FILED
11-25-2025
CLERK OF WISCONSIN
SUPREME COURT

Supreme Court of Wisconsin

NO. 2025XX1438 **BOTHFELD V. WIS. ELECTIONS COMM'N** **L.C.#2025CV2432**

November 25, 2025

Justice Susan M. Crawford has entered the following order:

A group of Congressmen and individual voters (collectively, the "Congressmen") intervened in this miscellaneous proceeding, which is before the court to consider the appointment of a three-judge panel. They now move for my recusal. *See* Congressmen's Motion to Recuse Justice Susan M. Crawford, *Bothfeld v. Wis. Elections Comm'n*, No. 2025XX1438 (Wis. filed Oct. 9, 2025) [hereinafter Congressmen's Motion]. The Congressmen allege that my participation in a video conference call organized by a nonprofit organization during my recent campaign for election to this court, along with a political party's contributions to my campaign, create an appearance of bias. They argue that my recusal is required by Wisconsin law and the Due Process Clause of the U.S. Constitution's Fourteenth Amendment.

Judicial recusal standards exist to safeguard judicial impartiality and public trust in the courts. Simply put, the Congressmen assert a novel theory of judicial recusal that is not only unmoored from Wisconsin law and due process requirements, but seeks to undermine public confidence in the courts. After careful consideration, I deny the Congressmen's motion for recusal.

I. BACKGROUND

On April 1, 2025, Wisconsin voters turned out in record numbers to elect me as a justice of the Wisconsin Supreme Court. Spending on the race, driven in large part by independent expenditures, set a national record for a state judicial election. Both my

campaign and the other candidate's campaign received sizable contributions from the state's political parties.[1]

The Congressmen's motion focuses in part on a January 13, 2025 video conference call in which I participated as a judicial candidate. *See generally* Congressmen's Motion. The call was organized by Focus for Democracy, a nonprofit organization, to introduce me to a group of donor advisors. Focus for Democracy drafted and circulated an email invitation to the call. *See* Appendix to Congressmen's Motion to Recuse Justice Susan M. Crawford at 28, *Bothfeld v. Wis. Elections Comm'n*, No. 2025XX1438 (Wis. filed Oct. 9, 2025). The email was not reviewed or endorsed by me or my campaign staff. The subject line of the email read: "Time-sensitive: Chance to put two more House seats in play for 2026." *Id.* The body of the email stated: "[W]inning this race could also result in Democrats being able to win two additional US House seats, half the seats needed to win control of the House in 2026." *Id.* At the outset of the scheduled call, I briefly introduced myself and my campaign, and then exited the call. I was not present for any discussion of congressional seats during the call and made no reference to congressional seats during my brief presentation.

Throughout my campaign, I reiterated my commitment to being a fair, impartial justice. I did not comment on matters that could come before this court, and affirmatively stated that I would not do so. The Congressmen acknowledge as much in their motion seeking my recusal. *See* Congressmen's Motion at 7. Indeed, the law presumes that I act fairly and impartially, and the Congressmen bear the burden to rebut that presumption. *See State v. Herrmann*, 2015 WI 84, ¶24, 364 Wis. 2d 336, 867 N.W.2d 772. The decision "whether to recuse is the sole responsibility of the individual justice for whom disqualification from participation is sought." *State v. Henley*, 2011 WI 67, ¶39, 338 Wis.

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[1] The Democratic Party of Wisconsin contributed $11,743,022.42 to my campaign; the Republican Party of Wisconsin contributed $9,760,567.65 to the other candidate. *See* Susan Crawford for Wisconsin, SUNSHINE: WISCONSIN CAMPAIGN FINANCE, https://campaignfinance.wi.gov/browse-data/registrant/17172 (last visited Nov. 5, 2025); Schimel for Justice, SUNSHINE: WISCONSIN CAMPAIGN FINANCE, https://campaignfinance.wi.gov/browse-data/registrant/17346 (last visited Nov. 5, 2025).

Total spending in the race, including independent expenditures, exceeded $100 million. *See Buying Time 2025 – Wisconsin*, BRENNAN CENTER FOR JUSTICE (Apr. 4, 2025), https://www.brennancenter.org/our-work/research-reports/buying-time-2025-wisconsin.

2d 610, 802 N.W.2d 175. Accordingly, I alone decide the outcome of the Congressmen's recusal motion.

II. WISCONSIN LAW

"States may choose to 'adopt recusal standards more rigorous than due process requires.'" *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 889 (2009) (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 794 (Kennedy, J., concurring)). Wisconsin has done so. If recusal is not mandated under those higher standards, the constitutional floor of due process is readily satisfied. Thus, I begin with an analysis of Wisconsin's recusal standards.

The Congressmen claim that WIS. STAT. § 757.19(2)(g) and the Wisconsin Code of Judicial Conduct, specifically Supreme Court Rule (SCR) 60.04(4), mandate my recusal.[2] *See* Congressmen's Motion at 21–23. The statute provides that a justice "shall disqualify . . . herself from any civil or criminal action or proceeding when . . . [she] determines that, for any reason, . . . she cannot, or it appears . . . she cannot, act in an impartial manner." WIS. STAT. § 757.19(2)(g). This is a subjective determination. *State v. Am. TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 182, 443 N.W.2d 662 (1989). The Wisconsin Code of Judicial Conduct governs the ethical conduct of judges and includes the following objective standard for recusal:

> [A] judge shall recuse . . . herself in a proceeding . . . when reasonable, well-informed persons knowledgeable about judicial ethics standards and the justice system and aware of the facts and circumstances the judge knows or reasonably should know would reasonably question the judge's ability to be impartial.

SCR 60.04(4). The Code of Judicial Conduct also provides that "[a] judge shall *not* be required to recuse . . . based solely on any endorsement or the judge's campaign committee's receipt of a lawful campaign contribution." SCR 60.04(7) (emphasis added).

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[2] The Congressmen also cite WIS. STAT. § 757.19(2)(f), which requires recusal "[w]hen a judge has a significant financial or personal interest in the outcome of the matter." The Congressmen provide no argument that I have any such interest. Because this argument is underdeveloped, and because I have no financial or personal interest in the outcome of this matter, I decline to address this provision in more detail.

The facts related to the Focus for Democracy conference call do not affect my ability to act impartially in this matter. Third-party organizations and individuals have their own interests in the outcome of judicial elections and are free to express their views. As a candidate, I did not control or endorse any statement made by Focus for Democracy or its members. A reasonable, well-informed person knowledgeable about judicial ethics standards and the justice system would not view such campaign commentary by third parties as a reason to question the impartiality of a subsequently-elected judge.

Likewise, the Democratic Party of Wisconsin's lawful campaign contributions do not affect my ability to act impartially, nor do they create an appearance of bias. As a candidate, I did not personally solicit any contribution from the Democratic Party of Wisconsin or any other individual or organization, in accordance with the Code of Judicial Conduct, and made no promises in exchange for support or endorsements. The Democratic Party of Wisconsin is not a party to the current litigation; its potential interest in the outcome of the case, which is before the court solely on a preliminary procedural matter, does not present grounds for my recusal. The Democratic Party of Wisconsin's contributions to my campaign do not present a basis for a reasonable, well-informed person to question my impartiality.

The Congressmen provide no case law to suggest that their novel recusal theory is well-founded. I conclude that Wisconsin law does not require my recusal in this matter. I can and "will administer justice . . . faithfully and impartially . . . to the best of my ability." WIS. STAT. § 757.02(1) (judicial oath).

III. DUE PROCESS

Unlike state standards, "[t]he Due Process Clause demarks only the outer boundaries of judicial disqualifications." *Caperton*, 556 U.S. at 889 (quoting *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986)). It compels recusal in only "exceptional," "extraordinary," and "extreme" cases. *Id.* at 884, 887. The Congressmen rely on *Caperton* to justify their present claim that campaign contributions by the Democratic Party of Wisconsin require my recusal under the Due Process Clause. *See* Congressmen's Motion at 14–20. *Caperton* presents no basis for my recusal.

In *Caperton*, Brent Benjamin, a candidate for the Supreme Court of Appeals of West Virginia, received contributions from Don Blankenship, the CEO of A.T. Massey Coal Company. *Caperton*, 556 U.S. at 872–73. Knowing the Supreme Court of Appeals of West Virginia would hear the appeal of a $50 million judgment against Massey Coal, Blankenship contributed the $1,000 statutory maximum to Benjamin's campaign,

donated $2.5 million to a political organization formed to support Benjamin, and spent over $500,000 on independent expenditures supporting Benjamin's candidacy. *Id.* Blankenship spent "more than the total amount spent by all other Benjamin supporters and three times the amount spent by Benjamin's own committee." *Id.* Benjamin ultimately won election to the Supreme Court of Appeals of West Virginia. *Id.* Shortly thereafter, the court was set to hear the appeal of the judgment against Massey Coal. *Id.* at 873–74. The opposing party "moved to disqualify now-Justice Benjamin under the Due Process Clause and the West Virginia Code of Judicial Conduct based on the conflict caused by Blankenship's campaign involvement." *Id.* Justice Benjamin denied the recusal motion, and the court ultimately reversed the judgment in a split 3-2 decision. *Id.* at 874–75.

The U.S. Supreme Court held that due process required Justice Benjamin to recuse from the case. *Id.* at 872. The Court emphasized the "serious risk of actual bias" stemming from "[t]he temporal relationship between the campaign contributions, the justice's election, and the pendency of the case." *Id.* at 884, 886. Additionally, the Court cited the "significant and disproportionate influence" of Blankenship's contributions on the election outcome. *Id.* at 886. The Court acknowledged that the facts of the case were extreme, cautioning that "[a]pplication of the constitutional standard implicated in this case will thus be confined to rare instances." *Id.* at 890.

This is not one of those rare instances involving extreme facts that mandate recusal as a matter of due process. The facts here differ from *Caperton* in several key respects. First, the circuit court case underlying the matter before this court was not pending during the campaign, but was filed months after the election. Thus, at the time the Democratic Party of Wisconsin contributed to my campaign, it was not reasonably foreseeable that the current matter would be before me as a newly-elected justice. Second, unlike Blankenship, the Democratic Party of Wisconsin is not a litigant with a vested stake in the outcome of a pending case. Finally, the Democratic Party of Wisconsin's contributions, while sizeable, constituted a small fraction of the total amounts contributed and expended on both sides of the race, and were offset by roughly equivalent political party contributions to the other candidate. This is not a situation in which a litigant's outsized contributions to a judicial candidate significantly and disproportionately influenced the election outcome. Such facts distinguish *Caperton* and make recusal under the Due Process Clause unnecessary.

The Congressmen's recusal theories are overbroad, impracticable, and rife with unintended consequences. Individuals and organizations have the right to contribute to judicial campaigns and to express their beliefs about the effect judicial elections will have

on issues of importance to them. Demanding that a justice recuse from a case because third parties who made campaign contributions have expressed their views on high-profile issues improperly implies that the judge had endorsed or adopted such views. This insinuation is inappropriate, particularly where the judge has expressly disclaimed such an endorsement, and undermines judicial impartiality. Further, it would chill protected speech and undermine this court's central role of deciding cases of statewide importance. In other words, "this court would grind to a halt if that were the constitutional standard for recusal." *Clarke v. WEC*, 2023 WI 66, ¶10, 409 Wis. 2d 249, 995 N.W.2d 735. I reject the Congressmen's arguments for recusal because they have no basis in state or federal law, diverge from common sense, and attempt to wield the recusal rules to gain a litigation advantage.

IT IS ORDERED that the Motion to Recuse Justice Susan M. Crawford filed by the Congressmen is denied.

Samuel A. Christensen
Clerk of Supreme Court

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