

FILED

08-22-2023

CLERK OF WISCONSIN
SUPREME COURT

No. 2023AP001412-OA

IN THE SUPREME COURT OF WISCONSIN

STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON,
JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,
Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR.,
MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J.
CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN
ELECTIONS COMMISSION; AND MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS
THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION,
Respondents.

**MOTION TO RECUSE JUSTICE PROTASIEWICZ BY PROPOSED
INTERVENOR-RESPONDENT THE WISCONSIN LEGISLATURE**

AUGUSTYN LAW LLC
JESSIE AUGUSTYN, SBN 1098680
1835 E. Edgewood Dr.,
Suite 105-478
Appleton, WI 54913
715.255.0817
jessie@augustynlaw.com

LEHOTSKY KELLER COHN LLP
SCOTT A. KELLER*
SHANNON GRAMMEL*
GABRIELA GONZALEZ-ARAIZA*
200 Massachusetts Avenue, NW
Suite 700
Washington, DC 20001
512.693.8350
scott@lkcfirm.com

BELL GIFTOS ST. JOHN LLC
KEVIN M. ST. JOHN, SBN 1054815
5325 Wall Street, Suite 2200
Madison, WI 53718
608.216.7995
kstjohn@bellgiftos.com

CONSOVOY MCCARTHY PLLC
TAYLOR A.R. MEEHAN*
1600 Wilson Blvd., Suite 700
Arlington, VA 22209
703.243.9423
taylor@consovoymccarthy.com

Additional Counsel Listed on Following Page

LEHOTSKY KELLER COHN LLP

MATTHEW H. FREDERICK*

919 Congress Avenue

Suite 1100

Austin, TX 78701

LAWFAIR LLC

ADAM K. MORTARA, SBN 1038391

40 Burton Hills Blvd., Suite 200

Nashville, TN 37215

773.750.7154

mortara@lawfairllc.com

** pro hac vice motions forthcoming*

Proposed Intervenor-Respondent the Wisconsin Legislature, through its counsel, hereby moves to recuse Justice Janet Protasiewicz pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Wis. Stat. §§757.19(2)(f), (g). For the reasons stated in the accompanying memorandum filed in support of this motion, the Legislature respectfully moves to recuse Justice Protasiewicz from these proceedings.

1. This action challenges the constitutionality of Wisconsin's existing state legislative district boundaries and asks the Court to declare the existing boundaries unconstitutional, draw new boundaries, and order special elections. Pet. at 120-21.

2. The existing state legislative districts were adopted by this Court in 2022, after being proposed by the Legislature. *See Johnson v. Wis. Elections Comm'n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559.

3. The Democratic Party of Wisconsin contributed nearly \$10 million to Justice Janet Protasiewicz's campaign for a seat on this Court—more than all other donors combined, and more than three times the size of the campaign contribution at issue in *Caperton v. A.T. Massey Coal. Co.*, 556 U.S. 868 (2009).

4. During that campaign, Justice Protasiewicz publicly declared the current legislative maps “unfair” and “rigged” in favor of Republicans. She publicly stated that she would like to take “a fresh look at the gerrymandering question.” And she publicly stated that she agreed with the dissenting opinion in *Johnson. v. Wisconsin Elections Commission*, 2021 WI 87, ¶52, 399 Wis. 2d 623, 967 N.W.2d 469.

5. One day after Justice Protasiewicz joined the Court, Petitioners filed a petition asking this Court to exercise original jurisdiction over partisan gerrymandering claims and draw its own maps designed to enable “Democratic voters across Wisconsin to translate their votes into representation in the state legislature,” Pet. ¶151, thereby overruling this Court’s decision that “[t]he Wisconsin Constitution contains no plausible grant of authority to the judiciary to determine whether maps are fair to the major parties,” *Johnson v. Wisconsin Elections Commission*, 2021 WI 87, ¶52, 399 Wis. 2d 623, 967 N.W.2d 469.

6. The Due Process Clause of the Fourteenth Amendment to the United States Constitution requires Justice Protasiewicz to recuse. The Due Process Clause does not allow a judge to sit a case when her participation

creates a serious risk of actual bias or prejudgment of the merits, either of which is sufficient to violate the Constitution. The risk of actual bias exists here because the Democratic Party of Wisconsin, the primary and intended beneficiary of Petitioners' claims, was the main contributor to Justice Protasiewicz's campaign for a seat on this Court, providing almost \$10 million of the \$16.7 million spent by her campaign. Moreover, Justice Protasiewicz's public campaign statements reveal that she has prejudged the merits of this case. She has publicly stated, for instance, that the legislative maps Petitioners challenge are "rigged" and that the *Johnson* dissent was right.

7. Wisconsin's mandatory recusal statute also requires Justice Protasiewicz to recuse from these proceedings because "she cannot, or it appears . . . she cannot, act in an impartial manner" and because "she has a significant . . . personal interest in the outcome of the matter." Wis. Stat. §757.19(2)(f), (g).

WHEREFORE, the Wisconsin Legislature requests that Justice Protasiewicz recuse from these proceedings.

Dated this 22nd day of August, 2023.

Respectfully submitted,

Electronically Signed By
Kevin M. St. John

AUGUSTYN LAW LLC

JESSIE AUGUSTYN, SBN 1098680
1835 E. Edgewood Dr.
Suite 105-478
Appleton, WI 54913
715.255.0817
jessie@augustynlaw.com

LEHOTSKY KELLER COHN LLP

SCOTT A. KELLER*
SHANNON GRAMMEL*
GABRIELA GONZALEZ-ARAIZA*
200 Massachusetts Avenue, NW
Suite 700
Washington, DC 20001
512.693.8350
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MATTHEW H. FREDERICK*
919 Congress Avenue
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Austin, TX 78701

BELL GIFTOS ST. JOHN LLC

KEVIN M. ST. JOHN, SBN 1054815
5325 Wall Street, Suite 2200
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Arlington, VA 22209
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Nashville, TN 37215
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*Attorneys for Proposed Intervenor-Respondent,
The Wisconsin Legislature*