduct

The Model Rules of the ABA suggest that states enact rules requiring a judge to disqualify him/herself from a case where a party or its lawyers have made contributions to the judge's campaign in an amount greater than a set amount within a certain number of years. The ABA is concerned that the contribution creates an appearance in which a judge's impartiality might reasonably be questioned. [Rule 2.11: Disqualification](#)

The Wisconsin Code of Judicial Conduct

In 2008, the League of Women Voters of Wisconsin Education Fund filed petitions with the state Supreme Court asking that it adopt rules requiring recusal when a party or lawyers in a case had made large campaign contributions or spent money on a media campaign in an election for a judge presiding in the case.

<https://www.wicourts.gov/supreme/docs/0816petition.pdf>

The petition was denied.

<https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=51874>

In 2017, a similar petition was filed and supported by the LWVWI. Again, the state Supreme Court denied the petition.

https://www.wisdc.org/images/files/pdf_imported/recusal/supreme-court-recusal-order-2017-06-30.pdf

Thus, the current Wisconsin rules do not require judges to recuse themselves in cases involving their campaign contributors. Supreme Court Rule (SCR) 60.04 sections 4 - 6 deal with general considerations, and sections 7 - 8 deal with campaign finance. [SCR CHAPTER 60 CODE OF JUDICIAL CONDUCT PREAMBLE](#)

Wisconsin Rule Is Unusual

The National Center for State Courts (NCSC), November 2016, lists various states' recusal standards after the Supreme Court decision in *Caperton*. Only Nevada and Wisconsin have expressly rejected proposals to adopt a specific campaign contribution amount that would trigger disqualification. [Judicial Disqualification Based on Campaign Contributions](#)

The transcript of a 2015 symposium, sponsored by the *New York University Journal of Legislation & Public Policy*, with the theme, “Courts, Campaigns and Corruption: Judicial Recusal Five Years After Caperton” includes a discussion of Wisconsin’s recusal rules. <https://nyujlpp.org/wp-content/uploads/2015/11/The-State-of-Recusal-Reform-18nyujlpp515.pdf>

Actions

Share information on the importance of the State Supreme Court election

- Talk with your friends, neighbors, and relatives about the importance of the election
- Find information about each candidate and consider how each relates to your values
- Post signs on community boards and in common areas to raise awareness of the election date
- Write letters to the editors publicizing what is at stake in this election
- Volunteer to distribute educational materials and talk to the public

LWVDC Work Group on Judicial Integrity: Janine Edwards, Lili Crane, Betty Eberle, Mary Eberle, Erin Everett, Sue Jennik, Elizabeth Kanne, Jordan Nickell, Traci Nolan, Marjorie Schuett