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**SUPREME COURT**

**IN THE SUPREME COURT OF WISCONSIN**

No. \_\_\_\_\_

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REVEREND ELAINE HANSON-HYSELL AND DEBORAH ANDERSON,

*Petitioners,*

v.

THE WISCONSIN STATE ASSEMBLY AND REPRESENTATIVE ROBIN VOS, IN HIS OFFICIAL  
CAPACITY AS SPEAKER OF THE WISCONSIN STATE ASSEMBLY,

*Respondents.*

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**EMERGENCY PETITION FOR ORIGINAL ACTION AND EX PARTE  
MOTION FOR TEMPORARY, EMERGENCY INJUNCTIVE RELIEF TO  
PRESERVE THE STATUS QUO**

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## **ISSUE PRESENTED**

I. Whether the threatened impeachment of Justices of this Court violates the Wisconsin Constitution, which places specific restrictions on that power, and which enshrines judicial independence, separation of powers, and the right of voters to effect political change.

## **INTRODUCTION**

The votes of over one million Wisconsinites are about to be assigned to the dustbin of history by an Un-American, anti-democratic powerplay by the Wisconsin state legislature that is designed to and will simultaneously destroy judicial independence and the right of voters to effectuate political change in Wisconsin.

After a decade of receiving the political benefits of unconstitutional, heavily gerrymandered legislative districts in Wisconsin, State Assembly Speaker Robin Vos (“**Speaker Vos**”) and members of the Wisconsin State Assembly (the “**Assembly**”) have stated their intention of prolonging their improper hold on power by impeaching Justice Janet Protasiewicz (“**Justice Protasiewicz**”) because of her refusal to commit to recuse herself from redistricting litigation before the Court. Invoking Article VII, Section 1 of the Constitution, Assembly Republicans premise impeachment on the Justice, as a candidate, making certain statements about her views that are now at issue in a case before the court. In addition, legislators assert that Justice Protasiewicz’s receipt of campaign contributions from the state Democratic Party have also compromised her impartiality. It takes no law degree to understand that the legislature’s threatened conduct violates the entire framework of

the Wisconsin Constitution, which separates power between the branches of government and ensures judicial independence and the right of voters to effect political change.

On April 4th, 2023, Wisconsin voters bestowed a mandate upon Justice Protasiewicz, delivering her an eleven percent margin of victory over her opponent Dan Kelly. One of most compelling differences between Justice Protasiewicz and her opponent was her factual observation that the legislative districts for Wisconsin State Assembly and Senate candidates are unfair. The unfairness is indisputable; in 2018 Democrats won fifty-three percent of the vote but only received thirty-six percent of the seats in the state assembly.<sup>1</sup>

On August 3rd of this year, a lawsuit was filed to challenge the constitutionality of the legislative maps. With Republican legislative majorities suddenly at risk, an effort is now afoot to implement an ex-post facto disenfranchisement of over one million Wisconsin voters. Without any basis, Speaker Vos and other members of his caucus have made public statements of their desire to impeach Justice Protasiewicz, and other members of the judiciary as well, using powers under Article III, Section 1.<sup>2</sup> According to the constitution, “[n]o judicial officer shall exercise his office, after he shall have been impeached.” Wis.

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<sup>1</sup> Philip Bump, *The several layers of republican power-grabbing in Wisconsin*, The Washington Post (Dec. 4, 2018), <https://www.washingtonpost.com/politics/2018/12/04/several-layers-republican-power-grabbing-wisconsin/>.

<sup>2</sup> On May 31, 2023, the Wisconsin Judicial Commission dismissed multiple complaints alleging statements made by Justice Protasiewicz during the campaign violated judicial rules and ethics.

Const. art. 7, § 1. Having lost at the ballot box, the legislature is poised to use their majority to attack the independent judiciary and negate the will of Wisconsin voters.

In 1853, five years after the Wisconsin Constitution was adopted, Circuit Court Judge Levi Hubbell was impeached based upon bribery accusations.<sup>3</sup> For one hundred and seventy years following that event, no single judicial officer has ever been impeached. That is now in question. The impeachment of Justice Protasiewicz, or any Supreme Court justice, for political reasons, other than for crimes or corruption, is unconstitutional. Not only does it threaten our constitutional framework and the separation of powers, but with specific and concrete particularity creates an imminent and inescapable threat to the fundamental constitutional rights of our citizens.

The legislature's threatened conduct places each of the current Wisconsin Supreme Court justices and any subsequent justice at the same risk of unwarranted impeachment. Accordingly, under the Rule of Necessity, no justice is required to recuse from hearing this Emergency Petition and Ex Parte Motion. Moreover, if the conduct of the legislature required recusal of any justice in this circumstance, there would be no remedy for the legislature's blatant violation of judicial independence and the right of voters to effectuate political change because the threatening of a completely baseless impeachment would deprive the Court as constituted by the voters from ruling on the constitutionality of the legislative encroachment.

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<sup>3</sup> See *Former justices, Justice Levi Hubbell*, Wisconsin Court System, <https://www.wicourts.gov/courts/supreme/justices/retired/hubbell.htm>.

### **STATEMENT OF FACTS**

1. Petitioner Reverend Elaine Hanson-Hysell is a pastor at the Bryn Mawr Presbyterian Church of Cottage Grove and a Wisconsin citizen who voted in the April 2023 election for Justice Janet Protasiewicz.

2. Petitioner Deborah Anderson is the office manager for Temple Menorah in Milwaukee and a Wisconsin citizen who voted in the April 2023 election for Justice Janet Protasiewicz.

3. Under the auspices of Article VII, Section 4, the selection of Wisconsin Supreme Court Justices is conducted by voters through elections.

4. On April 4th, 2023, Janet Claire Protasiewicz won her race for the Wisconsin Supreme Court decisively, receiving 203,431 votes more than her opponent Dan Kelly.

5. Protasiewicz's eleven percent margin of victory was historic in a state known for its evenly divided partisan makeup. In this election, Wisconsin voters had spoken with a clear and overwhelming.

6. To reach voters, all candidates for the Wisconsin Supreme Court raise money, run advertisements, and speak directly to voters about their qualifications and fundamental beliefs.

7. No different from her predecessors or contemporaries, Protasiewicz made statements to the public about her judicial philosophy and views about current issues important to Wisconsin voters.

8. Speaking at a forum with three other candidates were issues ranging from abortion to crime, she stated regarding the Wisconsin state legislative maps:

They do not reflect people in this state. 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, but I can tell you my values, and the maps are wrong.

Corrinne Hess, *Wisconsin Supreme Court candidate Janet Protasiewicz assails state's election maps as 'rigged'*, Milwaukee Journal Sentinel (Jan. 9, 2023), available at <https://www.jsonline.com/story/news/politics/2023/01/09/wisconsin-supreme-court-candidate-protasiewicz-assails-election-maps/69790966007/>.

9. As has been the practice for decades, candidates for the Supreme Court raised money and benefited from third party spending. Like her opponent, Protasiewicz's campaign received financial contributions from supporters. While Protasiewicz raised and spent more in her campaign than her general election opponent Kelly did, Kelly benefited from larger third-party expenditures made on his behalf. In all, a record \$51.06 million dollars was spent during the race.<sup>4</sup>

10. In 2015, the Republican legislature and the Republican Governor acted in tandem to remove limits to the contributions political parties could make to candidate committees. Wis. Stat. § 11.1104(5).

11. While it was not uncommon for supreme court candidates to receive contributions from political parties, the change in the law altered the scale of those contributions.

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<sup>4</sup> *Wisconsin Supreme Court Race Cost Record \$51M*, Wisconsin Democracy Campaign (July 18, 2023), <https://www.wisdc.org/news/press-releases/139-press-release-2023/7390-wisconsin-supreme-court-race-cost-record-51m>.

12. Under that new law, Protasiewicz received a multi-million-dollar contribution from the Wisconsin Democratic Party while Kelly received thirty percent of his contributions from the Wisconsin Republican Party.<sup>5</sup>

13. Since Justice Protasiewicz's election, Speaker Vos and members of the Wisconsin State Assembly have stated repeatedly that, unless Justice Protasiewicz exercises her power of recusal in regard to certain cases, they plan to impeach her through the invocation Article VII, Section 1 of the Wisconsin Constitution.

14. None of their statements have referenced how her conduct meets the constitutional standard for impeachment or how her conduct differs in any meaningful way from her predecessors and contemporaries.

**STATEMENT OF RELIEF SOUGHT AND  
WHY THE COURT SHOULD TAKE JURISDICTION**

This Petition is filed solely under state law and the state constitution and invokes no rights or powers available under the Constitution of the United States or any federal statute.<sup>6</sup>

Petitioners respectfully request that this Court issue an ex parte emergency order temporarily restraining the legislature from conducting impeachment

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<sup>5</sup> Inci Sayki, *Wisconsin Supreme Court race was the most expensive state judicial election in U.S. History*, Open Secrets (Apr. 10, 2023), <https://www.opensecrets.org/news/2023/04/wisconsin-supreme-court-race-was-the-most-expensive-state-judicial-election-in-u-s-history/>.

<sup>6</sup>See *James v. Heinrich*, 2021 WI 58, 397 Wis. 2d 516, 960 N.W.2d 350, where the Court found that a response citing the Constitution of the United States did not apply when the claim was fully plead under the Wisconsin state constitution. 397 Wis. 2d 516, ¶ 34.

proceedings against any member of this Court because doing so would violate the express terms of constitutional authority granted to the Assembly for impeachments of civil officers as well as violate the constitutional rights of the Petitioners to serve as electors under the Wisconsin Constitution. An emergency, temporary restraining order is warranted in these circumstances as the mere act of an unconstitutional impeachment, even without a conviction, would nullify the vote of over one million Wisconsin voters, including and specifically those of the Petitioners.

Petitioners further respectfully requests that, after full notice, briefing, and argument on the merits, this Court permanently enjoins the legislature from conducting impeachment proceedings against any member of this Court without a ruling by at least four members of this Court that the Wisconsin constitutional standards for impeachment have been met, because the Court's constitutionally prescribed role as a separate independent branch of government is to say what the Constitution means.

### **CONCLUSION**

Petitioners respectfully request that this Court grant Petitioners' Emergency Petition.

DATED: September 11, 2023

*Electronically signed by Timothy W. Burns*

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