

FILED

05-15-2025

CLERK OF WISCONSIN

SUPREME COURT

Supreme Court of Wisconsin



No. 2025AP996-OA BOTHFELD V. WISCONSIN ELECTIONS COMM'N

May 15, 2025

The Court has entered the following order:

A petition for leave to commence an original action having been filed on behalf of petitioners, Elizabeth Bothfeld et al.;

IT IS ORDERED that the respondents, Wisconsin Elections Commission et al., are directed to file a response to the petition for leave to commence an original action on or before June 5, 2025.

IT IS FURTHER ORDERED that any non-party that wishes to file a non-party brief amicus curiae in support of or in opposition to the petition must file a motion for leave of the court to file a non-party brief pursuant to the requirements of Wis. Stat. § (Rule) 809.19(7). Non-parties should also consult this court's Internal Operating Procedure concerning the nature of non-parties who may be granted leave to file a non-party brief. A proposed non-party brief must accompany the motion for leave to file it. Any proposed non-party brief shall not exceed 20 pages if a monospaced font is used or 4,400 words if a proportional serif font is used. Any motion for leave with the proposed non-party brief attached shall be filed on or before June 6, 2025. Any submission by a non-party that does not comply with Wis. Stat. § (Rule) 809.19(7) and any proposed non-party brief for which this court does not grant leave will not be considered by the court; and

IT IS FURTHER ORDERED that all Wisconsin attorneys participating in this case must each opt in to this case in the appellate court electronic filing system. All Wisconsin attorneys who are not already opted in for this case are hereby ordered to do so as soon as possible and no later than May 22, 2025.

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REBECCA GRASSL BRADLEY, J. (*dissenting*). During the most expensive campaign for a state supreme court seat in United States history,¹ Susan Crawford participated in “a donor advisory briefing” promoted as a “[c]hance to put two more House seats in play for 2026.”² The Democratic Party of Wisconsin invested \$11,000,000 in her campaign.³ She won. Before she even takes office, two original action petitions have been filed, asking this court—for the third time—to reapportion the congressional redistricting map to advantage candidates of the Democratic Party, recycling issues already decided by this court and inventing new ones that could have been brought *four years ago* but were not. Crawford’s donors expect her presence on the court “could [] result in Democrats being able to win two additional US House seats, half the seats needed to win control of the House in 2026.”⁴

Considering the majority’s redistricting redux in 2023, the expectation is reasonable. During her 2023 campaign for a seat on the Wisconsin Supreme Court—the *second* most expensive campaign for a state supreme court seat in United States history⁵—Janet Protasiewicz abandoned universal judicial ethics by promising to hear a renewed

¹ Megan O’Matz, *Will Extreme Spending and Partisanship Undermine Trust in State Supreme Courts?*, PROPUBLICA (Apr. 6, 2025), <https://www.propublica.org/article/wisconsin-supreme-court-musk-crawford-schimmel-partisanship-elections>. More than \$100 million was spent by or on behalf of the candidates. Tom O’Connor, *Record \$100M spent on Wisconsin Supreme Court Race Raises Concerns Over Judicial Independence*, WISCONSIN EXAMINER (May 12, 2025), <https://wisconsinexaminer.com/2025/05/12/record-100m-spent-on-wisconsin-supreme-court-race-raises-concerns-over-judicial-independence/>.

² Daniel Bice, *Judge Crawford Labels Herself ‘Impartial’ Despite Courting Dem Donors in Chat*, MILWAUKEE J. SENTINEL (Jan. 29, 2025), <https://www.jsonline.com/story/news/politics/elections/2025/01/29/bice-crawford-labels-herself-impartial-despite-courting-dem-donors/78001011007/>. The email sent to Crawford’s prospective donors is attached to this dissent as Appendix A.

³ Megan O’Matz, *Will Extreme Spending and Partisanship Undermine Trust in State Supreme Courts?*, PROPUBLICA (April 6, 2025), <https://www.propublica.org/article/wisconsin-supreme-court-musk-crawford-schimmel-partisanship-elections>.

⁴ Daniel Bice, *Judge Crawford Labels Herself ‘Impartial’ Despite Courting Dem Donors in Chat*, MILWAUKEE J. SENTINEL (Jan. 29, 2025), <https://www.jsonline.com/story/news/politics/elections/2025/01/29/bice-crawford-labels-herself-impartial-despite-courting-dem-donors/78001011007/>.

⁵ See *Clarke v. WEC*, 2023 WI 79, ¶178, 410 Wis. 2d 1, 998 N.W.2d 370 (Ziegler, C.J., dissenting).

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challenge to Wisconsin's state legislative maps, declaring the maps "rigged"⁶ and announcing she would "enjoy taking a fresh look at the gerrymandering question."⁷ In *Clarke v. WEC*, 2023 WI 79, 410 Wis. 2d 1, 998 N.W.2d 370, the members of the majority tossed the court's remedial maps, "usurp[ed] the prerogatives of the legislature, and deliver[ed] the spoils to their preferred political party." *Id.*, ¶185 (Rebecca Grassl Bradley, J., dissenting).

On social media, Protasiewicz also showcased her bias on *congressional* redistricting by reposting actress Julia Louis-Dreyfus' inducement to vote for her in order to "win" "[f]air maps" and "[a]bortion rights" and "[c]ontrol of Congress." *Clarke v. WEC*, 2023 WI 70, 409 Wis. 2d 372, 401, 995 N.W.2d 779 (Rebecca Grassl Bradley, J., dissenting). In support of Protasiewicz's campaign, Jill Karofsky did the same, declaring: "When it comes to the maps, the maps are rigged. . . . You can't be in this state and not realize that. Janet Protasiewicz is saying the quiet part out loud."⁸ One can't be in this state and not realize that at least some members of the majority already made up their minds on the issues presented in the latest redistricting petitions.

The court should deny both petitions without ordering a response because they seek to relitigate claims this court already decided in 2022. In *Johnson v. WEC*, 2022 WI 14, ¶25, 400 Wis. 2d 626, 971 N.W.2d 402 (*Johnson II*), the court adopted Democratic Governor Tony Evers' proposed congressional map. That map remained unchallenged in *Clarke*. 410 Wis. 2d 1, ¶116 (Ziegler, C.J., dissenting). A few months after *Clarke* was decided, this court denied a motion asking it to reconsider the *Johnson II* decision. See *Johnson v. WEC*, No. 2021AP1450-OA, unpublished order (Wis. Mar. 1, 2024). Forcing the parties to expend considerable resources and taxpayer money to respond to these petitions only signals the majority will once again "flex[] its political power [] to advance

⁶ Corrinne Hess, *Wisconsin Supreme Court Candidate Janet Protasiewicz Assails State's Election Maps as 'Rigged,'* MILWAUKEE J. SENTINEL (Jan. 9, 2023), <https://www.jsonline.com/story/news/politics/2023/01/09/wisconsin-supreme-court-candidate-protasiewicz-assails-election-maps/69790966007/>.

⁷ Jessie Opoien & Jack Kelly, *Protasiewicz Would 'Enjoy Taking a Fresh Look' at Wisconsin Voting Maps*, THE CAP TIMES (Mar. 2, 2023), https://captimes.com/news/government/protasiewicz-would-enjoy-taking-a-fresh-look-at-wisconsin-voting-maps/article_d07fbe12-79e6-5c78-a702-3de7b444b332.html.

⁸ Frederica Freyberg, *Jill Karofsky on the 2023 Wisconsin Supreme Court Election*, PBS WIS. (Mar. 31, 2023), <https://pbswisconsin.org/news-item/jill-karofsky-on-the-2023-wisconsin-supreme-court-election/>.

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a partisan agenda despite the damage inflicted on the independence and integrity of the court.” *Id.* at 2 (Rebecca Grassl Bradley, J., concurring).

In *Caperton v. Massey*, the United States Supreme Court decided due process required a state supreme court justice’s recusal from a case because “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable” based solely on the justice’s receipt of \$3 million dollars in campaign contributions from the chairman and principal officer of a party to the action. 556 U.S. 868, 876, 884 (2009) (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Consistent with universal judicial ethics, the justice in *Caperton* had not made any statements during his campaign suggesting he had prejudged the case. This court adopted the *Caperton* test, holding that a circuit court judge’s repeated social media interactions with a litigant in a contested paternity case pending before the judge constituted a due process violation. *Miller v. Carroll*, 2020 WI 56, 392 Wis. 2d 49, 944 N.W.2d 542. “To assess whether the probability of actual bias rises to the level of a due process violation, we apply, verbatim, the standard from *Caperton*.” *Id.*, ¶24.

The gross politicization of this court over the last several years is destroying its integrity and will undermine the public’s acceptance of its decisions, if it hasn’t already. “Those who would politicize the law offer the public, and the judiciary, the temptation of results without regard to democratic legitimacy.” ROBERT H. BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 2 (1990). Entertaining these claims makes a mockery of our justice system, degrades this court as an institution, and perpetuates the public’s perception that justice is for sale in Wisconsin. I dissent.

Samuel A. Christensen
Clerk of Supreme Court

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Appendix A

Time-sensitive: Chance to put two more House seats in play for 2026. Inbox x

Aaron Frank, Sandy Newman, and Rae Steward <sandy@focus4democracy.org>

11:52AM (49 minutes ago)



to scott, jberkenfeld, Matt, nkoerper, gabe, nick, Zach, emily, Michael, sdecarpentrie, jstocks, alexandra, galvarez, bashla, Christina.baal, thomas, abeard, mike, berlow, rbi

Please **RSVP [here](#)** to join Focus for Democracy and Investing In US for a **donor advisors briefing** to hear and question **Ben Wikler and pro-Democracy WI Supreme Court candidate Susan Crawford**.

Date: January 13th**Time: 4:30 ET/3:30 CT/1:30 PT**

After Janet Protasiewicz was elected to the WI Supreme Court in an April 2023 election, the new pro-democracy majority struck down Wisconsin's super-gerrymandered state legislative districts. Democrats then gained 14 state legislative seats in 2024, creating the potential to win chamber control in 2026. Now one of the judges who make up the pro-democracy majority is retiring, putting control of the WI Supreme Court up for grabs again.

Of course, there are many important state issues that hinge on the outcome, including whether the court reinstates the 1849 law criminalizing abortion. **But winning this race could also result in Democrats being able to win two additional US House seats, half the seats needed to win control of the House in 2026.**

Crawford's opponent is Brad Schimmel, who was state Attorney General under Scott Walker. He worked on the MAGA/Trump fake electors scheme and supports reinstating Wisconsin's 1849 law criminalizing abortions. He can be counted on to do everything in his power to ensure that rules protecting voting and an accurate count of votes are weakened for the 2026 and 2028 elections.

Again, please be sure to RSVP [here](#) to join us.

Thanks!

Aaron Frank and Sandy Newman, Focus for Democracy
Rae Steward, Investing In US