

FILED  
01-29-2024  
CLERK OF WISCONSIN  
SUPREME COURT

No. 2021AP1450-OA

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IN THE SUPREME COURT OF WISCONSIN

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BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN,

*Petitioners,*

BLACK LEADERS ORGANIZING FOR COMMUNITIES, VOCES DE LA FRONTERA, LEAGUE OF WOMEN VOTERS OF WISCONSIN, CINDY FALLONA, LAUREN STEPHENSON, REBECCA ALWIN, CONGRESSMAN GLENN GROTHMAN, CONGRESSMAN MIKE GALLAGHER, CONGRESSMAN BRYAN STEIL, CONGRESSMAN TOM TIFFANY, CONGRESSMAN SCOTT FITZGERALD, LISA HUNTER, JACOB ZABEL, JENNIFER OH, JOHN PERSA, GERALDINE SCHERTZ, KATHLEEN QUALHEIM, GARY KRENZ, SARAH J. HAMILTON, STEPHEN JOSEPH WRIGHT, JEAN-LUC THIFFEAULT, AND SOMESH JHA,

*Intervenors-Petitioners,*

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, in her official capacity as a member of the Wisconsin Elections Commission, JULIE GLANCEY, in her official capacity as a member of the Wisconsin Elections Commission, ANN JACOBS, in her official capacity as a member of the Wisconsin Elections Commission, DEAN KNUDSON, in his official capacity as a member of the Wisconsin Elections Commission, ROBERT SPINDELL, JR., in his official capacity as a member of the Wisconsin Elections Commission, AND MARK THOMSEN, in his official capacity as a member of the Wisconsin Elections Commission,

*Respondents,*

THE WISCONSIN LEGISLATURE, GOVERNOR TONY EVERS, in his official capacity, AND JANET BEWLEY SENATE DEMOCRATIC MINORITY LEADER, on behalf of the Senate Democratic Caucus,

*Intervenors-Respondents.*

---

**APPENDIX TO MOTION TO RECUSE JUSTICE PROTASIEWICZ BY  
INTERVENOR-RESPONDENT WISCONSIN LEGISLATURE, PETITIONERS  
BILLIE JOHNSON, ERIC O'KEEFE, ED PERKINS, AND RONALD ZAHN,  
AND INTERVENORS-PETITIONERS CONGRESSMEN GLENN  
GROTHMAN, MIKE GALLAGHER, BRYAN STEIL, TOM TIFFANY, AND  
SCOTT FITZGERALD**

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## TABLE OF CONTENTS

<p>Zac Schultz, <i>Candidates tangle over political issues, judicial perspectives at first 2023 Wisconsin Supreme Court forum</i>, PBS Wis. (Jan. 10, 2023), <a href="https://perma.cc/HC4L-NFUS">https://perma.cc/HC4L-NFUS</a> .....</p>	App.8
<p>Transcript of WisPolitics State Supreme Court Election Forum (Jan. 9, 2023) .....</p>	App.13
<p>Corrinne Hess, <i>Wisconsin Supreme Court candidate Janet Protasiewicz assails state’s election maps as ‘rigged,’</i> Milwaukee J. Sentinel (Jan. 9, 2023), <a href="https://perma.cc/8T33-Z5M6">https://perma.cc/8T33-Z5M6</a> .....</p>	App.33
<p>Jonah Beleckis, <i>Janet Protasiewicz thinks judicial candidates should be open about their values</i>, Wis. Pub. Radio (Feb. 14, 2023), <a href="https://perma.cc/2QWV-69Q5">https://perma.cc/2QWV-69Q5</a> .....</p>	App.36
<p>Shawn Johnson, <i>In a supreme court race like no other, Wisconsin’s political future is up for grabs</i>, NPR (Apr. 2, 2023), <a href="https://perma.cc/W2YA-WPA2">https://perma.cc/W2YA-WPA2</a> .....</p>	App.40
<p>Henry Redman, <i>Supreme Court candidates accuse each other of lying, extremism in sole debate</i>, Wis. Exam’r (Mar. 21, 2023), <a href="https://perma.cc/5KLA-S2FV">https://perma.cc/5KLA-S2FV</a> .....</p>	App.48
<p>@janetforjustice, Twitter (Mar. 27, 2023, 12:47 PM), <a href="https://perma.cc/YAL9-JR8R">https://perma.cc/YAL9-JR8R</a> .....</p>	App.53
<p>Janet for Justice, Facebook (Apr. 3, 2023), <a href="https://perma.cc/HVD7-PXD5">https://perma.cc/HVD7-PXD5</a> .....</p>	App.54
<p>Anya Van Wagtendonk, <i>Democratic law firm files challenge to Wisconsin’s congressional maps</i>, Wis. Public Radio (Jan. 17, 2024), <a href="https://perma.cc/TX2L-C6SG">https://perma.cc/TX2L-C6SG</a> .....</p>	App.55

Marc Elias, Opinion, <i>Early Victories in the Fight for Democracy in Wisconsin</i> , Democracy Docket (Jan. 26, 2024), <a href="https://perma.cc/6F9N-P8QF">https://perma.cc/6F9N-P8QF</a> .....	App.58
<i>State Candidates</i> , Wis. Elections Comm'n, <a href="https://perma.cc/M2Q2-VCGE">https://perma.cc/M2Q2-VCGE</a> (Form ELIS-9, 2024 Ballot Access Checklist for Legislative Office Candidates).....	App.61
<i>Federal Candidates</i> , Wis. Elections Comm'n, <a href="https://perma.cc/4YPC-NN3D">https://perma.cc/4YPC-NN3D</a> (Form ELIS-14, 2024 Ballot Access Checklist for Federal Candidates in Wisconsin).....	App.62
Associated Press, <i>Milwaukee County Judge Janet Protasiewicz announces candidacy for state Supreme Court</i> , Wis. Pub. Radio (May 25, 2022), <a href="https://perma.cc/RMK5-G34R">https://perma.cc/RMK5-G34R</a> .....	App.63
Alexander Shur, <i>Candidate Q&amp;A: Wisconsin Supreme Court</i> , Wis. State J. (Jan. 30, 2023), <a href="https://perma.cc/J4V6-E5RQ">https://perma.cc/J4V6-E5RQ</a> .....	App.65
Jessie Opoien & Jack Kelly, <i>Protasiewicz would 'enjoy taking a fresh look' at Wisconsin voting maps</i> , Cap Times (Mar. 2, 2023), <a href="https://perma.cc/THH2-VH3Q">https://perma.cc/THH2-VH3Q</a> .....	App.72
Zac Schultz, <i>Janet Protasiewicz, Daniel Kelly on Wisconsin redistricting</i> , PBS Wis. (Mar. 9, 2023), <a href="https://perma.cc/R45C-RDPV">https://perma.cc/R45C-RDPV</a> .....	App.75
@janetforjustice, Twitter (Mar. 3, 2023, 6:31 PM), <a href="https://perma.cc/75S9-A772">https://perma.cc/75S9-A772</a> .....	App.78

@janetforjustice, Twitter (Mar. 7, 2023, 2:15 PM), <a href="https://perma.cc/E3F8-HU8G">https://perma.cc/E3F8-HU8G</a> .....	App.79
Scott Bauer, <i>Wisconsin Supreme Court candidates clash over abortion, maps in only 2023 debate</i> , PBS Wis. (Mar. 21, 2023), <a href="https://perma.cc/SE77-ED4Z">https://perma.cc/SE77-ED4Z</a> .....	App.80
A.J. Bayatpour, <i>In only state Supreme Court debate, candidates trade accusations of partisan ties</i> , CBS 58 (Mar. 21, 2023), <a href="https://perma.cc/87BY-66CB">https://perma.cc/87BY-66CB</a> .....	App.84
Patrick Marley, <i>Liberals win control of Wisconsin Supreme Court ahead of abortion case</i> , Wash. Post (Apr. 4, 2023), <a href="https://perma.cc/ZA99-QR5D">https://perma.cc/ZA99-QR5D</a> .....	App.88
<i>WisPolitics tracks \$56 Million in spending on Wisconsin Supreme Court race</i> , WisPolitics (July 19, 2023), <a href="https://perma.cc/8A97-2JHC">https://perma.cc/8A97-2JHC</a> .....	App.93
Janet for Justice, Campaign Finance Report, Form CF-2 (July 2023), <a href="https://perma.cc/X6FA-QTSL">https://perma.cc/X6FA-QTSL</a> .....	App.96
Friends of Justice Daniel Kelly, Campaign Finance Report, Form CF-2 (July 2023), <a href="https://perma.cc/P2EW-D9KU">https://perma.cc/P2EW-D9KU</a> .....	App.98
<i>Campaign contributions: PAC and Political Committee Contributors to: Janet C Protasiewicz (NP) – Supreme Court</i> , Wis. Democracy Campaign, <a href="https://perma.cc/9Ezd-V69A">https://perma.cc/9Ezd-V69A</a> .....	App.100
Jack Kelly, <i>Liberal law firm to argue gerrymandering violates Wisconsin Constitution</i> , Cap Times (Apr. 6, 2023), <a href="https://perma.cc/5TCG-4EQF">https://perma.cc/5TCG-4EQF</a> .....	App.103

Scott Bauer, <i>Wisconsin Republicans' large majorities expected to shrink under new legislative maps</i> , AP (Jan. 15, 2024), <a href="https://bit.ly/4b5S1dk">https://bit.ly/4b5S1dk</a> .....	App.107
<i>About</i> , Elias Law Grp., <a href="https://perma.cc/DGA3-GU52">https://perma.cc/DGA3-GU52</a> .....	App.111
Shawn Johnson, <i>Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum</i> , Wis. Pub. Radio (Jan. 9, 2023), <a href="https://perma.cc/NF68-NQ35">https://perma.cc/NF68-NQ35</a> .....	App.112
Matt Mencarini, <i>How could the 2023 Wisconsin Supreme Court election impact medical malpractice lawsuits?</i> , PBS Wis. (Mar. 31, 2023), <a href="https://perma.cc/V87K-LC4C">https://perma.cc/V87K-LC4C</a> .....	App.117
Jacqueline L. Salmon, <i>Scalia Defends Public Expression of Faith</i> , Wash. Post. (Jan. 13, 2003), <a href="https://perma.cc/VRV2-TU3F">https://perma.cc/VRV2-TU3F</a> .....	App.123
Editorial Board, <i>Opinion, Judicial Ethics at Work in Wisconsin</i> , Wall St. J. (Aug. 2, 2023) <a href="https://perma.cc/8Q6T-CHL6">https://perma.cc/8Q6T-CHL6</a> .....	App.124
Ian Millhiser, <i>America's worst gerrymander may soon finally die</i> , Vox (Aug. 3, 2023), <a href="https://perma.cc/E4U7-GMF6">https://perma.cc/E4U7-GMF6</a> .....	App.126
Reid J. Epstein, <i>Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers</i> , N.Y. Times (Apr. 4, 2023), <a href="https://perma.cc/A6NP-S4TC">https://perma.cc/A6NP-S4TC</a> .....	App.131
Shawn Johnson, <i>Justice Janet Protasiewicz is sworn in, giving liberals control of Wisconsin Supreme Court</i> , Wis. Pub. Radio (Aug. 1, 2023), <a href="https://perma.cc/8KVV-MQDN">https://perma.cc/8KVV-MQDN</a> .....	App.135

Editorial Board, Opinion, <i>Wisconsin's Judicial Election Donnybrook</i> , Wall St. J. (Feb. 26, 2023), <a href="https://perma.cc/25X6-XD3X">https://perma.cc/25X6-XD3X</a> .....	App.141
Mark Joseph Stern, <i>The Rule of Janet Is Here. Wisconsin Republicans Should Be Afraid.</i> , Slate (Aug. 3, 2023), <a href="https://perma.cc/MK6M-EBHR">https://perma.cc/MK6M-EBHR</a> .....	App.143
Ruth Marcus, Opinion, <i>Wisconsin notwithstanding, electing judges is a terrible idea</i> , Wash. Post (Apr. 6, 2023), <a href="https://perma.cc/ESK7-MNQK">https://perma.cc/ESK7-MNQK</a> .....	App.148
Ronald Brownstein, <i>The First Electoral Test of Trump's Indictment</i> , Atlantic (Mar. 31, 2023), <a href="https://perma.cc/CL5C-W5QY">https://perma.cc/CL5C-W5QY</a> .....	App.151
Scott Bauer, <i>Protasiewicz pledges to recuse in lawsuits from Democrats, while Kelly declines to pledge for Republican cases</i> , PBS Wis. (Mar. 1, 2023), <a href="https://perma.cc/NFX2-37GZ">https://perma.cc/NFX2-37GZ</a> .....	App.159
Vendor/Recipient Profile: <i>Elias Law Group</i> , Open Secrets, <a href="https://perma.cc/ZS8U-Z2V7">https://perma.cc/ZS8U-Z2V7</a> .....	App.163
Reid J. Epstein, <i>Costly Court Race Points to a Politicized Future for Judicial Elections</i> , N.Y. Times (Mar. 28, 2023), <a href="https://perma.cc/8ZN2-QKXU">https://perma.cc/8ZN2-QKXU</a> .....	App.165
Certification.....	App.168

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### ELECTIONS

# Candidates tangle over political issues, judicial perspectives at first 2023 Wisconsin Supreme Court forum

The two conservatives and two liberals running in the 2023 race for an open seat on the state's high court were offered questions about high-profile issues of law and its application to difficult and disputed issues.

By [ZAC SCHULTZ](#)

January 10, 2023



Judge Jennifer Dorow, former Justice Daniel Kelly, Judge Everett Mitchell and Judge Janet Protasiewicz participate in a panel forum for Wisconsin Supreme Court candidates in Madison on Jan. 10, 2023. (Credit: PBS Wisconsin)



The four candidates [running for a seat](#) on the Wisconsin Supreme Court in 2023 have a short window of time to make an impression before the Feb. 21 primary election, and they wasted no time at a Jan. 9 forum in Madison trying to define themselves to potential voters.

Milwaukee County Judge [Janet Protasiewicz](#) only made it to her second sentence in her introductory statement before attacking the conservative majority on the state's high court.

"I could not sit back and watch extreme right-wing partisans hijack our Supreme Court," Protasiewicz said

Dane County Judge [Everett Mitchell](#) hopes to be the first Black justice elected to the Wisconsin Supreme Court, a goal he referenced in his opening sentence.

## RELATED STORIES

[Meet the candidates running in the 2023 Wisconsin Supreme Court primary](#)

"I believe our state deserves a justice that reflects the diversity and ideas and values of our entire state," Mitchell said.

[Daniel Kelly](#) is a former justice on the court, having been appointed in 2016 by then-Gov. Scott Walker, a Republican. Kelly made no reference to [losing his bid for re-election](#) in 2020, instead portraying himself as a quasi-incumbent.

"Now, I'm the only candidate in this race who has experience doing this sort of thing," Kelly said.

Waukesha County Judge [Jennifer Dorow](#) made an early reference to [her claim to fame](#), which is presiding as judge in the highly-publicized 2022 trial

of Darrell Brooks, who was [convicted](#) in the 2021 Waukesha Christmas parade murders.

“I heard from judges across the country and even inmates, who sent letters praising my efforts to be fair and impartial in the face of extreme disrespect, disruption and at times even vile behavior,” Dorow said.

When it comes to their broader political ideologies, Dorow and Kelly are conservatives and Protasiewicz and Mitchell are liberals.

The winner will replace the retiring [Justice Patience Roggensack](#).

The remaining justices can generally be divided into blocks of three conservatives and three liberals, so the 2023 election will determine the ideological balance of the court just as it is set to render decisions over issues like abortion rights and another potential battle over redistricting.

Redistricting was a topic of discussion at the forum, as Protasiewicz made it clear what she thought about the state Supreme Court’s decisions to [use Republican-created maps](#) for legislative districts.

“So let’s be clear here. The maps are rigged — bottom line. Absolutely, positively rigged. They do not reflect the people in the state,” she said. “They are rigged, period.”

It is [expected](#) that if liberal justices control the court, Democrats will attempt to get the court to relitigate the current maps, something Protasiewicz is prepared for.

“I believe the gerrymandering decision was wrong. As I indicated to you before, I can’t ever tell you what I would do on a particular case, but I can tell you my values and common sense tell you that it’s wrong,” Protasiewicz said

Kelly agreed with the decision by the conservative majority on the high court to implement the Republican maps, and criticized Protasiewicz for her stance.

“I think when someone tells you what their values are, in answer to a legal question, they’re telling you how they’re going to decide the case,” Kelly said.

Dorow spent most of the time during her answers referencing a plastic binder of notes in front of her, often declining to give specific answers, including about redistricting.

“Now there is talk about further challenges. So I will not put myself in a position to prejudge anything. But as with any case, I will listen to the challenge and I will apply the law to the task at hand,” Dorow said.

Mitchell argued that voters should hear about the values of the candidates.

“We all have values, and it is important to you to know our values so you can decide who you want to be sitting in that black robe making decisions about the values of our state,” he said.

During his four years on the court, Kelly sided with the conservative justices and conservative plaintiffs on every controversial case he heard, but said politics were never part of his motivation.

“Politics is poison to the work of the court. Everybody who comes to the court — regardless of what they might tell you — has political beliefs. The question is whether you can set them aside to do the work of the court,” said Kelly.

Dorow spoke from a similar position.

“So the role of the judge at its core is to apply the law, not make it. Laws are written and words have meaning. Everybody knows this,” she said.

Mitchell spoke emotionally about the power of the courts to make change in society, referencing the Voting Rights Act and *Brown v. Board of Education*, the 1954 U.S. Supreme Court case that struck down segregation in public schools.

“You can use the law as a force for good — that you can use the law as a force for change and making people’s lives better,” Mitchell said.

Protasiewicz echoed that position, describing the legal theory of a constitution as a living document.

“(It is) a living, breathing document and our laws change and they evolve and the case law changes and evolves,” she said.

That was too much for Kelly, who referenced [Alexander Hamilton’s writings](#) on the role of the courts.

“If it should ever combine itself with the powers of the Legislature, that would then become the very definition of tyranny,” Kelly paraphrased. “But I have heard a fair amount [of] my opponents talking about their values and what they think that the law ought to do. That is the step towards the combination of the power of the judiciary and the Legislature. That is a step we cannot take.”

The primary election for the 2023 Wisconsin Supreme Court election is on Tuesday, Feb. 21, from which the top two vote-getters will move on to face off in the spring election on Tuesday, April 4. More information about the candidates and race is available at [Wisconsin Vote](#).

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WisPolitics State Supreme Court Election Forum  
January 9, 2023

Page 2

1 ANNOUNCER: You're watching  
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 3 affairs network engaging the citizens of  
 4 Wisconsin since 2007 through access to government  
 5 proceedings and public policy events.  
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 8 Wiseye.org/donate or by texting Wiseye to 44321.  
 9 JEFF MAYERS: All right, hi there  
 10 everybody. I'm Jeff Mayers from WisPolitics.com.  
 11 Thanks very much for coming to this event. We  
 12 have a very important Supreme Court race and your  
 13 attendance shows it.  
 14 I want to thank our sponsors, of  
 15 course. State Bar of Wisconsin, thank you very  
 16 much, who we do debate, Attorney General debate  
 17 and Supreme Court debate with the State Bar every  
 18 time there's an important race. So, candidates,  
 19 the winners who emerge will be invited, and I  
 20 hope you nod your yes right now that you will be  
 21 part of the State Bar debate. Yes, there you go.  
 22 All right. I did my job, Larry.  
 23 I also want to thank our other sponsor,  
 24 of course, the Wisconsin Institute for Law and  
 25 Liberty. Thank you very much, Will, and all your

Page 3

1 guests for being part of this event.  
 2 Okay, so this is not a debate; it's a  
 3 forum, so I ask you to please refrain from jeers  
 4 or boos or wild applause or shouts of joy; just  
 5 try to keep it contained, okay, please. Please  
 6 silence your phones if you can.  
 7 So this is not being livestreamed; it's  
 8 being recorded for a full broadcast later today  
 9 by WisconsinEye, and when we get the link, we'll  
 10 post it at our site and we'll also distribute it  
 11 in our products, so you can go to WisPolitics.com  
 12 later on for that.  
 13 So again, silence your phones. Thank  
 14 you very much for attending. I'm now going to  
 15 turn it over to the co-hosts of the WisconsinEye  
 16 program that we are also part of called "Rewind."  
 17 JR Ross, he's the WisPolitics.com editor, and  
 18 Emilee Fannon, she's the Capitol bureau chief for  
 19 Channel 58 out of Milwaukee.  
 20 So please welcome them and the  
 21 candidates.  
 22 EMILEE FANNON: So I will begin just  
 23 talking to you guys about the format that we'll  
 24 be doing today. Each candidate will have a 90-  
 25 second opening remarks and each will make a

Page 4

1 statement in alphabetical order. We did draw  
 2 names in the back on who will be going first for  
 3 opening remarks, so with that, we have Everett  
 4 Mitchell who will be going first. Then we will  
 5 be taking questions from myself and JR, and then  
 6 we'll be gathering some questions from the  
 7 audience to wrap up this 90-minute debate.  
 8 All right. Well, with that, we'll  
 9 start with opening remarks, so Judge Everett  
 10 Mitchell, you can begin.  
 11 JUDGE EVERETT MITCHELL: Well, good  
 12 afternoon, Wisconsin. Good afternoon, guests.  
 13 My name is Everett Mitchell and I'm running for  
 14 Wisconsin Supreme Court because I believe our  
 15 state deserves the justice that reflects the  
 16 diversity and ideas and values of our entire  
 17 state.  
 18 For too long, partisanship has  
 19 separated us so that we're not able to have the  
 20 representation that Wisconsin people need. And  
 21 as a judge since 2016, I've learned that justice  
 22 is not just what you say; justice is what you do.  
 23 And I believe that we need a justice can  
 24 represent what that means for our state.  
 25 I've worked hard as a judge to be tough

Page 5

1 but fair. I've worked hard to be proactive in  
 2 our community rather than reactive, to address  
 3 public safety as the needs of Dane County heads  
 4 on. Like a couple of my opponents here, I've  
 5 been a former prosecutor and now a judge, handing  
 6 out punishment when necessary, but giving out  
 7 hope when it's entirely needed as well.  
 8 What separates me from my opponents is  
 9 this: I've also worked with community leaders,  
 10 faith leaders, school officials, LGBTQ leaders,  
 11 police chiefs, sheriffs, and rank-and-file  
 12 officers to take on crime, to stop it before it  
 13 starts, and to prevent people from becoming  
 14 victims in the first place.  
 15 One of my proudest accomplishments is  
 16 establishing the Juvenile Empowerment Team  
 17 Committee, where we work with rank-and-file  
 18 officers, school officials to go out and work  
 19 with young people to ensure that they are not  
 20 committing crimes in the first place, because if  
 21 they're not committing crimes, that means their  
 22 futures are protected and there are no victims  
 23 being harmed at the same time. My commitment to  
 24 our young people is that here in Dane County, we  
 25 want to make sure that crime is stopped, and I

Page 6

1 want to bring that vision and that passion  
 2 throughout our entire state.  
 3 I want people to know that you not only  
 4 can trust the work that I have done, but also  
 5 trust the vision that I have for what the rule of  
 6 law and what our Supreme Court can be able to  
 7 provide for our entire state.  
 8 I look forward to this conversation and  
 9 you getting to know a little bit more about me  
 10 and me getting to be able to answer your  
 11 questions about the things and the values of our  
 12 state that will continue to be forward for the  
 13 next 10 years. Thank you so very much.  
 14 EMILEE FANNON: Up next is going to be  
 15 Janet Protasiewicz.  
 16 JUDGE JANET PROTASIEWICZ: Thank you  
 17 very much. Well, first, I would like to thank  
 18 WisPolitics for hosting this forum and thank all  
 19 of you for turning out today to hear us talk  
 20 about our views and what we think about some of  
 21 the issues that may or may not come before the  
 22 Wisconsin Supreme Court in such a critically  
 23 important race.  
 24 I got into this race to bring change  
 25 and common sense back to our Supreme Court. I

Page 7

1 started thinking about it last spring. I could  
 2 not sit back and watch extreme right-wing  
 3 partisans hijack our Supreme Court, and that is  
 4 why I got into this race: change and common  
 5 sense.  
 6 My entire life has been dedicated to  
 7 community service; that is all I have ever wanted  
 8 to do. For the past 30 years, I have worked as a  
 9 prosecutor in Milwaukee County and a judge in  
 10 Milwaukee County. As a prosecutor, I handled  
 11 some of the most violent troubling cases that  
 12 could ever come before a court and that affect a  
 13 community in so very many ways. As a judge, I  
 14 just came off of three years in homicide and  
 15 sexual assault court. I have worked very, very  
 16 hard to keep the community safe and make the  
 17 tough calls necessary to ensure safety and uphold  
 18 peoples' constitutional rights.  
 19 I got into this race late last spring,  
 20 and I can tell you I have been all over our  
 21 beautiful state and, my God, our state is  
 22 beautiful, it is gorgeous. I have been  
 23 everywhere. During this period of time, I have  
 24 garnered over 1,000 endorsements from judges,  
 25 community leaders, and attorneys across our

Page 8

1 state. I have spent time listening to people and  
 2 hearing about what they think is important and I  
 3 know what they think is important. What they  
 4 want is the extremism to stop immediately; that  
 5 is what people want.  
 6 I am here to tell you that I am --  
 7 EMILEE FANNON: Judge, your time is up  
 8 if you could wrap up your final remarks.  
 9 JUDGE JANET PROTASIEWICZ: -- that  
 10 change, common sense candidate. Thank you.  
 11 EMILEE FANNON: Next up is Judge  
 12 Jennifer Dorow.  
 13 JUDGE JENNIFER DOROW: Well, thank you  
 14 to WisPolitics for hosting this forum, to the  
 15 moderators, and to the audience both here and who  
 16 will eventually watch online today for taking  
 17 time out of your busy schedule to be here.  
 18 I am Judge Jennier Dorow. I'm a wife,  
 19 I'm a mother, I'm a coach, and I'm a judge. I'm  
 20 a lifetime resident of Wisconsin. This is my  
 21 home.  
 22 Over my 26-year legal career, I have  
 23 served as a prosecutor, a private practice  
 24 attorney, and an advocate for abused and  
 25 neglected children. And for the last 11 years, I

Page 9

1 have served as a Waukesha County judge having won  
 2 two elections as a trial court judge.  
 3 I am running for the Supreme Court  
 4 because the people of this great state of  
 5 Wisconsin need and deserve a justice who will  
 6 uphold the rule of law, protect our  
 7 constitutional rights, and not inject their  
 8 political bias by legislating from the bench.  
 9 I have a depth and a breadth of  
 10 experience, unlike any other candidate, and an  
 11 unwavering commitment to a fair and impartial  
 12 judiciary. I'm also the choice of law  
 13 enforcement for the Wisconsin Supreme Court,  
 14 having earned bipartisan support and more law  
 15 enforcement endorsements than any other candidate  
 16 on this stage.  
 17 I also love this state and care deeply  
 18 for its future. I want to do my part to ensure  
 19 that my children, my children's children, and the  
 20 families of Wisconsin have a safe and secure  
 21 state in which to live, work, and play, and where  
 22 judges and justices protect our constitutional  
 23 rights.  
 24 EMILEE FANNON: Your time is up, please  
 25 wrap up.

Page 10

1 JUDGE JENNIFER DOROW: I've done that  
 2 as a trial court judge and now I'd be honored to  
 3 do that on the Wisconsin Supreme Court.  
 4 EMILEE FANNON: Justice Dan Kelly, your  
 5 opening remarks.  
 6 JUSTICE DAN KELLY: Thank you. Well,  
 7 good afternoon everyone. I'd like to take just a  
 8 moment to introduce myself to you. I came to  
 9 Wisconsin 40 years ago as a young man getting  
 10 ready to study at Carroll College.  
 11 I fell in love with the people of  
 12 Wisconsin the very first day I was here because  
 13 of the very first people that I met. They were  
 14 the most warm and welcoming people that you could  
 15 imagine, and over a long weekend of camping and  
 16 fishing, they taught me what it is to be a  
 17 Wisconsinite. I learned from them that  
 18 Wisconsinites are the people of the open hand and  
 19 the generous hearts.  
 20 A few years later, I met my wife at  
 21 intervarsity Christian fellowship meeting at  
 22 school, and 33 years and five children later,  
 23 they're my treasures.  
 24 The people of Wisconsin are the same as  
 25 when I met them 40 years ago: the people of the

Page 11

1 open hand and the generous heart. That's one of  
 2 the reasons it has been such an honor and a  
 3 privilege to serve you as one of your Supreme  
 4 Court justices. And this afternoon, I'm looking  
 5 forward to continuing a conversation that I  
 6 started many years ago about the proper role and  
 7 function of our Supreme Court and how critical it  
 8 is to elect a justice whose commitment is to  
 9 understanding and applying the original public  
 10 meaning of our Constitution, preserving the rule  
 11 of law, and preventing politics from interfering  
 12 with the work of the Court.  
 13 Thank you so much.  
 14 JR ROSS: Now much like we drew who  
 15 would speak first opening comments, we're going  
 16 to rotate who answers each question for us to  
 17 keep it fair.  
 18 Judge Protasiewicz, you get the first  
 19 question here. This race is for ideological  
 20 control of the Supreme Court. We know judges  
 21 often hate labels, so public views Judges  
 22 Mitchell Protasiewicz is left of center; they  
 23 view Judge Dorow and Justice Kelly as right of  
 24 center.  
 25 Outside groups are poised to spend

Page 12

1 millions of dollars on this race because what is  
 2 perceived to be at stake and they expect the  
 3 candidate they support will vote the "right" way.  
 4 Can you point to any ruling you've issued or  
 5 personal experience with the law that shows  
 6 you'll be an independent thinker on the Court  
 7 rather than a reliable vote for one side or the  
 8 other?  
 9 JUDGE JANET PROTASIEWICZ: Thank you.  
 10 Judicial independence is absolutely crucial and  
 11 critical. Wisconsinites deserve a court that is  
 12 independent. Wisconsinites deserve a court where  
 13 there's not a thumb on the scale. Wisconsinites  
 14 deserve a court where outcomes are not  
 15 preordained.  
 16 So the question is, what have I done to  
 17 show you that I'm a judicial independent.  
 18 Plenty. I am in court every single day. I told  
 19 you I just came off of three years in homicide  
 20 and sexual assault court; before that, I spent  
 21 two years in a high intensity drug trafficking  
 22 court; before that, a year in domestic violence  
 23 court.  
 24 Every single day, I heard arguments  
 25 from district attorneys, from defense attorneys,

Page 13

1 and I've heard victims tell me what's important  
 2 to them. How do you know I'm independent? Even  
 3 though I'm a career prosecutor, I side with the  
 4 person or party who I think is most appropriate.  
 5 Sometimes I do what the state want, sometimes I  
 6 do what the defense wants, but you never know. I  
 7 follow the law, I uphold the Constitution, and  
 8 that's what I plan to do and that's what I plan  
 9 to continue to do if you elect me as your next  
 10 Justice of the Wisconsin Supreme Court.  
 11 Wisconsinites deserve better than what  
 12 we have had. We deserve much better and that is  
 13 what I plan to do, fair and independent all the  
 14 time.  
 15 JR ROSS: Judge Dorow, you're next with  
 16 that question.  
 17 JUDGE JENNIFER DOROW: Thank you. The  
 18 core of my judicial approach has always been  
 19 fairness and impartiality. The people who appear  
 20 before a judge expect and deserve this. I say  
 21 they should demand this.  
 22 For the past 11 years, I have  
 23 administered justice fairly, faithfully, and  
 24 impartially. Sometimes judges are faced with  
 25 difficult litigants. I recently had such an



Page 14

1 experience in a case that I handled. The  
 2 citizens of Wisconsin got a very unique  
 3 opportunity to see my approach to fairness and  
 4 justice, and I was deeply touched by the feedback  
 5 that I got from around the world for how I  
 6 handled that case. I heard from judges across  
 7 the country and even inmates who sent letters  
 8 praising my efforts to be fair and impartial in  
 9 the face of extreme disrespect, disruption, and  
 10 at times even vile behavior.

11 Through it all, I protected the very  
 12 rights of the person who engaged in this behavior  
 13 while also ensuring that the rights of the  
 14 victims and the witnesses were also protected.  
 15 You can expect nothing less from me as your next  
 16 Supreme Court Justice. Fairness, impartiality;  
 17 that is what I will be.

18 JR ROSS: Justice Kelly.

19 JUSTICE DAN KELLY: Thank you. I think  
 20 it's important to emphasize the significance of  
 21 the premise to that question. Politics is poison  
 22 to the work of the Court.

23 Now everybody who comes to the court,  
 24 regardless of what they might tell you, everybody  
 25 has political beliefs. The question is whether

Page 15

1 you can set them aside to do the work of the  
 2 Court. In order to do that, you need to have a  
 3 methodology developed and ready at hand that you  
 4 can apply consistently every single day and  
 5 making sure that the results of the decision are  
 6 commanded by the law and are not influenced by  
 7 one's personal beliefs or personal politics.

8 The methodology I use is really quick  
 9 straightforward. I start always with the  
 10 premises, the law that applies to the case, and  
 11 then I exercise rigorous logic to move from those  
 12 premises all the way down to the conclusion. And  
 13 when you're done, you should be able to look back  
 14 and see an unbroken chain of logic connecting the  
 15 premises to the conclusion, and if you see an  
 16 unbroken chain, that's your guarantee that the  
 17 conclusion is commanded by the law, rather than  
 18 by the individual's personal preferences or  
 19 personal politics.

20 Now I've been told that there are some  
 21 of the opinions that I've written on the Court  
 22 that have not been the favorites of those might  
 23 be considered otherwise to be my supporters.  
 24 Because, in truth, every opinion that I've  
 25 written for the Supreme Court, every dissent,

Page 16

1 every concurrence has been based 100 percent on  
 2 what the law is, not on what I think it ought to  
 3 be, and certainly not on what any political party  
 4 or member of the legislature thinks that it ought  
 5 to be.

6 My commitment has always been the same:  
 7 simply applying the law and using rigorous logic  
 8 to reach the conclusion so that the people of  
 9 Wisconsin can have confidence that the decisions  
 10 of the Court are solely informed by the law.

11 And I've written my opinions in such a  
 12 way that they're accessible to anyone, regardless  
 13 of whether they have a legal background, because  
 14 I understand that I'm using borrowed authority  
 15 from the people of Wisconsin, and every opinion  
 16 that I write is my report to the people of  
 17 Wisconsin on what I have done with their borrowed  
 18 authority. And so, I've made it accessible, I've  
 19 made it logical so that anyone in this state can  
 20 confirm that the opinions that I write are  
 21 commanded solely by the law.

22 JR ROSS: Judge Mitchell.

23 JUDGE EVERETT MITCHELL: I would say  
 24 that shortly after I took the bench, one of the  
 25 first things I realized is how unfair the system

Page 17

1 truly is. There are so many inequalities within  
 2 our system that if you don't have the income to  
 3 be able to have representation in the court  
 4 system your voice isn't heard.

5 Fairness for me meant to make sure that  
 6 my courtroom was a place where every voice had an  
 7 opportunity to be heard, regardless of the income  
 8 that you did or did not have, regardless of your  
 9 race, regardless of your self-identified gender,  
 10 and was to give a space so that people could be  
 11 heard regardless of those things.

12 And when you're a judge who oversees  
 13 juvenile cases, it becomes even more important  
 14 because you're not dealing with adults; you're  
 15 dealing with children who often have no voice.  
 16 Children don't have a lobbyist group who can come  
 17 in and lobby for how you treat them, so it's up  
 18 to the judge who hears those cases to make sure  
 19 that they're creating an environment that is both  
 20 fair, that is honest, and most importantly,  
 21 transparent in those cases.

22 I do believe that there are times when  
 23 politics can try its best to enter into that  
 24 space, but a judge who is committed to the rule  
 25 of law and committed to fairness in our state

Page 18

1 will make sure that they understand that when  
 2 that person comes in, you don't ask them are you  
 3 Republican, are you Democrat, are you Green  
 4 Party, are you Independent. They're  
 5 Wisconsinites and they deserve to have their  
 6 cases heard without any bias whatsoever.  
 7 And I always say any judge who comes to  
 8 the bench with a predetermined idea already  
 9 should recuse him- or herself from the process  
 10 because the fairness of our system is at stake;  
 11 the integrity of the court system is at stake.  
 12 And so we have to suspend those things, so at  
 13 that moment in which somebody needs to be heard,  
 14 that we remain curious to the facts that are  
 15 being brought before us. And when you lose that  
 16 curiosity, you're no longer a judge, you're no  
 17 longer; you're a partisan tool that somebody can  
 18 use to be able to get what you want.  
 19 And I can promise you, I have a whole  
 20 lot in my resume that shows you I'm nobody's  
 21 tool. I stand on the beliefs, I stand on what's  
 22 right, I stand on what's fair, and I live in that  
 23 moment and I believe what it is.  
 24 I remember as a pastor when I had to  
 25 marry -- when I was compelled to marry a same-sex

Page 19

1 couple in my congregation and people told me,  
 2 they said we don't do that. Black Baptist  
 3 preachers don't do that. And I said to them, I  
 4 said, we're going to stand on what is right, even  
 5 before the Supreme Court gave us cover to do so.  
 6 And I married those two women in my congregation  
 7 because they had been together 42 years and when  
 8 they asked me would I do it, I said of course, I  
 9 will. I don't many straight people that's been  
 10 together 42 years.  
 11 And so I married that same-sex couple  
 12 and I pastor the only open and affirming  
 13 congregation. Why? Because I'm independent and  
 14 I cannot be controlled by others, groups, or  
 15 influencers.  
 16 So the example that you said give us an  
 17 example, I remember when I had a case before me  
 18 with a lawyer that I loved to death, came into my  
 19 courtroom, and he presented something before me,  
 20 and I remember that it was against Scott Walker.  
 21 And I looked at the law, looked at the facts, and  
 22 everything in me said this is about the rule of  
 23 law, not about my friend; that's not my friend in  
 24 this moment. He's a litigant and I got to make  
 25 sure I follow the rule of law.

Page 20

1 And so I made that decision to uphold  
 2 the decision related to the Scott Walker  
 3 administration because, for me, that is the job,  
 4 and afterwards, we can go get some beers. And he  
 5 was mad at me for two and a half years, but I had  
 6 to do the job that I was called -- that I was  
 7 committed to do and that's what I did in that  
 8 moment. Thank you.  
 9 EMILEE FANNON: All right. Continuing  
 10 in our order, Judge Dorow, we will start with you  
 11 with this question:  
 12 The State Supreme Court has rejected  
 13 past petitions asking the Justices to set a  
 14 recusal standard for cases in which a party has  
 15 contributed to their campaign. Essentially, the  
 16 Court has said it is up to each judge to make a  
 17 decision on whether they can be impartial.  
 18 Still, the State Democratic and Republican  
 19 Parties are already fundraising for the race and  
 20 are expected to spend millions of dollars in this  
 21 campaign.  
 22 One, do you believe the Court was  
 23 correct in rejecting requests to set a standard  
 24 for recusal and, two, will you hear cases  
 25 involving the state political parties knowing

Page 21

1 they will and likely spend against you in this  
 2 race?  
 3 JUDGE JENNIFER DOROW: Well, first and  
 4 foremost, my integrity cannot be bought by  
 5 anyone. We have rules and statutes already that  
 6 address recusal and they are important. I would,  
 7 of course, follow them and apply them to the  
 8 facts of any given case. At the same time, I  
 9 know that recusal is often used as a weapon by  
 10 litigants to secure the judges they prefer and  
 11 that is wrong.  
 12 Justice requires that judges and  
 13 justices hear the cases that come before the  
 14 Court. We have an ethical obligation to  
 15 diligently take care of our cases. That is the  
 16 job that the people of Wisconsin and of our  
 17 counties elect us to do.  
 18 I often think of recusal in the context  
 19 of a one judge county. A judge in a one judge  
 20 county knows probably everyone, or at least a  
 21 large portion of that county's population. And  
 22 if we start looking at money, why don't we look  
 23 at time or why don't we look at the efforts that  
 24 other people put even into our campaigns. But if  
 25 a judge in a one judge county would recuse

Page 22

1 himself based on every relationship that that  
 2 judge had, even if it's just a litigant or an  
 3 attorney or even a financial donation without  
 4 more, that judge wouldn't handle the cases that  
 5 that judge was elected to do.  
 6 We can still look at the cases from a  
 7 broader perspective even when they come to the  
 8 Supreme Court. And again, go back to the rules,  
 9 go back to the law because the law is important  
 10 and our statutes and our Supreme Court rules on  
 11 recusal and the case law that talks about them  
 12 are very important and I would start with that  
 13 and I would then apply those laws and those  
 14 principles to the facts of the case before me.  
 15 EMILEE FANNON: Thank you. Justice  
 16 Kelly, you are next.  
 17 JUSTICE DAN KELLY: Here's where I  
 18 start. I understand that all of the authority to  
 19 create and maintain governments in the State of  
 20 Wisconsin comes from -- well, you, we the people  
 21 of Wisconsin, and it comes to us only as a loan  
 22 and that loan is mediated by the Constitution of  
 23 that the people of Wisconsin decided to create  
 24 and maintain.  
 25 And the point of this is that the

Page 23

1 question of recusal is for the people of  
 2 Wisconsin to decide if they believe that there  
 3 should be new rules or different rules governing  
 4 how that is handled. Right now, what they've  
 5 decided is that there is a cap on contributions  
 6 to judicial candidates and that's their call.  
 7 They believe that to be an appropriate way of  
 8 handling that issue.  
 9 The people of Wisconsin decided that  
 10 our judiciary is to be an elected judiciary.  
 11 There are many different ways of doing that: You  
 12 could have an appointive judiciary; you could  
 13 have a Senate confirmation for judicial nominees.  
 14 But Wisconsin has decided on elections and they  
 15 know well enough that elections require the  
 16 candidates have the ability to get their messages  
 17 out to the people of Wisconsin. And so, they put  
 18 their stamp of approval on the contributions they  
 19 think is appropriate for a judicial candidate to  
 20 receive and continue to sit on cases.  
 21 Now, I think on top of that is the  
 22 individual responsibility of the Supreme Court  
 23 justice. Only we can truly know whether we are  
 24 going to be adversely impacted by someone's  
 25 contribution, by someone's time or efforts in

Page 24

1 supporting us, or conversely, by someone who has  
 2 spent against us in a campaign.  
 3 The truth of the matter is it would be  
 4 extraordinarily difficult to develop a standard  
 5 of recusal that could capture all of those  
 6 elements and all of those dynamics in a way that  
 7 could be administered in an intelligent fashion.  
 8 The real key to recusal is this: It's  
 9 the choice of the people of Wisconsin and who  
 10 they send to their Supreme Court and that has to  
 11 begin with a level of trust in who you send. It  
 12 has to be a commitment to looking at the  
 13 character of the person and understanding that  
 14 that person will stay true to the law and will  
 15 not allow other factors to influence the way they  
 16 decide cases.  
 17 And that if they should encounter a  
 18 circumstance in which there is an outside factor  
 19 that is so powerful, so dynamic that would  
 20 threaten to change the results of a case, that  
 21 that person would have the integrity and the  
 22 honor to step aside, and that's what recusal is  
 23 about.  
 24 EMILEE FANNON: Up next is Judge  
 25 Everett Mitchell.

Page 25

1 JUDGE EVERETT MITCHELL: So if you ever  
 2 go to the Wisconsin Supreme Court website,  
 3 there's a seal. It's a beautiful seal because  
 4 it's different than the other seals that I've  
 5 seen representing justice. The Wisconsin Supreme  
 6 Court seal has a hand that's holding the scale,  
 7 and that hand that's holding the scale is meant  
 8 to say that there's a certain balance that judges  
 9 and justices are supposed to have when it comes  
 10 to thinking about what justice should look like  
 11 in every case.  
 12 So when I think about recusal, I think  
 13 about that symbol; that when a judge's hand  
 14 starts to tilt the balance in a different  
 15 direction, he or she needs to make sure that they  
 16 recuse themselves. I think that is the ultimate  
 17 decision that we all make.  
 18 I get that question all the time as a  
 19 person who's always in the community. The first  
 20 thing people always ask, Judge, will you have to  
 21 recuse yourself because you know so many people.  
 22 I say, no, just because I'm popular doesn't mean  
 23 I got to recuse myself from every case. What it  
 24 means is that I have to make sure that there is a  
 25 standard in which I review and I explain the

Page 26

1 relationships up front.  
 2 I think what has often made the court  
 3 seem as though it's a dark place is because  
 4 justices and judges are not always honest about  
 5 the relationships that they have when they see  
 6 them in the courtroom. So any time I see  
 7 somebody that comes up, I make sure every party  
 8 is aware of what that relationship may look like,  
 9 and I make sure that every party is aware that  
 10 those things are important and they may be in  
 11 play so that everybody understands the rules of  
 12 engagement in that moment that we're going to  
 13 address the particular case.  
 14 Because my view has always been, we  
 15 should never be at the point where we're tipping  
 16 the balance of power in one direction or the  
 17 other because of relationships that we have. As  
 18 I said earlier, it is about curiosity, and I  
 19 think that there are rules related to recusal.  
 20 And if you are in a position where you  
 21 do believe that you can no longer effectively,  
 22 fairly, impartially administer a decision or you  
 23 will be able to make rulings in a particular case  
 24 even before it goes before a jury or if you have  
 25 it to answer yourself in a court trial, if you

Page 27

1 cannot listen to evidence in a fair manner, then  
 2 you need to make sure that you give the person in  
 3 front of you the due respect to tell them I need  
 4 to get off this particular case.  
 5 And that goes back to the integrity of  
 6 the individuals that you elect to be in these  
 7 positions. That goes back to people  
 8 understanding that it's not about having a  
 9 particular victory. It is about their persons or  
 10 the persons or the bodies or the issues that are  
 11 in front of you, make sure that they get  
 12 litigated fairly in a way that brings and holds  
 13 the integrity of our court system and place at  
 14 the same time.  
 15 So again, I'll go back to that example.  
 16 I think you need a justice who has even hand and  
 17 they make sure that they don't tilt it, but they  
 18 let the facts tilt it in a direction that it's  
 19 supposed to go. Thank you.  
 20 EMILEE FANNON: Judge Protasiewicz up  
 21 next.  
 22 JUDGE JANET PROTASIEWICZ: I think we  
 23 need a recusal rule. I think we have two  
 24 distinct scenarios that we've been talking about.  
 25 Sure, we all go into our courtrooms and we all

Page 28

1 know many of the people on our cases. We always  
 2 disclose I know the plaintiff, I know the  
 3 respondent, I know the defendant, you know, I  
 4 know the defendant's attorney is one of my court  
 5 commissioners; we always disclose that.  
 6 But I take it a step further when it  
 7 comes to the political contributions. I think  
 8 that due to the extreme partisanship and the  
 9 amount of money that comes into races like this,  
 10 we absolutely need a recusal rule. Now what  
 11 should that recusal rule be? I think the public  
 12 should be able to weight in on that.  
 13 I know that it has been talked about  
 14 and presented to the Supreme Court in the past  
 15 and the idea of talking about the recusal rule  
 16 has been rejected, but I think there should be  
 17 open hearings about that. I don't think I'm in  
 18 the minority. I can tell you that there are a  
 19 majority of retired Wisconsin Circuit Court  
 20 judges who also think that there should be a  
 21 recusal rule.  
 22 And I also understand that there are  
 23 limits as to how much money an individual or a  
 24 union can contribute to a personal campaign, and  
 25 in this particular campaign, an individual can

Page 29

1 contribute \$20,000 to my campaign. The question  
 2 is if you're on the Supreme Court, does \$20,000  
 3 sway you or not. Each individual would have  
 4 their own answer to that.  
 5 However, that's not what we're talking  
 6 about. We're talking about outside money that's  
 7 going to come into this campaign in millions and  
 8 millions of dollars, millions of dollars; that is  
 9 why there has to be a recusal rule. The public  
 10 has to weigh in.  
 11 I'm not going to sit here and tell you  
 12 what I think an exact number is, but I absolutely  
 13 think there has to be a hearing, the public has  
 14 to weigh in, and I think there should be a  
 15 recusal rule 100 percent. Thank you.  
 16 JR ROSS: Judge, Dorow, did you answer  
 17 the question?  
 18 JUDGE JENNIFER DOROW: I answered the  
 19 question.  
 20 JR ROSS: All right, just making sure  
 21 we're on the same page.  
 22 EMILEE FANNON: We're taking them in  
 23 the same order.  
 24 JR ROSS: Justice Kelly, you're up  
 25 next. Now, Judge Dorow and Justice Kelly, the

Page 30

1 applications you filled out for an appointment to  
 2 the bench asked you for the worst ruling by the  
 3 Wisconsin Supreme Court in the last 30 years.  
 4 Judge Dorow, in 2011, you cited a 2003 U.S.  
 5 Supreme Court ruling overturning a Texas anti-  
 6 sodomy law. Justice Kelly, you cited a 2005  
 7 ruling from that Court that said -- that justify  
 8 the government taking private property to be put  
 9 to a more productive economic use.  
 10 For the two of you, I want to know is  
 11 that still the worst decision you've seen in the  
 12 last three decades.  
 13 For Judges Mitchell and Protasiewicz,  
 14 what's the worst ruling you've seen in the last  
 15 few decades in Wisconsin or U.S. Supreme Courts.  
 16 So Justice Kelly up first.  
 17 JUSTICE DAN KELLY: I think that stands  
 18 up well. You know, we look at our Wisconsin  
 19 Constitution and the very first article and the  
 20 very first section says that we are endowed with  
 21 inalienable rights, that amongst these are life  
 22 and liberty and the pursuit of happiness, and  
 23 that governments are created to protect those  
 24 rights gaining their just powers from the consent  
 25 to the government.

Page 31

1 When the government steps in and takes  
 2 private property, it's not just an economic  
 3 problem for the person who loses the property;  
 4 it's also a question of liberty. You've acquired  
 5 that property, whether it's real estate or  
 6 personal property, for a reason: because you  
 7 believed that it would be productive, that it  
 8 would be enjoyable, because it would advance your  
 9 pursuit of happiness.  
 10 And when the government steps in and  
 11 takes that from you, it has to have a really good  
 12 reason and there has to be just compensation, but  
 13 the just compensation only takes care of the  
 14 financial aspect of that intrusion.  
 15 So I think any opinion of a Court that  
 16 allow for the government to, without regard to  
 17 absolute necessity of taking it for the purpose  
 18 of public use, that would allow a government to  
 19 take that property is inappropriate. See, the  
 20 problem in that case was it was not being taken  
 21 for public use; private use, transferring it from  
 22 one private party to another, and this is a  
 23 significant interference with the liberties that  
 24 our Constitution protects, so I think that  
 25 opinion stands up well as one of the worst

Page 32

1 opinions.  
 2 JR ROSS: Thank you. Judge Mitchell.  
 3 JUDGE EVERETT MITCHELL: So I think for  
 4 me there are a lot of Supreme Court decisions in  
 5 various categories that have had very adverse  
 6 impacts. I think I can think of no other greater  
 7 impact that I have seen with the overturning of  
 8 the Roe decision.  
 9 I think the overturning of the Roe  
 10 decision really put at jeopardy of privacy that  
 11 we were founded in the Fourteenth Amendment as a  
 12 critical place of infrastructure of how we  
 13 understood the law. It was one of the first  
 14 times that I can remember in my own history that  
 15 a right was reached into the lives of people and  
 16 taken away.  
 17 While we also understand that, you  
 18 know, the decision really focused a lot on, you  
 19 know, precedent, it also invalidated the ways in  
 20 which courts often use precedence to make sure  
 21 that we're ensuring the rights of individuals are  
 22 consistently maintained and protected at the same  
 23 time.  
 24 The invalidation of a protection for  
 25 reproductive choice also was telegraphed through

Page 33

1 Justice Thomas to also look at, you know, not  
 2 only same gender relationships but also, you  
 3 know, all of the other constitutional rights that  
 4 we also seen as protected as well. So I think  
 5 overturning that also put our country in a very,  
 6 you know, chaotic place where you may have 50  
 7 different types of interpretations about  
 8 reproductive choice.  
 9 And our states are struggling to try to  
 10 figure out where these things mean because that  
 11 was taken away from something that the majority  
 12 of individuals in our communities in our states  
 13 had also thought was foundational at that time.  
 14 So there are a lot of consequential  
 15 decisions, whether we're talking about Shelby  
 16 County v. Holder that talked about voting rights  
 17 or Graham v. Connor that talked about the  
 18 engagement around police reform. But this one is  
 19 significant because it was the first time in my  
 20 study of the law that I can see that the Supreme  
 21 Court went and took a right for which that had  
 22 been a right for people for over 50 years and  
 23 we're dealing with the consequences of that  
 24 instability all throughout our country and all  
 25 throughout many peoples' lives right now, so I'll

Page 34

1 leave it with that.  
 2 JR ROSS: Thank you. Judge  
 3 Protasiewicz.  
 4 JUDGE JANET PROTASIEWICZ: I agree. I  
 5 think the Dobbs decision is the worst Supreme  
 6 Court decision that comes to mind. That is the  
 7 epitome and definition of judicial activism.  
 8 Quite frankly, I was surprised when they reached  
 9 and rendered that decision. Three generations of  
 10 women have counted on Roe v. Wade to allow them  
 11 to make their own decisions in regard to  
 12 reproductive rights.  
 13 Now, I can't tell you where I'll end up  
 14 on any case. I can tell you a little bit about  
 15 my values, and I assume I'd be asked about that  
 16 because it's no secret what my values are in  
 17 regard to Roe v. Wade and in regard to the Dobbs  
 18 case. Privacy issue is paramount.  
 19 My value is that women should be able  
 20 to make their reproductive right decisions  
 21 themselves. Sure, go ahead, talk to your clergy,  
 22 talk to your family, talk to your healthcare  
 23 provider. But in the end, my values tell me that  
 24 that should be your decision.  
 25 That is exactly why we need to bring

Page 35

1 common sense back to the Court. That's exactly  
 2 why we need to bring change back to the Court to  
 3 not only uphold our Constitution, to not only  
 4 employ stare decisis, but to uphold the will of  
 5 the people who have relied on I think three  
 6 generations -- would that be 50 years  
 7 potentially? -- three generations of women.  
 8 Many women never knew a world before  
 9 Roe; now, they certainly do. So, to me, that is  
 10 the most critically poor decision and, as I  
 11 indicated earlier, an absolute example of  
 12 judicial activism.  
 13 JR ROSS: Thank you. Judge Dorow.  
 14 JUDGE JENNIFER DOROW: Thank you. I'll  
 15 be honest with all of you, sometimes I don't  
 16 personally agree with the law that I'm applying  
 17 and I'm sure that's also true for the U.S. and  
 18 Wisconsin Supreme Court justices. Sometimes the  
 19 words or even the statutes themselves are stupid,  
 20 but stupid doesn't mean unconstitutional. It  
 21 doesn't matter to my job whether I like the words  
 22 or even to agree with the law. My job is to  
 23 apply the words and what they mean.  
 24 If I were running for the senate or  
 25 assembly, I might campaign on changing some laws,

Page 36

1 but I'm not running for the legislature, none of  
 2 us are. I'm running for a seat on the Wisconsin  
 3 Supreme Court. Politics have absolutely no place  
 4 in the courtroom and we should not be legislators  
 5 in robes. Thank you.  
 6 EMILEE FANNON: All right. This next  
 7 question we'll start with Judge Mitchell. We now  
 8 want to flip that question that we just asked you  
 9 around. What ruling has most shaped your  
 10 judicial philosophy?  
 11 JUDGE EVERETT MITCHELL: If you have a  
 12 judicial philosophy, it is rooted in probably a  
 13 judicial mentor that you've used to better  
 14 understand how the law understands.  
 15 Part of my judicial is Justice Thurgood  
 16 Marshall. And I think his argument in the Brown  
 17 v. Board of Education when it overturned the  
 18 separate but equal doctrine was one of those  
 19 decisions when you're growing up as a young man  
 20 learning about what the law is, that you  
 21 understand how the law can be used to oppress and  
 22 demean and hurt communities of color because of  
 23 the fact that they're using the law as a  
 24 foundation for that erosion.  
 25 And so, the fact that, you know,

Page 37

1 Justice Marshall was educated by Charles Hamilton  
 2 Houston at Howard University and he was educated  
 3 on the idea that the Fourteenth Amendment could  
 4 be the vehicle that is used to change the  
 5 dynamics of how we understood the law and that  
 6 you can use the law as a force for good, that you  
 7 can use the law as a force for change and making  
 8 peoples' lives better.  
 9 No, we're not up here trying to be  
 10 legislators, but even the language of the law  
 11 that we're supposed to enforce itself should make  
 12 sure that lives are being better if we have the  
 13 discretion to do so.  
 14 And it was Justice Marshall's ways in  
 15 which he thought about the law and using the law  
 16 that gave me a sense of purpose to my own  
 17 judicial philosophy so that when I think about  
 18 the discretion that judges have -- and trust me,  
 19 Wisconsin, judges, especially those who served in  
 20 the district courts, we have a lot of discretion  
 21 where we can implement all kinds of things that  
 22 are not codified in statute, nor in case law,  
 23 that you have to make ruling on every day, so you  
 24 make those decisions.  
 25 And so, I still remember the time that

Page 38

1 I have these ideas about Justice Marshall using  
 2 it and Brown v. Board of Education and the  
 3 decision to desegregate all these schools to  
 4 bring our communities together. I think about  
 5 the times in my courtroom, like, when I had the  
 6 young child come into my courtroom -- blonde,  
 7 blue-eyed child -- in handcuffs, belts, and  
 8 restraints. And I asked myself, what do I use my  
 9 discretion for in this moment to make this child  
 10 better, to make sure that the lives of these  
 11 children are better.  
 12 And when I pushed toward taking away  
 13 handcuffs off of children, not only in Dane  
 14 County, but also joining the petition that we get  
 15 before the Supreme Court to do it statewide, it  
 16 was a reminder that the law not only is about  
 17 what's in books and statutes and case law, but  
 18 the law is what it looks like in the lives of  
 19 people who have the impact to change something  
 20 that is wrong before you.  
 21 And that is what is a judge is supposed  
 22 to do also, not only just follow patterns and  
 23 trends with everybody else is, but ask the  
 24 critical question of why are we doing this and  
 25 can we change it.

Page 39

1 And so, always paying attention to how  
 2 passionately Justice Marshall argued for  
 3 integration in a world that seemed to be set in  
 4 how we do things gave me the courage to do some  
 5 of the stuff that I have done to make the  
 6 judiciary reflect a certain value system of  
 7 fairness, kindness, and equality.  
 8 EMILEE FANNON: Judge Protasiewicz.  
 9 JUDGE JANET PROTASIEWICZ: Judicial  
 10 philosophy is -- I'm not going to say it's  
 11 complicated. It is what you do every single day  
 12 that you walk into your courtroom, and my goal  
 13 and my judicial philosophy is that every single  
 14 person who walks into my courtroom gets a fair  
 15 shake.  
 16 I'm a commonsense judge, I was a  
 17 commonsense prosecutor, and I'll be a commonsense  
 18 justice on your Supreme Court. There's no thumb  
 19 on the scale putting down a weight toward one  
 20 side or the other. Everybody is treated  
 21 absolutely fairly. I've rendered some sentences  
 22 that parties don't like, but my goal is when they  
 23 walk out of the courtroom that everybody feels as  
 24 though they've been treated fairly.  
 25 In regard to specific cases, I have a

Page 40

1 couple of them that have really impacted me. We  
 2 talked about Brown v. Board of Education; we  
 3 talked a little bit about Plessy v. Ferguson, you  
 4 know, it's a precursor. And I think it's  
 5 critical that when you look at those two cases  
 6 you see that Plessy v. Ferguson talked about  
 7 separate but equal. What did we learn back in  
 8 high school? Always separate, never equal;  
 9 that's what we learned in Plessy v. Ferguson.  
 10 Then we come forward to the Board of  
 11 Education where those laws were struck down. And  
 12 to me and my judicial philosophy, what it tells  
 13 you, is that we are a living, breathing document  
 14 and our laws change and they evolve and the case  
 15 law changes and evolves. I think that that is  
 16 critically important.  
 17 So fairness, evolution, no thumb on the  
 18 scale, everybody being treated equitably would be  
 19 what I would have to say is my judicial  
 20 philosophy.  
 21 EMILEE FANNON: Judge Dorow.  
 22 JUDGE JENNIFER DOROW: So the role of a  
 23 judge at its core is to apply the law, not make  
 24 it. Laws are written and words have meaning.  
 25 Everybody knows this. We use words every single

Page 41

1 day in the contracts we enter into, in the wills  
 2 we make so that they will be applied upon our  
 3 death. We expect that the words we use in those  
 4 moments of our wills and our contracts won't be  
 5 twisted later on by giving them a meaning that we  
 6 didn't intend or, frankly, wasn't even in  
 7 existence when we used them. Statutes and the  
 8 Constitution should be treated no differently.  
 9 The role of a judge should not be  
 10 interfered with by our political views. We wear  
 11 a black robe in part to tell of our authority,  
 12 but also to shield us from the biases and the  
 13 prejudice that we undoubtedly bring from our  
 14 personal experiences.  
 15 You know, I've spent 9 of my 11 years  
 16 on the trial court bench in key leadership  
 17 positions dedicating my career to improving the  
 18 justice system. I have been appointed three  
 19 times by the Wisconsin Supreme Court to serve as  
 20 a chief judge, and I've been selected and have  
 21 the honor and privilege by my peers to serve as  
 22 the chair of the committee of chief judges or  
 23 chief of the chiefs, as we affectionately refer  
 24 to it. That is where judges can really have an  
 25 impact on improving the justice system.

Page 42

1 Of course, we need to be fair and  
 2 impartial in every case that comes before us.  
 3 The litigants deserve it, the victims deserve it,  
 4 the families of everyone involved, the accused,  
 5 they deserve it as well. But it starts and ends  
 6 with our commitment to be fair and impartial and  
 7 give due respect to the role that our founders  
 8 gave to us when they instituted the three  
 9 branches of government. Thank you.  
 10 EMILEE FANNON: Justice Kelly.  
 11 JUSTICE DAN KELLY: I'm influenced by  
 12 all of the court opinions in which the justices  
 13 have demonstrated fidelity to the Constitution;  
 14 that's the north star for us, fidelity to the  
 15 Constitution.  
 16 Now sometimes circumstances call for  
 17 the Constitution to change, and that's why both  
 18 the United States Constitution and our Wisconsin  
 19 Constitution provide for amendments, amendments  
 20 in which the people and their representatives  
 21 decide how and when those Constitutions are going  
 22 to change.  
 23 It does not change in the hands of the  
 24 Court. It must not ever change in the hands of  
 25 the Court. That is a fundamentally illegitimate

Page 43

1 step to take, and the reason for that is because  
 2 of the nature of the authority that we wield.  
 3 You see, when the people of Wisconsin put  
 4 together our Constitution, they did not ask us  
 5 what our views on the Constitution were. They  
 6 did not ask us to decide what laws are good and  
 7 effective and which are not. They asked us to do  
 8 one thing: Please decide our cases according to  
 9 the way the law is written, and we -- we, the  
 10 people -- will take care of it if those laws or  
 11 the Constitution needs to change.  
 12 Now, there's been mention both of  
 13 Plessy and Brown v. Board of Education, and I  
 14 think that's a great example. Plessy was wrong.  
 15 It was wrong the day it was decided; it was wrong  
 16 every day after that. And when Brown came along  
 17 and overruled it, it was not because they took  
 18 the Constitution into their own hands to change  
 19 it. It is because they looked at Plessy and the  
 20 compared it to the Constitution and they said  
 21 Plessy was simply wrong and we are fixing that  
 22 error.  
 23 Now I'm the only candidate in this race  
 24 who has experience doing that sort of thing. Now  
 25 this might be a little self-referential and I

Page 44

1 apologize for that, but I wrote the opinion in  
 2 Tetra Tech v. Department of Revenue. Now that  
 3 wasn't a case as monumental as Plessy and Brown,  
 4 but it was a question of whether the Supreme  
 5 Court of the State of Wisconsin had gone off on a  
 6 wrong track for about 100 years. And the  
 7 question there was who decides as a final matter  
 8 how to apply the law: Is it an executive agency  
 9 or is it the Supreme Court, the branch that the  
 10 people of Wisconsin have entrusted with the  
 11 judicial power?  
 12 And over a course of about 100 years,  
 13 the Supreme Court had slowly begin deferring to  
 14 administrative agencies' interpretation of the  
 15 law, and they concluded that we have to defer to  
 16 what they think the law is. So we researched  
 17 that, we compared it to the Constitution, and we  
 18 concluded that those precedents were wrong. They  
 19 were wrong the day they were decided; they were  
 20 wrong every day after that.  
 21 And so, it was our responsibility and  
 22 our job to correct that wrong and it was my honor  
 23 to write the opinion in Tetra Tech in which we  
 24 said we are repatriating the authority of the  
 25 Court where it belongs, with the judiciary. And

Page 45

1 the consequence of that is that when you have  
 2 cases in which the government is a party, you  
 3 will be assured that it's the Court applying the  
 4 law and not your opponent in the courtroom.  
 5 JR ROSS: Thank you. Emilee will tell  
 6 you from our (indiscernible), I'm a redistricting  
 7 dork, total and complete absolute dork. So I  
 8 want to apologize to our two justices here for  
 9 summarizing the dozens and dozens and dozens of  
 10 pages you guys wrote about redistricting in the  
 11 past year and a half.  
 12 That said, Judge Protasiewicz, the  
 13 Court issued several rulings in that case. One  
 14 was the parties decided to take a least change  
 15 approach map they submitted. They then  
 16 eventually picked a map drawn by (indiscernible)  
 17 lawmakers because it followed that directive and  
 18 was race neutral.  
 19 My question is, was the Court correct  
 20 to require a least change approach, and do you  
 21 believe there are conditions in Wisconsin that  
 22 meet the requirements to allow race to be  
 23 considered as a factor in drawing political  
 24 boundaries?  
 25 JUDGE JANET PROTASIEWICZ: So let's be



Page 46

1 clear here: the maps are rigged, bottom line,  
 2 absolutely positively rigged. They do not  
 3 reflect the people in this state. They do not  
 4 reflect accurately representation in neither the  
 5 state assembly or the state senate; they are  
 6 rigged, period. I'm coming right out and saying  
 7 that.

8 I don't think you could sell to any  
 9 reasonable person that the maps are fair. Least  
 10 change approach, I mean, I think the idea of it  
 11 might sound good to some people. I see no basis  
 12 for it in the Constitution, no basis in case law.  
 13 Basically, what the least change approach has  
 14 done, has taken votes away from -- or meaningful  
 15 votes away from people in large communities in  
 16 Dane County and in Milwaukee County.

17 I believe the gerrymandering decision  
 18 was wrong. As I indicated to you before, I can't  
 19 ever tell you what I'm going to do on a  
 20 particular case, but I can tell you values, my  
 21 common sense tell you that it's wrong. And I was  
 22 talking to somebody and the person used this  
 23 phrase with me in regard to the maps -- I wrote  
 24 it down so I get it right because I think it is  
 25 so interesting. They said, "In the State of

Page 47

1 Wisconsin, do the voters choose the politicians  
 2 or do the politicians choose the voters," right,  
 3 and that absolutely resonates with me.

4 So as I've indicated, I think those  
 5 maps are rigged. I think they're unfair. I  
 6 don't think they fairly reflect the population in  
 7 our state. Thank you.

8 JR ROSS: Judge Dorow.

9 JUDGE JENNIFER DOROW: I think we all  
 10 would agree that what happened this past year was  
 11 very interesting and unique. Following the  
 12 Census every 10 years, the legislature and the  
 13 governor are tasked with coming up with new maps.  
 14 The process is guided by the principle of one  
 15 person/one vote, the Voting Rights Act, and the  
 16 Wisconsin Constitution.

17 When the legislature and the governor  
 18 could not agree on the new maps, the Supreme  
 19 Court was asked to step in. And then, of course,  
 20 we saw the very unusual back and forth between  
 21 the Wisconsin Supreme Court and the United States  
 22 Supreme Court. Ultimately, after the U.S.  
 23 Supreme Court reversed our court, the 2020 map  
 24 proposed by the legislature was adopted.

25 Now, there is talk about further

Page 48

1 challenges, so I will not put myself in a  
 2 position to prejudge anything. But as with any  
 3 case, I will listen to the challenge and I will  
 4 apply the law to the facts at hand. Thank you.

5 JR ROSS: Justice Kelly.

6 JUSTICE DAN KELLY: I think when  
 7 someone tells you what their values are in an  
 8 answer to a legal question, they're telling you  
 9 how they're going to decide a case.

10 A redistricting map is an entirely  
 11 political act: It involves political calculation,  
 12 it involves communities of interest, it involves  
 13 give and take, it involves compromise, it  
 14 involves the political process; it is political  
 15 from start to end.

16 Now there are legal elements to a map.  
 17 The phrase least change is meant to capture what  
 18 the Court's responsibility is when it has to  
 19 consider a redistricting map. See, we do have  
 20 legal standards for what a map must do. It has  
 21 to have equal population. And if you look at our  
 22 Constitution, Article 4, Section 4, it tells us  
 23 that the districts must be compact and  
 24 contiguous. These are legal requirements, and  
 25 Courts are for the law and the law alone. It is

Page 49

1 not for politics.

2 And so, when a map comes to the Court  
 3 with a challenge that it is unlawful in some  
 4 regard, the Court's responsibility is limited to  
 5 considering the legal challenges, not the  
 6 political challenges.

7 How districts get apportioned according  
 8 to political considerations must have no purchase  
 9 in the courts, unless we are dead set on tearing  
 10 down the distinctions between the branches of  
 11 government that our Constitution creates. But if  
 12 we are going to preserve the constitutional  
 13 order, if we are going to make sure our courts  
 14 exist wholly and only for the purpose of deciding  
 15 legal questions, then we can't let our values,  
 16 our personal values or our personal politics  
 17 reorient what the different branches of  
 18 government are supposed to do.

19 When that map comes to the Court, its  
 20 mandate is the same as with respect to every  
 21 other case that has ever come before the Court or  
 22 will ever come before the Court: decide questions  
 23 of law, not politics.

24 JR ROSS: Thank you. Judge Mitchell.

25 JUDGE EVERETT MITCHELL: I think I'll

Page 50

1 start my comments around this idea from Justice  
 2 Ginsburg in her dissent in Shelby County, Alabama  
 3 v. Holder, and Justice Ginsburg said:  
 4 "The evolution of voting discrimination  
 5 into more subtle second-generation barriers is  
 6 powerful evidence that a remedy as effective as  
 7 preclearance remains vital to protect minority  
 8 voting rights and to prevent backsliding." She  
 9 said the second-generation barriers are no longer  
 10 subtle.  
 11 It's a reminder that when we think  
 12 about the nature of maps and the decision that  
 13 the Supreme Court in many ways had to make that  
 14 decision is because our democracy in many ways  
 15 has become broken; the partisanship has become  
 16 broken. And now, they're looking to courts to  
 17 answer questions for which the courts should be  
 18 focused on the law, but now we're being forced to  
 19 answer questions because democracy is no longer  
 20 working.  
 21 So I think in order to restore peoples'  
 22 faith in our democracy, what we need to do is to  
 23 ensure that legislative districts are drawn in a  
 24 fair, non-partisan way. And I think the way how  
 25 extremely partisan our maps have gotten, we're

Page 51

1 saying to folks, both on the left and to the  
 2 right, that your voices don't matter in these  
 3 districts, only party leadership does.  
 4 So I think you're right in the sense  
 5 that, yes, the law is a place for us to consider  
 6 these bigger things, but it's also the  
 7 implications that our laws will have upon the  
 8 lives of people that I believe our Constitution  
 9 asks for us to be able to make.  
 10 Just an example that we were given  
 11 earlier when we talked about overturning Plessy  
 12 and implementing Brown v. Board of Education,  
 13 they implemented that idea not because they were  
 14 following the law, because they understood the  
 15 implications of having children educated in  
 16 separate environments and what that meant.  
 17 It's also the understanding of why the  
 18 Supreme Court also supported same gender marriage  
 19 because of the social implications for what this  
 20 also looked like as it relates to privacy.  
 21 So I believe our maps that we have now  
 22 have ridded so many people of a particular voice  
 23 that is necessary and the standard of least  
 24 change approach. Anytime as an African American  
 25 in judicial spaces hear the word least change

Page 52

1 approach, it just brings up all kind of past  
 2 trauma of how people didn't want to change stuff  
 3 because it did not empower our communities and  
 4 our communities, whether it is Black or whether  
 5 it is Native.  
 6 I'll bet you if you ask a Native,  
 7 you'll hear the same thing, our indigenous  
 8 community would say the same thing: least change  
 9 approach always means the same, it always means  
 10 wait, it always means never, and it always means  
 11 more oppression and more pain for folks who don't  
 12 have a voice in the political process.  
 13 So the role in which we are to play, we  
 14 all have values, and it is important to you to  
 15 know our values so you can decide who you want to  
 16 be sitting in that black robe making decisions  
 17 about the values of our state.  
 18 I'm going to say this and I'm done. I  
 19 wasn't born in Wisconsin, but I chose Wisconsin  
 20 as a place to have my children, as a place to  
 21 build community because of the values of the  
 22 people that I see in this state, all throughout  
 23 this state. My wife and I have traveled this  
 24 entire state with the intended purpose of  
 25 introducing the state to a judge named Everett

Page 53

1 Mitchell, and everybody in my community was,  
 2 like, you got to be careful where you go  
 3 throughout the state. And I said to them when I  
 4 gave a five-minute speech and the person asked me  
 5 do you want to come hang out with us later, I  
 6 was, like, okay, this is Wisconsin, because it is  
 7 more welcoming.  
 8 And those are the people that I make  
 9 sure that we pay attention to in that space  
 10 because they are the ones who we are making a  
 11 Constitution commitment to ensure that we're  
 12 following the rule of law a particular kind of  
 13 way. Thank you.  
 14 EMILEE FANNON: All right. We'll do  
 15 one mor question for all of you and then take  
 16 some audience questions. Judge Dorow, we'll  
 17 start with you on this one.  
 18 The U.S. Supreme Court ruled in 2008  
 19 that the right to bear arms doesn't only apply to  
 20 militia but to all individuals. In doing so, it  
 21 overturned the District of Columbia's handgun ban  
 22 and requirement that lawfully owned rifles and  
 23 shotguns be kept unloaded, disassembled, or bound  
 24 by a trigger lock.  
 25 Would you have sided with the majority

Page 54

1 or minority in that case and please explain why.  
 2 JUDGE EVERETT MITCHELL: Can you read  
 3 that question one more time? That was like 19  
 4 statements in one.  
 5 EMILEE FANNON: Thank you. I will  
 6 repeat it one more time.  
 7 JUDGE EVERETT MITCHELL: Okay, go  
 8 ahead.  
 9 EMILEE FANNON: The U.S. Supreme Court  
 10 ruled in 2008 that the right to bear arms doesn't  
 11 only apply to militia but to all individuals. In  
 12 doing so, it overturned the District of  
 13 Columbia's handgun ban and requirement that  
 14 lawfully owned rifles and shotguns be kept  
 15 unloaded, disassembled, or bound by a trigger  
 16 lock.  
 17 The question is, would you have sided  
 18 with the majority or minority in that case and  
 19 please explain why. Judge Dorow.  
 20 JUDGE JENNIFER DOROW: In our country,  
 21 we have not only the Constitution that's made up  
 22 of the original words of our founders, but then  
 23 we have the Bill of Rights. And within that Bill  
 24 of Rights, there are a number of very important  
 25 rights that are important to our communities, are

Page 55

1 important to our democracy, and I believe we  
 2 shouldn't pick and choose which ones we need to  
 3 follow.  
 4 As with any case before me, I'm going  
 5 to start with the law. I'm going to look at what  
 6 the law means. I'm going to consider the  
 7 challenge that is before me, the facts of that  
 8 case, and then apply the law as written to the  
 9 facts of that case. That's really at the core of  
 10 what a judge and justice is.  
 11 I think we all can imagine a variety of  
 12 settings where the Second Amendment is brought to  
 13 the Supreme Court for a decision or that is  
 14 implicated in a case. I want to be true to my  
 15 ethical obligations about not prejudging or  
 16 letting my personal biases or opinions or even  
 17 what I want the law to be or not be influence  
 18 what I do. And that means I need to start again,  
 19 as I've said before, with the facts, with the  
 20 law, and only render a decision that addresses  
 21 those very specific things.  
 22 So because cases raising the Second  
 23 Amendment are very likely to come before the  
 24 Supreme Court, I'm going to leave my answer at  
 25 that and make a pledge to all of you that, once

Page 56

1 again, I will start with the law and I will apply  
 2 that law to the facts, every decision every time.  
 3 EMILEE FANNON: Thank you. Justice  
 4 Kelly.  
 5 JUSTICE DAN KELLY: So I have heard the  
 6 Second Amendment is something of a controversial  
 7 provision of our Bill of Rights. You know, one  
 8 of the reasons that we can reach constitutional  
 9 language is to put it beyond the reach of simple  
 10 majority rule, right? It might be that at any  
 11 given time in our history, the people would favor  
 12 the keeping and bearing of arms.  
 13 And then time goes along, circumstances  
 14 change, and people might decide, well, I don't  
 15 like that so much anymore. Well, we have a way  
 16 of accommodating those changes in time; we call  
 17 it amendments. The Second Amendment came into  
 18 existence, as its name states, as an amendment;  
 19 did not exist in the original Constitution.  
 20 So the question is when we see that  
 21 language that promises the right to keep and bear  
 22 arms, what do we do with it. Do we take a survey  
 23 of current impressions and preferences and  
 24 determine do most people like the terms of the  
 25 Second Amendment, and if they do, then we will

Page 57

1 uphold the terms and we will say that it is okay  
 2 to keep and bear arms. Or do we say, you know,  
 3 times have changed and people really aren't that  
 4 committed to the keeping and bearing of arms  
 5 anymore, and so, as justices, we're going to  
 6 strike that down.  
 7 The role the Court is to not look at  
 8 passing fads and fancies, changes in political  
 9 opinion; it is to apply the law.  
 10 Now in this instance, the question is  
 11 what did that language mean when it was passed  
 12 and adopted in 1791. So the role of the Court is  
 13 to discover the original public meaning of the  
 14 terms included in the Second Amendment and then  
 15 to have faithfully applied those without regard  
 16 to what opinion polls might say today about the  
 17 popularity, or lack thereof, of the Second  
 18 Amendment, and that's the role of a justice and I  
 19 can tell you it's not easy.  
 20 There are rulings that I've made that  
 21 were commanded by our law, by our Constitution,  
 22 and I was raked over the coals sometimes by the  
 23 left, sometimes by the right. But my commitment  
 24 every single time was simply applying the law as  
 25 it exists. Because my confidence is in the

Page 58

1 people of Wisconsin, that if they are so opposed  
 2 to a particular standard, if they are so desirous  
 3 of change in the law, they will move heaven and  
 4 earth to make sure that it changes, and they've  
 5 done that a lot. You can look at our  
 6 Constitution and go through and see all the  
 7 amendments that have occurred over time.  
 8 So my confidence is in the people of  
 9 Wisconsin, not in four lawyers sitting in a  
 10 Madison courtroom thinking that they know what  
 11 the Constitution ought to say, thinking they know  
 12 what the law ought to be. Our responsibility is  
 13 to set that aside and wait for the people of  
 14 Wisconsin to make their call.  
 15 Do I think the Heller decision was  
 16 right? Of course, it was. It inquired into the  
 17 original public meaning of the Second Amendment  
 18 and that's precisely what it meant: the right to  
 19 keep and bear arms. Do I understand there are  
 20 people who wished that that were not true? Yes,  
 21 I do. And to those of you, I suggest you do your  
 22 organizing and you follow the constitutional  
 23 process for changing that, rather than asking  
 24 your members of the Court to disregard their oath  
 25 of office, to steal the power of the people of

Page 59

1 Wisconsin, of the legislature to change it  
 2 themselves.  
 3 EMILEE FANNON: Thank you. Judge  
 4 Mitchell.  
 5 JUDGE EVERETT MITCHELL: I'll start by  
 6 answering your question upfront, and since I  
 7 didn't actually hear the facts of that case, I'm  
 8 not going to tell you how I would rule in that  
 9 case. Does that make sense, no? All right.  
 10 But in terms of values, what I think is  
 11 very important is I think Dan said something when  
 12 he talked about, well, one group that disagrees  
 13 is that we should really be paying attention to  
 14 our law enforcement officers, our rank-and-file,  
 15 who also indicated that the number of guns on the  
 16 street outnumber the amount of Americans that we  
 17 have. Everybody in America, if we look at all  
 18 the guns on the street, everybody could have  
 19 seven guns on them.  
 20 And I think listening to groups of  
 21 people, one of them our law enforcement who have  
 22 been saying about the number of guns on the  
 23 streets makes their job almost unsafe.  
 24 I think about the tragic case of the  
 25 young man 10 years old in Milwaukee took his

Page 60

1 mother's life. It is reminded that guns are not  
 2 toys. How we play with guns are not toys. How  
 3 we talk about these guns and these mass violent  
 4 tools that are being used to take lives of so  
 5 many people is a consistent reminder of us; that  
 6 the decisions that we make and how we make them  
 7 and how we understand the rule of law and what  
 8 that looks like has real implications on peoples'  
 9 lives.  
 10 Now I'm a carry and conceal owner, and  
 11 so I have my permit and so, I recognize the  
 12 importance of the Second Amendment and I  
 13 recognize and I own that because that is an  
 14 important value that I think everybody should  
 15 have. But the stuff that we're seeing right now  
 16 has far reaching implications of people whose  
 17 lives are being taken on an everyday basis.  
 18 Murder rates all the way in Milwaukee and  
 19 different states around us remind us of the  
 20 critical nature in which we are supposed to be  
 21 engaging in these conversations.  
 22 We may not understand how we will rule  
 23 because of the fact that, you know, we're  
 24 supposed to follow the rule of law. It is clear  
 25 that when certain facts come to us in a certain

Page 61

1 kind of way, it is important for us to think  
 2 about the implications that our rulings will have  
 3 on the facts that are being presented to us. And  
 4 when we make our rulings and when we demonstrate  
 5 our rulings, we need to make sure that they're  
 6 narrowly tailored so as not to, you know, lean so  
 7 far one way to give one group of influence or  
 8 lean another way that totally takes away the  
 9 capacity of one group not to be able to get the  
 10 voice and advocacy that they need.  
 11 Because at the end of the day, you  
 12 know, lives are being lost when we're not being  
 13 attentive to the commitment that we have to the  
 14 rule of law, but also to the lives that are  
 15 impacted when we don't do our jobs as  
 16 consistently and importantly as we need to, so  
 17 thank you.  
 18 EMILEE FANNON: Thank you. Judge  
 19 Protasiewicz.  
 20 JUDGE JANET PROTASIEWICZ: That's a  
 21 very challenging question. I have not carefully  
 22 read the dissent; I have not carefully read the  
 23 majority opinion. I don't know what the  
 24 legislative history is behind the law in the  
 25 District of Columbia. I didn't hear the

Page 62

1 attorneys' arguments; I haven't reviewed the  
 2 briefs, so I'm not able to tell you do I agree  
 3 with the majority or the dissent in that case. I  
 4 can't tell you.  
 5       What I can tell you is it's all a  
 6 balancing act. Obviously, we have the Second  
 7 Amendment: people are entitled to bear firearms;  
 8 we all know that. I also can tell you that I  
 9 know lots of responsible firearm owners, many  
 10 responsible firearm owners. I also have seen  
 11 many irresponsible firearm users.  
 12       So the question becomes, was that an  
 13 overreach by the United States Supreme Court or  
 14 was it an appropriate decision? On this  
 15 particular case, I'll tell you I am well aware of  
 16 what's going on in the community with firearms.  
 17 I am well aware that the community is frequently  
 18 -- the people in the community frequently don't  
 19 feel like they're safe because of the number of  
 20 firearms in the community. But like I said  
 21 earlier, I can also tell you there are many, many  
 22 responsible firearms owners and firearms users.  
 23       So I am not going to take a position on  
 24 this case until I very carefully read it. Thank  
 25 you.

Page 63

1       JR ROSS: Thank you. We're getting  
 2 close to time. We have two quick audience  
 3 questions. The first one, I'm hoping you do it  
 4 in three sentences or less, all right: favorite  
 5 founding father and why. Justice Kelly, you are  
 6 up first.  
 7       JUSTICE DAN KELLY: I guess I'd have to  
 8 say Alexander Hamilton.  
 9       JUDGE EVERETT MITCHELL: Oh, come on,  
 10 man. Everybody going to say Alexander Hamilton,  
 11 people seen the musical.  
 12       JUSTICE DAN KELLY: So here's the  
 13 thing. So I can't rap, but he's still my  
 14 favorite, and I think the reason for that is  
 15 because he wrote so extensively about the nature  
 16 of the court and its function. He really was the  
 17 first expositor of the important but limited role  
 18 that the court has in a constitutional scheme of  
 19 government.  
 20       He understood the dangers that happened  
 21 when you combined the powers of different  
 22 branches into one. He called the court the least  
 23 dangerous branch. Why? Because it has neither  
 24 the power of the sword nor the purse. It can't  
 25 require anything; it can't do anything with

Page 64

1 motive force. That belongs to the executive  
 2 branch. All it has is its judgment, and he goes  
 3 on to say that even the execution of that  
 4 judgment is entirely dependent on the executive  
 5 branch. It is the least dangerous, but only so  
 6 far as it does its job and only its job.  
 7       He went on to say that if it should  
 8 ever combine itself with the powers of the  
 9 legislature, that would then become the very  
 10 definition of tyranny.  
 11       What I've heard a fair amount this  
 12 afternoon is my opponents talking about their  
 13 values and what they think that the law ought to  
 14 do. That is the step towards the combination of  
 15 the power of the judiciary and the legislature.  
 16 That is a step we cannot take.  
 17       Alexander Hamilton is my favorite  
 18 because he explained the importance of keeping  
 19 those branches separate and he went on to explain  
 20 the dangers that occur if the court steps outside  
 21 of its constitutionally limited role, so that's  
 22 why he's my favorite, and great Broadway  
 23 production.  
 24       I'm sorry, that was maybe four  
 25 sentences.

Page 65

1       JUDGE EVERETT MITCHELL: Four run-on  
 2 sentences.  
 3       JUSTICE DAN KELLY: Indeed, they were.  
 4       JR ROSS: Judge Mitchell.  
 5       JUDGE EVERETT MITCHELL: Well, to go  
 6 off of what he said, Alexander Hamilton, I'm not  
 7 going to take away my shot, all right. I think  
 8 for me if I have to give an answer, which is  
 9 always complex, you know, for African American  
 10 whose communities were enslaved during the time  
 11 of the founding of this country.  
 12       I would say Thomas Jefferson probably  
 13 gives me the greatest one because he also penned  
 14 those revolutionary words, "Life, liberty, and  
 15 the pursuit of happiness," but he was also the  
 16 one who also codified the idea of what race is in  
 17 the notes of State of Virginia when he said that  
 18 blacks are inferior and whites are superior,  
 19 giving our country the first time a theory of  
 20 race in our country.  
 21       So it is the juxtaposition of founding  
 22 fathers who also aspired for what this young  
 23 country to become, but it's also recognition that  
 24 as they had the aspiration for some, they didn't  
 25 have that aspiration for others. And so, I live

<p style="text-align: right;">Page 66</p> <p>1 in that intricate space of balance between those                  2 two communities at the same time because there                  3 were so many who were not included in that space.                  4 And yet at the same time, those are the                  5 same values, again, that my mentor and, you know,                  6 God mentor, Justice Marshall said that we have a                  7 right to live in as well, and they use that same                  8 argument to say we should overturn these laws                  9 that oppress people and make sure that we have                  10 integration in our community.                  11 So you stole Alexander Hamilton, so I                  12 had to go to Thomas Jefferson.                  13 JR ROSS: Judge Protasiewicz please.                  14 JUDGE JANET PROTASIEWICZ: Our founding                  15 fathers were obviously a brilliant group, but                  16 they had some flaws, right? I like the two                  17 founding fathers that my opponents have                  18 mentioned, so I'll just go with somebody else.                  19 I'll take John Adams: brilliant, creative,                  20 hardworking, hard scrappy New Englander, staying                  21 away from Abigail fighting so hard to form this                  22 country, so I'll go with John Adams.                  23 JR ROSS: Thank you. Judge Dorow.                  24 JUDGE JENNIFER DOROW: I'm going to                  25 take a little bit different approach to this and</p>	<p style="text-align: right;">Page 68</p> <p>1 in the law. In 1965 when the signed the Voting                  2 Rights Act, the whole intention of the Voting                  3 Rights Act was that all branches of government,                  4 including civil rights leaders who endured the                  5 brutality of Selma, was to expand access for all                  6 people to participate in the political process at                  7 the local, state, and national level. Any time                  8 we have an erosion of that law and those                  9 principles, we're losing what is foundation for                  10 our community.                  11 So I say for me, obviously, I don't                  12 know facts, I don't know what cases may be                  13 brought, I don't know any of those issues, but I                  14 can tell you that being able to overcome so much                  15 in the historical nature of our communities so we                  16 could be able to check that box is in my DNA.                  17 And so it is a consistent value that I want to                  18 make sure that we protect that value and we make                  19 sure that within our discretion to be able to                  20 view the law a certain way, that the lenses that                  21 we have are rooted in making sure that we protect                  22 that.                  23 I don't wear glasses, but I have a                  24 bifocal-like lens when it comes to the                  25 Constitution. I believe we have to have a sense</p>
<p style="text-align: right;">Page 67</p> <p>1 I think back to our very first president, George                  2 Washington. And the reason why I'm selecting him                  3 is because he had an unwavering commitment to his                  4 faith in the face of incredible tyranny, a man                  5 who kind of like a David against Goliath, went                  6 out and led our troops in battle against the                  7 tyrannical government that King George had thrust                  8 upon the Colonies.                  9 And even though there weren't a lot of                  10 founding mothers, I know there were a lot of                  11 women supporting those men, women like Betsy                  12 Ross, of course. But I can still look at someone                  13 like George Washington and be very proud of his                  14 faith and how he brought that faith to his role                  15 as president, and I'm proud to say I like him a                  16 lot.                  17 EMILEE FANNON: All right, last                  18 question for all candidates. The state's high                  19 court has and is expected to hear many cases                  20 addressing voting laws.                  21 Judge Mitchell, we'll start with you.                  22 How do you plan to protect voting rights?                  23 JUDGE EVERETT MITCHELL: You know, as                  24 I've always talked about, for me, voting is an                  25 essential part of my values because it is rooted</p>	<p style="text-align: right;">Page 69</p> <p>1 where we pay attention to the historical nature                  2 of the document, but we also have to have a                  3 living approach to it to understand the                  4 implications of where the law moves us to.                  5 And so, for me, there's nothing more                  6 critical than the voice of the democracy of                  7 people and making sure that they have access to                  8 the ballot and making sure they have access to                  9 the right to vote, and that goes from no matter                  10 how young you are, how old you are, everybody                  11 should make sure that they have access to that.                  12 And when we can make those decisions and we do, I                  13 think we must lean always on the side of opening                  14 our democracy, rather than shrinking it.                  15 EMILEE FANNON: Thank you. Judge                  16 Protasiewicz.                  17 JUDGE JANET PROTASIEWICZ: Thank you.                  18 I think this question dovetails into some of the                  19 areas that we've already talked about, right: our                  20 founding fathers, maps, gerrymandering. And I                  21 suspect the reason we are asked about our                  22 favorite patriot or founding father has to do                  23 with what are values are, what our history has                  24 taught us, what we think, what we think going                  25 forward.</p>

Page 70

1 Remember, we fought that battle against  
 2 Great Britain in the 1700s when it wasn't  
 3 necessarily popular. A third of the people  
 4 wanted to split from Great Britain, a third of  
 5 the people wanted to stay with Great Britain, and  
 6 about a third of the people were indifferent,  
 7 right?  
 8 But that third who were really, really  
 9 fighting to separate were fighting to separate  
 10 for one reason: they wanted fair representation.  
 11 Remember the Boston Tea Party, remember the Stamp  
 12 Act, everything we've talked about, taxation  
 13 without representation? It all comes back to  
 14 that, and then that question dovetails with that  
 15 gerrymandering question.  
 16 When I said to all of you do the voters  
 17 pick the politicians or do the politicians pick  
 18 the voters, right? It all comes back to  
 19 representation and every single person's voice  
 20 should be heard. That is what is so critically  
 21 unique about this country: every single person's  
 22 voice should be heard.  
 23 So will cases be coming to the  
 24 Wisconsin Supreme Court? I would suspect so.  
 25 But I can tell you our entire history is all

Page 71

1 about our democracy and having everybody's voice  
 2 heard. Thank you.  
 3 EMILEE FANNON: Judge Dorow.  
 4 JUDGE JENNIFER DOROW: So not only is  
 5 the right to vote essential, it is core to our  
 6 democracy. I also believe that election  
 7 integrity is vital. The system needs to be fair  
 8 and reliable and the people need to be confident  
 9 that it works as it should.  
 10 In future cases making ballot access  
 11 claims, I will apply well-developed case law from  
 12 the United States Supreme Court. And as with any  
 13 case that comes before the Court, I will listen  
 14 to the challenge and then apply the law fairly  
 15 and faithfully to the facts of that case. Thank  
 16 you.  
 17 EMILEE FANNON: Thank you. Justice  
 18 Kelly.  
 19 JUSTICE DAN KELLY: So I believe part  
 20 of the question was how will you enforce the law.  
 21 Could you read the part again?  
 22 EMILEE FANNON: How do you plan to  
 23 protect voting rights.  
 24 JUSTICE DAN KELLY: All right. So my  
 25 plan to protect voting rights is to do my part of

Page 72

1 the job. See, this goes back to the whole  
 2 question about what is the proper role and  
 3 function of the court within a constitutional  
 4 construct. Now, I know we're sitting here  
 5 talking about a Supreme Court election and so,  
 6 we're focused pretty heavily on the court side of  
 7 it.  
 8 But a justice never loses sight of the  
 9 fact that the justice resides in only one third  
 10 of the government created by our Constitution,  
 11 and the protection of voting rights is a  
 12 collaborative work amongst the three branches.  
 13 The legislature makes the law, the executive  
 14 executes the law, and the court does one thing:  
 15 it resolves legal questions about the law. It  
 16 doesn't tell the legislature you didn't think  
 17 wisely about this. It doesn't tell the  
 18 legislature there's a better way of doing this.  
 19 It doesn't tell the executive you should be more  
 20 energetic.  
 21 A proper justice concentrates on simply  
 22 the role of the court: to decide disputed  
 23 questions of law and use that to resolve the case  
 24 and nothing more.  
 25 Now some might have more ambitions for

Page 73

1 the role. Some may look at voting rights and say  
 2 we need to be more active in this, we need to  
 3 reach outside the authority of the courts, we  
 4 need to adopt laws that I think should be in  
 5 place, or perhaps we'll just stretch the  
 6 boundaries creatively of the laws that are  
 7 already there. That's not for us to do.  
 8 That would break faith not only with  
 9 our Constitution, it would break faith with we  
 10 the people of Wisconsin, because it would be  
 11 going beyond what you have asked us to do, and  
 12 we'd be venturing into that space that Alexander  
 13 Hamilton warned about where tyranny resides when  
 14 we start combining our power with the power of  
 15 the other branches.  
 16 How will I protect? First and  
 17 foremost, by not exercising anything but judicial  
 18 authority, and then by faithfully applying the  
 19 terms of the law that your representatives and  
 20 legislature have chosen, and then relying on the  
 21 people of Wisconsin that if they think there  
 22 needs to be a different standard that you'll take  
 23 care of business and you'll let your legislators  
 24 know that there needs to be a different standard.  
 25 Thank you.

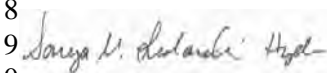
1 JR ROSS: Thank you. Thank you to all  
 2 four of you coming today. Thank you to our  
 3 sponsors, Wisconsin State Bar. Thank you all for  
 4 coming. We appreciate the time. On behalf of  
 5 Aimee and myself, have a wonderful day.

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CERTIFICATION

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3 I, Sonya Ledanski Hyde, certify that the  
4 foregoing transcript is a true and accurate  
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# milwaukee journal sentinel

## POLITICS

# Wisconsin Supreme Court candidate Janet Protasiewicz assails state's election maps as 'rigged'



**Corrinne Hess**

Milwaukee Journal Sentinel

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MADISON – Speaking at a campaign forum Monday, Wisconsin Supreme Court candidate Janet Protasiewicz called state election maps "rigged" and designed to take away votes from people in larger communities including Dane and Milwaukee counties.

"They do not reflect people in this state. I don't think you could sell any reasonable person that the maps are fair," said Protasiewicz, a Milwaukee County judge and one of four running for a seat on the state Supreme Court. "I can't tell you what I would do on a particular case, but I can tell you my values, and the maps are wrong."

In April 2022, the court ruled 4-3 in favor of a legislative redistricting plan drawn by Republican lawmakers giving the party's candidates in the Legislature a bigger advantage over the next decade.

**More:** Wisconsin finally has its new election maps. Here is how we got there and what the end result means for voters

New maps are drawn every 10 years.

Former Supreme Court Justice Daniel Kelly, seeking a return to the bench, said the court's responsibility was limited to considering legal challenges, not political challenges.

"When someone tells you what their values are to a legal challenge, they are telling you how they will decide a case," Kelly said. "Unless we are dead set on tearing down the distinctions of the branches of government, we need to make sure the court exists for deciding legal distinctions."

Protasiewicz and Kelly joined the other two candidates, Waukesha County Court Judge Jennifer Dorow and Dane County Judge Everett Mitchell, during a forum sponsored by WisPolitics.com.

Mitchell agreed with Protasiewicz's assessment of the state's election maps, saying they only benefit the status quo. He said he hopes future maps are less partisan and represent Wisconsin's diversity.

On most questions, Dorow read from a prepared script and did not answer fully, saying the issues, including election maps and gun control might be before the court.

The four candidates are in a hotly contested race for conservative Justice Patience Roggensack's seat, which could swing the makeup of the court from its current 4-3 conservative majority.

On Monday, Roggensack endorsed Dorow, one of two conservative candidates running. Kelly, the other conservative, served with Roggensack. Kelly was appointed to the court in 2016 and lost his bid for a 10-year term in 2020 to Jill Karofsky, a member of the court's liberal minority.

Protasiewicz and Mitchell are both liberals running with the support of Democrats.

Each candidate highlighted the individual experiences that they say will make them the best candidate for the 10-year term on the Supreme Court.

The candidates also pledged to not let outside funding influence how they would rule from the bench if elected and to recuse themselves if there is a conflict of interest.

The top two vote-getters during the primary on Feb. 21 will go onto the April 4 general election.

While abortion is likely to be one of the key issues in the Supreme Court race, it was not a focus of Monday's forum. Republican legislative leaders have said they don't want the race to become a one-issue contest.

Assembly Speaker Robin Vos hopes the Republican-controlled Legislature can introduce amendments to the state's abortion ban or write a new law that will be signed by Gov. Tony Evers so the state Supreme Court doesn't have to weigh in. But Evers has repeatedly said he wouldn't sign a bill unless it codifies abortion rules in place under the five decades of *Roe v. Wade*.

State leaders have grappled with abortion policy since the U.S. Supreme Court struck down its 1973 ruling legalizing abortion nationwide, leaving it up to state officials to decide their rules. The decision put back into effect the state's 1849 law banning doctors from providing abortions unless women would die without the procedure.

Mitchell and Protasiewicz cited the Dobbs decision as the court's worst ruling in the last 50 years.

## **Candidates' fundraising varies widely**

Early campaign finance reports show Protasiewicz, who declared her candidacy last May, raised \$756,217 in the second half of 2022, pushing her fundraising last year to \$924,449, according to figures released by her campaign Monday.

Mitchell, who declared his candidacy last June, raised \$24,471 in the first six months of 2022 and had \$27,767 in his campaign account on June 30. The latest campaign finance report for Kelly, who entered the race last September, showed he raised nothing in the first six months of 2022 and had \$16,581 in his campaign account on June 30, left over from his unsuccessful 2020 court race, according to the Wisconsin Democracy Campaign.

Dorow, who entered the race in November, has not raised any campaign cash since 2012 when she ran for her first six-year term for circuit judge, according to the Wisconsin Democracy Campaign.

Campaign finance reports for the last half of 2022 are due Jan. 17.



JUSTICE, POLITICS, SUPREME COURT

# Janet Protasiewicz thinks judicial candidates should be open about their values

Balance of power on court could swing if liberal-backed candidate wins April general election; primary is Tuesday

BY JONAH BELECKIS • FEBRUARY 14, 2023

Listen



Milwaukee County Judge Janet Protasiewicz. Photo courtesy of Janet Protasiewicz' campaign

Milwaukee County Judge Janet Protasiewicz said recently that those running for the state Supreme Court should share their values with voters in races where candidates typically keep their cards close to their chest.

She is one of four candidates running in the Feb. 21 primary as conservative

1A

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Protasiewicz and **Dane County Judge Everett Mitchell** are being backed by liberals. **Former state Supreme Court Justice Daniel Kelly** and Waukesha County Judge Jennifer Dorow have support from conservatives.

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Wisconsin Public Radio's "**Central Time**" recently invited the candidates to discuss their campaigns on the program. Only Dorow declined the invitation.

Protasiewicz, a former prosecutor, has said the U.S. Supreme Court made a mistake when last summer it **overturned the landmark Roe v. Wade decision**. She has also criticized the state's electoral maps.

*Read about the interviews with **Mitchell here** and **Kelly here**. The following from Protasiewicz was lightly edited for brevity and clarity.*

### **Rob Ferrett: What is your case for being on the court?**

**Janet Protasiewicz:** The reason I'm running for the state Supreme Court is to bring back change and common sense to our court. I'm a follow-the-law, common-sense judge — not an uber-partisan. There has been so much extreme partisanship on our Wisconsin Supreme Court, and that's why I'm running.

### **RF: Groups that support you view you as a liberal. So do groups that oppose you. What would you say to them?**

**JP:** Labels are interesting. Yes, I am very, very progressive when it comes to social issues. But I would also say that there are issues that, quite frankly, go across all party lines, such as community safety, judicial philosophy, being a fair jurist, being nonpartisan, not having a thumb on the scale when it comes to issues that are going to come before the Supreme Court, and not being an activist judge. We need common sense. We don't need extreme partisanship, and I will root every decision in the law.

**created them unfavorably. Could Republicans count on you to not have your thumb on the scale?**

**JP:** Absolutely. I said the maps are rigged. Wisconsin is a battleground state. I don't think you could sell to any rational person that the maps are fair. Just look at them with the numbers in the Wisconsin State Senate (and) the numbers from the Wisconsin State Assembly. Just look at those numbers. You know that something is wrong.

But what I have told everyone: While I state that those maps are rigged and while I talk about some of the other issues that are important to both me and all Wisconsinites, all of my decisions are going to be rooted in the law. I plan to follow the law. I tell you what my values are because I think that Supreme Court candidates should share with the community and the electorate what their values are. Nonetheless, I will uphold the law (and) follow the Constitution when I make any decisions. Nothing is prejudged.

**RF: How would you handle the ongoing legal conflict around the state's 1849 abortion ban? The state Department of Justice contends it is in conflict with a later law.**

**JP:** I can't make any specific comments as to what I would do when elected as a Supreme Court justice. What I have told people regarding the 1849 (ban): I have been very, very clear that my values are that women have the right to choose. I have stated that I disagreed with the (U.S.) Supreme Court's decision on this. Quite frankly, I was surprised when the U.S. Supreme Court decided to take away a fundamental right that so many people in our country had for such a long time.

I would also say that this is the same type of decision making that people are tired of. They don't want that from our Wisconsin Supreme Court. So, we currently have a majority on the court who are making decisions based on right-wing partisan beliefs — not the Constitution and not the law. We need to bring that change back to the courts. We should get away from that right-wing extremism and back to common sense.

**[READ MORE: Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum](#)**

**RF: What would be your standards for when you should recuse yourself from a particular case on the state Supreme Court?**

**JP:** There needs to be a recusal rule. I have been very, very open about that. Just

absolutely needs to weigh in on that. But I really, really believe a recusal rule is appropriate for lots of reasons.

Other candidates have opposed additional rules. I think that's wrong. I will obviously follow any recusal rules. But there are people who really believe that so much money is being poured into these races and so much of it by outside groups — should a Supreme Court justice really sit on a case where millions of dollars of outside money have come in on your behalf? I don't think that people think that's fair. People think that that puts a thumb on the scale.

**RF: Usually, voters are picking politicians to enact certain policies they like. How should voters decide what judge to vote for?**

**JP:** You have to look at the person's judicial philosophy — how they plan to run their courtroom, how they plan to treat people, whether or not they are able to be fair and appropriate under all circumstances. Judicial philosophy, it's critical. I tell people I can't tell you where I'm going to end up on a case, but I can tell you I'm going to root my decisions in the law.

We need to get away from hyper-partisanship and predetermined outcomes by ideologues. We absolutely need to do that. The Supreme Court should be different in many instances than the other branches of government. People should really, really be able to look up to our Supreme Court and believe that it is a bastion of dignity and integrity and that they are going to have a fair shake across the board in our courts.

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NATIONAL

# In a supreme court race like no other, Wisconsin's political future is up for grabs

APRIL 2, 2023 · 5:01 AM ET

HEARD ON WEEKEND EDITION SUNDAY

By Shawn Johnson



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Judge Janet Protasiewicz points at former Justice Dan Kelly during a debate March 21 at the State Bar Center in Madison, Wis.

Angela Major/WPR

MADISON, Wis. — An election on Tuesday could change the political trajectory of Wisconsin, a perennial swing state, by flipping the ideological balance of the state Supreme Court for the first time in 15 years.



The race comes at a critical time for Wisconsin, with a challenge to the state's pre-Civil War abortion ban already working its way to the court and legal fights ahead of the next presidential election right around the corner.

The stakes of the race go beyond a single issue. Should liberals win control of the court for the first time since 2008, they're almost certain to hear a challenge to Wisconsin's Republican-drawn redistricting maps, which have helped cement conservative priorities for more than a decade.

Republicans are framing the race in terms of what they could lose, which they contend includes key pillars of former Republican Gov. Scott Walker's legacy.

### **Abortion rights and gerrymandering**

On a recent Saturday night in Madison, people lined up down the street outside the Barrymore Theater for a live recording of the show "Pod Save America." The hosts — speechwriters who worked for former President Barack Obama — hold celebrity status in Madison, a Democratic stronghold that's proven critical to recent statewide victories in Wisconsin.

This show is aimed at turning out the Democratic vote for Milwaukee County Judge Janet Protasiewicz in her race against former state Supreme Court Justice Dan Kelly, the Republican favorite. (Races for Supreme Court in Wisconsin are officially nonpartisan, but that's not how it works in practice.)

At the front of the line before the doors opened, Ariel Hendrickson, a Madison resident, said the election boiled down to two issues.

"Abortion rights and making sure that gerrymandering does not get any worse in our state," Hendrickson said.





Melissa Johnson holds a sign in support of Wisconsin state Supreme Court candidate Judge Janet Protasiewicz during a rally on March 11 in Appleton, Wis.

Angela Major/WPR

Abortion has been a major issue in Wisconsin since the U.S. Supreme Court struck down *Roe v. Wade* last summer, a ruling that reinstated a long-dormant abortion ban first written in 1849. Democrats have featured it prominently in their ads for statewide office over the past year, and it's been the bedrock of Protasiewicz's campaign.

### **National spending records broken**

"I know people keep saying this, but this is probably one of the most important elections for Wisconsin," said Sheila Hosseini, also of Madison. "Especially because reproductive rights are on the line."

In a state like Wisconsin where close elections are a way of life, voters are accustomed to hearing every couple of years — or in this case, every few months — that the latest campaign is the most important one yet.

But there's actually so much riding on Wisconsin's court race this year, that it might fit that billing, says University of Wisconsin-Madison political science and law professor Howard Schweber.

"I have to agree, I think this election really does live up to its hype," Schweber says. "In the sense that the stakes are extraordinarily high across an extraordinarily broad range of issues."



Supporters of former Justice Dan Kelly attend a St. Patrick's Day party with Republican speakers on March 16 at Clifford's Supper Club in Hales Corners, Wis.

Angela Major/WPR

Money has poured into the race, doubling, and by one estimate, tripling the old national record for spending in a state Supreme Court campaign.

According to the Brennan Center for Justice, the old record of \$15.2 million was set in a 2004 race for the Illinois Supreme Court. According to the center's tracking, nearly \$29 million had been spent on political ads in Wisconsin's race. Another running tally by the Wisconsin political news site WisPolitics found total spending on the race had hit \$45 million.

"It shows that Wisconsin just tends to be the center of the political universe," says Anthony Chergosky, a professor of political science at the University of Wisconsin-La Crosse. "And it also shows that money is flowing into this high stakes battle over abortion in the post-*Roe v. Wade* political landscape."

**For some Republicans, more than a decade of GOP accomplishments are on the ballot**

For Republican activists, the Supreme Court election is less about what they could gain and more about what they could lose.

At a Republican get-out-the-vote party in the Milwaukee suburb of Hales Corners, organizers warned that a long list of GOP wins could get struck down if liberals win the court, including election laws like voter ID and laws that strengthen gun owner rights.



Former Justice Dan Kelly attends a Republican event for St. Patrick's Day on March 16 at Clifford's Supper Club in Hales Corners, Wis.

Angela Major/WPR

Former Gov. Walker's signature law curbing union rights could also be in danger if the court flips, according to Orville Seymer, a longtime Republican activist.

Protasiewicz was among the tens of thousands who marched against the law in 2011. She also signed a recall petition against Walker.

"All those things, they don't appear on the ballot, but they really are on the ballot," Seymer said at the GOP event. "People are voting on those issues. And the people here in this room – conservative people – they want to maintain that."

While seemingly everyone else is framing the court race in terms of issues, Kelly has notably avoided them.

"If I were to start talking about my political views, that would be no more relevant to this race than who I think the Packers' next quarterback ought to be," he said at a Milwaukee Press Club forum in March.

As a private lawyer, Kelly once defended Republicans' legislative maps in federal court, and his recent clients included state and national Republican parties. Kelly offered legal counsel to the state party after the 2020 presidential election when Republicans used fake electors in an effort to contest former President Donald Trump's narrow loss in Wisconsin.

It's not that Kelly has never shared his views. About a decade ago, Kelly wrote in a blog that abortion took the life of a human being, and he wrote a passage in a book comparing affirmative action to slavery.

As a judicial candidate, he says it's inappropriate for him to share his political views, since a judge's job is applying the law.

"I am running to be the most boring Supreme Court justice in the history of the country," Kelly said. "Because the role of the court is not to be original. It's not to be innovative."

### **Protasiewicz says voters want to hear where candidates stand**

Protasiewicz, who spent decades as a prosecutor and judge in Milwaukee County, has no such hesitation when it comes to sharing her personal beliefs, particularly on abortion.

During a brief interview at the "Pod Save America" event, Protasiewicz was asked what kind of a difference she could make if she's elected to the court.



Judge Janet Protasiewicz, center, waves to the audience during a *Pod Save America* live podcast event March 18 at the Barrymore Theatre in Madison, Wis.

Angela Major/WPR

"I have been very, very forthright that my personal value is that women have a right to choose," Protasiewicz said. "Reproductive choices belong to the person."

Asked about Wisconsin's Republican-drawn legislative districts, which the court's conservative majority endorsed last year, Protasiewicz was similarly outspoken.

"Our maps are rigged in this state," she said. "I would certainly welcome the opportunity to have a fresh look at our maps."

For Democrats in this moment, the Supreme Court race means everything. With a liberal majority on the court and new maps, their hope is that they could finally push the state's politics to the left like neighboring Minnesota and Michigan.

That prospect has helped Protasiewicz smash candidate fundraising records, drawing from a network of Democratic donors around the country and a handful of wealthy donors, like George Soros and Illinois Gov. JB Pritzker, who've made million-dollar donations to the state Democratic Party.

Conservatives were badly outspent in the early stages of the race but have closed the funding gap recently. The state's largest business lobby, Wisconsin Manufacturers and Commerce, and a group funded by GOP megadonor Richard

Uihlein, have spent more than \$10 million on ads attacking Protasiewicz as soft on crime.

Both parties have also described this race in presidential terms because whichever side wins will have a majority on the court ahead of the 2024 presidential race. That means they'll get to hear election lawsuits in Wisconsin, the swing state where each campaign feels a little more important than the last.



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POLITICS &amp; GOVERNMENT

## Supreme Court candidates accuse each other of lying, extremism in sole debate

BY: HENRY REDMAN - MARCH 21, 2023 2:27 PM



📷 Dan Kelly and Janet Protasiewicz met on Tuesday for the only debate in the Wisconsin Supreme Court race. (Henry Redman | Wisconsin Examiner)

*This story has been updated.*

In the only debate of an increasingly expensive and heated campaign between Milwaukee County Judge Janet Protasiewicz and former Supreme Court Justice [Dan Kelly](#) for an open seat on the Wisconsin Supreme Court, the two candidates exchanged attacks over their impartiality, legal histories and political allegiances.

During the debate, hosted Tuesday afternoon by the Wisconsin State Bar, each candidate made several accusations that the other is a liar.

The race for the seat, set to become vacant following the retirement of conservative Justice Patience Roggensack, will determine the



ideological sway of the seven-member court. While the race is officially nonpartisan, Kelly is running as a conservative and Protasiewicz as a liberal.

The first time the court's lean has been up for grabs in more than a decade, the race has blown away national fundraising records for judicial campaigns.

Kelly served on the court for four years from 2016 to 2020 after being appointed to an open seat by former Republican Gov. Scott Walker. He lost reelection to liberal Justice Jill Karofsky by a 10-point margin.

On Tuesday, Kelly's attacks on Protasiewicz grew increasingly pointed as he argued – as he has throughout the race – that she would bring her political views to the bench. Several times, Kelly said Protasiewicz was a liar or slandering him.

“Again, this is you being quick to lie,” Kelly said in response to Protasiewicz saying the support he's received from outside political organizations signals which political side his decisions will benefit. “This has been apparent in all your ads against me. It's been apparent every time you speak about me. It's just full of deceit.”

Protasiewicz, on the other hand, regularly argued that Kelly's history of [working for the Republican party](#) and its related interest groups should signal how he will rule – even though throughout the campaign he's said he will only decide based on the rule of law.

“I am running against probably one of the most extreme partisan characters in the history of the state,” Protasiewicz said. “This is somebody who advised the Republican Party on the fake electors. This is somebody who was running his former office out of the Republican Party headquarters. This is somebody who's given legal advice to the Republican Party over and over and over.”

The race for the open seat has taken on an increased importance because the court is likely to play a major role in coming years as the arbiter between the divided government in Wisconsin's executive and legislative branches. The winner of the race will likely be the swing vote in cases over abortion access, the state's legislative maps and voting rights.

Throughout the campaign, Protasiewicz has repeatedly shared what her [“personal values”](#) are over abortion rights, saying she believes women should have the right to choose to get an abortion. Kelly has often pointed to these statements as evidence she is pre-judging a case.

A [lawsuit](#) against Wisconsin's 1849 outlawing abortion is currently pending in the courts and the winner is likely to play an important role in its outcome.

"I would say that I have been very clear about my values to the electorate because I think the electorate deserves to know what the person's values are rather than hiding," Protasiewicz said. "I've also been very clear that any decision that I render will be made based solely on the law and the Constitution. I have told everyone I am making no promises to you. But I can tell you that if my opponent is elected, I can tell you with 100% certainty, that 1849 abortion ban will stay on the books."

Protasiewicz, who has received endorsements from Planned Parenthood and Emily's List, organizations that favor abortion rights, pointed to Kelly's endorsements from anti-abortion groups such as Wisconsin Right to Life as evidence he's also signaled his views on the issue.

Wisconsin Right to Life, which is working to strengthen Wisconsin's abortion ban, states on its political endorsement web page that candidates pledge to support their values to receive their endorsement.

"The Wisconsin Right to Life Political Action Committee endorses candidates who have pledged to champion pro-life values and stand with Wisconsin Right to Life's legislative strategy," the page states. "In judicial elections, the Wisconsin Right to Life Political Action Committee endorses candidates whose judicial philosophies and values fit with those of Wisconsin Right to Life."

Kelly said Protasiewicz was lying when she said his endorsements show he has made pledges on the issue.

"That's absolutely not true, once again," Kelly said. "So this seems to be a pattern for you, Janet, is telling lies about me. So you don't know what I'm thinking about that abortion ban. You have no idea, these things you do not know. What I know is this: the endorsements I've received are entirely because of conversations that I have with individuals or organizations in which they asked me what kind of a justice will you be and I explained to them at length the role of a jurist instead of talking about politics, which is all you do."

Whoever wins the race will also be a crucial vote in a likely challenge to the state's legislative maps, which are frequently characterized as the most gerrymandered political lines in the country.

Protasiewicz has said several times throughout the campaign that the maps are “rigged.” On Tuesday, she indicated she agreed with the dissent written by the court’s liberal justices in the state Supreme Court case that decided the maps last year.

“I think the map issue is really kind of easy, actually. I don’t think anybody thinks those maps are fair, anybody,” she said. “But the question is, am I able to carefully make a decision on a case? Of course I am. It’s what I’ve spent my entire career doing, follow laws I don’t always necessarily like or agree with, you follow the law, that’s what you do. I can assure you that every single case that I will ever handle will be rooted in the law 100%. If you look at the dissent in that maps case, that dissent is what I will tell you I agree with.”

Kelly, who was one of the lawyers who worked with Republicans to install the 2011 maps that entrenched the state’s gerrymandering, said that is another example of an issue in which Protasiewicz is pre-judging a case.

“Well there you have it, I think she’s just told you how she’d resolve the case,” Kelly said. “See this is the problem you have when we get a candidate who does nothing to talk about her personal politics. She’s already told each and every one of us how she will approach this and although she says the formulaic words that she will follow the law, she’s never said one thing in this campaign that would lead to any reasonable belief that that’s what she would do.”

The candidates also sparred over the increasingly negative attack ads that have aired about them during the campaign.

Protasiewicz regularly alluded to the complaints raised in her campaign’s ads which paint Kelly as a partisan extremist with a “corrupt” history of siding with groups that had supported him financially and participating in Republican efforts to overturn the 2020 election.

“He is a true threat to our democracy,” she said on Tuesday.

Kelly countered that he was just one of many lawyers who advised the Republican party as it searched for ways to change the results of the 2020 election in the weeks and months after it was won by Joe Biden.

Throughout the race, Kelly and outside groups supporting him have regularly highlighted sentencing decisions Protasiewicz made in a handful of cases in which sexual offenders were given little or no prison time. On Tuesday, she said that a few cases were “cherry picked” out of the thousands of sentencing decisions she’s made while serving as a judge in Milwaukee County and when Kelly gave

direct quotes, she said she'd like to see the transcripts because "it certainly doesn't sound like anything I would do."

In one case, Kelly accused her of not giving a 25-year-old man who got a 15-year-old girl pregnant jail time because of COVID.

The transcripts from the sentencing hearing show that she did say "But for COVID, I would be giving you some House of Correction time." The transcripts also show that the prosecutor in the case did not recommend a jail or prison term, instead recommending the defendant be placed on probation.

In another case highlighted during the debate, Kelly accused Protasiewicz of telling a defendant, who pleaded guilty to sexually assaulting his cousin, that she saw "good" in him.

Protasiewicz did say there were "a lot of good things" in the defendant's character, the transcripts show. Yet the transcripts also show she said the offense was "phenomenally serious" and warranted a heftier sentence because of that.

The prosecutor in the case did not recommend a sentence, instead leaving the decision to Protasiewicz, who imposed 14 months of imprisonment and 18 months of extended supervision.

The Supreme Court election is set for April 4. Early voting has already begun. Voters can check with their local clerk's offices for hours and locations.



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**HENRY REDMAN**  

Henry Redman is a staff reporter for the Wisconsin Examiner who focuses on covering Wisconsin's towns and rural areas. He previously covered crime and courts at the Daily Jefferson County Union. A lifelong Midwesterner, he was born in Cleveland, Ohio and graduated from Loyola University Chicago with a degree in journalism in May 2019.

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**Justice-elect Janet Protasiewicz**  
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Everything is on the line April 4. From reproductive freedom to the outcome of the 2024 election – Judge Janet Protasiewicz will always protect the rights of Wisconsinites, and will bring fairness back to the Wisconsin Supreme Court.

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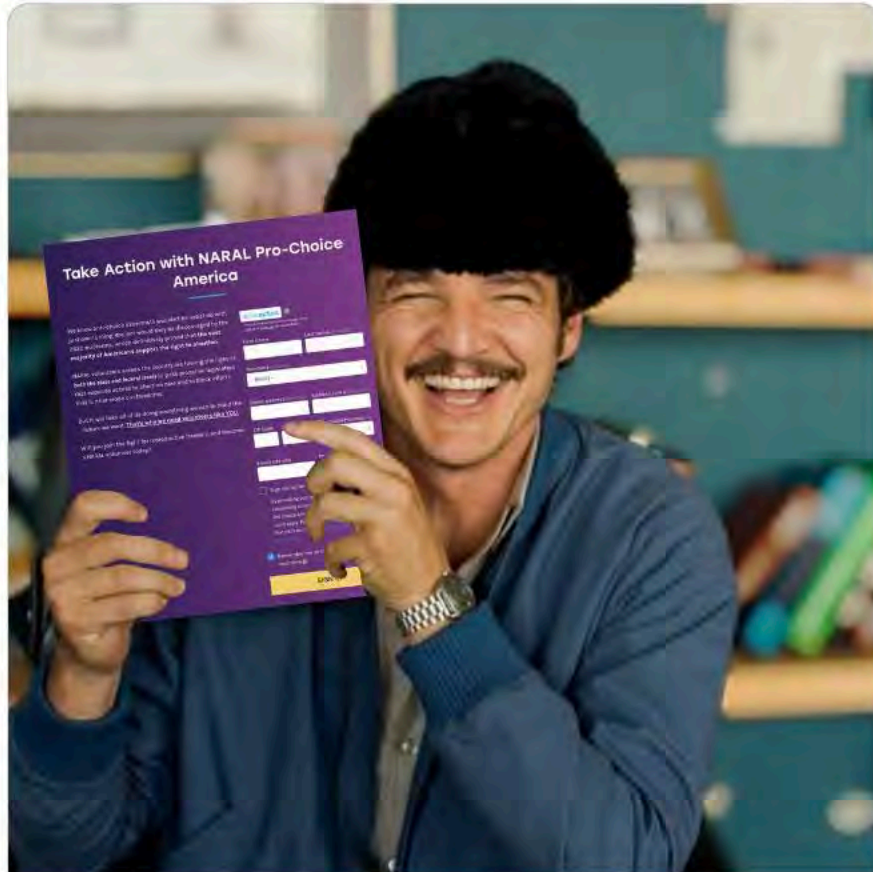


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Election Day is tomorrow in Wisconsin and the stakes couldn't be higher. Judge Protasiewicz is running against Daniel Kelly, an anti-choice judge who has been endorsed by numerous extremist groups. If Judge Protasiewicz wins, the court will lose its conservative majority—and that could have huge consequences for the whole nation. Sign up to textbank with NARAL tomorrow for **Janet for Justice!** 🗳️ [#WisconsinSupremeCourt naral.org/WItextbankFB/](https://naral.org/WItextbankFB/)

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NEWS, POLITICS, SUPREME COURT

# Democratic law firm files challenge to Wisconsin's congressional maps

The Elias Law Group lawsuit comes weeks after the Wisconsin Supreme Court ruled the state legislative maps unconstitutional

BY **ANYA VAN WAGTENDONK** • JANUARY 17, 2024

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Attendees hold signs at the Rally for Fair Maps on Monday, May 17, 2021, in Madison, Wis. *Angela Major/WPR*

A Democratic law firm has filed a lawsuit challenging Wisconsin's congressional maps, weeks after the state Supreme Court ruled Wisconsin's legislative maps unconstitutional.

Should the effort succeed, it could upend Wisconsin's congressional races months before the 2024 election. Six of the state's eight congressional districts are currently held by Republicans, and only two are seen as competitive.

"Wisconsin is a purple state, but our current congressional district maps don't

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Pocan's district, which encompasses liberal Madison, is one of Wisconsin's two safely Democratic seats in Congress.

Meanwhile, Republicans blasted the lawsuit, calling it a further example of a liberal agenda in the state Supreme Court. The ideological makeup of that court swung to the left last year after the election of Justice Janet Protasiewicz. Republicans have argued that she pre-judged maps challenges while on the campaign trail.

"The newly bought and paid for liberal majority on the Wisconsin Supreme Court faces yet another test of the public's trust: do the right thing by leaving the current, constitutional maps in place, or once again abandon sound judgment by catering to their left-wing out-of-state donors," said Wisconsin GOP chair Brian Schimming in a statement Wednesday.

The argument behind the new congressional lawsuit is based on the ruling the Wisconsin Supreme Court handed down in December, which changed the standard by which the court evaluates redistricting.

The **state maps ruling**, delivered by the court's liberal majority, ruled that the "least changes" approach to redistricting used by the previous conservative majority was unlawful. Under that approach, conservative justices endorsed maps with as little change as possible from previous, Republican-drawn maps.

The "least change" requirement created congressional maps that "perpetuated and exacerbated the partisan unfairness that has robbed Wisconsin voters of fair congressional districts for over a decade," argued an attorney for the Elias Law Group, which filed the **lawsuit** Tuesday. Democrats voiced support for the challenge, which could result in maps that are more favorable to them.

Schimming said that if the Wisconsin Supreme Court accepts the congressional redistricting case, opponents would likely appeal it to the U.S. Supreme Court.

The court has not yet said whether it will take up the case.



# New maps could make Congressional seats more competitive

The lawsuit contends the Congressional maps are based on a “now-discredited legal principle” that upheld GOP-drawn maps unnecessarily. For that reason, the plaintiffs argue, new maps offer voters more fair representation in a purple state.

Just two of the eight seats — both now held by Republicans — are seen as competitive. **The 1<sup>st</sup> District, held by Rep. Bryan Steil**, comprises Racine, Kenosha and parts of Rock and Milwaukee Counties. The 3<sup>rd</sup> District, held by Rep. Derrick Van Orden, comprises much of western Wisconsin and the cities of Eau Claire, La Crosse and Stevens Point. That seat had previously been held by Democrat Ron Kind, who did not seek reelection in 2022.

The current maps were drawn up by Gov. Tony Evers under the “**least-change**” model, which required them to be closely modeled on maps drawn by Republicans after the 2010 Census. Evers’ maps were approved by the Wisconsin Supreme Court.

Congressional primaries are scheduled for Aug. 13, and the general election is on Nov. 5.

Marc Elias, who chairs the Elias Law Group, has been active around the country on voting issues, including in Wisconsin. Elias’ firm has also challenged Wisconsin’s requirement to have **witness signatures** on absentee ballots and is behind an effort to overturn a ruling that restricts the use of absentee ballot **drop boxes**.

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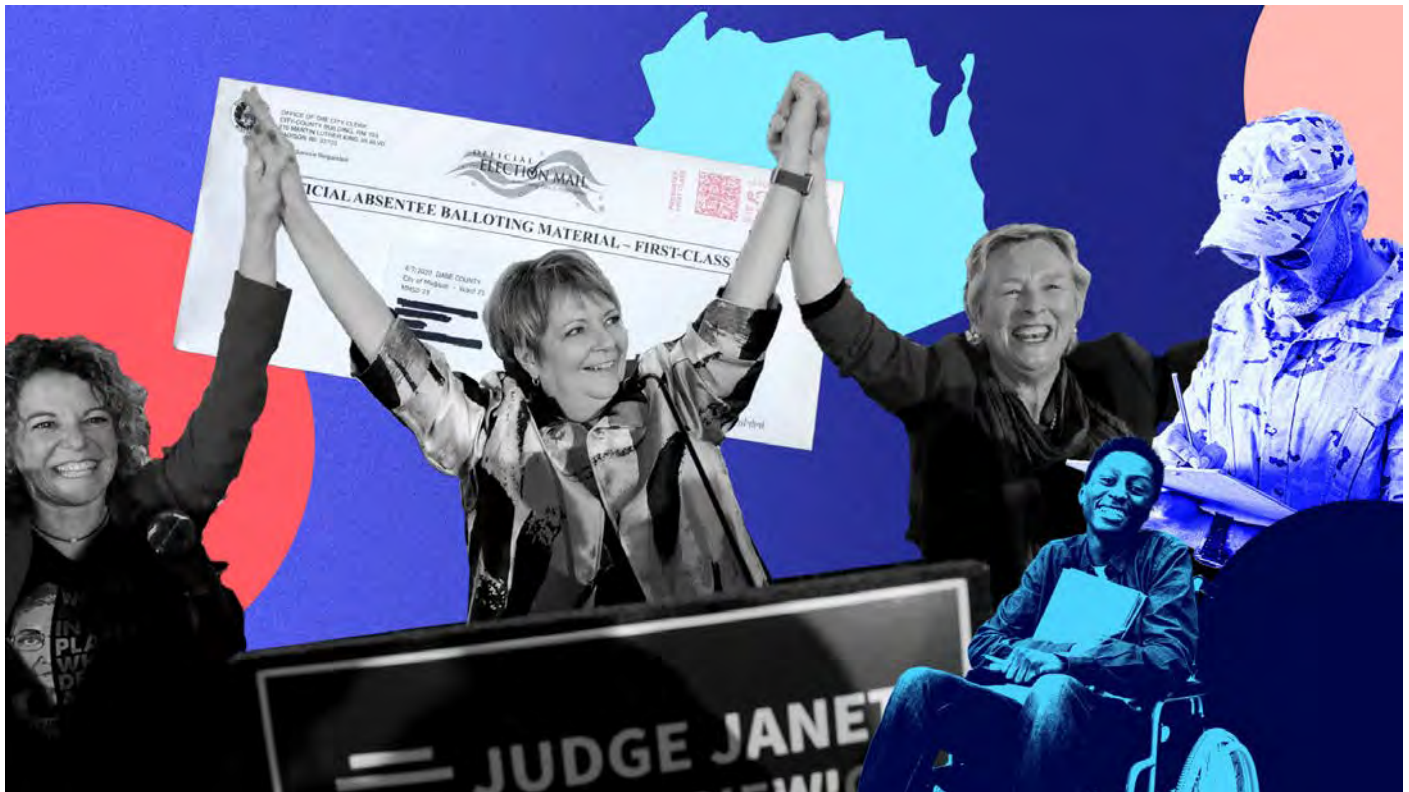
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OPINION | FROM MARC | LITIGATION | VOTING

## Early Victories in the Fight for Democracy in Wisconsin

By Marc Elias | January 26, 2024



For many years Wisconsin had the distinction of having the most Republican gerrymandered state legislature and among the most conservative state Supreme Courts. It was the Wisconsin Supreme Court that came closest to giving former President Donald Trump a victory in challenging the results of the 2020 election. A toxic brew of antidemocratic laws and court rulings hung over an otherwise closely divided state.

Times have changed.

As a result of a critical judicial election, there is now a newly minted progressive majority on the state Supreme Court. Already the new Wisconsin Supreme Court has struck down the state's heavily gerrymandered

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The most consequential cases, however, involve the state's arcane absentee ballot witness requirement.

At the core of the fight is the fact that Wisconsin absentee voters must vote on absentee ballots and sign a certificate on the return envelope — in the presence of a witness. That witness, in turn, must then complete and sign their own certification.

It turns out that a surprisingly high number of people who witness absentee ballots make some type of error or omission in completing their own certification. The most common culprit was an incomplete witness's address. A post-2020 election audit revealed that almost 7% of all absentee ballots suffered from some type of potential witness address certification defect and 5.4% were simply missing a zip code.

Is a zip code essential? If a witness fills in Milwaukee, but omits the state, is the address insufficient? What if the witness lives with the voter and simply writes "same"?

## **As a key battleground state, we should expect more litigation by both pro- and anti-voting forces in Wisconsin in the months to come.**

Wisconsin law does not specify what is needed for an address and local election officials differ greatly on what information they require to consider the address requirement met and for the ballot to be considered properly cast.

Making matters worse, we know that rejected ballots are disproportionately cast by minority and young voters. With more than 1.3 million absentee ballots in the last presidential election year, the partisan impact on the election results is in the thousands of votes.

The good news is that the pro-voting forces have won the first major case involving witness addresses. A Wisconsin judge recently sided with the student group Rise, Inc. in holding that any witness address information on the certificate that can identify where a witness can be reached is sufficient. The court rejected the Republican Legislature's argument that a witness must include a street number, street name, municipality and postal code for a ballot to be counted.

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A victory in either of these cases would transform absentee voting in Wisconsin. It would not only prevent ballots from being rejected for insufficient witness certifications, but it would increase confidence in communities that all too often are discouraged from voting because of the understandable fears of ballot rejection. It would also empower citizens who cannot reliably find a witness, but who also cannot vote in person, to participate in elections.

Standing on the other side of all these cases is the Republican Party and its anti-voting allies. Just as they demonized absentee voting in 2020, they are desperate to make absentee voting as difficult as possible in 2024.

Recall that it was in Wisconsin in 2019 when a Trump campaign advisor admitted that “traditionally it’s always been Republicans suppressing votes in places” as he assured the crowd that the GOP would “start playing offense a little bit.” After the 2022 election, a prominent Wisconsin election official boasted that because of the GOP’s plan, voter turnout in Milwaukee dropped by 37,000 votes “with the major reduction happening in the overwhelming Black and Hispanic areas.”

The absentee ballot cases are not the only voting cases pending in Wisconsin. Nor have we seen the last of new litigation that will inevitably be filed in the state before November. As a key battleground state, we should expect more litigation by both pro- and anti-voting forces in Wisconsin in the months to come.

So far, the pro-voting side has won the early battles, but the war to protect voting rights is not over.

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- Register your Campaign Committee** online with the Wisconsin Ethics Commission. A current Campaign Registration Statement must be filed with the Ethics Commission by **5:00 p.m., on Monday, June 3, 2024**. Wis. Stat. §§ 8.10(5), 8.30(2), Wis. Admin. Code EL § 6.04.
- *New candidates*  
Register online at <http://cfis.wi.gov/Public/Registration.aspx?page=Candidate> before campaign funds are collected or spent or submitting nomination papers. Wis. Stat. §§ 11.0202(1)(a), 11.0101(1). Submit a signed copy of the form to the Ethics Commission by email, fax or mail.
  - *Continuing candidates*  
Amend your current registration, indicating the office sought and the new primary and election dates, at <http://cfis.wi.gov/Login.aspx>. Please log in by entering your username (your 7-digit registrant number beginning with "0") and the password emailed to you when you originally registered. If you do not have or do not know your username or password, please contact the Ethics Commission at (608) 266-8123.
- Complete and Submit a Declaration of Candidacy (Form [EL-162](#))** to the Wisconsin Elections Commission (WEC). The Declaration of Candidacy must be received in the WEC office no later than **5:00 p.m., on Monday, June 3, 2024**, or the candidate's name will not be placed on the ballot. If the form is faxed or emailed, the original document must follow, postmarked no later than June 3, 2024. Wis. Stat. §§ 8.15(4)(b), 8.21, 8.30(4), EL § 6.04, Wis. Adm. Code.
- Circulate and Submit Nomination Paper for Partisan Office (Form [EL-168](#))** to the Wisconsin Elections Commission (WEC) no later than 5:00 p.m. on Monday, June 3, 2024.
- Only original nomination papers will be accepted (no photocopies, faxes or emailed documents). Signatures must be received in the WEC office no later than **5:00 p.m. on Monday, June 3, 2024**. Nomination papers may not be circulated before April 15, 2024. Wis. Stat. §8.15(1), EL § 6.04(2), Wis. Adm. Code.
- The number of signatures required are as follows:**
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| State Senator                  | 400 - 800 |
| Representative to the Assembly | 200 - 400 |
- Complete and Submit a Statement of Economic Interests (SEI)** to the Ethics Commission using the website <https://sei.wi.gov>. Faxed or emailed forms are also acceptable. The SEI must be received no later than **4:30 p.m. on Thursday, June 6, 2024**, or the candidate's name will not appear on the ballot. Wis. Stat. §§ 8.15(4)(b), 8.30(3), 19.43(4). Incumbent candidates must file an SEI by Tuesday, April 30, 2024 and that satisfies this requirement. New candidates will receive an email notice within one or two days of registering their committee. Any time after January 1, 2024, a candidate may print the *Statement of Economic Interests* form and instructions from the Ethics Commission website <https://ethics.wi.gov>.

For further information regarding **registering your campaign or filing your SEI**, please contact the Wisconsin Ethics Commission at 608-266-8123 or [ethics@wi.gov](mailto:ethics@wi.gov). All other ballot access questions may be directed to the Elections Commission at 608-261-8005 or [elections@wi.gov](mailto:elections@wi.gov).

# 2024 BALLOT ACCESS CHECKLIST FOR FEDERAL CANDIDATES IN WISCONSIN



*(U.S. SENATOR, REPRESENTATIVE IN CONGRESS)*

Each of the following forms must be completed and filed on time by a candidate for federal office for the candidate's name to be placed on the ballot for the **August 13, 2024 Partisan Primary** and the **November 5, 2024 General Election** in Wisconsin.



### ***Campaign Finance Registration and Disclosure Requirements***

Contact the Federal Election Commission to determine the applicable registration and reporting requirements:

Federal Election Commission  
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Washington, DC 20463  
800-424-9530  
[www.fec.gov](http://www.fec.gov)



***Complete and Submit a Declaration of Candidacy (Form [EL-162](#))*** to the Wisconsin Elections Commission (WEC). The Declaration of Candidacy must be received in the WEC office no later than **5:00 p.m., on Monday, June 3, 2024**, or the candidate's name will not be placed on the ballot. If the form is faxed or emailed, the original document must follow, postmarked no later than June 3, 2024. Wis. Stat. §§ 8.15(4)(b), 8.21, 8.30(4), ch. EL § 6.04, Wis. Adm. Code.



***Circulate and Submit Nomination Papers for Partisan Office (Form [EL-168](#))*** to the Wisconsin Elections Commission (WEC). Original nomination papers (no photocopies, faxes or emailed documents) must be received in the WEC office no later than **5:00 p.m. on Monday, June 3, 2024**, or the candidate's name will not be placed on the ballot. Nomination papers may not be circulated before April 15, 2024. Wis. Stat. §8.15(1), ch. EL § 6.04(2), Wis. Adm. Code.

**The number of signatures required are as follows:**

U.S. Senator	2,000 – 4,000
Representative in Congress	1,000 – 2,000

For further information or to obtain any of the necessary forms, please contact the Wisconsin Elections Commission.

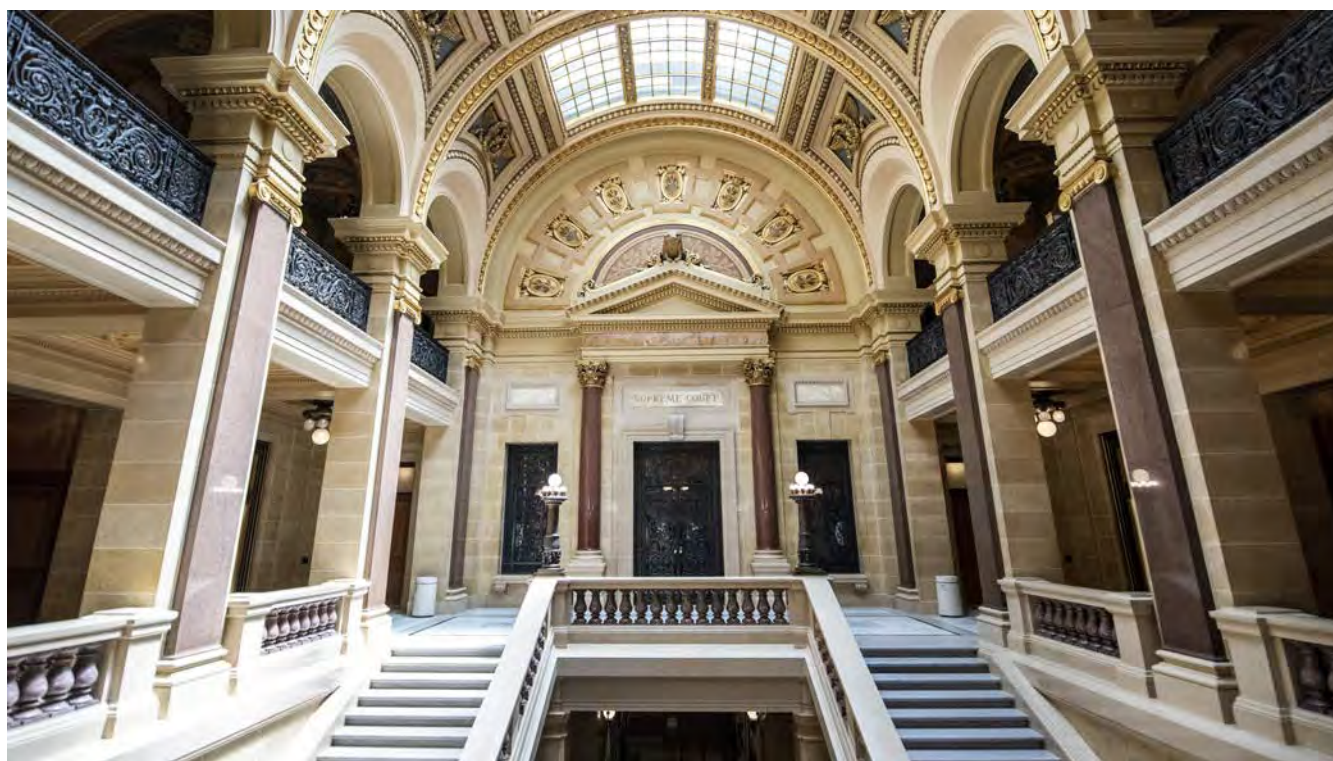


ELECTIONS, JUSTICE, POLITICS, SUPREME COURT

# Milwaukee County Judge Janet Protasiewicz announces candidacy for state Supreme Court

Protasiewicz running for seat being vacated by retiring Justice Patience Roggensack

BY THE ASSOCIATED PRESS • MAY 25, 2022



The Wisconsin Supreme Court on Wednesday, June 9, 2021, at the Wisconsin State Capitol in Madison, Wis.  
*Angela Major/WPR*

Milwaukee County Circuit Judge Janet Protasiewicz says that she will run for the Wisconsin Supreme Court next year to fill a seat currently held by the conservative former chief justice.

**The Larry Meiller Show**

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Retiring Justice Patience Roggensack, who turns 82 in July, isn't seeking a third 10-year term. She is part of the four-justice conservative majority on the seven-member court.

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Protasiewicz said in a statement Wednesday launching her candidacy that “radical right-wing extremists” are attacking “our most closely-held constitutional rights.”

Numerous others are mulling whether to run, including former conservative state Supreme Court Justice Dan Kelly.

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[https://madison.com/news/local/govt-and-politics/elections/candidate-q-a-wisconsin-supreme-court/article\\_fb416ee5-a99e-5a8f-b43d-d4652861a65e.html](https://madison.com/news/local/govt-and-politics/elections/candidate-q-a-wisconsin-supreme-court/article_fb416ee5-a99e-5a8f-b43d-d4652861a65e.html)

TOPICAL TOP STORY

ELECTION 2023 | WISCONSIN SUPREME COURT

## Candidate Q&A: Wisconsin Supreme Court

Alexander Shur | Wisconsin State Journal

Jan 30, 2023



The candidates for the Wisconsin Supreme Court are, from left, Waukesha County Circuit Judge Jennifer Dorow, former Justice Dan Kelly, Dane County Circuit Judge Everett Mitchell and Milwaukee County Circuit Judge Janet Protasiewicz. JOHN HART, STATE JOURNAL ARCHIVES

Alexander Shur | Wisconsin State Journal

**R**esponses to the Wisconsin State Journal’s candidate questionnaire. The four candidates will face off in the Feb. 21 primary, with the top two vote-getters advancing to the April 4 general election.



App.065



VACATION HOMES FOR WHOEVER YOU CALL FAMILY



Dorow

JOHN HART, STATE JOURNAL

## **Jennifer Dorow**

**Age:** 52

**Hometown:** Waukesha

**Family:** Husband Brian, three children

**Current position:** Circuit Court Judge Waukesha County and Chief Judge of the Third Judicial District

**Other public service:** Chair, Waukesha County Evidence Based Decision-Making Initiative (fully incorporated as CJCC); Secretary, Highlands of River Reserve Homeowners Association; Waukesha County Community Foundation Women of Distinction Event Committee; Past Member and Chair, Waukesha-Ozaukee-Washington Youth Council; Past Member, Waukesha-Ozaukee-Washington Workforce Development Board; Past Member, Waukesha County Preventing Alcohol Related Crashes Task Force and DS2 Committee; Board Member, Waukesha Noon Kiwanis

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- 

**Education:** Marquette University and Regent University School of Law

**Website:** [www.judgejennifer.com](http://www.judgejennifer.com)



Kelly

JOHN HART STATE JOURNAL

**Daniel Kelly**

**Age:** 58

**Hometown:** Ottawa

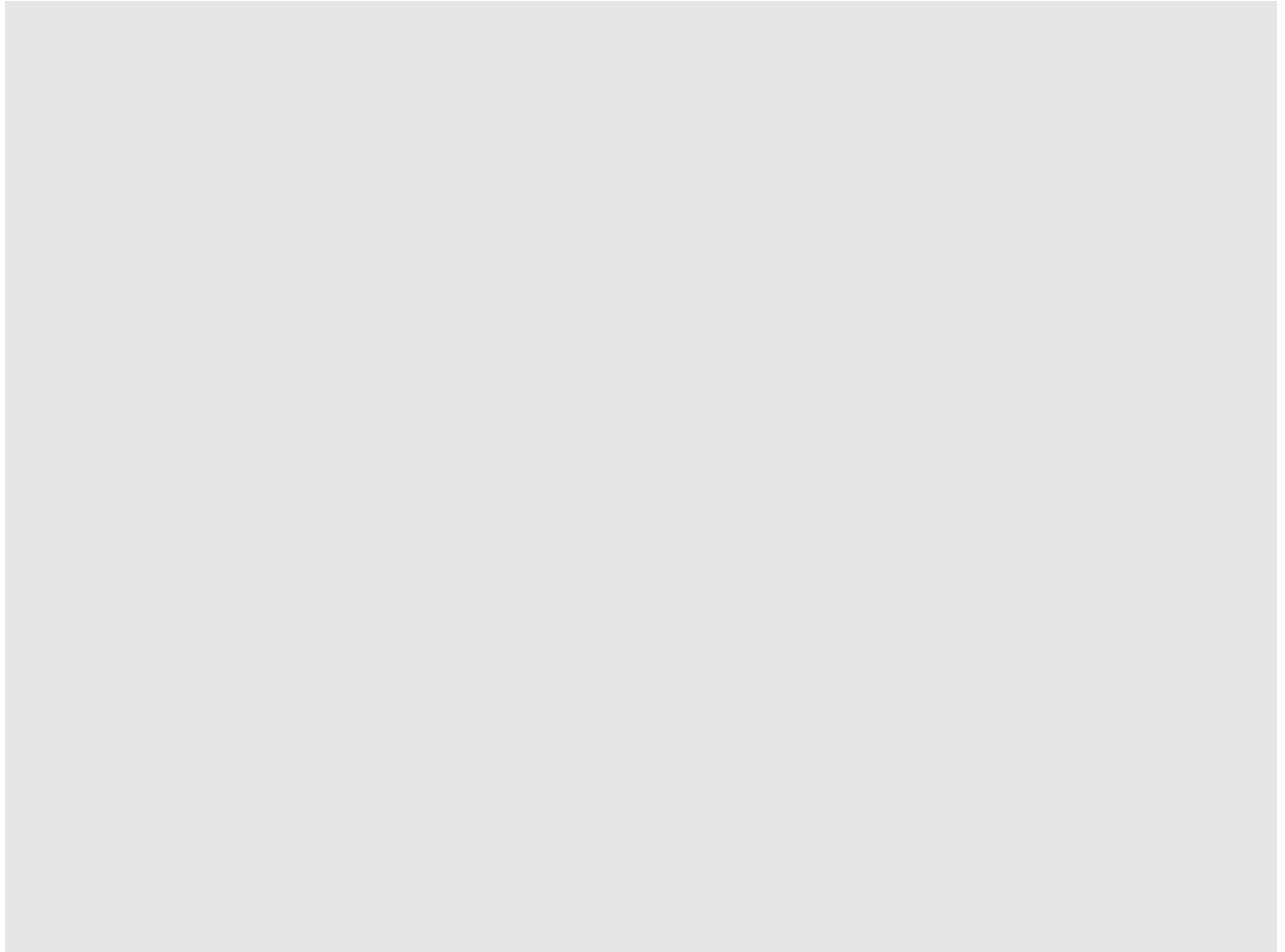
**Family:** Wife, five children

**Current position:** Consultant

**Prior elected office:** Justice, Wisconsin Supreme Court (by appointment)

**Education:** Bachelor's degree in political science with a minor in Spanish from Carroll College; law degree from Regent University

**Website:** [justicedanielkelly.com](http://justicedanielkelly.com)



Mitchell

JOHN HART, STATE JOURNAL

**Everett Mitchell**

**Age:** 45

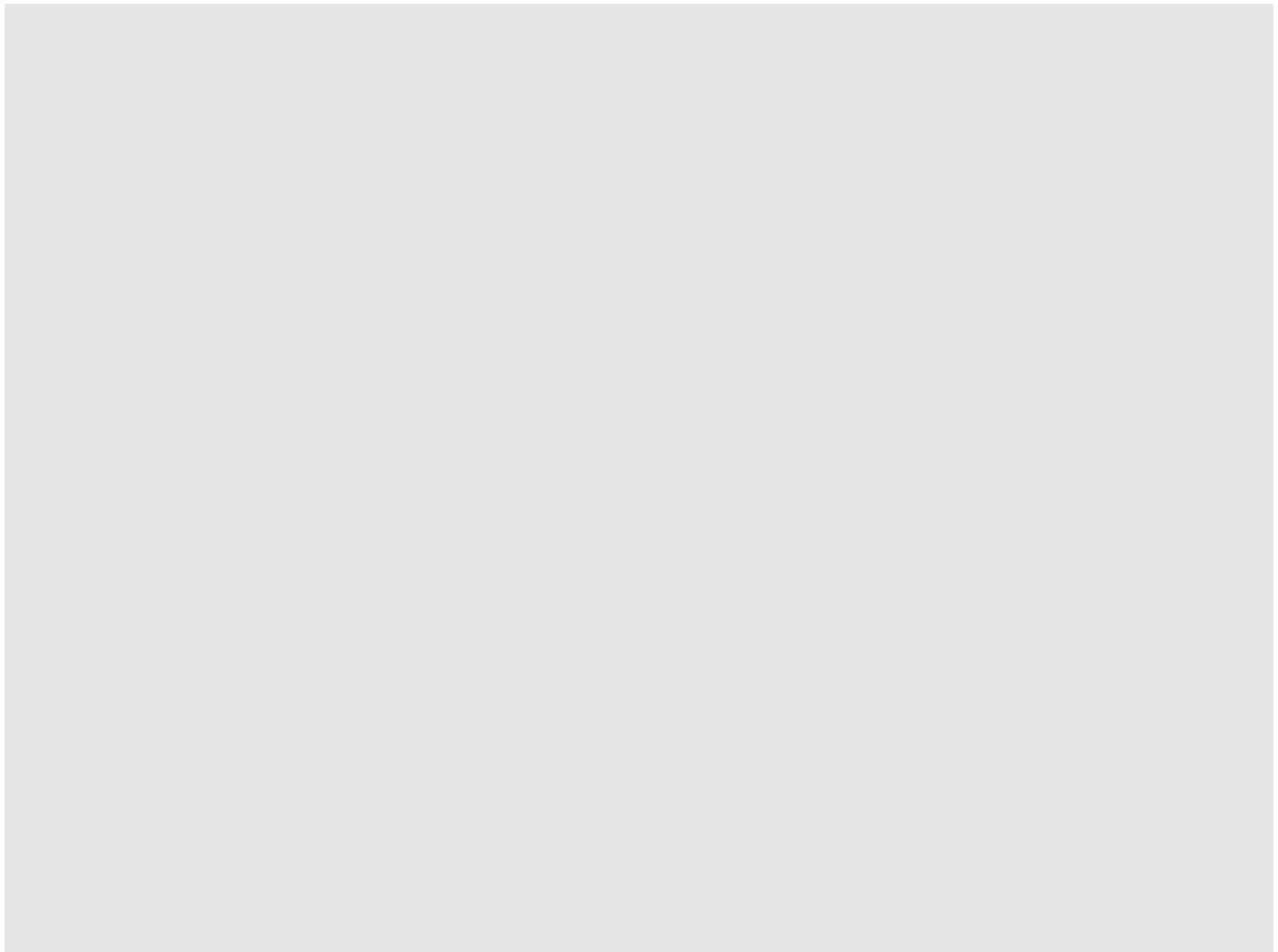
**Hometown:** Sun Prairie

**Family:** Married to Mankah Zama Mitchell; children Braylon, 10, Sydney, 17

**Current position:** Dane County Circuit Court judge; Adjunct professor, UW Madison Law School; senior pastor, Christ the Solid Rock Baptist Church

**Education:** Bachelor's degrees in mathematics and religion from Morehouse College; master's of divinity and master's of theology from Princeton Theological Seminary; law degree from the University of Wisconsin Law School

**Website:** [judgemitchellforjustice.com](http://judgemitchellforjustice.com)



Protasiewicz

JOHN HART, STATE JOURNAL

**Janet Protasiewicz**

**Age:** 60

**Hometown:** Franklin

**Family:** Married to Gregory Sell, stepchildren

**Current position:** Milwaukee County Circuit Court judge

**Prior elected office:** Milwaukee County Circuit Court  
App.069

**Other public service:** Served on the boards of the Association of Marquette University Women, the American Red Cross-Wisconsin Chapter, the Polish Heritage Alliance and Marquette University Law School Alumni Association

**Education:** Bachelor's degree from UW-Milwaukee; law degree from Marquette University

**Website:** [janetforjustice.com](http://janetforjustice.com)

## Q&A

**Every Wisconsin Supreme Court justice claims to be independent, yet each falls into one of two ideological camps. Why should voters believe you'll be any different?**

**Dorow:** I believe judges must ascribe to neutral principles of judicial decision-making: The law means what it says, as understood when it was enacted, and judges don't get to red-pencil the text to avoid outcomes they don't like. Applying that principle, I've reached plenty of outcomes in my 11 years as a trial judge that clashed with my personal views. I'm sure that'll continue to happen when I'm a justice.

**Kelly:** My service on the (Wisconsin Supreme Court) demonstrates I am committed to preserving and applying the original public meaning of our constitutions. I wrote my opinions in a manner designed to squeeze out all personal politics and preferences. I did this by using rigorous logic to move from the premises of the case (the law) to the conclusion. An unbroken chain of logic guarantees the conclusion is commanded by the law.

**Mitchell:** Just as religion must be separate from the state, partisanship should be separate from justice. Justice, fairness, and equity before the law are paramount.

**Protasiewicz:** Over the past several months I've heard from people across Wisconsin who are tired of a Wisconsin Supreme Court that puts partisan politics ahead of the rule of law. I'm committed to being an impartial, nonpartisan justice who believes in upholding our Constitution, protecting our rights and keeping Wisconsinites safe. As a judge and 25-year prosecutor, I know how important it is to return common sense to the court.

**What one decision you either issued or joined in the majority best typifies your approach to the law?**

**Dorow:** In the recent **Waukesha parade tragedy case**, citizens had the opportunity to witness my commitment to fairness and justice in the face of extreme disrespect and disruption. Through it all, I protected the rights of the person who engaged in this behavior, while also ensuring the rights of victims and witnesses were also protected. I remained impartial, enforced the rule of law and protected the rights of all involved.

**Kelly:** In **Tetra Tech v. DOR**, the court had to determine whether it would follow a long line of cases in which the court ceded part of its authority to the executive branch. My opinion describes how those cases conflict with the terms of our Constitution. My commitment to our Constitution is reflected in my conclusion that the Constitution must always take precedence over all else.

**Mitchell:** Most of my cases involve minors so I cannot speak to them specifically. What I can say is that I seek to apply justice whenever I can. And to treat everyone who comes before me with the dignity that they deserve.

**Protasiewicz:** I'm proud of my record as a judge and prosecutor. My job is to uphold the Constitution. Sometimes there are laws that I disagree with, but my duty to the people of Wisconsin is to apply the law and common sense. I've done this throughout my career and look forward to serving the state as the next Supreme Court justice.

**What recent Wisconsin Supreme Court decision do you feel the court got wrong?**

**Dorow:** In last year's **State v. Richey**, a divided court held the police were wrong to pull over a motorcyclist on suspicion of drunken driving — what turned out to be his eighth offense — even though an officer had witnessed his erratic and reckless driving and had called it in. Justice Roggensack, joined by justices Ziegler and Hagedorn, dissented, explaining the stop was entirely reasonable given the “articulable facts.” I agree.

**Kelly: Becker v. Dane County.** The Supreme Court upheld a COVID-related public health order modeled on the order at issue in **Wisconsin Legislature v. Palm**. The court failed to acknowledge that local levels of government must respect the separation of powers just as much as the state government. Therefore, the court erred in upholding the Dane County order for the reasons outlined in my separate opinion in **Palm**.

**Mitchell:** I believe the “**least changes**” **approach** adopted by our Supreme Court for their ruling on gerrymandering is wrong. It is not supported by precedent. And it unfairly robs the voters of their voice in the process.

**Protasiewicz:** I've been clear that I believe the **court's decision last year regarding legislative maps** was wrong. As the dissent noted, Wisconsin's current maps fail to deliver representative government to the people of Wisconsin, and the process was not rooted in the law. This was a decision rooted in partisan extremism, not common sense. I'll always be an impartial justice who upholds our Constitution.

*Editor's note: An earlier version of this story included incomplete information on Everett Mitchell's education. In addition to his bachelor's and master's degrees, he has a law degree from the University of Wisconsin Law School.*

[https://captimes.com/news/government/protasiewicz-would-enjoy-taking-a-fresh-look-at-wisconsin-voting-maps/article\\_d07fbe12-79e6-5c78-a702-3de7b444b332.html](https://captimes.com/news/government/protasiewicz-would-enjoy-taking-a-fresh-look-at-wisconsin-voting-maps/article_d07fbe12-79e6-5c78-a702-3de7b444b332.html)

## Protasiewicz would ‘enjoy taking a fresh look’ at Wisconsin voting maps

By **Jessie Opoien and Jack Kelly**

Mar 2, 2023



*Milwaukee County Circuit Judge Janet Protasiewicz, a liberal, and former state Supreme Court Justice Daniel Kelly, a conservative, will battle April 4 for a seat on the state’s high court being vacated by retiring conservative Justice Patience Roggensack.*

RUTHIE HAUGE

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Milwaukee County Circuit Judge Janet Protasiewicz said Wednesday she would “enjoy taking a fresh look” at Wisconsin’s electoral maps if elected to the state Supreme Court — a look that would come from a court led by a liberal majority for the first time since 2008.

“I would anticipate that I would enjoy taking a fresh look at the gerrymandering question,” Protasiewicz said on a recent episode of “Wedge Issues,” the Cap Times’ politics podcast.



Protasiewicz's comments about redistricting aren't surprising, as she said at a January candidate forum that the state's maps are "rigged" — but they serve as an illustration of the lines ostensibly nonpartisan candidates walk as judicial races become increasingly driven by partisan influences.

The Milwaukee County judge made similar assertions on the latest episode of "Wedge Issues," released Thursday, adding that she would not recuse herself from hearing a challenge to the maps despite her comments on the campaign trail.

"I think anybody with any sense knows our maps are rigged," Protasiewicz said. "We have amongst the most gerrymandered maps in the entire country. I have told people, 'I don't think you can sell, to any rational person, that our maps are fair.'"

If she's elected, Protasiewicz said, "I would anticipate that at some point, we'll be looking at those maps," adding that the state's intense and close statewide elections are not reflected in the dominant Republican majorities in the Legislature.

Protasiewicz, a liberal, and former state Supreme Court Justice Daniel Kelly, a conservative, will battle April 4 for a seat on the state's high court being vacated by retiring conservative Justice Patience Roggensack.

Protasiewicz and Kelly both emerged from Feb. 21's four-way primary. Protasiewicz led the way with about 46% of the vote, followed by Kelly who earned about 24% of the vote. Conservative Waukesha County Circuit Judge Jennifer Dorow trailed Kelly by about 2 points, and Dane County Circuit Court Judge Everett Mitchell, a liberal, finished a distant fourth.

The race has attracted national attention and has already reached the milestone of becoming the most expensive judicial contest in American history.

In addition to her criticism of the state's legislative boundaries, Protasiewicz has also been outspoken in her support for abortion access — another issue all but certain to come before the state's high court as a challenge to Wisconsin's 1849 abortion ban makes its way through the legal system.

Kelly has accused Protasiewicz of planning to “place her thumb on the scales of justice to ensure the results satisfy her personal interests.”

“If we do not resist this assault on our Constitution and our liberties, we will lose the Rule of Law, and will find ourselves saddled with the Rule of Janet,” Kelly said in a statement following the primary election.

“We must not allow this to come to pass.”

Protasiewicz told the Cap Times she believes the public has a right to know the personal values of the candidates they elect, arguing that her personal beliefs don’t prevent her from applying the law in cases where the two conflict.

“I think that everybody knows that anybody running for any type of office has their own personal opinions and their own personal values,” Protasiewicz said. “And the question is, do you want to hide those opinions and those values from the public? Are they entitled to know what your personal feelings are? I mean, we've all got them. So the question is, do we hide them? Or do we let the public know?”

*We’ve invited former state Supreme Court Justice Daniel Kelly to join us on an upcoming episode and look forward to sharing that conversation soon. Subscribe to Wedge Issues on [Apple Podcasts](#), [Spotify](#), [Google Podcasts](#) or anywhere else you find podcasts.*



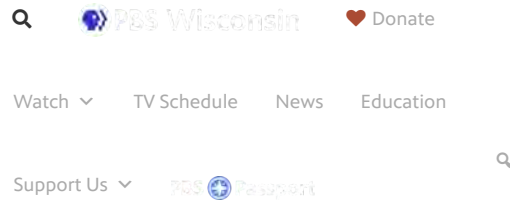
Wedge Issues

Janet Protasiewicz, 'common sense' and the Wisconsin Supreme Court

00:00 / 19:35

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## News

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### ELECTIONS

# Janet Protasiewicz, Daniel Kelly on Wisconsin redistricting

The politics of gerrymandering election maps and its effects on the balance of power in the state Legislature is a high-profile issue in the 2023 race for an open seat on the Wisconsin Supreme Court.

By [ZAC SCHULTZ](#) | Here & Now  
March 9, 2023



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On April 4, voters will choose between Janet Protasiewicz and Daniel Kelly and determine the future ideological balance of the Wisconsin Supreme Court. But that same election will determine whether the court will look backwards as well.

“So that’s when I say, yes, those maps are rigged,” said Protasiewicz, who has made clear she believes Wisconsin’s legislative maps are gerrymandered in favor of Republicans.

Protasiewicz said the state Supreme Court erred twice on its path to approving those maps.

The first error came in 2021 when the court's conservative majority announced they would not draw new legislative boundaries, but would instead choose from [maps](#) submitted by Gov. Tony Evers and the Republican-controlled Legislature.

### RELATED STORIES

[Wisconsin's 2023 Supreme Court candidates and Brian Hagedorn](#)

[What Daniel Kelly and Janet Protasiewicz say about the 2023 Wisconsin Supreme Court election](#)

[Daniel Kelly, Janet Protasiewicz on health orders, 2020 vote](#)

The best map, according to the court, was one that kept the new boundaries as close to the existing boundaries as possible, so as to have the fewest number of voters switch legislative districts.

It was [called](#) the “least change” methodology — a new precedent, invented by the court.

“There’s no legal precedent. There’s nothing in the Constitution. There’s nothing in case law,” Protasiewicz said. “So you get this ‘least change’ rule that, quite frankly, if you talk to an uneducated voter about it, they might say, ‘you know, it sounds like it kind of makes sense — right? — kind of on its face makes sense, kind of, keeping the districts together.’”

However, ‘least change’ only cemented in the [advantage](#) Republicans drew for themselves 10 years earlier.

Even the “least change” map [submitted](#) by Evers still created districts that ensured a Republican majority in the Legislature.

“This is where I say democracy’s on the line. You look at what’s happening in our state. You look at what the Republicans did with the redistricting. You look at the fact that the maps were — 10 years ago — a problem,” said Protasiewicz. “I would say that the maps are a bigger problem. You’ll hear people argue that the Republicans used very, very sophisticated computer technology to draw those maps and to draw those maps in a way that are absolutely the most favorable to them. So that’s when I say, yes, those maps are rigged.”

Daniel Kelly served on the court from 2016 until he lost re-election in 2020, and was not on the bench when the court decided the redistricting case.

However, he said the decision makes sense.

“The phrase ‘least change’ is meant to encompass the idea that we take the maps as they’re written, and then we look for the legal errors, and we fix the legal errors and we leave everything else the same,” said Kelly.

Past redistricting cases were decided in federal court, but Republicans wanted this case before the Wisconsin Supreme Court.

Kelly said the idea of fairness in the maps is a political question, something the court must avoid.

“The members of this court have not been entrusted with making political decisions, only legal decisions. And so their job is just to address those legal imperfections in that map,” he said. “When they’re done addressing those, it is to step aside and then wait for the people of Wisconsin to work on their Legislature and their governor to get to a map that is politically acceptable to the state.

In the spring of 2022, using the ‘least change’ criteria, Justice Brian Hagedorn joined the three liberals on the court to [choose](#) Evers’ legislative maps, which [created](#) an additional African-American majority Assembly seat in the Milwaukee area, something they [argued](#) was required under the Voting Rights Act.

Republicans appealed to the United States Supreme Court, which [struck down](#) the maps, [saying](#) there wasn’t enough evidence to support [invoking](#) the Voting Rights Act.

Hagedorn then joined the conservatives in [picking the Republican-drawn maps](#), which Protasiewicz said was the court’s second major error and something she expects the court to revisit [if she wins](#).

One of the things that was in the [dissent](#) from the Wisconsin Supreme Court regarding the redistricting case — especially after it came back from the U.S. Supreme Court — was that they felt that the court could hold a trial to actually determine whether it was warranted to add an additional district under the Voting Rights Act in Milwaukee or not. Is that an issue she would expect to come back before the court, given that the dissent almost envisioned it?

“I would think so,” said Protasiewicz. “I would think so.”





**Justice-elect Janet Protasiewicz**

@janetforjustice

Coupled with the trend of extreme gerrymandering, voter suppression laws, Wisconsin's 173-year-old abortion ban & the potential for the Supreme Court to undermine the Voting Rights Act, the conservative takeover of the WI Supreme Court poses a serious threat to our democracy. 2/4

2:15 PM · Mar 7, 2023 · **1,630** Views



# News

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## ELECTIONS

# Wisconsin Supreme Court candidates clash over abortion, maps in only 2023 debate

The only debate between 2023 Wisconsin Supreme Court candidates Dan Kelly and Janet Protasiewicz came hours after early in-person voting began ahead of the April 4 election.

Associated Press  
March 21, 2023



Wisconsin Supreme Court candidates Republican-backed Dan Kelly and Democratic-supported Janet Protasiewicz participate in a debate on March 21, 2023, in Madison. (Credit: AP Photo / Morry Gash)

By Scott Bauer, AP

MADISON, Wis. (AP) — The liberal candidate for a seat on the Wisconsin Supreme Court didn't back down from her support for abortion rights or her belief that the state's Republican-drawn legislative maps are unfair during a debate on March 21 in which her GOP-backed opponent accused her of being "bought and paid for" by Democrats.



Janet Protasiewicz called her conservative opponent, Dan Kelly, “a true threat to our democracy” because he consulted with Republicans about their plan to seat fake electors to support Donald Trump after he lost Wisconsin in 2020.

Whoever wins the April 4 election for a seat vacated by the retirement of a conservative justice will determine majority control of the court for at least the next two years, including leading up to the 2024 presidential election. Control of the court, which came within a vote of overturning Trump’s 2020 defeat in the state, could be crucial, with abortion access, legislative redistricting, voting rights and other key issues at stake. The millions already spent have made it the most expensive state Supreme Court race in U.S. history.

Kelly repeatedly accused the Democratic-backed Protasiewicz of lying about his role in the fake elector plan, his abortion stance and other issues, telling her, “You’re willing to say anything to get what you want.”



Wisconsin Supreme Court candidate Republican-backed Dan Kelly participates in a debate on March 21, 2023, in Madison. (Credit: AP Photo/Morry Gash)

Protasiewicz [has focused her candidacy](#) on her support for abortion rights, stopping just short of saying how she would rule on a lawsuit challenging the state’s abortion ban first passed in 1849 — a year after statehood. She reiterated March 21 that she hadn’t made up her mind on how she would rule, but she said Kelly had.

“My personal opinion is that should be a woman’s right: to make a reproductive health decision. Period,” she said. “If my opponent is elected, I can tell you with 100% certainty that (the) 1849 abortion ban will stay on the books.”

Kelly defended his support from the state’s three largest anti-abortion groups and said he made no pledge to them to uphold the ban, as Protasiewicz has alleged.

“This seems to be a pattern for you Janet, just tell a lie,” Kelly said. “You don’t know what I’m thinking about that abortion ban. You have no idea. ... I had no conversations with those organizations about how I would rule on any issue, including the abortion issue.”

Kelly, who [previously did work](#) for Wisconsin Right to Life, has not said how he would rule on the challenge to the abortion ban should it reach the court. But he did write in a blog post years ago that abortion “takes the life of an unborn child.”

On redistricting, Protasiewicz was asked how she could fairly hear the case given that the Democratic Party has given her campaign \$2.5 million. She said she would recuse herself from any case brought by the party, but challenges to the [Republican-drawn maps](#) are expected to come from others.

“The map issue is really kind of easy, actually,” Protasiewicz said. “I don’t think anybody thinks those maps are fair. Anybody.”



Wisconsin Supreme Court candidate Democratic-supported Janet Protasiewicz participates in a debate on March 21, 2023, in Madison. (Credit: AP Photo / Morry Gash)

Protasiewicz said she agreed with the liberal dissenting justices in a case that challenged the Republican-drawn maps.

“There you have it,” Kelly said in response. “She just told you how she would resolve the case.”

Protasiewicz accused Kelly of being unfair with his campaign ads accusing her of handing down soft sentences in numerous criminal cases she has handled as a Milwaukee County circuit court judge.

“I have spent my entire career protecting this community,” she said.

Kelly, a former state Supreme Court justice, has long ties to the Republican Party, having [previously worked for Republicans](#). Kelly was endorsed by Trump in 2020. This year, he has the backing of Scott Presler, a Virginia native who planned several “stop the steal” rallies and was on the U.S. Capitol grounds on Jan. 6, 2021. He was in Wisconsin in March helping to raise money and support for Kelly through personal appearances on conservative talk radio.

Protasiewicz’s endorsements include Hillary Clinton, Planned Parenthood and EMILY’s List, which works nationwide to elect Democratic abortion rights supporters.

The debate at the Wisconsin Bar Association, co-sponsored by WISC-TV and WisPolitics.com, came on the same day that early, in-person voting began. Early voting runs through April 2.



Madison residents cast their votes at the Warner Park Community Recreation Center on the first day of early voting on March 21, 2023. Wisconsin voters began casting ballots in person in the state’s high-stakes Supreme Court race, hours before the two candidates were slated to meet for their only debate two weeks before Election Day. (Credit: AP Photo / Morry Gash)

Elizabeth Doe, 73, was the first person to cast a ballot in Wisconsin’s liberal capital, Madison, doing so shortly after 9 a.m. at a community center. She said she voted for Protasiewicz because of her concerns over “reproductive rights.”

“You can’t take that right away,” Doe said.

The [contest](#) has already broken national spending records for a Supreme Court race, with the two sides having spent at least \$22 million to date. WisPolitics.com estimated that more than \$30 million had been spent on the race as of mid-March, which would be roughly double the \$15.2 million spent on a 2004 Illinois Supreme Court race that had held the mark as the most expensive.



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# In only state Supreme Court debate, candidates trade accusations of partisan ties

By: [A.J. Bayatpour](#) [Facebook](#) | [Twitter](#)

Posted: Mar 21, 2023 10:33 AM CST | Updated: Mar 21, 2023 4:44 PM CST

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NOW: In only state Supreme Court debate, candidates trade accusations

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MADISON, Wis. (CBS 58) --The two final candidates for Wisconsin's upcoming Supreme Court election accused one another of having troubling political connections Tuesday during the only debate they'll have during this campaign.

Liberal candidate Janet Protasiewicz, a Milwaukee County Circuit Court judge, and Dan Kelly, a former state Supreme Court justice who currently is a private attorney, fielded a variety of questions ranging from abortion and redistricting to whether they'd recuse themselves from cases involving groups who've campaigned against them.

The April 4 election will decide who controls the state's high court. Conservatives currently have a 4-3 advantage. The court's balance may well determine the outcome of future challenges to the state's abortion ban, its legislative voting districts and election laws.

CBS 58 Capitol correspondent Emilee Fannon was one of three reporters asking questions to Protasiewicz and Kelly during the debate.

Throughout the debate, the candidates pointed to their opponent's ties to partisan politics.

"My opponent is accepting millions from the Democratic Party of Wisconsin, and that presents a major problem," Kelly said about Protasiewicz accepting \$2.5 million from state Democratic party.

Protasiewicz countered by attacking Kelly over his conversations with the state Republican party's former chair, [Andrew Hitt, who discussed](#) with Kelly the effort after the 2020 election to submit an alternate slate of 10 fake electors for former President Donald Trump.

"I am running against one of the most extreme partisan candidate in the history of this state," Protasiewicz said.

Kelly maintained he was unaware of the fake elector plan when Hitt contacted him. Protasiewicz also pointed to Kelly taking the Wisconsin GOP as a client in recent months.

Kelly said Protasiewicz was misleading voters because there's a difference between working for Republicans and taking on the party as a client.

**40°**  
Mostly Cloudy

**38°**  
Rain and Snow

**7 DAY FORECAST**

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**COUNTDOWN TO THE BIG GAME:**

<b>1</b>	<b>3</b>	<b>0</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>5</b>	<b>5</b>
Days	Hours	Minutes	Seconds				

**FEBRUARY 11TH, 2024**

### LATEST

**Wisconsin woman involved in Slender Man attack as child seeks release from psychiatric institute**

1h ago

## Abortion

Throughout the campaign, abortion has been one of the race's defining issues. Pro-life groups, such as [Right to Life Wisconsin](#) and [Pro-Life Wisconsin](#), have backed Kelly.

Pro-choice groups, including [Planned Parenthood](#) and [EMILY's List](#), have shared their support for Protasiewicz. The Milwaukee judge repeated Tuesday she personally believes women should have the right to abortion, but that doesn't automatically mean she'd vote to strike down Wisconsin's ban, which makes it a felony to provide abortion, and only makes exceptions for cases where a mother's life is at risk.

"I've been clear any decision I render will be based solely on the law and constitution. I've told everyone I'm making no promises to you," Protasiewicz said. "My personal opinion is that should be the woman's right to make the reproductive health decision, period."

Protasiewicz said Kelly's endorsements were proof he'd be a reliable vote to uphold the abortion ban, citing the Pro-Life website that states it endorses candidates "who have pledged to champion pro-life values."

Kelly accused her of making another misleading remark and argued those endorsements are not an indicator of how he's rule from the bench.

"This seem to be a pattern for Janet, just telling lies about me. You don't know what I'm thinking about that abortion ban," Kelly said. "You have no idea. What I know is this: the endorsements I receive are entirely based on conversations I have with individuals and organizations in which they ask me, 'What kind of justice will you be?'"

## Redistricting

With the possibility of a future challenge to the state's maps, Kelly criticized his opponent for talking about how she may approach redistricting after calling the current maps "rigged."

"We know the maps are not fair," Protasiewicz said. "We have battleground elections. We know they are not fair."

Kelly accusing Protasiewicz of plotting to "steal legislative authority," from the GOP-controlled Legislature, who's responsible for redrawing the maps every 10 years.

## Crime

1h ago

'What about love?': Heart bringing 'Royal Flush' tour to Fiserv Forum, joined by Cheap Trick

1h ago

'Bid adieu to Shrekfest': Popular festival in Milwaukee's Humboldt Park will not return

1h ago

Milwaukee area Marcus Theaters celebrate Wizard of Oz 85th anniversary

2h ago

## ONLY ON CBS 58



Moment in Wisconsin: Estabrook Park



'Just an awesome experience': Veterans showcase photography work at War Memorial Center

Kelly criticized Protasiewicz for not sentencing someone convicted of sexual assault because of the COVID-19 pandemic.

"It's interesting that a handful of cases have been cherrypicked and selected and twisted," she said.

The Milwaukee judge and former prosecutor also added she would not have served in those roles if "the community and the rest of my colleagues thought I wasn't handing down sufficient sentence."

### Other Takeaways

Kelly said he will not accept campaign funds from the state Republican Party after stating a few weeks ago he would welcome their support. The former justice is receiving some assistance from party officials for get out the vote efforts and research.

Protasiewicz also suggested possible changes to settle case law when asked about Act 10, absentee ballot drop boxes, and the governor's emergency powers, all controversial issues that have been upheld by the high court.

"Obviously, we all follow precedent all the time. That's what you want to do, Protasiewicz said. "But you know, precedent changes."

Both candidates did signal support for a [proposed constitutional amendment](#) to give judges more discretion when setting bail amounts. It will appear on the April 4th ballot.

Early, in-person absentee voting for the spring election began Tuesday. Early voting dates and times vary by municipality. You can find your election day polling place or request a mailed absentee ballot at [myvote.wi.gov](http://myvote.wi.gov).



'A dream come true:' Wisconsin tattoo artist creates Taylor Swift promotion to raise money for Eras Tour tickets



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ABORTION Tracking abortion laws by state Before Roe Roe v. Wade overturned Dobbs v. Jackson Women's Health

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DEMOCRACY IN AMERICA

### Liberals win control of Wisconsin Supreme Court ahead of abortion case



By [Patrick Marley](#)

Updated April 4, 2023 at 11:55 p.m. EDT | Published April 4, 2023 at 12:58 p.m. EDT



Wisconsin Supreme Court candidate Janet Protasiewicz votes at Franklin City Hall on April 4. (Evelyn Hockstein/Reuters)

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MILWAUKEE — Liberals claimed control of Wisconsin's high court in an [election](#) Tuesday, giving them a one-vote majority on a body that in the coming years will likely consider the state's [abortion](#) ban, its gerrymandered legislative districts and its voting rules for the 2024 presidential election.

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Milwaukee County Judge Janet Protasiewicz's victory over former state Supreme Court justice Daniel Kelly will end 15 years of conservative control of the Wisconsin Supreme Court. She could face ethical questions when the court takes up politically charged cases because she campaigned heavily on abortion rights and repeatedly called the state's election maps "rigged."

Protasiewicz beat Kelly by 11 points, 55.5 percent to 44.5 percent, according to the Associated Press. About 1.8 million people voted, nearly 40 percent of the state's eligible voters, which was high given that court elections rarely see turnout of more than 30 percent.

The candidates, political parties and independent groups spent more than \$40 million on the race, making it the [most expensive judicial contest](#) in U.S. history. It more than quadrupled the amount spent in Wisconsin's 2020 state Supreme Court race.





## Democrats flip Wisconsin Supreme Court

2:10

Milwaukee County Judge Janet Protasiewicz defeated former state Supreme Court justice Daniel Kelly on April 4, campaigning on abortion and voting rights. (Video: Reuters)

Judicial candidates in Wisconsin do not run with party labels, but the race was steeped in partisanship. The state Democratic Party gave nearly \$9 million to Protasiewicz, while arms of the Republican Party gave more than \$500,000 to Kelly and GOP megadonor Richard Uihlein spent nearly \$6 million to help him, according to campaign finance records.

At Protasiewicz's victory party in downtown Milwaukee, the three liberals who sit on the court marched into the hotel ballroom arm in arm to Lizzo's "About Damn Time." They later joined Protasiewicz onstage, and the four of them — the court's incoming majority — held their hands aloft as the crowd chanted "Janet!"

"Today's results show that Wisconsinites believe in democracy and the democratic process," Protasiewicz said. "Today I'm proud to stand by the promise I made to every Wisconsinite that I will always deliver justice and bring common sense to our Supreme Court."

On Tuesday night, Kelly accused Protasiewicz of spreading "rancid slanders" and said he did not have a "worthy opponent to which I can concede." He said he respected the voters' decision but feared for the future of the court.

"I wish Wisconsin the best of luck because I think it's going to need it," he said, speaking from a rural, lakeside hotel 70 miles north of Madison. Protasiewicz will start her 10-year term in August. She will replace Justice Patience Roggensack, a conservative who decided not to seek a third term after 20 years on the court. The next race for a seat on the court is in 2025, when liberal Justice Ann Walsh Bradley's term ends. As Wisconsin voters cast their ballots, former president Donald Trump appeared in a Manhattan courtroom and pleaded not guilty to 34 felony counts related to payments intended to silence an adult-film actress during his 2016 presidential campaign. Trump endorsed Kelly in 2020 but stayed out of this year's race.

Protasiewicz and her allies had a fundraising edge and structured their campaign spending to run about three times as many ads as conservatives in the final weeks of the campaign, according to the media-tracking firm AdImpact. That's because Democrats took advantage of a campaign finance law written by Republican lawmakers in 2015 that let them funnel huge sums to Protasiewicz, who qualified for the cheapest ad rates because she was a candidate for office. Conservatives ran most of their ads through independent groups that pay far more for ads.

Conservatives won a majority on the court in 2008 and over the next decade and a half issued rulings that upheld limits on unions, approved a voter ID law, ended a campaign finance investigation of

Republicans, outlawed absentee-ballot drop boxes and adopted election maps that assured Republicans have commanding majorities in the state legislature.

Kelly joined the court in 2016, when the Republican governor at the time, Scott Walker, appointed him to fill a vacancy. He lost the seat by 10 points in 2020 but hoped to rejoin it this year.

Protasiewicz, 60, was raised in Milwaukee's working-class south side, graduated from the University of Wisconsin at Milwaukee and got her law degree from Marquette University in Milwaukee. She served as a prosecutor for more than 25 years before becoming a judge nearly 10 years ago. On the campaign trail, she often noted that the only client she ever had as a lawyer was the state.

Protasiewicz had the advantage in the race from the start. She got in early, raised \$14 million over the next year and a half, and got Democrats to coalesce around her even though another liberal was also running. She came in first in the February primary with 47 percent. Kelly was second with 24 percent, edging out conservative Waukesha County Circuit Court Judge Jennifer Dorow by two points. (The other liberal in the race, Dane County Circuit Court Judge Everett Mitchell, received about 8 percent.)

Some conservatives feared all along that Kelly would have a tough time this year, citing his loss in 2020 and a string of writings that expressed opposition to abortion and called affirmative action and slavery morally the same.

Share this article



Protasiewicz made abortion rights the centerpiece of her campaign. Democrats have found the issue resonates with voters since the U.S. Supreme Court in June overturned *Roe v. Wade*, the 1973 ruling that guaranteed access to abortion across the nation.

When the ruling came down, abortion providers in Wisconsin stopped offering the procedure because of an 1849 law that bans abortion unless one is required to save the life of the mother. A trial judge is slated to hear a challenge to the law next month, and the case is expected to eventually reach the state Supreme Court.

"I can tell you with certainty that if I'm elected on April 4th, I'm sure that we will be looking — I am sure we will be looking — at that 1849 law," Protasiewicz said at a campaign stop in March in eastern Wisconsin. She added: "I believe in a woman's right to choose."

Over the next two years, the state high court could be called on to decide a host of voting rules for the 2024 presidential election. And the justices could be dragged into challenges over the results of that election, as they were in 2020. Last time, conservative Justice Brian Hagedorn joined the court's liberals to issue a string of 4-3 rulings that rejected challenges from Trump and his allies over Joe Biden's win in the state.

Liberal groups are now preparing to file a lawsuit challenging the legislative and congressional districts that conservatives on the Wisconsin Supreme Court approved last year. Those maps so heavily favor Republicans that they have been able to gain nearly two-thirds of the seats in the state legislature even though Wisconsin is nearly evenly split between Democratic and Republican voters.

Even if the court acts quickly, it may not be able to draw new maps in time for the 2024 election. New maps would need to be set by next spring, just six months after Protasiewicz is sworn in. Ordinarily, redistricting challenges take years.



Supporters of Wisconsin Supreme Court candidate Daniel Kelly cheer during a campaign event in Waukesha, Wis., the night before the state Supreme Court election. (Evelyn Hockstein/Reuters)

Protasiewicz will face tough questions when the court addresses the abortion and redistricting challenges. Critics have argued she cannot ethically participate in those cases after so clearly spelling out her views.

During the campaign, Republicans filed a complaint against her with the state's judicial ethics commission. The commission moves slowly and has not said whether it believes she has broken any rules. Republicans have made clear they're ready to file more complaints.

The commission's powers are limited, however, and only the state Supreme Court can impose discipline on a justice for violating the judicial ethics code. The conservatives on the court would need to get at least one vote from the liberals to discipline Protasiewicz.

Protasiewicz has said she would not participate in cases brought by the state Democratic Party since it donated so much money directly to her campaign. But she has said she is inclined to remain on the abortion case and would likely participate in a redistricting case if someone other than the state Democratic Party brought it.

Protasiewicz was able to speak so freely about her views on abortion and redistricting during the campaign because of a 2002 U.S. Supreme Court decision. Acting on a lawsuit brought by the Republican Party of Minnesota, the conservative majority in a 5-4 ruling determined judicial candidates have a First Amendment right to express their views on political issues so long as they don't promise to rule in a particular way. But having now spelled out her views, Protasiewicz could face challenges over whether she can be impartial, said Charles Geyh, an Indiana University law professor who has written extensively on judicial ethics.

"If she is then called upon to resolve the redistricting matter, where she is on record saying it's rigged, I have a hard time saying that she shouldn't disqualify herself from that," he said.

In Wisconsin, justices decide on their own whether they can participate in cases. That's in part because conservatives on the court in 2009 ruled the justices could not force one of their colleagues off a case. Eric H. Holder Jr., who served as attorney general under President Barack Obama, spent Saturday campaigning for Protasiewicz as the head of the National Democratic Redistricting Committee. In an interview, he contended Protasiewicz could remain fair on a redistricting challenge despite her comments in recent months.

"She has said the maps are not necessarily good, but she hasn't said she would vote in a particular way with regard to a case that was

brought before her,” he said. “And you have to look at what the case is, what’s the basis for the complaint that might be filed, and I’m confident that she can do so in an impartial way.”

CORRECTION

This story previously misreported the margin of Milwaukee County Judge Janet Protasiewicz’s victory over former state Supreme Court justice Daniel Kelly. She won 55.5 percent to 44.5 percent, according to the Associated Press.



## WisPolitics tracks \$56 million in spending on Wisconsin Supreme Court race

 July 19, 2023

[Home](#) » [Battleground Wisconsin](#) » WisPolitics tracks \$56 million in spending on Wisconsin Supreme Court race



WisPolitics has tracked more than \$56 million spent on this spring's Supreme Court race — almost four times the previous national record — as liberals flipped control of the body for the first time in 15 years.

And it's likely the final tab was significantly higher, thanks to issue ads and spending on infrastructure that aren't reported to the state.

Dems said those efforts add millions to the more than \$32 million that WisPolitics tracked in spending by Justice-elect Janet Protasiewicz and the groups backing her.



Meanwhile, conservative former Justice Daniel Kelly and his supporters spent more than \$22.5 million, according to campaign finance reports, independent expenditure filings, TV records and interviews. The rest was spent by Jennifer Dorow, Everett Mitchell and their backers ahead of a four-way primary.

The previous national record for a state Supreme Court race was a 2004 Illinois contest that hit \$15 million, while the most expensive Wisconsin contest had been the 2020 campaign, when Kelly lost a bid to retain his seat to liberal Jill Karofsky.

The story of this spring's Supreme Court race is more than just how much was spent, but how it was spent.

Protasiewicz was the biggest spender, with more than \$16.7 million dropped on her successful bid, according to her campaign finance reports. That effort was fueled by the state Dem Party, which pumped \$9.9 million into her campaign through transfers and in-kind donations. That helped fund the \$12.9 million that Protasiewicz spent on TV.

This approach gave Protasiewicz and her allies a significant advantage over Kelly and his allies on TV ahead of the April election.

Candidates get better rates than independent groups, giving them greater buying power. Most of Protasiewicz's allies focused their efforts on digital ads, which cost the same for candidates as they do outside groups, while the campaign was the main vehicle on TV.

According to figures from the Protasiewicz campaign, Kelly and his allies spent nearly \$7.2 million on TV over the final four weeks of the race, compared to under \$6.4 million on the liberal side. Still, Protasiewicz and her allies put up more than 92,000 points over that period — a measure of how often viewers see the ads — compared to less than 41,000 by the conservative side.

Over the final week of the race, conservatives had more than a \$1 million advantage in spending, but liberals had more than 86 percent more points on the air, according to her campaign.

Protasiewicz general consultant Patrick Guarasci said liberal donors wanted to see their donations be as impactful as possible. The easiest way to do that was to give directly to the campaign. The second avenue was through the state party, which raised \$13.6 million over the first six months of 2023.

Guarasci said the campaign was in regular contact with the party and had to demonstrate "that we had a plan to win. It wasn't just a rubber stamp and they sent money to us willy-nilly."

"The spending is irrelevant," Guarasci said of what was put on TV. "The points are what's relevant."

— Kelly spent \$3.7 million on the race, including \$611,363 on TV, according to his filings.

Multiple people who worked on Kelly's campaign didn't return messages today from WisPolitics seeking comment on the spending numbers.

One conservative operative who worked on the race and was granted anonymity to speak freely said Kelly's refusal to accept cash transfers from the state GOP was a big factor in the disparity in points on TV.

While Kelly declined to take money through the party, he still accepted \$853,299 in in-kind contributions from the party for things such as mail.

The operative said many factors played into Kelly's loss, including the prominence of abortion as an issue. The decision not to accept money from the party, the operative said, contributed a lot to the spending imbalance.

"We're not dumb. We know ad rates. It's not a new concept," the operative said. "But when he's not willing to take them, what are we supposed to do? We have to spend it."

See more in Tuesday's PM Update.

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**CAMPAIGN FINANCE REPORT  
STATE OF WISCONSIN  
CF-2**

*COMMITTEE IDENTIFICATION*

<b>Filing Period Name:</b>	July Continuing 2023 Covers all activity from 03/21/2023 through 06/30/2023	<b>OFFICE USE ONLY</b>  <b>Committee ID:</b> 0106639
<b>Name of Committee/Corporation:</b>	Janet for Justice	
<b>Street Address:</b>	1314 S. 1st Street, #145	
<b>City, State and Zip:</b>	Milwaukee, WI 53204	

<i>SUMMARY OF RECEIPTS AND DISBURSEMENTS</i>	Column A This Period	Column B Calendar Year-To-Date
<b>1. RECEIPTS</b>		
1A. Contributions (Including Loans) from Individuals	\$1,499,754.60	\$5,438,469.61
1B. Contributions from Committees (Transfers-In)	\$1,199,691.09	\$10,371,419.50
1C. Other Income and Commercial Loans	\$100.00	\$100.00
<b>TOTAL RECEIPTS</b> (Add totals from 1A, 1B and 1C)	<b>\$2,699,545.69</b>	<b>\$15,809,989.11</b>
<b>2. DISBURSEMENTS</b>		
2A. Gross Expenditures	\$5,481,363.44	\$16,540,350.31
2B. Contributions to Committees (Transfers-Out)	\$0.00	\$0.00
<b>TOTAL DISBURSEMENTS</b> (Add totals from 2A and 2B)	<b>\$5,481,363.44</b>	<b>\$16,540,350.31</b>

*CASH SUMMARY*

Cash Balance Beginning of Report *	\$2,786,368.50	
Total Receipts	\$2,699,545.69	
Subtotal	\$5,485,914.19	
Total Disbursements	\$5,481,363.44	
<b>CASH BALANCE END OF REPORT *</b>	<b>\$4,550.75</b>	
<b>INCURRED OBLIGATIONS</b>		
(Balance at the Close of This Period-3A)	\$0.00	
<b>LOANS</b> (Balance at the Close of This Period-3B)	<b>\$0.00</b>	

*\*Cash Balance as reported by committee*

**I certify that I have examined this report and to the best of my knowledge and belief it is true, correct and complete.**

Type or Print Name of Candidate or Treasurer: Steinle, Michael	Signature of Candidate or Treasurer	Date: Daytime Phone:
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**NOTE:** The information on this form is required by ss.11.06, 11.20, Wis. Stats. Failure to provide the information may subject you to the penalties of ss.11.60, 11.61, Wis. Stats.

CF-2 (Rev. 12/03) This form is prescribed by the Wisconsin Ethics Commission | P.O. Box 7984, Madison, WI 53707-7984 | Phone: 608-266-8123 | Email: ethicscfis@wi.gov.



The complete report, with all the schedules is 1215 pages long.

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**CAMPAIGN FINANCE REPORT  
STATE OF WISCONSIN  
CF-2**

*COMMITTEE IDENTIFICATION*

<b>Filing Period Name:</b>	July Continuing 2023 Covers all activity from 03/21/2023 through 06/30/2023	<b>OFFICE USE ONLY</b>  <b>Committee ID:</b> 0105892
<b>Name of Committee/Corporation:</b>	Friends of Justice Daniel Kelly	
<b>Street Address:</b>	8383 Greenway Boulevard Suite 600	
<b>City, State and Zip:</b>	Middleton, WI 53562	

<i>SUMMARY OF RECEIPTS AND DISBURSEMENTS</i>	Column A This Period	Column B Calendar Year-To-Date
<b>1. RECEIPTS</b>		
1A. Contributions (Including Loans) from Individuals	\$623,344.80	\$2,377,875.43
1B. Contributions from Committees (Transfers-In)	\$430,974.00	\$989,904.67
1C. Other Income and Commercial Loans	\$20,328.28	\$20,328.28
<b>TOTAL RECEIPTS</b> (Add totals from 1A, 1B and 1C)	<b>\$1,074,647.08</b>	<b>\$3,388,108.38</b>
<b>2. DISBURSEMENTS</b>		
2A. Gross Expenditures	\$1,469,684.87	\$3,664,601.67
2B. Contributions to Committees (Transfers-Out)	\$0.00	\$0.00
<b>TOTAL DISBURSEMENTS</b> (Add totals from 2A and 2B)	<b>\$1,469,684.87</b>	<b>\$3,664,601.67</b>

*CASH SUMMARY*

Cash Balance Beginning of Report *	\$395,098.21	
Total Receipts	\$1,074,647.08	
Subtotal	\$1,469,745.29	
Total Disbursements	\$1,469,684.87	
<b>CASH BALANCE END OF REPORT *</b>	<b>\$60.42</b>	
<b>INCURRED OBLIGATIONS</b>		
(Balance at the Close of This Period-3A)	\$0.00	
<b>LOANS</b> (Balance at the Close of This Period-3B)	<b>\$0.00</b>	

*\*Cash Balance as reported by committee*

**I certify that I have examined this report and to the best of my knowledge and belief it is true, correct and complete.**

Type or Print Name of Candidate or Treasurer: Turke, Jon	Signature of Candidate or Treasurer	Date: Daytime Phone:
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**NOTE:** The information on this form is required by ss.11.06, 11.20, Wis. Stats. Failure to provide the information may subject you to the penalties of ss.11.60, 11.61, Wis. Stats.

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The complete report, with all the schedules is 238 pages long.

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## Campaign contributions Campaign 2023

[PACs](#) [Profile Index](#)

### Big Money Contributors\* to: Janet C Protasiewicz (NP) - Supreme Court

Contributions of \$100 or more January 1, 2022 through June 30, 2023

Date	Contributor	City	Employer	Amount
03/23/2023	A, Home Number	Allen, TX	No Employer Identified	\$100.00
03/31/2023	Aaberg, Donald	Vancouver, WA	No Employer Identified	\$100.00
03/18/2023	Aala, Maribeth	Brooklyn, NY	Pinay Pictures	\$2,000.00
02/08/2023	Aaronson, Mark	Oakland, CA	Retired	\$500.00
03/25/2023	Abarbanel, Eliot	Oak Park, IL	Law Offices of Eliot Abarbanel	\$250.00
03/03/2023	Abelson, Richard	Arlington, VA	AFSCME	\$200.00
03/11/2023	Aber-Towns, Matthew	Raleigh, NC	North Carolina Association of Educators	\$250.00
02/23/2023	Aberly, Naomi	Boston, MA	Fairness Project	\$1,000.00
03/02/2023	Aberly, Naomi	Boston, MA	Fairness Project	\$2,500.00
10/07/2022	Abert, Grant D	Madison, WI	Kailo Fund	\$100.00

**Total Big Money Contributions: \$5,218,348.67**

Start	Prev	1	2	3	4	5	6	7	8	9	10	Next	End
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## PAC and Political Committee Contributors\* to: Janet C Protasiewicz (NP) - Supreme Court

Contributions of \$100 or more January 1, 2022 through June 30, 2023

PAC	Interest Group	Amount
Democratic Party of Wisconsin	Political/Ideological	\$9,919,873.74
AFT Wisconsin	Labor Unions	\$18,000.00
Amalgamated Transit Union - ATU (Federal)	Labor Unions	\$18,000.00
American Federation of Teachers #212	Labor Unions	\$18,000.00
D R I V E (Teamsters)	Labor Unions	\$18,000.00
End Citizens United (Federal)	Political/Ideological	\$18,000.00
IBEW Local 14 COPE Fund	Labor Unions	\$18,000.00
IBEW Local 494	Labor Unions	\$18,000.00
National Education Association (Federal)	Labor Unions	\$18,000.00
Operating Engineers 139 PAC	Labor Unions	\$18,000.00

**Total PAC Contributions: \$10,429,319.50**

Results 1 - 10 of 76

Start	Prev	1	2	3	4	5	6	7	8	Next	End
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## Liberal law firm to argue gerrymandering violates Wisconsin Constitution

By Jack Kelly

Apr 6, 2023



*As Wisconsin's state Supreme Court shifts toward its first liberal majority in 15 years, a liberal law firm plans to challenge the state's voting maps based on the assertion that partisan gerrymandering violates the Wisconsin Constitution.*

RUTHIE HAUGE

As Wisconsin's state Supreme Court shifts toward its first liberal majority in 15 years, a liberal law firm plans to challenge the state's voting maps based on the assertion that partisan gerrymandering violates the Wisconsin Constitution.

The lawsuit will be filed in the weeks or months after Justice-elect Janet Protasiewicz is sworn in on Aug. 1, Nicole Safar, executive director of Madison-based Law Forward, said in a Wednesday interview. Protasiewicz, who declared on the campaign trail that the state's current voting maps are "rigged," won a landslide victory for a seat on the state's high court Tuesday, giving liberals their first majority since 2008. She defeated conservative former Justice Daniel Kelly by 11% — about 200,000 votes — according to unofficial results.

Safar said she and her colleagues "are still putting the pieces together about what we think the most successful arguments will be," adding that they haven't yet started to write briefs for their promised legal challenge.

But, she said, the challenge won't ask the court to relitigate a lawsuit that determined the state's current legislative and congressional voting districts last year. Instead, Safar said, the new lawsuit will focus on "how the extreme partisan gerrymander that we have in Wisconsin is in violation of the Wisconsin Constitution." She said the lawsuit will focus on state law, not federal law.

"Generally, the idea is that the (Wisconsin) Constitution guarantees a free and fair government, and the way that our gerrymandered maps have consolidated power within a legislative body that is not accountable to the voters, is not a free and fair government," Safar said.

Safar said the law firm is eager to test its theory before the Wisconsin Supreme Court because it no longer feels federal courts are "there to protect and vindicate our basic rights, like the right to vote, the right to access abortion, the right to marry who we choose."



She said that a national effort from conservatives to stock the federal judiciary with conservative judges has forced members of the progressive legal movement to turn to state courts to seek legal protections on certain issues.

Redrawing voting districts usually only takes place once a decade, following the completion of the U.S. Census. However, there is some precedent for new maps to be approved more than once a decade. In the 1980s, the courts drew the state's voting boundaries after the Legislature and then-Gov. Lee Dreyfus failed to come to a consensus on the maps. But following the 1982 election, Democrats had total control of state government and passed a new map — though it largely codified the one put in place by the courts.

Protasiewicz, while running for the high court, signaled that she would welcome a challenge to the legislative districts.

“I think anybody with any sense knows our maps are rigged,” Protasiewicz said on an episode of the Cap Times’ “Wedge Issues” podcast before the election. “We have amongst the most gerrymandered maps in the entire country. I have told people, ‘I don't think you can sell, to any rational person, that our maps are fair.’”

She said during that interview that if she were to be elected, she “would anticipate that at some point, we'll be looking at those maps,” adding that Wisconsin’s intense and close statewide elections are not reflected in the dominant Republican majorities in the Legislature.

When asked if she and her colleagues would be discussing a potential legal challenge if Protasiewicz hadn't won on Tuesday, Safar said, "There wouldn't be an opportunity to have a fair argument, I don't think, under Justice Kelly."

Any legal challenge to the state's legislative and congressional districts will likely be met with ire from Republicans. GOP lawmakers last year won the redistricting battle before the Wisconsin Supreme Court, with the high court implementing the districts Republicans drew but were vetoed by Democratic Gov. Tony Evers. Those maps once again all but locked in Republican control of the Legislature.

A lawsuit, if the court agrees to hear it, challenging the state's current maps would trigger another bitter fight over the districts — a common occurrence in Wisconsin history.

"It will be novel for the Wisconsin Supreme Court," Safar said of the legal challenge. "It will be an opportunity to really talk about the impact of the partisan gerrymander and how it has harmed, not just our ability to make government work for the people, but also kind of the civic fabric of our state."

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U.S. NEWS

## Wisconsin Republicans' large majorities expected to shrink under new legislative maps



FILE - This image taken with a drone shows the Wisconsin State Capitol on Dec. 31, 2020, in Madison, Wis. Most of the newly ordered maps redrawing Wisconsin's political boundaries for the state Legislature would keep Republicans in majority control, but their dominance would be reduced, according to an independent analysis of the plans. (AP Photo/Morry Gash, file) [Read More](#)

BY **SCOTT BAUER**

Updated 9:33 AM EST, January 15, 2024

MADISON, Wis. (AP) — Most of the [newly ordered maps](#) redrawing Wisconsin's political boundaries for the state Legislature would keep Republicans in majority control, but their dominance would be reduced, according to an independent analysis of the plans.

Seven sets of new state Senate and Assembly maps were submitted on Friday, the deadline given by the Wisconsin Supreme Court to propose new maps after it ruled three weeks ago that the current ones drawn by Republicans were unconstitutional.

The ruling stands to shake up [battleground Wisconsin's](#) political landscape in a presidential election year.

Wisconsin is a purple state, with four of the past six presidential elections decided by less than a percentage point. But Democrats have made gains in recent years, winning the governor's office in 2018 and again in 2022 and [taking over majority control](#) of the state Supreme Court, setting the stage for the redistricting ruling.

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Under legislative maps first enacted by Republicans in 2011, and [then again in 2022](#) with few changes, the GOP has increased its stranglehold over the Legislature, largely blocking major policy initiatives of Gov. Tony Evers and Democratic lawmakers the past five years.

Republicans currently hold a 22-11 supermajority in the Senate and a near supermajority of 64-35 in the Assembly. If they can get a supermajority in both chambers, they would be able to override Evers' vetoes. He has already [issued more vetoes](#) than any governor in Wisconsin history.

The Supreme Court, in ordering new maps, said the current legislative boundary lines [were not contiguous](#), resulting in districts that with disconnected pieces of land in violation of the state constitution. The court ordered new maps with contiguous districts, but also said the maps must not favor one party over another.

The Dec. 22 ruling set off a furious dash to meet a March 15 deadline set by the state elections commission to have new boundary lines in effect for the state's August primary. Candidates have to submit nomination papers signed by residents of the district in which they are running by June 1.

Following Friday's map submissions, a [pair of consultants](#) hired by the Supreme Court will analyze the proposals and issue a report by Feb. 1.

The [consultants](#) could choose to ignore all of the maps submitted last week and put forward their own plan. Or, they could adopt maps as submitted, with or without changes. The Supreme Court has said it will enact a map unless the Legislature passes plans that Evers would sign into law, a highly unlikely scenario.

Both Republican and Democratic lawmakers, along with Evers, a conservative Wisconsin law firm, a liberal law firm that brought the redistricting lawsuit, a group of mathematics professors and a redistricting consultant submitted new maps on Friday.

“We’re a purple state, and our maps should reflect that basic fact,” Evers said in a statement. “I’ve always promised I’d fight for fair maps — not maps that favor one political party or another — and that’s a promise I’m proud to keep with the maps I’m submitting.”

Marquette University Law School research fellow John D. Johnson did an [analysis of the maps](#) using a statistical model to predict the results of the 2022 state legislative election had they taken place in the newly proposed districts. This year, different Senate seats will be up for election and turnout will be higher because of the presidential election.

Still, the analysis shows that the Assembly maps would keep a Republican majority ranging from as low as one seat to as high as the current 29 seat margin.

The 50-49 Republican majority map was submitted by Law Forward, the Madison-based law firm representing Democratic voters that brought the lawsuit. The map maintaining the current 64-35 breakdown was proposed by Republican lawmakers.

Republicans only addressed the contiguity issue in their maps, resulting in fewer changed boundary lines than other proposals.

In the Senate, five of the seven submitted plans would maintain the Republican majority, according to Johnson’s analysis. It would range from one seat, under plans from Evers and Law Forward, to 13 seats under the Republican map.

The maps proposed by Senate Democrats and a redistricting consultant who intervened in the case would give Democrats a narrow majority of either three seats or one seat.

Republicans have indicated that they [plan an appeal](#) to the U.S. Supreme Court arguing due process violations, but it’s not clear when that would occur.

Republican Assembly [Speaker Robin Vos](#) has suggested the appeal will argue that liberal Justice Janet Protasiewicz, who called the current maps “rigged” and “unfair” during her run for office, [should not have heard the case](#). Her vote was the deciding one in the ruling that ordered new maps to be drawn.

**SCOTT BAUER**

Bauer is the AP’s Statehouse reporter covering politics and state government in Madison, Wisconsin. He also writes music reviews.





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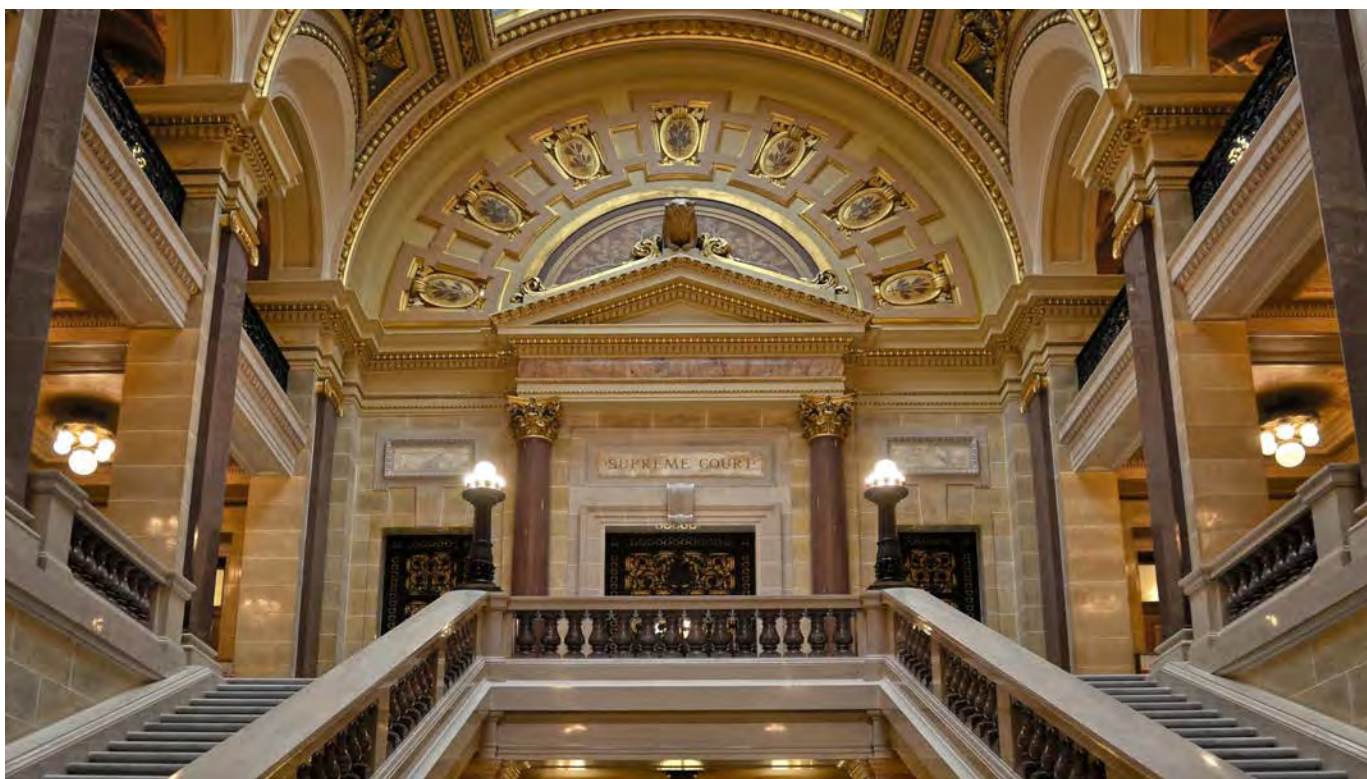
ELECTIONS, JUSTICE, POLITICS, STATE CAPITOL

# Wisconsin Supreme Court candidates discuss abortion, redistricting at Madison forum

The race between Jennifer Dorow, Dan Kelly, Everett Mitchell and Janet Protasiewicz could swing the ideological balance of the court

BY SHAWN JOHNSON • JANUARY 9, 2023

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Wisconsin Supreme Court. [Richard Hurd](#) (CC-BY)

The four candidates running for a pivotal seat on the Wisconsin Supreme Court laid out how they'd approach the job during a forum in Madison Monday, with some of the candidates sending strong signals about their views on issues like redistricting and abortion.

Waukesha County Judge Jennifer Dorow, former Wisconsin Supreme Court Justice Dan Kelly, Dane County Circuit Court Judge Everett Mitchell and Milwaukee County Circuit Court Judge Janet Protasiewicz are all seeking a 10-year term on the court to replace conservative Justice Patience Roggensack, who is retiring. Roggensack endorsed Dorow Monday.

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Dorow and Kelly are supported by Republicans while Mitchell and Protasiewicz are backed by Democrats.

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The forum comes a little more than a month before voters head to the polls in a Feb. 21 primary. The top two vote-getters will advance to the general election on April 4.

Here are some of the issues they addressed.

## Abortion

While the candidates were not asked directly about abortion, the issue came up when they were asked to name the worst Supreme Court ruling they'd seen in the last 30 years.

Mitchell and Protasiewicz both listed U.S. Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision, which overturned *Roe v. Wade* and reversed decades of precedent guaranteeing abortion rights.

"It was the first time in my study of the law that I can see that the Supreme Court went and took a right," Mitchell said.

Mitchell said the decision had left behind **chaos where each state is making its own decisions** about reproductive choice.

"We're dealing with the consequences of the instability all throughout our country, and all throughout many people's lives right now," Mitchell said.

Protasiewicz said she was surprised the U.S. Supreme Court overturned *Roe*.

"That is the epitome and definition of judicial activism," Protasiewicz said.

"Three generations of women have counted on *Roe v. Wade*, to allow them to make their own decisions in regard to reproductive rights."

Protasiewicz said she couldn't say where she would end up on the issue on a case involving abortion, but she said that she could share her personal values when it comes to the issue.

“My value is that women should be able to make their reproductive right decisions themselves,” Protasiewicz said.

Neither Kelly nor Dorow mentioned Roe in their answers. Both were once appointed to judicial positions by former Republican Gov. Scott Walker, where they were asked a similar question on their applications.

At the time, Kelly, whom Walker appointed to the Wisconsin Supreme Court, cited a 2005 ruling that expanded the government’s power of eminent domain, according to the forum moderator.

“This is significant interference with the liberties that our Constitution protects,” Kelly said. “And so I think that opinion stands up well as one of the worst opinions.”

In her application to the Waukesha County Circuit Court, the forum moderator said, Dorow cited the **2003 U.S. Supreme Court decision** overturning a Texas anti-sodomy law. She did not address that case or provide another example in her answer to the question Monday, instead saying she would follow the law regardless of whether she liked it.

“Sometimes, the words, or even the statutes themselves, are stupid,” Dorow said. “But stupid doesn’t mean unconstitutional. It doesn’t matter to my job whether I liked the words or even agree with the law. My job is to apply the words and what they mean.”

## Redistricting

The candidates were also asked about the Wisconsin Supreme Court’s decisions in the state’s last round of redistricting, where conservative justices decided to approve a map that took a “**least changes**” approach to redistricting. In practice, that meant approving a map that adhered closely to the one Republicans passed and Walker signed in 2011.

Following a string of court decisions that included an appeal to the U.S. Supreme Court, **Wisconsin’s conservative majority eventually approved the legislative redistricting plan** passed by Republican lawmakers in 2021, which had an even stronger GOP advantage than the map the Legislature passed a decade earlier. In last year’s elections, Republicans grew their majorities in the Legislature, even as Democratic Gov. Tony Evers won his race statewide.

Protasiewicz and Mitchell both attacked the decision.

“Let’s be clear here: the maps are rigged,” Protasiewicz said. “I don’t think you could sell to any reasonable person that the maps are fair.”

Protasiewicz said the idea of a “least changes” map might sound good to people, but in practice it had taken meaningful representation away from voters

Mitchell said that democracy had become “broken” in many ways and called for legislators to draw districts in a fair, nonpartisan way. Mitchell, who is Black, also criticized the use of “least changes” as a rationale for map-drawing.

“Anytime as an African American in judicial spaces (you) hear the words “least change approach,” it just brings up all kinds of past trauma of how people didn’t want to change stuff because it did not empower our communities,” Mitchell said. “It always means more oppression and more pain for folks who don’t have a voice in the political process.”

Kelly, who was not on the court when justices issued their redistricting decisions, largely defended the court’s approach to redistricting.

“The phrase ‘least change’ is meant to capture what the court’s responsibility is when it has to consider a redistricting map,” Kelly said. “When a map comes to the court ... the court’s responsibility is limited to considering the legal challenges, not the political challenges.”

Kelly also criticized Protasiewicz for weighing in on redistricting.

“I think when someone tells you what their values are in answer to a legal question, they’re telling you how they’re going to decide a case,” Kelly said.

Dorow described the recent redistricting process as “interesting” but declined to weigh in on the maps, or discuss the court’s rationale, noting that there was talk of bringing additional redistricting lawsuits in state court.

“So I will not put myself in a position to prejudge anything,” Dorow said. “But as with any case, I will listen to the challenge, and I will apply the law to the facts at hand.”

## Recusal

With so much focus on Wisconsin’s Supreme Court, the state’s political parties and outside interest groups are expected to spend millions of dollars trying to influence the contest. Many of those groups could some day have business before the court.

Right now, it’s up to justices to decide when to recuse themselves from those cases, although there has been an effort to get the court to adopt consistent recusal standards.

Dorow voiced support for the current standard, which leaves it up to justices to decide when they can hear cases.

“My integrity cannot be bought by anyone,” Dorow said. “Justice requires that judges and justices hear the cases that come before the court. We have an ethical obligation to diligently take care of our cases.”

“Only we can truly know whether we are going to be adversely impacted by someone’s contribution,” Kelly said. “It would be extraordinarily difficult to develop a standard of recusal.”

Mitchell also did not endorse new recusal standards, saying it was up to justices to be frank with people who come into their courtroom.

“If you cannot listen to evidence in a fair manner, then you need to make sure that you give the person in front of you the due respect to tell them I need to get off this particular case,” Mitchell said.

Protasiewicz endorsed the idea of new recusal standards but didn’t say where the line should be drawn that would require justices to step aside in cases involving their supporters or critics.

“There has to be a recusal rule,” Protasiewicz said. “The public has to weigh in. I’m not going to sit here and tell you what I think an exact number is.”

Monday’s forum was **organized by Wispolitics** and moderated by WisPolitics Editor JR Ross and CBS58 Capitol reporter Emilee Fannon.

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## ELECTIONS

# How could the 2023 Wisconsin Supreme Court election impact medical malpractice lawsuits?

A liberal majority on the Wisconsin Supreme Court once struck down caps on payouts to victims and then a conservative majority late upheld them — would a high court under liberal control revisit the issue?

Wisconsin Watch  
March 31, 2023



During their only debate, Wisconsin Supreme Court candidates Daniel Kelly and Janet Protasiewicz discussed their views on court precedent. (Credit: Joey Prestley / Wisconsin Watch)



By Matt Mencharini, Wisconsin Watch

In the past two decades, the Wisconsin Supreme Court has flip flopped on whether a limit on damages in medical malpractice lawsuits is constitutional.

In three cases involving people who suffered horrific, life-altering injuries or died due to negligence from doctors, the court set three different precedents, including one that overturned one of those precedents.

In the 2023 Supreme Court election, liberals could retake a majority for the first time in 15 years, meaning issues previously settled by the conservative-controlled court could be revisited — again.

Back in 2004, the court [ruled](#) the state's \$300,000 cap on noneconomic damages — money a jury awards to compensate for pain and suffering — was constitutional in a medical malpractice wrongful death case involving a 5-year-old girl who died when a doctor failed to diagnose her acute diabetic ketoacidosis.

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[Wisconsin's three precedent-setting malpractice cases explained](#)

A year later, after a liberal justice was appointed to replace a conservative one, the court tossed a cap involving injury but not death, [finding](#) it violated the equal protection clause of the state constitution. In that case, a doctor's error when delivering a baby left the boy's arm deformed.

Then, 13 years later in 2018, a conservative-dominated court [ruled](#) that the new cap set in 2006 at \$750,000 did not violate that same part of the constitution. The case involved the failure of

doctors to diagnose a catastrophic infection in Ascaris Mayo, leading to amputation of all four of her limbs, who had been awarded more than \$15 million by a jury.

As the medical malpractice issue shows, sharp changes in case law hinge on how the sitting justices view the importance of judicial precedent.

At their only debate on March 21, both candidates were asked that question. Both said they were open to overturning precedent.

Liberal Milwaukee County Circuit Judge Janet Protasiewicz used the U.S. Supreme Court examples of the 1896 case, *Plessy v. Ferguson*, which found racial segregation in “separate but equal” public accommodations to be constitutional; and *Brown v. Board of Education*, a 1954 decision that struck down *Plessy* as discriminatory when it comes to public schools.

“Precedent changes when things need to change to be fair and work well for absolutely, you know, everybody in our society and everybody in our community,” she said. “So of course, we give great, great weight to precedent, but it doesn’t mean that it doesn’t change from time to time.”

Former Wisconsin Supreme Court Justice Daniel Kelly didn’t cite an example, but said justices must look at how current precedent comports with the “original authority” contained in a specific statute or section of the constitution.

“We don’t want to simply follow what’s been done before if we know it’s wrong,” the conservative former jurist said. “To do that would just be to propagate errors from now until the end of time. And that’s not what we do. And that’s not the role of the court.”

Kelly was in the majority for the 2018 precedent-setting case that upheld the \$750,000 cap in the Mayo case but did not author a separate opinion.

## Stare decisis at the Wisconsin Supreme Court

Precedent is often addressed at length in briefs to the court and between justices as they draft opinions. The arguments revolve around *stare decisis*, ([Latin for “let the decision stand”](#)) the notion that justices should honor precedents set by their own courts to provide consistency and enhance public perception of the court’s integrity.

Writing in the 2005 case that found the medical malpractice cap unconstitutional, then-Chief Justice Shirley Abrahamson dismissed arguments the court should uphold a precedent set just a year earlier. Precedent is “not mechanical in application, nor is it a rule to be inexorably followed,” she wrote, adding that *stare decisis* didn’t apply because the 2005 case was about a grievous injury, not a wrongful death.



Then-Chief Justice Shirley Abrahamson wrote the majority opinion in the 2005 Wisconsin Supreme Court case that found limits on jury awards in medical malpractice cases violated the state constitution. (Credit: Lukas Keapproth / Wisconsin Watch)

Precedents are intended to ensure that courts have strong reason to overturn past decisions, due to changes in the law or circumstances.

Writing a dissent in the Mayo case, Justice Ann Walsh Bradley noted the court’s precedent from 13 years prior rejecting the malpractice award cap. She cited another state Supreme Court opinion that said justices shouldn’t overturn past cases “merely because the composition of the court has changed.”



Chad Oldfather, a Marquette University Law School professor who teaches state constitutional law, said the Supreme Court has overturned its own precedents in recent years, but the liberal justices have frequently made the point that the court shouldn't do it often.

"So I think that, too, plays a role here," he said, "in the sense that it's going to make them less inclined to revisit questions because they've been, you know, sort of singing this song consistently for the past few years of 'No, we really ought to adhere to what we've decided in the past.'"

### **Courts play role in medical malpractice law**

In 2014, the [\*Milwaukee Journal Sentinel\*](#) reported the number of medical malpractice lawsuits filed in Wisconsin had dropped by more than 50% since 1999. The balance in the state-run insurance fund — created to avoid rising malpractice insurance premiums — had ballooned to \$1.15 billion, the newspaper reported, a total larger than all the money it has paid out during its 39-year history.

That year, \$21.6 million was paid out in Wisconsin malpractice cases, the lowest annual total since 1990, according to federal data.

The fund surpassed \$1.2 billion in 2020 and, according to a report released in March, has decreased but remains above \$1 billion. In 2022, \$20.1 million was paid out in malpractice payouts. And since 2014, nine medical malpractice insurance policies increased in cost and the same number either stayed flat or decreased, according to Medical Liability Monitor, a trade publication that tracks rates.

J. Michael End, a Milwaukee medical malpractice attorney, said he thought the horrible circumstances before the Supreme Court in the Mayo case presented justices with the best reasons he had seen to prove the cap should be tossed for good.

“I thought that if there was ever a case that would’ve brought about a change in the law, that was it,” End said.

End was cautious to predict whether a medical malpractice cap case would return to the Supreme Court if the April 4 election goes in Protasiewicz’s favor. But it could, perhaps years from now.

End said any challenge to the cap would likely take years, noting the Mayo decision came eight years after the plaintiff lost her arms and legs in 2011.

Because there are now fewer medical malpractice cases, the pool of possible challenges is relatively small. A lawsuit would also need to have noneconomic damages in excess of \$750,000, with rulings from the trial court judge and Court of Appeals that allowed for the case to even reach the Supreme Court.

“There may well be the opposite result someday,” End said, “because we’re going to have new justices on the Supreme Court.”

Kelly didn’t respond to questions for this story.

Protasiewicz declined to say which case — the one tossing or the one affirming the cap — should be precedent in Wisconsin, saying she’d have to hear a case and its arguments before reaching a conclusion on what should be done going forward.

“There should be a very high bar to overturning prior decisions,” she told Wisconsin Watch when asked her views on precedent. “If a precedent is no longer workable or doesn’t meet constitutional standards, reversing precedent can happen, but those examples should be few and far between.”

*The nonprofit [Wisconsin Watch](#) collaborates with WPR, PBS Wisconsin, other news media and the University of Wisconsin-Madison School of Journalism and Mass Communication. All works created, published, posted or disseminated by Wisconsin Watch do not necessarily reflect the views or opinions of UW-Madison or any of its affiliates.*

## Scalia Defends Public Expression of Faith

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By Jacqueline L. Salmon  
January 13, 2003

A historic Virginia law and the constitutional amendment guaranteeing freedom of religion did not intend to "exclude God from the public forums and from political life," Supreme Court Justice Antonin Scalia said yesterday.

In a short speech to about 150 people gathered in a small park in Fredericksburg to commemorate a landmark Virginia statute that ultimately served as the blueprint for the First Amendment to the Constitution, Scalia criticized court decisions in recent years that have outlawed expressions of religious faith in public events.

He cited as an example a California federal court ruling last summer that the words "under God" in the Pledge of Allegiance were a violation of the separation of church and state.

Scalia spoke at a ceremony marking the day in 1777 when Thomas Jefferson, George Mason and other colonialists gathered in a Fredericksburg tavern to draft what became the Virginia Statute for Religious Freedom.

That legislation, ultimately enacted in 1786, became the blueprint for the constitutional guarantee of the right to religious freedom enshrined in the Bill of Rights, penned shortly after that.

In his 10-minute speech, Scalia launched a spirited defense of such public expressions of religious faith as coins stamped "In God We Trust," chaplains in the military services and in Congress and nondenominational prayers before high school graduations.

Such actions, Scalia said, "reflect the true tradition of religious freedom in America -- a tradition of neutrality among religious faiths."

"Government will not favor Catholics, Protestants, Muslims, Jews," Scalia told the crowd. "But the tradition was never that the government had to be neutral between religiousness and nonreligiousness."

Court decisions forbidding mentions of God in public events, Scalia said, are the result of interpretations of the Constitution that are too elastic.

"It is part of the Constitution known as the 'living Constitution,' " said Scalia, whose son Paul is a priest in a Fredericksburg area Catholic church. "It is a Constitution that morphs. . . . Whatever we think it ought to mean it means, and that new meaning will be imposed on our citizens coast to coast."

Fredericksburg's celebration of the 1777 meeting has become a town tradition in recent years, sponsored by two fraternal organizations -- the Knights of Columbus and Knights Templar.

Before the event, about 60 knights -- in crisp black uniforms, white gloves and plumed hats -- marched in the winter chill behind a Marine Corps color guard through the streets of historic downtown Fredericksburg to the memorial commemorating the gathering 226 years ago.

Adding a musical note were a bagpipe player and three members of a fife and drum corps from a Civil War reenactment group.

"It's a little cold this year," said Jim Driscoll, 60, a knight from Culpeper, as he patted his thin uniform in the icy wind with his gloved hands to try to stay warm before the parade. "I'm getting a little old for this."

As the parade marched by the antique stores and cappuccino shops lining Caroline Street, mystified visitors, and even some residents, stopped to watch.

Bryan and Laura Carpenter pushed their two toddlers' strollers to the end of the sidewalk so they could get a better view.

"We had no idea this was going on," Laura Carpenter said. The couple had come from Great Mills in Southern Maryland to tour Fredericksburg.

"This is so wonderful."

Supreme Court Justice Antonin Scalia speaks at the Religious Freedom Monument in Fredericksburg.

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<https://www.wsj.com/articles/janet-protasiewicz-wisconsin-supreme-court-legislative-maps-judicial-ethics-bd5028eb>

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## *Judicial Ethics at Work in Wisconsin*

Will a new Justice recuse herself in a legislative redistricting case she has clearly prejudged?

By [The Editorial Board](#) [Follow](#)

Aug. 2, 2023 6:40 pm ET



Janet Protasiewicz speaks after being sworn in as a Wisconsin Supreme Court justice in Madison, Wis., Aug. 1. PHOTO: MORRY GASH/ASSOCIATED PRESS

Progressives spent big to elect Justice Janet Protasiewicz to the Wisconsin Supreme Court, and they're wasting no time trying to cash in now that the court has a 4-3 liberal majority. Ms. Protasiewicz was sworn in Tuesday afternoon, and on Wednesday liberal groups filed a challenge to the state's legislative maps.

Groups including Law Forward, the Election Law Clinic at Harvard and the Campaign Legal Center say the Wisconsin maps are an illegal gerrymander giving the state more legislative districts that lean Republican than Democrat. Their petition notes as evidence that even though Democrats have "won as much as 53% of the statewide vote," they have only held about 40% of state Assembly seats.

In reality, Wisconsin's maps break down the way they do mainly because the state's Democrats are highly concentrated in the urban areas of Milwaukee and Madison, with the rest of the state mostly conservative. Wisconsin law specifies

that all political districts must have the same number of voters. Each must be contiguous and compact and preserve counties and municipalities when possible.

The progressive groups charge that the map has some geographic gaps, but the current lines were approved by the state Supreme Court in 2022 after the U.S. Supreme Court struck down Governor Tony Evers's maps as an illegal racial gerrymander.

That didn't stop Justice Protasiewicz from signaling to progressives that she will vote their way. During a campaign event in January, candidate Protasiewicz said the maps are "rigged" and that "I don't think you could sell any reasonable person that the maps are fair."

"I can't tell you what I would do on a particular case," she added, "but I can tell you my values, and the maps are wrong."

The Wisconsin Code of Judicial Ethics "prohibits a candidate for judicial office from making statements that commit the candidate regarding cases, controversies or issues likely to come before the court." Justice Protasiewicz's statements on the legislative maps mean she has clearly prejudged the case under Wisconsin's judicial code.

Democrats in Congress have proposed stringent and misguided standards for U.S. Supreme Court Justices to recuse themselves from cases. But since they're insisting, we await word from Democratic Sens. Dick Durbin and Sheldon Whitehouse on Justice Protasiewicz's ethical duty to recuse herself.

*Appeared in the August 3, 2023, print edition as 'Judicial Ethics at Work in Wisconsin'.*



## We have a request

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VOTING RIGHTS POLITICS SUPREME COURT

# America's worst gerrymander may soon finally die

The lawsuit seeking to transform Wisconsin into a democracy, explained.

By Ian Millhiser | Aug 3, 2023, 4:40pm EDT



Justice Janet Protasiewicz, potential savior of democracy in Wisconsin. | Jeff Schear/Getty Images for WisDems

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*Ian Millhiser is a senior correspondent at Vox, where he focuses on the Supreme Court, the Constitution, and the decline of liberal democracy in the United States. He received a JD from Duke University and is the author of two books on the Supreme Court.*

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The state of Wisconsin does not choose its state legislature in free and fair elections, and it has not done so for a very long time. A **new lawsuit**, filed just one day after Democrats effectively gained a majority on the state Supreme Court, seeks to change that.

The suit, known as *Clarke v. Wisconsin Elections Commission*, seeks to reverse gerrymanders that have **all-but-guaranteed Republican control of the state legislature** — no matter which party Wisconsin voters supported in the last election.

In 2010, the Republican Party had its best performance in any recent federal election, **gaining 63 seats in the US House of Representatives** and making similar gains in many states. This election occurred right before a redistricting cycle, moreover — the Constitution **requires every state to redraw its legislative maps every 10 years** — so Republicans used their large majorities in many states to draw aggressive gerrymanders.

Indeed, Wisconsin's Republican gerrymander is so aggressive that it is practically impossible for Democrats to gain control of the state legislature. In 2018, for example, Democratic state assembly candidates received 54 percent of the popular vote in Wisconsin, but **Republicans still won 63 of the assembly's 99 seats** — just three seats short of the **two-thirds supermajority** Republicans would need to override a gubernatorial veto.

The judiciary, at both the state and federal levels, is complicit in this effort to lock Democrats out of power in Wisconsin. In *Rucho v. Common Cause* (2019), for example, the US Supreme Court held that no federal court may ever consider a lawsuit challenging a partisan gerrymander, overruling the Court's previous decision in *Davis v. Bandemer* (1986).

Three years later, Wisconsin drew new maps which were still very favorable to Republicans, but that included an additional Black-majority district — raising the number of state assembly districts with a Black majority from six to seven. These new maps did not last long, however, because the US Supreme Court struck them down in *Wisconsin Legislature v. Wisconsin Elections Commission* (2022) due to concerns that these maps **may have done too much to increase Black representation**.

In response to this US Supreme Court decision, the state Supreme Court, which was then controlled by Republicans, adopted another set of maps proposed by the state's gerrymandered legislature — **maps that had previously been vetoed by Democratic Gov. Tony Evers**. As Justice Jill Karofsky wrote in dissent, by

implementing the new Republican maps over the governor's veto, "this court judicially overrides the Governor's veto, thus nullifying the will of the Wisconsin voters who elected that governor into office."

These judicially imposed maps maintained the GOP's lock on the state legislature. The 2022 Wisconsin electorate was fairly evenly divided between Democrats and Republicans (Evers **won his reelection bid by a little more than 3 percentage points**, but US Sen. Ron Johnson, a Republican, also **won his race by about a single point**). Yet Republicans **won 64 seats in the state assembly (out of 99), and 22 of the 33 seats in the state senate.**

Legally, not much has changed since the state Supreme Court imposed the Republican Party's preferred maps on the state in 2022. But politically, there has been one enormous change. Former Justice Patience Roggensack, who joined the decision implementing the Republican maps, retired. On Tuesday, she was replaced by Justice Janet Protasiewicz, who **campaigns against the gerrymandered maps** and then **won her election in a landslide.**

Protasiewicz's elevation to the state's highest court also gave Democrats a 4-3 majority (technically, Supreme Court races in Wisconsin are nonpartisan, but every recent race has pitted a liberal supported by Democrats against a conservative supported by the GOP), meaning that there's now a very high likelihood that the state's Republican gerrymander will fall. Indeed, the plaintiffs in *Clarke* ask the Wisconsin Supreme Court to require every member of the state legislature, including state senators who would not ordinarily run for election until 2026, **to stand for election in 2024** — a remedy that may be necessary if the court does strike down the state senate maps, because otherwise there will be some senators who represent districts drawn using the old maps and some who represent districts under new maps.

If the court grants this request, that would mean that Wisconsin would have its first competitive state legislative election in over a decade.

## **So what are the *Clarke* plaintiffs' legal arguments?**

The *Clarke* plaintiffs raise several constitutional objections to Wisconsin's gerrymandered maps, some of which will be familiar to anyone who follows partisan gerrymandering lawsuits closely, and others that are specific to Wisconsin.

Like most states and the federal government, for example, Wisconsin's constitution includes a ban on certain forms of discrimination (Wisconsin's equal protection provision states that "**all people are born equally free and independent**"). The *Clarke* plaintiffs argue that partisan gerrymandering violates this anti-discrimination guarantee by allowing "a majority of the Legislature to create superior and inferior classes of voters based on viewpoint" — that is, by drawing maps that effectively give Republicans more voting power than Democrats.

Additionally, Wisconsin's constitution includes a provision similar to the federal First Amendment, which provides that "**every person may freely speak, write and publish his sentiments on all subjects.**" The *Clarke* plaintiffs argue that partisan gerrymanders violate this provision because, by giving less representation to Democrats, the state effectively retaliates against those voters because of their political views.

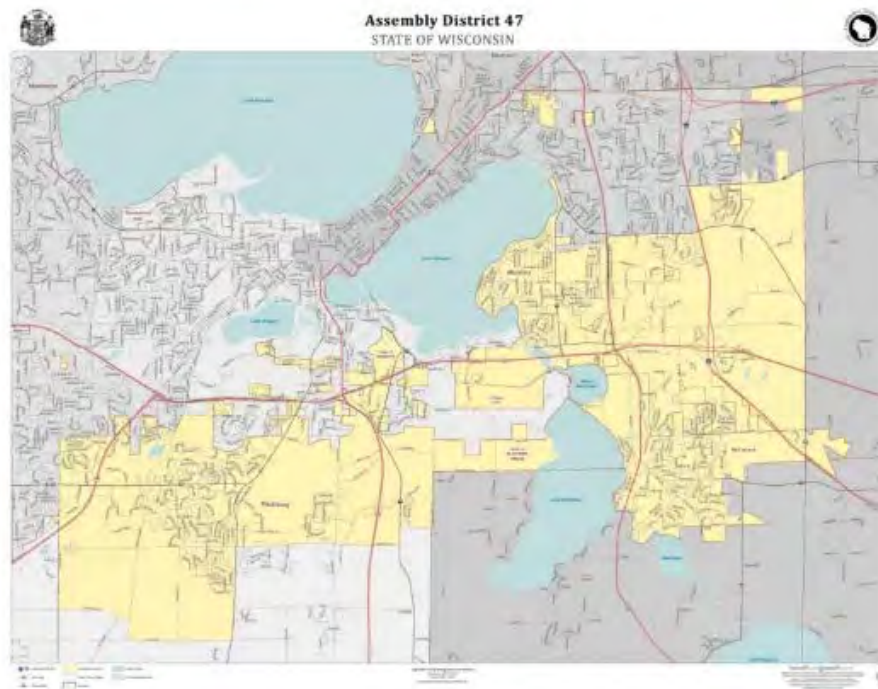


These sorts of claims, that partisan gerrymanders amount to unlawful discrimination on the basis of viewpoint, are a mainstay of lawsuits challenging such gerrymanders, and **they have been for a very long time.**

But the *Clarke* plaintiffs also raise several additional claims that are unique to Wisconsin. One of their most potent arguments is that the state Supreme Court, when it was controlled by Republicans in 2022, **violated the state's separation of powers** when it implemented the exact same maps that were previously vetoed by the governor.

“The Constitution grants the Governor — not the Judiciary — the power to approve or reject by veto, legislation,” the plaintiffs argue. Similarly, the state constitution “grants the Legislature — not the Judiciary — exclusive power to override gubernatorial vetoes.” Yet, when the state Supreme Court implemented the very same map that the governor had previously vetoed, it effectively seized the legislature’s power to decide whether to override that veto.

Additionally, the state constitution provides that legislative districts must “**consist of contiguous territory**,” meaning that every part of the district must be geographically connected to the rest of the district. But the plaintiffs claim that, under the GOP’s maps, “a remarkable 55 assembly districts, consisting of between 2 and 40 disconnected pieces of territory, and 21 senate districts, consisting of between 2 and 34 disconnected pieces of territory, are noncontiguous.” They also **include a map of one of these noncontiguous districts** in their brief (the yellow areas are all parts of a single noncontiguous district).



Petitioner's Memorandum of Law in *Clarke v. Wisconsin Elections Commission*.

It remains to be seen which of these arguments are embraced by the state Supreme Court's new majority. It is possible that the court will hand down a fairly narrow decision, which might require the noncontiguous

districts to be redrawn but that does not reach any of the more philosophical questions about when gerrymandering crosses the line into unconstitutional discrimination. It is equally possible that the new majority will hand down a more sweeping decision that lays out broader rules prohibiting partisan gerrymanders in the future.

Even a decision striking down only the noncontiguous districts could result in a wholesale redrawing of the maps, however, because the plaintiffs claim that so many districts are noncontiguous. And, given that the court's more liberal justices have long complained about partisan gerrymandering, the fact that Protasiewicz openly campaigned against such gerrymandering, and the fact that she won in a landslide, it is very likely that the court will hand down some kind of decision ordering Wisconsin to redraw its maps.

Indeed, it would be a catastrophic outcome for democracy if the court did not do so. The US Supreme Court's decision in *Rucho* locked Democrats who wanted to be able to fairly compete for election in Wisconsin out of federal court. And the gerrymander itself prevents Democrats from appealing to the state legislature for relief. In electing Protasiewicz, Wisconsin's voters turned to the only remaining institution that can eliminate the state's gerrymandered maps.

If the state Supreme Court does not act, pursuant to the clear mandate voters gave Protasiewicz in her recent election, there is no one left to restore democracy to the state of Wisconsin.

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# *Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers*

Janet Protasiewicz prevailed in the state's highly consequential contest for the Supreme Court, which will now be likely to reverse the state's abortion ban and end the use of gerrymandered legislative maps.



By Reid J. Epstein

April 4, 2023

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MILWAUKEE — Wisconsin voters on Tuesday chose to upend the political direction of their state by electing a liberal candidate to the State Supreme Court, flipping majority control from conservatives, according to The Associated Press. The result means that in the next year, the court is likely to reverse the state's abortion ban and end the use of gerrymandered legislative maps drawn by Republicans.

Janet Protasiewicz, a liberal Milwaukee County judge, overwhelmingly defeated Daniel Kelly, a conservative former Wisconsin Supreme Court justice who sought a return to the bench. With more than 95 percent of votes counted by Wednesday morning, Judge Protasiewicz led by 11 percentage points, a huge margin in the narrowly divided state.

"Our state is taking a step forward to a better and brighter future where our rights and freedoms will be protected," she told jubilant supporters at her victory party in Milwaukee.

The contest, which featured over \$40 million in spending, was the most expensive judicial election in American history. Early on, Democrats recognized the importance of the race for a swing seat on the top court in one of the country's perennial political battlegrounds. Millions of dollars from out of state poured into Wisconsin to back Judge Protasiewicz, and a host of national Democratic groups rallied behind her campaign.

Judge Protasiewicz, 60, shattered long-held notions of how judicial candidates should conduct themselves by making her political priorities central to her campaign. She made explicit her support for abortion rights and called the maps, which gave Republicans near-supermajority control of the Legislature, "rigged" and "unfair."

Her election to a 10-year term for an officially nonpartisan seat gives Wisconsin's liberals a 4-to-3 majority on the court, which has been controlled by conservatives since 2008. Liberals will hold a court majority until at least 2025, when a liberal justice's term expires. A conservative justice's term ends in 2026.

As the race was called Tuesday night, the court's three sitting liberal justices embraced at Judge Protasiewicz's election night party in Milwaukee, as onlookers cried tears of joy. During her speech, the judge and the other three liberal justices clasped their hands together in the air in celebration.

"Today's results mean two very important and special things," Judge Protasiewicz said. "First, it means that Wisconsin voters have made their voices heard. They have chosen to reject partisan extremism in this state. And second, it means our democracy will always prevail."



Supporters of Judge Protasiewicz gathered in Milwaukee on Tuesday night. "Our state is taking a step forward to a better and brighter future where our rights and freedoms will be protected," she said in her speech. Jamie Kelter Davis for The New York Times

Justice Kelly, 59, evinced the bitterness of the campaign with a testy concession speech that acknowledged his defeat and portended doom for the state. He called his rival's campaign "truly beneath contempt" and decried "the rancid slanders that were launched against me."

"I wish that I'd be able to concede to a worthy opponent, but I do not have a worthy opponent," Justice Kelly told supporters in Green Lake, Wis. He had not called Judge Protasiewicz by the time she delivered her victory remarks.

He concluded the final speech of his campaign by saying, "I wish Wisconsin the best of luck, because I think it's going to need it."

Judge Protasiewicz made a calculation from the start of the race that Wisconsin voters would reward her for making clear her positions on abortion rights and the state's maps — issues most likely to animate and energize the base of the Democratic Party.

In an interview at her home on Tuesday before the results were known, Judge Protasiewicz (pronounced pro-tuh-SAY-witz) attributed her success on the campaign trail to the decision to inform voters of what she called “my values,” as opposed to Justice Kelly, who used fewer specifics about his positions.

“Rather than reading between the lines and having to do your sleuthing around like I think people have to do with him, I think I would rather just let people know what my values are,” she said. “We’ll see tonight if the electorate appreciates that candor or not.”

Over the last dozen years, the court has served as an important backstop for Wisconsin Republicans. It certified as constitutional Gov. Scott Walker's early overhauls to state government, including the Act 10 law that gutted public employee unions, as well as voting restrictions like a requirement for a state-issued identification and a ban on ballot drop boxes.

In 2020, Wisconsin's Supreme Court was the only one in the country to agree to hear President Donald J. Trump's challenge to the presidential election. Mr. Trump sought to invalidate 200,000 ballots from the state's two largest Democratic counties. The Wisconsin court rejected his claim on a 4-to-3 vote, with one of the conservative justices siding with the court's three liberals on procedural grounds.

That key vote gave this year's court race extra importance, because the justices will weigh in on voting and election issues surrounding the 2024 election. Wisconsin, where Mr. Trump's triumph in 2016 interrupted a string of Democratic presidential victories going back to 1988, is set to again be ferociously contested.

The court has acted in Republicans' interest on issues that have received little attention outside the state.

In 2020, a year after Gov. Tony Evers, a Democrat, succeeded Mr. Walker, conservative justices agreed to limit his line-item veto authority, which generations of Wisconsin governors from both parties had used. Last year, the court's conservatives allowed a Walker appointee whose term had expired to remain in office over Mr. Evers's objection.

Once Judge Protasiewicz assumes her place on the court on Aug. 1, the first priority for Wisconsin Democrats will be to bring a case to challenge the current legislative maps, which have given Republicans all but unbreakable control of the state government in Madison.

Jeffrey A. Mandell, the president of Law Forward, a progressive law firm that has represented Mr. Evers, said he would file a legal request for the Supreme Court to hear a redistricting case the day after Judge Protasiewicz is seated.

“Pretty much everything problematic in Wisconsin flows from the gerrymandering,” Mr. Mandell said in an interview on Tuesday. “Trying to address the gerrymander and reverse the extreme partisan gerrymandering we have is the highest priority.”

The state’s abortion ban, which was enacted in 1849, seven decades before women could vote, is already being challenged by Josh Kaul, Wisconsin’s Democratic attorney general. This week, a circuit court in Dane County scheduled the first oral arguments on Mr. Kaul’s case for May 4, but whichever way a county judge rules, the case is all but certain to advance on appeal to the State Supreme Court later this year.

Dan Simmons contributed reporting from Green Lake, Wis.

**Reid J. Epstein** covers campaigns and elections from Washington. Before joining The Times in 2019, he worked at The Wall Street Journal, Politico, Newsday and The Milwaukee Journal Sentinel. More about Reid J. Epstein

A version of this article appears in print on , Section A, Page 20 of the New York edition with the headline: Liberal Wins Wisconsin Court Race, in Victory for Abortion Rights Backers



ELECTIONS, POLITICS, STATE CAPITOL

# Justice Janet Protasiewicz is sworn in, giving liberals control of Wisconsin Supreme Court

Protasiewicz's oath of office Tuesday gives liberals a majority on the court for the first time since 2008

BY SHAWN JOHNSON • AUGUST 1, 2023

Listen



Wisconsin Supreme Court Justice-elect Janet Protasiewicz is sworn in by Justice Ann Walsh Bradley on Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

Promising to ensure justice and fairness for all, Justice Janet Protasiewicz was officially sworn in to a 10-year term on the Wisconsin Supreme Court Tuesday, flipping the court from a conservative to a liberal majority for the first time since 2008.

The investiture ceremony bore similarities to a governor's inauguration. Hundreds gathered in the state Capitol rotunda to hear Protasiewicz speak,

**The Larry Meiller Show**

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A crowd watches as speakers give remarks during the investiture of Justice-elect Janet Protasiewicz on Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

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Protasiewicz, who spoke for just over 20 minutes, largely avoided some of the hot-button themes that helped her mobilize Democratic voters in her high-turnout, double-digit victory in April. Absent was any mention of her belief that women have a right to choose when it comes to abortion or her assertion that the political maps drawn by Republicans were “rigged.”

Instead, Protasiewicz talked about her time growing up on Milwaukee's south side, spending 25 years as a prosecutor in the Milwaukee County District Attorney's office and most of the last decade as a circuit court judge.

“All of those long hours led to an incredible opportunity to see our judicial system up close, and it allowed me to see what I believe is universal,” she said. “And that is everyone should get a fair shot to demand justice and not feel like the thumb is on the scale against them.”

**The Larry Meiller Show**

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Wisconsin Supreme Court Justice Janet Protasiewicz is greeted with applause after swearing in Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

While the court is officially nonpartisan, the political ramifications of Protasiewicz’s win are massive. For the past 15 years, the court was regularly an ally to Republicans, upholding many of the laws signed during the tenure of former Republican Gov. Scott Walker.

Now, with a challenge to the state’s pre-Civil War abortion ban already working its way through the state court system and a challenge to the state’s redistricting plan looming, a high court run by liberal justices will have the final say.

The court’s other three liberals — Justices Ann Walsh Bradley, Rebecca Dallet and Jill Karofsky — were all in attendance at Tuesday’s ceremony.

“What an amazing day,” Bradley said during her own speech before administering the oath of office to Protasiewicz. “I say let us rejoice and be glad.”



Wisconsin Supreme Court Justice Ann Walsh Bradley gives a thumbs up before giving remarks at Justice-elect Janet Protasiewicz's investiture Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

Dallet, who used her own investiture speech **in 2018** to call on courts to be more inclusive of people of color, hit on similar themes during a brief speech Tuesday. Dallet said she'd gotten to know Protasiewicz well during their experience as prosecutors and judges in Milwaukee County.

"She knows that our system is imperfect, and we must work hard to reduce inequity," Dallet said. "And make sure that we live up to the promise of America, that all of us are treated equally before the law."

Protasiewicz replaces former conservative Justice Patience Roggensack, who retired Friday. Roggensack was first elected 20 years ago and decided not to seek a third term.

Among the remaining conservatives on the court, only swing Justice Brian Hagedorn attended Tuesday's investiture, sitting in the front row next to Karofsky.



Wisconsin Supreme Court Justices Brian Hagedorn, left, and Jill Karofsky, right, sit together during Justice-elect Janet Protasiewicz's investiture Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

“To my colleagues who are here today,” Protasiewicz said, “I’m under no illusion that we will always agree. But I respect each of you immensely. And you have my promise to work with you to fulfill our duties to the people of Wisconsin.”

The court’s other conservatives, Chief Justice Annette Ziegler and Justice Rebecca Bradley, did not attend Tuesday’s ceremony. Justice Rebecca Bradley campaigned hard for Protasiewicz’s opponent, **former conservative Justice Dan Kelly**.

Conservatives were also critical of the court’s new liberal majority after it was reported Monday **by WISN-AM** that the court planned to fire Randy Koschnick, the director of the state court system since 2017. Koschnick, a conservative, ran an unsuccessful campaign for Supreme Court in 2009. He previously worked as a judge and public defender in Jefferson County.

“Political purges of court employees are beyond the pale,” Justice Rebecca Bradley told WisPolitics in a text message Tuesday.

Other changes to the court’s day-to-day operations could also be in store. While Ziegler was recently elected by her peers to a two-year term as chief justice, the court’s new liberal majority is expected to eventually choose a new chief to replace her.



Wisconsin Supreme Court Justice-elect Janet Protasiewicz is sworn in by Justice Ann Walsh Bradley on Tuesday, Aug. 1, 2023, at the Wisconsin State Capitol in Madison, Wis. *Angela Major/WPR*

Protasiewicz won't have to stand for reelection for another decade, meaning she can remain on the seven-member court until at least 2033.

Barring the unexpected, the next chance conservatives have to flip the court back will be in April 2025, when Justice Ann Walsh Bradley is up for reelection. Conservatives would then be on the defensive again in 2026, when Justice Rebecca Bradley's ten-year term is up.

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OPINION REVIEW & OUTLOOK [Follow](#)

## Wisconsin's Judicial Election Donnybrook

The Democratic candidate for the state Supreme Court is all but saying how she'd vote on cases.

By The Editorial Board [Follow](#)

Feb. 26, 2023 1:06 pm ET



Judge Janet Protasiewicz and her husband Randy Nass during her election night party as she advances as a candidate in the April 4 election for Wisconsin Supreme Court on Tuesday, Feb. 21 in Milwaukee. PHOTO: EBONY COX/ASSOCIATED PRESS

Judicial elections used to be sleepy, nonpartisan affairs, but not anymore. A race for an open Supreme Court seat in Wisconsin has become a brawl with the Democratic candidate all but declaring how she'll rule on cases.

Conservatives on the Wisconsin court hold a 4-3 majority, but conservative Justice Patience Roggensack is retiring. Democrats are giddy at the prospect of controlling the court for the first time in more than a decade, and they're not hiding their ambition to turn it into a policy engine.

In last week's four-way judicial primary, Milwaukee County Circuit Judge Janet Protasiewicz led the field with some 46.5% of the vote and conservative Daniel Kelly finished second with about 24%. They eliminated conservative Judge Jennifer Dorow (22%) and liberal Judge Everett Mitchell (7.5%). The runoff is on April 4.

Judicial candidates are traditionally circumspect about their policy views so as not to give the appearance of prejudging cases. Judge Protasiewicz has abandoned such legal niceties, all but forecasting her views on future cases. She's been especially blunt on abortion rights. When the U.S. Supreme Court returned abortion policy to the states last year, Wisconsin law reverted to an 1849 statute that makes performing an abortion a felony except to save the woman's life.

In one ad called "Janet for Justice—Common Sense," she says, "I believe in a woman's freedom to make her own decision on abortion. It's time for a change."

But changing the law is the job of the Legislature and Governor.

She has also criticized the state's contested judicial maps, calling them "rigged" though the Supreme Court reviewed them in 2022. "They do not reflect people in this state. I don't think you could sell any reasonable person that the maps are fair," Ms. Protasiewicz told a candidate forum. "I can't tell you what I would do on a particular case, but I can tell you my values, and the maps are wrong." No one believes she won't overturn the maps in a future case.

Also in her potential line of fire: Act 10, the landmark 2011 law that limited the ability of government unions in Wisconsin to collectively bargain. The state's right-to-work law, voter ID requirements and a voucher program for private schools could also be vulnerable.

Mr. Kelly, the GOP nominee, is running largely against Judge Protasiewicz's record of leniency toward felony defendants. One irony is that Democrats spent heavily to help Mr. Kelly get through the primary because they think he'll be easier to beat. He was appointed by former Gov. Scott Walker in 2016 but lost a retention election in 2020 after being endorsed by Donald Trump. In last week's primary he was third after fellow conservative Jennifer Dorow and Ms. Protasiewicz in Waukesha County, a GOP stronghold.

The race is sure to be the most expensive judicial election in Wisconsin history—with more than \$6 million already spent by candidates and outside groups. Judge Protasiewicz raised some \$2 million in the primary, more than the other three candidates combined. National progressives are pouring money into the contest. Mr. Kelly is counting on conservative donor Richard Uihlein's Fair Courts America, but he'll need much more to be competitive with the progressive machine.

The Wisconsin spectacle shows how much the judiciary is now being treated like the third political branch of government. It's a depressing turn of events, but that is where we are.

*Appeared in the February 27, 2023, print edition as 'Wisconsin's Judicial Donnybrook'.*

**SLATE**

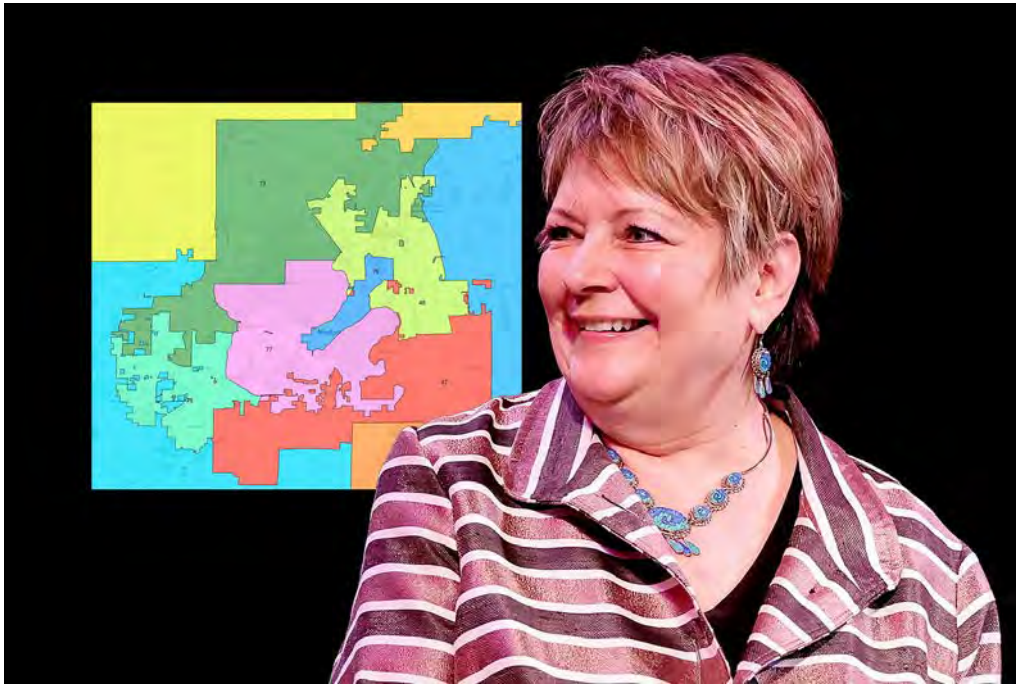
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JURISPRUDENCE

## The Rule of Janet Is Here. Wisconsin Republicans Should Be Afraid.

BY MARK JOSEPH STERN

AUG 03, 2023 • 5:57 PM



Wisconsin's experiment with subverting democracy is finally drawing to a close. Photo illustration by Slate. Images via Jeff Schear/Getty Images and [Mark Gaber/Twitter](#).

Justice Janet Protasiewicz was sworn into the Wisconsin Supreme Court on Tuesday, creating a 4–3 liberal majority after years of conservative domination. By Wednesday, voting rights advocates had filed a [lawsuit](#) asking the court to strike down the state's gerrymandered legislative maps. The other liberal justices have already condemned these maps as an unlawful assault on representative democracy. During her campaign, Protasiewicz [decried](#) them as “rigged” and “wrong.” The real question, then, is not *if* the new majority will strike down these maps, but *when*.

Right now, Wisconsin's legislative districts are arguably the most egregiously gerrymandered in the country. [The origin of today's maps](#) lies in the 2010 redistricting cycle, when Wisconsin Republicans used novel technology to gerrymander Democrats into a permanent minority. Mapmakers packed as many Democrats as possible into a few deep-blue districts, then distributed the rest throughout safely red districts, eliminating genuinely competitive elections for the statehouse. Urban areas were ruthlessly carved up to dilute their political power. Mapmakers stuffed Democrats and racial minorities into contorted districts that stretched into conservative rural areas whose GOP voters could always prevail. The plans were so extreme that, in 2018, Democrats won a majority of votes for the state Legislature—and Republicans captured a near-supermajority of seats.



After the 2020 census, the Legislature, still in the grip of this gerrymander, drew new maps that maintained or expanded the partisan bias of the old ones. Because suburban areas were trending blue, for instance, Republican lawmakers added more red, rural voters to suburban districts, restoring the GOP's advantage for another decade. Democratic Gov. Tony Evers vetoed the map, but the Legislature refused to draw fairer ones; the governor and Legislature then asked the state Supreme Court to resolve this impasse. Democrats urged the court to choose maps that did not benefit either political party. The conservative majority, however, rejected this request, claiming it would ignore all political considerations and favor maps with the "least change" from the old (and heavily gerrymandered) ones. This majority eventually enacted the maps submitted by the state Legislature—the same ones that Evers had vetoed. (There were various side quests to the U.S. Supreme Court, but those are not relevant here.)

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MARK JOSEPH STERN

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Throughout this epic journey, the court's four conservatives insisted that the Wisconsin Constitution imposed no enforceable limits on partisan gerrymandering. The three liberals disagreed, asserting that courts have an obligation to protect voters' right to equal participation in representative government. Protasiewicz aligned herself with this view on the campaign trail, and her blowout victory was a kind of mandate to bring democracy back to the Badger State. The fundamental problem with gerrymandering, after all, is that the people can't vote their way out of it, in the traditional sense of electing new representatives, when legislators have entrenched their power so durably. After the U.S. Supreme Court declined to restrict partisan redistricting, Wisconsinites had just one remaining solution: their state Supreme Court, which remains free to limit gerrymandering under the state constitution. By electing Protasiewicz, voters all but ensured an end to one-party rule over the statehouse.

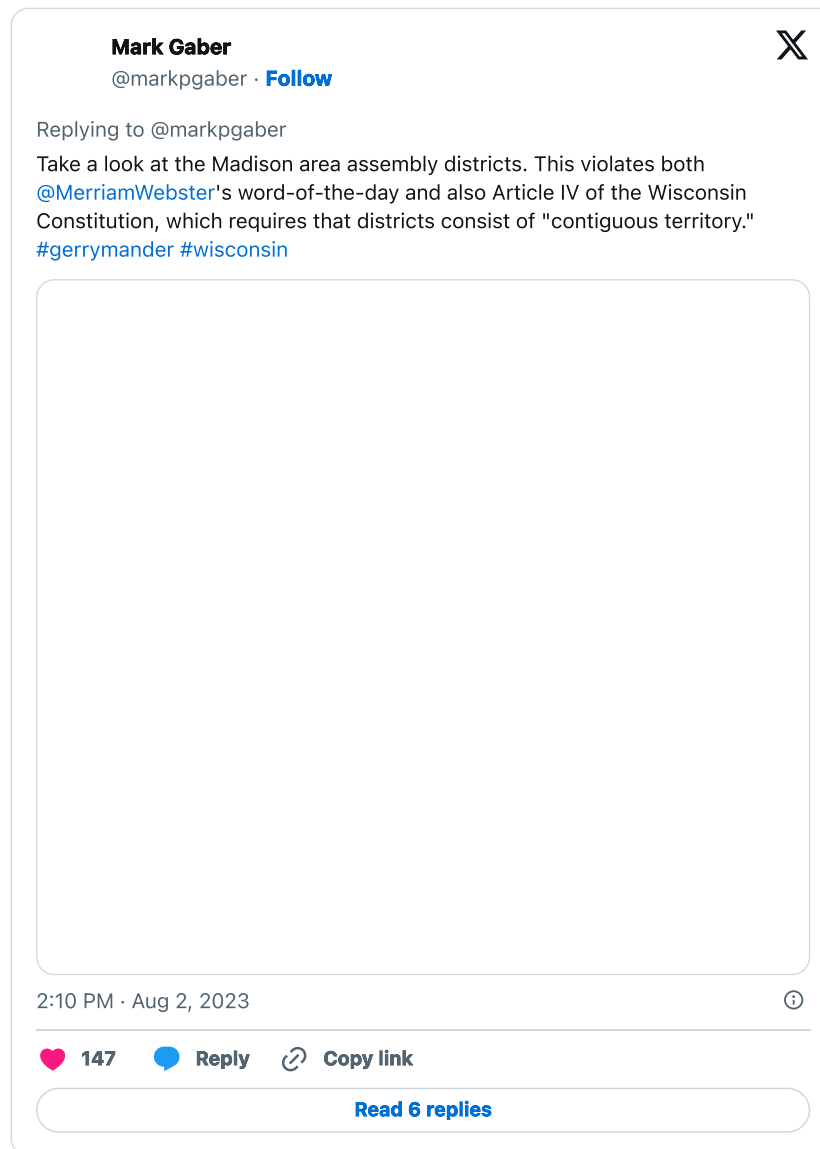


Voting rights advocates are not wasting any time. Tuesday's lawsuit—filed by a coalition of groups, including Law Forward and the Campaign Legal Center, on behalf of several voters—urged the court to strike down the existing maps. The plaintiffs were able to take their case directly to the Wisconsin Supreme Court because, under state law, it has original jurisdiction over redistricting disputes. That shortcut eliminates the need for a lengthy trip through the lower courts, increasing the odds of having new maps by 2024.

The lawsuit argues that the current districts violate the Wisconsin Constitution in several different ways. First, it claims that the maps violate the guarantee of equality by discriminating against voters on the basis of political affiliation. Second, it claims that the maps violate freedom of speech and association by retaliating against voters for “their expression of political views” and impairing their ability “to associate for the advancement of their political beliefs.” Third, it cites the state constitution's provision requiring “maintenance of free government” through laws that comport with “justice” and “moderation.” Fourth, it accuses the court of violating the separation of powers by adopting a map in 2022 that the governor had previously vetoed.

Take a step back and consider what the plaintiffs are saying here. The Wisconsin Constitution explicitly guarantees every citizen an equal right to participate in a “free government.” It also bars the state from penalizing any citizen for exercising their liberty to speak, associate, and assemble freely to promote their political views. And it establishes these rights in far broader language than anything found in the federal Constitution. The case should be easy to make that Republican lawmakers have run afoul of the state constitution by retaliating against voters who associated themselves with the Democratic Party. Lawmakers punished these voters *because of* their political expression, diluting their votes through an insurmountable gerrymander. And when the chief executive of the state exercised his constitutional authority to reject this gerrymander, the court stepped in and imposed it over his veto.

On top of everything else, the plaintiffs have an ace in the hole: The Wisconsin Constitution requires that all legislative districts be made up of “contiguous territory.” Yet a majority of seats in both chambers currently “consist of a patchwork of disconnected pieces that do not share a common border with other parts of the same district.” Rather, tiny pieces of one district are stuffed into others to maximize partisan advantage. The plaintiffs make strong arguments, on originalist and textualist grounds, that the meaning of “contiguous” (sharing a common border) cannot be stretched to include districts that literally do not touch each other. (Past courts have assumed that districts are “legally contiguous” if they follow *municipal* borders, but the constitution explicitly refers to physical “territory,” not any legal fiction.)



If the court finds the maps unconstitutional, the plaintiffs seek relief in two ways. First, they ask the court to forbid the state from holding elections under the current maps in 2024, and to solicit new maps from the parties; the court would then assess the submissions for compliance with the constitution, or appoint a special master to do so. (If no submissions suffice, the special master could draw their own plans.) This approach, though, does not address a looming issue: State senators serve four-year terms, so half of them are not up for reelection until 2026. The plaintiffs therefore ask the court to issue a rare order holding that these senators have “no right to complete a term of office that was unconstitutionally obtained,” and force them to run for reelection in 2024 instead.

While it seems extraordinarily likely that the court will, indeed, invalidate the maps, the liberal majority may feel uncomfortable halving the terms of sitting state senators. Today, Republicans hold a majority in the state Assembly and a supermajority in the state Senate; the Legislature could thus, in theory, impeach and remove Protasiewicz, or any other liberal justice, who cuts down the gerrymander. (Republican lawmakers have downplayed this threat.) That political reality may be cause for caution—though Gov. Evers could simply replace any justice who loses her seat with another progressive who would carry out her

predecessor's decision. (Replacing a justice does not require Senate confirmation.) If Republicans responded by attempting to remove Evers, the state would fall into a genuine constitutional crisis; such extraordinary, simultaneous assaults on the executive and judicial branches seem highly improbable.

Because this case involves legislative districts rather than congressional ones, the U.S. Supreme Court has absolutely no authority to override the state Supreme Court's rulings. (We can, though, expect challenges to the gerrymandered congressional map in the future, perhaps after this suit prevails.) GOP legislators can rail against "the rule of Janet," but they have no cards left to play that will save their skins. Wisconsin's experiment with subverting democracy is finally drawing to a close. ▀

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# The Washington Post

Democracy Dies in Darkness

## Opinion Wisconsin notwithstanding, electing judges is a terrible idea



By [Ruth Marcus](#)

Associate editor | [+ Follow](#)

April 6, 2023 at 10:52 a.m. EDT

The bottom-line result of Tuesday's Wisconsin Supreme Court election offers multiple reasons for celebration. The process, not so much. The race — the most expensive judicial contest in U.S. history, with spending above \$40 million — represents another disturbing step in the politicization of the judiciary, and it won't be the last.

Celebration first. Milwaukee County Judge Janet Protasiewicz defeated former state Supreme Court justice Daniel Kelly, giving liberals a majority on the seven-member court for the first time since 2008 as they filled the seat of a retiring conservative justice. Protasiewicz didn't just win — she won big, by 11 percentage points, in an election that generated impressive turnout for a judicial race, almost 40 percent of eligible voters.

The outcome — that single-vote liberal edge — is more significant than ever. In the aftermath of the U.S. Supreme Court's overturning of *Roe v. Wade*, the battleground for [abortion](#) rights has shifted to state legislatures and state courts.

In Wisconsin, the Democratic governor and attorney general have challenged the state's 1849 abortion ban, a case headed inevitably to the state's high court. Protasiewicz was not shy about proclaiming her support for abortion rights, while Kelly did legal work for Wisconsin Right to Life and [wrote](#), in a now-deleted 2012 blog post, that abortion "involves taking the life of a human being" and that abortion rights supporters seek to "preserve sexual libertinism."

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Even more fundamentally, Protasiewicz's victory is healthy for democracy in Wisconsin. It offers the prospect of restoring an effective judicial check in a state where shameless partisan gerrymandering, perhaps some of the [worst](#) in the nation, has frustrated the will of the voters. They are closely divided — Democratic Gov. Tony Evers won reelection 51 to 48 percent in 2022 — but skewed maps drawn by Republican legislators and blessed by the state Supreme Court have given Republicans a tight grip on both houses of the state legislature. They've allowed a 6-2 Republican majority in congressional seats.

“Let’s be clear here: The maps are rigged,” Protasiewicz said at a candidate forum in January. “Absolutely, positively rigged. They do not reflect the people in the state.” The Wisconsin Supreme Court, she said, was wrong to have upheld them. Kelly, for his part, has said courts shouldn’t wade into gerrymandering disputes.

So, you may ask, why the long face?

The root of the problem is the system itself. Electing judges is a terrible way to create a judiciary that is independent and trusted by the public to rule impartially. Wisconsin is one of 22 states where judges on the highest court are only chosen through election. Its elections are technically nonpartisan, but the absence of a party label fooled precisely no one. Since his failure to be reelected to the supreme court in 2020, Kelly has been paid nearly \$120,000 by the Wisconsin Republican Party and the Republican National Committee to work on election issues, the Milwaukee Journal Sentinel reported. Protasiewicz, for her part, said she would “likely” recuse herself from any case involving the Democratic Party of Wisconsin, one of her top campaign donors.

This system produces terrible incentives and bad results, as retired Justice Sandra Day O’Connor argued on behalf of merit selection in 2009. “The amount of money poured into judicial campaigns has skyrocketed, intensifying the need to re-examine how we choose judges in America,” she told CNN. “I believe it is our moral duty and obligation to restore the public’s confidence in our judicial system.”

Of course, things have proceeded in the opposite direction. The situation in 2009 looks quaint compared with the torrent of spending and overt politicization that has erupted since then. And the Wisconsin race didn’t just set a new standard for spending — it featured comment and behavior that went beyond the norm for judicial candidates and augur poorly for the future.

The race degenerated to a level of nastiness to rival any ordinary election. Kelly and Protasiewicz did not shake hands at their debate; after the election was called Tuesday evening, Kelly declared, “I do not have a worthy opponent to which I can concede,” calling Protasiewicz a “serial liar” who “demeaned the judiciary with her behavior.” Talk about demeaning. This is the unseemly Trumpification of judicial elections. All that was missing was a chant of “Lock her up!”

For her part, Protasiewicz walked a wobbly line between declaring that voters had a right to know her “values” and insisting that she would “put them aside,” as she told the Atlantic’s Ronald Brownstein, in cases that might come before her. Beyond her statements on abortion and gerrymandering, she declared that the state’s law limiting collective bargaining for public employees was unconstitutional — an assertion that might require her to recuse herself in a case challenging that law. Some people hear this and think: It’s about time. Judges are political actors, and we might as well abandon any pretense to the contrary.

“Is it only when progressives win by being honest about their views that we hear shrieks about politicization of the judiciary?” asks my colleague Jennifer Rubin. “Frankly, after years of right-wing judges dissembling about their respect for precedent and their supposed open-mindedness (despite public advocacy against abortion), there is something refreshing about progressive judges going to voters to set out their values.”

Maybe, but if you, like me, hold out faint hope that judges can rise above the partisan fray, if you think judges are, or can be, more than politicians in robes, you look at the goings-on in Wisconsin and recognize that celebration must be tinged with a dollop of despair.

POLITICS

# The First Electoral Test of Trump's Indictment

The most consequential election of 2023 is in Wisconsin.


By Ronald Brownstein



Illustration by The Atlantic. Sources: Jamie Kelter Davis / The New York Times / Redux.

MARCH 31, 2023

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The most important election of 2023 may also offer crucial insights into the most important election of 2024.

Next Tuesday's vote for an open seat on the Wisconsin Supreme Court has been justifiably described as the most consequential election in the nation this year, because it will determine whether liberals or conservatives control a majority of the body. The election's outcome will likely decide whether abortion in the state is completely banned and whether the severely gerrymandered state legislative maps that have locked in overwhelming Republican majorities since 2011 are allowed to remain in place.

But the contest between the liberal Milwaukee County Circuit Court judge Janet Protasiewicz and the conservative former state-supreme-court justice Dan Kelly has also become a revealing test of the electoral strength of the most powerful wedge issues that each party is likely to stress in next year's presidential race.

Protasiewicz and her allies have centered her campaign on portraying Kelly as a threat to legal abortion and an accomplice in Donald Trump's schemes to undermine democracy—the same issues that helped Democrats perform unexpectedly well in last November's elections. Kelly and his allies have centered his campaign on presenting Protasiewicz as soft on crime, the same accusation that Republicans stressed in many of their winning campaigns last year.



With the choice framed so starkly, in a state that has been so evenly balanced between the parties, Tuesday's result will measure which of those arguments remains more potent, particularly among the suburban voters who loom as the critical swing bloc in 2024's presidential contest.

If Kelly wins, after being significantly outspent on television, it would underscore how much risk Democrats face from rising public anxiety about crime. But a Protasiewicz win, which most political observers in Wisconsin expect, would suggest that support for legalized abortion has accelerated the recoil from the Trump-era GOP that is already evident among college-educated suburban voters. And such a shift could restore a narrow but decisive advantage for Democrats in a state at the absolute tipping point of presidential elections.

“The margins are still very narrow, and of course the economy and other issues will come into play next year, but if it simply becomes a test between abortion and crime, I would say yes, [abortion] is more powerful by a slight, slight margin,” says Paul Maslin, a Democratic pollster who has worked in Wisconsin for decades.

Read: How working-class white voters became the GOP's foundation

Like the state itself, the Wisconsin Supreme Court is closely divided. Conservatives now hold a 4–3 majority (though Brian Hagedorn, one of the four conservative justices, has voted with the liberals on some key cases, particularly four rulings denying Trump's effort to overturn the state's 2020 election results). The retirement of a conservative justice has provided Democrats this opportunity to secure a 4–3 liberal majority.

Though Tuesday's election is technically nonpartisan, the race has become a brawl between the two parties. The state GOP is mounting an extensive get-out-the-vote campaign for Kelly, who was appointed to the state supreme court by Republican then-Governor Scott Walker to fill an unexpired term in 2016 before losing his bid for a full term in 2020. State Democrats, meanwhile, have raised and transferred millions of dollars into the campaign for Protasiewicz, who served as an assistant

county district attorney before winning election as a county-circuit-court judge . The tension between the race’s openly partisan character and traditional notions of judicial neutrality and nonpartisanship has itself become a central point of contention in the campaign.

Protasiewicz has pushed the envelope for a judicial candidate by offering voters explicit declarations of her views. She has unequivocally affirmed her support for legal abortion, described the gerrymandered state legislative maps as “rigged,” and declared that the signature legislation Walker passed to eviscerate the power of the state’s public-sector unions is unconstitutional. But in the next breath she insists that those views—which she calls her “values”—will not affect her decisions on the bench.

The juxtaposition of those two assertions can be head-spinning. At a forum this week on the University of Wisconsin at Milwaukee campus, Protasiewicz declared, “I’ve been very clear with everybody that I think women should have a right to choose. Obviously, I can’t comment about what I would do on any case. That robe goes on; my personal opinions go out the door.”

After her appearance, I asked Protasiewicz why her “values” should matter to voters if they are irrelevant once she dons her judicial robe. “I truly believe that people have an absolute right to know what a candidate’s personal thoughts and personal values are,” she answered. Even if, I asked, they are irrelevant to your decisions? “I put them aside,” she said.

Kelly and other Republicans have argued that Protasiewicz’s candid expression of her “values” renders her too partisan for a judicial position. (At the Milwaukee forum, the conservative state-supreme-court justice Rebecca Bradley, appearing for Kelly, maintained that Protasiewicz would be forced to recuse herself from cases involving abortion, redistricting, and other issues because she has expressed such clear positions on them—a view that other legal experts reject.) But Kelly is, to say the least, an imperfect messenger for the argument that anyone else is too biased. He has been far more involved than Protasiewicz in direct partisan activities: Kelly has served as a paid legal adviser to the state’s leading anti-abortion group as well as to the state Republican Party.

Andrew Hitt, the former state GOP chairman, testified to the congressional committee investigating the January 6 insurrection that he had “pretty extensive conversations” with Kelly and another lawyer about the fake-electors scheme that Trump supporters developed after the 2020 election in order to overturn President Joe Biden’s victory in Wisconsin. Kelly says his involvement was limited to a single 30-minute conversation in which he explained he was not “in the loop” on the plans. But at the sole debate between the candidates earlier this month, Protasiewicz described Kelly as “a true threat to our democracy.”

In the past, local observers say, Wisconsin Supreme Court elections have more narrowly centered on debates about crime and criminal justice (even though the court isn’t directly involved in handing down sentences). “Law-and-order candidates have traditionally done very well,” Mark Jefferson, the executive director of the state Republican Party, told me.

Read: The four quadrants of American politics

Kelly is running in that tradition. Ads from his campaign’s final days are focused almost exclusively on lashing Protasiewicz over rulings she made to sentence a rapist and other violent offenders to limited or no jail time. So many sheriffs are appearing in Kelly ads that it’s reasonable to wonder who is still patrolling the state’s highways this week.

Protasiewicz has responded with ads defending her record on crime, and also jabbing Kelly over his work as a criminal-defense attorney. But mostly her advertising has insisted that Kelly would uphold the 1849 state abortion ban that snapped back into effect when the U.S. Supreme Court last year overturned *Roe v. Wade*. (Both sides agree that the state supreme court will eventually need to decide whether to sustain or strike down that law, which prohibits abortions in almost all cases, and is now being challenged in a lower state court.) Protasiewicz and the groups supporting her are heavily stressing abortion in their ads and have aired nearly four times as many ads across all subjects as Kelly and his backers, according to AdImpact, a group that tracks ad purchases. (That disparity exists largely because Democrats have raised enough

money to allow her to buy the ads directly through her campaign, which receives lower rates, while Kelly's relying mostly on outside groups that must pay higher rates.)

That huge tactical advantage for her is one reason some observers are cautious about drawing too many conclusions from next week's outcome. Conversely, Trump's indictment yesterday might inspire enough Republican turnout to lift Kelly, especially because far fewer people vote in these off-year contests than on a typical November Election Day.

Yet a Protasiewicz win could put an exclamation point on a subtle but discernible shift in the state's political direction.

Though close elections are usually the rule in Wisconsin, early in this century it often leaned Democratic. The state was part of what I termed the "blue wall": the 18 states that voted for Democratic presidential candidates in all six elections from 1992 through 2012. (Democrats actually started their Wisconsin presidential winning streak in 1988.) Democrats also controlled both U.S. Senate seats throughout most of that same period, and the governorship for two terms after 2002.

But the tide began to shift around 2010, with the election of Republican Governor Walker and a GOP sweep of the state legislature. In 2016, two years after Walker won reelection, Trump dislodged Wisconsin from the blue wall, carrying it by 22,748 votes. Like Trump's 2016 victories in Pennsylvania and Michigan, which had also been part of the "blue wall," the former president's Wisconsin breakthrough symbolized his success at forging a winning coalition that revolved around massive margins among non-college-educated and non-urban white voters.

Charles Franklin, the director of the Marquette Law School poll in the state, says Wisconsin today remains divided almost evenly between the parties: 45 percent of voters identify as Republicans, 44 percent as Democrats, and the rest are unaffiliated. Yet since Trump's initial victory, Democrats have won most of the state's key contests. The Democrat Tony Evers beat Walker for governor by about 30,000 votes in 2018 and won reelection by triple that amount last year. In 2018, Democratic Senator Tammy Baldwin won a landslide reelection. Democrats also won big in state-

supreme-court elections in 2018 and 2020. Biden carried the state by about 21,000 votes in 2020. The major Republican victories over this period have been narrow ones: Hagedorn's 6,000-vote 2019 win for the state supreme court and the roughly 27,000-vote win last November by GOP Senator Ron Johnson over the Democrat Mandela Barnes.

Those results suggest that Democrats have come out slightly ahead from the demographic and geographic re-sorting of the electorate that Trump accelerated here. As in states across the country, Republicans have grown stronger in heavily blue-collar and white rural areas, primarily across Wisconsin's northern and western counties where Democrats once competed effectively. But Democrats have been boosted by offsetting gains in the state's most populous cities and towns, many of them relatively more racially diverse or better educated. (About 90 percent of Wisconsin voters are white.)

Craig Gilbert, a fellow with Marquette University Law School's Lubar Center for Public Policy Research and Civic Education, calculated that from the 2018–22 governor races, Evers improved his performance in *all* 30 communities that cast the most votes except for Kenosha (where he was hurt by a backlash against the 2020 riots over the police shooting of a Black man in the city). The places where Republicans are winning “simply aren't growing,” while Democrats are generally improving in the places that are adding population, Devin Remiker, the executive director of the Wisconsin Democratic Party, told me. “It's getting harder and harder for them to keep up with that trend.”

Democrats have benefited from improved showings mostly in two areas. One is the so-called WOW suburban counties (Waukesha, Ozaukee, and Washington) around Milwaukee. Though the GOP still comfortably wins all three, Democrats have noticeably narrowed its margins. As Gilbert calculated, in Waukesha, which he described as “the most important Republican county in Wisconsin,” 21 communities have shifted at least 20 points toward the Democrats in gubernatorial races since 2014.

Even more significant has been the explosive Democratic gains in Dane County, the highly educated hub for biotech, insurance, and government jobs centered on the city of Madison, home to both the flagship campus of the University of Wisconsin and the state capital. The Democratic share of the vote in Dane County has increased from about 70 percent for Hillary Clinton in 2016 to 75 percent for Biden in 2020 to 79 percent for Evers in 2022; Dane actually provided Evers a larger net vote margin than Milwaukee County did, something that would have been almost unimaginable even a decade ago. Franklin says Dane has become a triple threat for Democrats: “It is growing fast, the turnout keeps rising, and the lopsided partisan margins keep growing.”

The flip side of the Democrats’ improving performance in Dane and the Milwaukee suburbs is rising concern in the party about lackluster turnout among Black voters, especially in Milwaukee. Some local leaders fear that a political competition between the parties focusing more on social issues such as abortion simply doesn’t engage enough lower-income Black voters, who are focused more on material needs such as jobs and health care. “If people feel like their issues are not going to be reflected, they are going to sit out,” Angela Lang, the executive director of the group Black Leaders Organizing for Communities, told me.

Lagging Milwaukee turnout next week would be another signal that Democrats, as in 2020, continue to face challenges not only with non-college-educated whites, but also with blue-collar voters of color. But if abortion rights, in effect, trump crime and allow Protasiewicz to extend the Democrats’ gains in white-collar suburbs, that could signal trouble for anti-abortion Republican presidential candidates in 2024—not only in Wisconsin but in the suburbs of any swing state. The Democrats’ rural and inner-city troubles in Wisconsin, which still might allow Kelly to eke out an upset win, testify to the fragility of a modern Democratic coalition bonded less by economic interests than by cultural values. But a Protasiewicz win, in a state that Republicans probably must recapture to regain the White House in 2024, would demonstrate again that there’s formidable power in that new coalition too.

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## ELECTIONS

# Protasiewicz pledges to recuse in lawsuits from Democrats, while Kelly declines to pledge for Republican cases

Wisconsin Supreme Court candidate Janet Protasiewicz says she would not hear cases brought by the state Democratic Party, while opponent Daniel Kelly would not make a pledge for cases by the Republican Party.

Associated Press  
March 1, 2023



Milwaukee County Circuit Court Judge Janet Protasiewicz participates in a forum for Wisconsin Supreme Court candidates on Jan. 10, 2023. (Credit:

*PBS Wisconsin)*

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By Scott Bauer, AP

MADISON, Wis. (AP) — The Democrats' choice in a high-stakes Wisconsin Supreme Court race said March 1 that she would not hear cases brought by the Wisconsin Democratic Party because it has donated \$2.5 million to her campaign.

But her Republican-backed opponent would not make a similar pledge for cases brought by the Republican Party.

Milwaukee County Circuit Judge Janet Protasiewicz [faces](#) Dan Kelly in the April 4 election, with majority control of the state's highest court at stake.

The court is expected to hear a challenge to Wisconsin's 1849 law banning abortion, and liberals have promised to put a case before the court that would allow it to overturn Republican-drawn legislative districts.

Protasiewicz said she would not recuse herself from cases involving abortion or legislative redistricting, even though groups active on those issues are backing her campaign.

The winner of the race will also be in place heading into the 2024 presidential election in battleground Wisconsin. The court, currently controlled 4-3 by conservatives, came within one vote of overturning President Joe Biden's narrow 2020 win in the state.

With so much on the line, the race has already broken national spending records for a state supreme court election. More than \$18 million has been spent so far, with more than a month to go before Election Day. The previous record spent on a state supreme court race was just over \$15 million in Illinois in 2004.



Protasiewicz was asked after she spoke at a meeting of the Wisconsin Counties Association about whether she would step aside from cases brought by Democrats given the party's donation of \$2.5 million to her campaign in late February.

"I think that \$2.5 million is obviously a significant amount of money," Protasiewicz told reporters. "I don't know if the public could really say she's fair when she's received two and a half million dollars from a particular entity."

She said her decision would only apply to cases brought by the Democratic Party, not cases brought by others who are supported by Democrats.

Kelly, who also spoke to county officials, declined to make a similar pledge for cases involving the Wisconsin Republican Party, which donated money and helped run his 2020 campaign. He said he would decide recusal on a case-by-case basis.

Kelly [worked for Republicans](#), providing legal advice to the chairman of the Wisconsin Republican Party about its plan to field fake electors for former President Donald Trump after he lost in 2020. Kelly said he spoke with the GOP chairman for about 30 minutes, but declined to offer details on March 1 citing attorney-client privilege.

The Biden electors have [sued](#) the fake Trump electors and are seeking \$2.4 million in damages. Kelly said he would recuse himself from that case if it were to make it to the Supreme Court and his conversation was part of the lawsuit.

Trump endorsed Kelly in the 2020 race. When asked if he was seeking Trump's endorsement this year, Kelly said March 1: "I've not really thought about it that much."

Protasiewicz's position on recusal is the same as that taken by Justice Jill Karofsky in 2020 when she won the race that year against Kelly. He was

appointed to the court in 2016 and served four years. He is now running again for a full 10-year term, with majority control of the court at stake.

Protasiewicz has made her support for abortion rights a centerpiece of her campaign. Kelly has accused her of going too far and essentially of committing to voting to overturn the state's abortion ban, should the case come before the court as expected.

Protasiewicz has not said how she would rule on that or any other specific case.

Kelly blasted Protasiewicz for prioritizing “the rule of Janet” over the rule of law.

“Janet having promised to put her thumb on the scales of justice, in some cases at least, I think that really raises the question of whether she can safely serve on the Supreme Court consistently with the constitutional rules of ethics,” Kelly said.

Kelly is endorsed by three anti-abortion groups in Wisconsin, and the leader of Wisconsin Right to Life said in 2016 that Kelly [had done legal work](#) for the group. When asked March 1 what that entailed, Kelly said, “Frankly, I don’t even recall.”

Protasiewicz also said she did not anticipate recusing herself from cases involving redistricting. Kelly has accused her of improperly signaling that she would overturn the GOP-drawn maps since she has called them “rigged.”

A liberal voting rights attorney has promised to bring a new lawsuit challenging the GOP maps should Protasiewicz win. Whoever wins the April election will join the court in August.

*Associated Press/Report for America writer Harm Venhuizen contributed to this report.*

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2	Democratic Senatorial Campaign Cmte	\$6,834,020	220	2021-11-30	2022-12-30
3	Senate Majority PAC	\$2,326,255	19	2021-11-12	2022-11-15
4	DNC Services Corp	\$1,630,416	135	2021-11-26	2022-11-17
5	EMILY's List	\$581,618	20	2021-10-28	2022-11-10
6	House Majority PAC	\$439,095	13	2021-10-14	2022-11-07
7	Mark Kelly for Senate	\$432,632	18	2021-10-21	2022-12-22

Rank	Customer/Payor	Total	Number of Payments	First Payment	Last Payment
8	PAC for America's Future	\$325,604	19	2021-10-22	2022-12-23
9	American Bridge 21st Century	\$299,571	11	2021-12-09	2022-11-21
10	The Lincoln Project	\$231,817	14	2021-11-09	2022-12-08
11	Warnock for Georgia	\$175,446	17	2021-10-19	2022-12-19
12	Schneider for Congress	\$168,859	16	2021-12-07	2022-11-28
13	Mandela Barnes for Wisconsin	\$167,514	14	2021-12-31	2022-12-01
14	Forward Majority Action	\$165,377	14	2021-10-26	2022-12-15
15	Cindy Axne for Congress	\$159,794	11	2021-11-19	2022-11-18
16	Val Demings for US Senate	\$156,802	17	2021-10-13	2022-11-25
17	Priorities USA Action	\$151,724	17	2021-10-13	2022-12-28
18	Open Democracy PAC	\$147,500	7	2022-05-17	2022-11-07
19	Progressive Turnout Project	\$127,805	15	2021-10-23	2022-12-31
20	Fetterman for Pennsylvania	\$125,337	16	2021-10-13	2022-11-08
21	State Democracy Defenders PAC	\$122,312	7	2022-06-14	2022-11-07
22	Tammy for Illinois	\$119,380	16	2021-10-13	2022-12-07
23	Trudy Busch Valentine for Senate	\$102,971	10	2022-06-06	2022-11-30
24	Maggie for New Hampshire	\$102,921	11	2021-12-28	2022-10-13
25	Friends of Schumer	\$100,895	20	2021-10-14	2022-12-16

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## *Costly Court Race Points to a Politicized Future for Judicial Elections*

A crucial election for Wisconsin's Supreme Court has drawn tens of millions of dollars in spending, turning an officially nonpartisan contest into a bare-knuckle political fight.



By Reid J. Epstein

March 28, 2023

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MADISON, Wis. — It is a judicial election like no other in American history.

Thirty million dollars and counting has poured into the campaign for a swing seat on Wisconsin's Supreme Court, with TV ads swamping the airwaves. The candidates leave no illusions that they would be neutral on the court. And the race will decide not only the future of abortion rights in Wisconsin, but the battleground state's political direction.

Yet in other ways, the contest resembles an obscure local election: There are no bus tours or big rallies. Out-of-state political stars are nowhere to be found. Retail politicking is limited to small gatherings at bars that are not advertised to the public in advance.

The result is a campaign — officially nonpartisan but positively awash in partisanship — that swirls together the old and new ways of judicial politics in America, and that offers a preview of what might be to come. It is the latest evidence, after the contentious recent confirmation battles and pitched decisions on the U.S. Supreme Court, that judges increasingly viewed as political are starting to openly act political as well.

Officials in both parties believe the Wisconsin race could lead to a sea change in how State Supreme Court races are contested in the 21 other states where high court justices are elected, injecting never-before-seen amounts of money, politicization and voter interest.

"If you elect a candidate who is focusing on politics and agenda and values, that's going to reward that behavior, and it will just repeat," said Shelley Grogan, a state appellate court judge in Wisconsin who is backing Daniel Kelly, the conservative candidate for the Supreme Court, and plotting a future high court run of her own.

Judge Grogan was alluding to the fact that Justice Kelly's liberal rival, Janet Protasiewicz, has been far more open about her political views, seeking to turn the April 4 general election into a single-issue referendum on abortion, which is now illegal in Wisconsin. And she appears to have the advantage, with a lead in private polling and a major fund-raising and advertising edge.

Justice Kelly, who served for four years on the court before being ousted in a 2020 election, has a long conservative record and endorsements from Wisconsin's largest anti-abortion groups. But he has centered his campaign on the argument that he is not a political actor and will decide cases solely based on the Wisconsin Constitution, a message that even some conservatives worry is less compelling than Democrats' pleas to protect abortion rights.

Judge Protasiewicz, a Milwaukee County judge, has emphasized her support for liberal issues and her opposition to conservative policies. She is, she says, sharing her values without explicitly stating how she would rule on particular cases.

But few are fooled. During their lone debate last week, Judge Protasiewicz barely bothered to disguise how she would rule on the state's 1849 abortion ban, a challenge to which is expected to reach the Wisconsin Supreme Court this year.

Sarah Godlewski, a Democrat who was appointed this month as Wisconsin's secretary of state, said last week at a stop in Green Bay that "when we're talking about abortion, when we're talking about reproductive freedom, we're going to be able to win on these messages."



Janet Protasiewicz, the liberal candidate in the race, has been remarkably open about her political views. Jamie Kelter Davis for The New York Times

Whoever wins will earn a 10-year term and be the deciding vote on a four-to-three majority on the court, which is likely to rule on voting issues before and during the 2024 presidential election. If Judge Protasiewicz wins, Democrats are certain to challenge the state's gerrymandered legislative maps — and during the campaign, she has called them "rigged."

The Protasiewicz strategy is to pound away on advertising to energize Democrats while depressing Republican support.

"For the typical voter, 90 percent of what they learn about this election is probably going to wind up being from campaign ads," said Ben Wikler, the chairman of the state Democratic Party.

Virtually all of the state's Democratic players are united behind Judge Protasiewicz's campaign — with some notable exceptions.

In Milwaukee, the Black community organizing group BLOC, which formed in 2017, has refused to back Judge Protasiewicz because she sentenced the son of one of the group's leaders to 20 years in prison for a 2019 hit-and-run crash that killed 6- and 4-year-old sisters.

"It's obviously not ideal, as it is for all the marbles," said Angela Lang, BLOC's executive director. "But it is one that I have to stand in. I would not force folks who have had family members locked up by her to be put in the position of supporting her."

Wisconsin Republicans face more familiar divisions.

Some conservative voters have been turned off by the torrent of negative ads about Justice Kelly, said Matt Batzel, the Wisconsin-based executive director of American Majority Action, a conservative grass-roots training group.

Mr. Batzel's canvassers, who typically focus on conservative homes, found that in a suburban Milwaukee State Senate district that is also holding a special election on April 4, two-thirds of people who said abortion was their top issue in the race said they were in favor of abortion rights.

"Let's interpret the Constitution as written and follow the rule of law' hasn't historically motivated that many people," Mr. Batzel said.



Daniel Kelly, the conservative candidate, has centered his campaign on the argument that he is not a political actor, a message that even some conservatives worry is less compelling than Democrats' pleas to protect abortion rights. Jamie Kelter Davis for The New York Times

During the debate, Justice Kelly insisted he had not made up his mind on how he would rule on the challenge to the 1849 law.

“Dan is such a purist that he doesn’t want to appear to be a politician,” said David Prosser, a conservative former justice on the court.

Republican legislative leaders in Wisconsin, aware that abortion rights are a potent motivator for Democrats, have sought to create some exceptions to the 1849 law, but the effort has made little headway.

“The Republican Party should have passed an abortion bill and put it on the governor’s desk a long time ago,” said Van Mobley, the Republican village president of Thiensville, who was the first Wisconsin elected official to endorse Donald J. Trump’s 2016 campaign. “They still haven’t. So I don’t think that that’s very helpful to create a climate for us.”

Justice Kelly’s biggest hurdle may be the financial disparity — which is the result of campaign finance rules written by Wisconsin Republicans in 2015.

Before then, the state provided modest public funding for statewide judicial campaigns and capped the amount of money candidates for any office could receive from the state parties.

But that year, Gov. Scott Walker and the Republican-led Legislature passed a law allowing individual donors to give unlimited amounts to the state parties and allowing the state parties to transfer unlimited sums directly to candidates.

This, combined with the fund-raising acumen Mr. Wikler brought for Democrats when he became party chairman in 2019, has put Republicans at a significant financial disadvantage in races where their billionaire donors do not underwrite candidates.

Republicans now find themselves bemoaning the spending imbalance that has allowed Judge Protasiewicz to broadcast more than \$10 million in television ads while Justice Kelly has spent less than \$500,000 on them.

Judge Grogan lamented that Republicans did not have access to the national fund-raising network that has propped up the Protasiewicz campaign. But she declined to say whether it had been a mistake for Republicans and Mr. Walker to lift the cap on contributions to state parties, and would not offer an opinion about whether donors should be allowed to make unlimited contributions.

“What we should not let money do in the state of Wisconsin is buy a seat on any court,” Judge Grogan said. “Outside money should not buy a seat on a Wisconsin court. The voters in Wisconsin should decide.”

**Reid J. Epstein** covers campaigns and elections from Washington. Before joining The Times in 2019, he worked at The Wall Street Journal, Politico, Newsday and The Milwaukee Journal Sentinel. More about Reid J. Epstein

## CERTIFICATION REGARDING APPENDIX

I certify that the appendix meets the form requirements governing a respondent's appendix contained in Wis. Stat. §809.19(3)(b) and further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 29th day of January, 2024.

Respectfully submitted,

Electronically Signed by  
Kevin M. St. John

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