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 Janet C. Protasiewicz has entered the following order:

The Bothfeld plaintiffs, a group of Wisconsin voters,[1] filed a Dane County Circuit Court action seeking a declaratory judgment that Wisconsin's congressional districting map violates separation of powers and Article I, Sections 1, 3, 4, and 22 of the Wisconsin Constitution. By statute, the Dane County Clerk of Circuit Court notified this court to appoint three circuit court judges to hear the matter and assign venue. WIS. STAT. §§ 801.50(4m), 751.035(1) (2023–24).[2]

The intervening defendants, Congressmen and voters,[3] move for my recusal under the Fourteenth Amendment Due Process Clause and Wisconsin law. They cite (1) statements I made while campaigning, and (2) a $10 million contribution by the Democratic Party of Wisconsin (DPW) to my campaign.

Like all Wisconsin judges, I swore an oath to "faithfully and impartially" discharge the duties of my office. WIS. STAT. § 757.02(1). The law presumes I will act "fairly, impartially, and without prejudice." *State v. Herrmann*, 2015 WI 84, ¶24, 364 Wis. 2d 336, 867 N.W.2d 772. The Congressmen bear the burden to overcome that presumption. *Id.*

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[1] This order refers to all of the plaintiffs as "Bothfeld."

[2] All subsequent references to the Wisconsin Statutes are to the 2023–24 version unless otherwise indicated.

[3] This order refers to the intervening defendants as "the Congressmen."

I alone decide a motion for my recusal. *State v. Henley*, 2011 WI 67, ¶26, 338 Wis. 2d 610, 802 N.W.2d 175. If the law does not warrant recusal, I have a duty to sit.[4] I have reviewed the Congressmen's motion, the facts, the law, and my prior recusal rulings on these same issues. The Congressmen's motion lacks any basis in law. I therefore deny it.

## I. BACKGROUND

A brief review of recent redistricting litigation and prior, similar motions for my recusal sets the stage for my conclusion that the Congressmen's motion is groundless.

### *Johnson*

In August 2021, a group of voters filed an original action challenging Wisconsin's state and congressional maps. The court granted relief. Applying the "least change" approach,[5] the court ultimately selected the congressional map proposed by Governor Evers and the state legislative maps proposed by the Wisconsin Legislature. *See Johnson v. WEC*, 2021 WI 87, 399 Wis. 2d 623, 967 N.W.2d 469 (*Johnson I*) (explaining the "least change" approach); *Johnson v. WEC*, 2022 WI 14, 400 Wis. 2d 626, 971 N.W.2d 402 (*Johnson II*) (adopting the congressional map); *Johnson v. WEC*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559 (*Johnson III*) (adopting the state legislative maps).

### *Clarke* and *Wright*

In August 2023, two groups of Wisconsin voters filed original actions arguing that the state legislative maps adopted in *Johnson* violated the Wisconsin Constitution. The Wisconsin Legislature and a group of state senators intervened and moved for my recusal under the Due Process Clause and Wisconsin law due to my campaign statements and the DPW contribution. I denied both motions. *See Clarke v. WEC*, 2023 WI 66, 409

[4] *See Moore v. United States*, No. 22-800, 2023 WL 5807533, at *1 (U.S. Sep. 8, 2023) (Statement of Alito, J.).

[5] With the "least change" approach, the court used existing maps as a template, and implemented only those changes necessary to ensure that the remedial maps comport with constitutional and statutory requirements. *Johnson v. WEC*, 2021 WI 87, ¶72, 399 Wis. 2d 623, 967 N.W.2d 469 (*Johnson I*).

Wis. 2d 249, 955 N.W.2d 735 (*Clarke* recusal); *Wright v. WEC*, 2023 WI 67, 409 Wis. 2d 311, 995 N.W.2d 699.[6]

The court held that Wisconsin's state legislative maps violated the contiguity requirement in Article IV, § 4 and § 5 of the Wisconsin Constitution. *Clarke v. WEC*, 2023 WI 79, ¶3, 410 Wis. 2d 1, 998 N.W.2d 370.[7] The court also overruled any portions of *Johnson I*, *Johnson II*, and *Johnson III*, "that mandate a least change approach" to crafting remedial maps. *Id.*, ¶63.

*Johnson II* (again)

In January 2024, the intervenors filed a motion for relief from judgment in *Johnson II* based on *Clarke*'s rejection of the "least change" approach for drawing remedial maps. The Wisconsin Legislature, a group of voters, and the Congressmen moved for my recusal on essentially the same grounds as the movants in *Clarke.* I declined to participate in the matter because I was not on the court when it decided *Johnson*.[8] I denied the recusal motion as moot, and the court denied the motion for relief from judgment.

*Bothfeld I* and *Felton*

In May 2025, two groups of voters filed petitions for original actions arguing that Wisconsin's congressional map violates the Wisconsin Constitution and is invalid after *Clarke*'s rejection of the "least change" approach. The same Congressmen as in *Johnson* intervened and filed recusal motions that were very similar to their recusal motions in *Johnson II*. I denied the motions to recuse, and the court denied both petitions for original actions.[9]

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[6] There is no substantive difference between my recusal decisions in these two cases. For simplicity, this order cites only to my *Clarke* recusal decision.

[7] The court dismissed *Wright*.

[8] *Johnson v WEC*, No. 2021AP1450, unpublished order (Mar. 1, 2024) (order of Protasiewicz, J.).

[9] *Bothfeld v. WEC*, No. 2025AP996, unpublished order (June 25, 2025) (order of Protasiewicz, J.); *Felton v. WEC*, No. 2025AP999, unpublished order (June 25, 2025) (order of Protasiewicz, J.).

*Bothfeld II* (this case)

In July 2025, Bothfeld filed a circuit court declaratory judgment action asserting the same claims she raised in *Bothfeld I*.[10] The same Congressmen intervened and have refiled virtually identical recusal motions to those that I denied in *Bothfeld I* and *Felton*.

The Congressmen argue that my campaign statements show that I have prejudged this case in violation of due process and Wisconsin law—specifically, SCR 60, the Wisconsin Code of Judicial Conduct, and WIS. STAT. § 757.19(2)(f)–(g). They point to six occasions during my year-long campaign where I spoke about legislative maps.[11] My recusal decision in *Clarke* addressed and denied recusal on claims involving all but three of the statements they now complain about.[12]

One of the three statements occurred during a PBS interview. I said: "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." Schultz, *supra* note 11.

Another statement occurred during a supreme court debate. I said: "You look at Congress—we have eight seats. Six are red, two are blue, in a battleground state. So we know something's wrong. We know that the least change rule certainly inhibits people's

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[10] *Bothfeld II* includes two plaintiffs who did not participate in *Bothfeld I*.

[11] The occasions at issue are: *WisPolitics State Supreme Court Election Forum* (WisconsinEye, Jan. 9, 2023), https://wiseye.org/2023/01/09/wispolitics-state-supreme-court-election-forum; RIVER CHANNEL, *Western Wisconsin Journal: Wisconsin Supreme Court Candidate: Janet Protasiewicz* (YouTube, Feb. 12, 2023) https://www.youtube.com/watch?v=_iMTaVvt35A; WEDGE ISSUES: *Janet Protasiewicz, 'Common Sense' and the Wisconsin Supreme Court* (Apple Podcasts, Mar. 2, 2023); Zac Schultz, *Janet Protasiewicz, Daniel Kelly on Wisconsin Redistricting*, PBS WIS. (Mar. 9, 2023), https://pbswisconsin.org/news-item/janet-protasiewicz-daniel-kelly-on-wisconsin-redistricting [https://perma.cc/4HH9-PXHP]; POD SAVE AMERICA: "*Mugshots and Milk Shots." (Live from Wisconsin!)* (Apple Podcasts, Mar. 20, 2023); and *State Bar of Wisconsin, WISC-TV, WisPolitics.com Supreme Court Debate* (WisconsinEye, Mar. 21, 2023), https://wiseye.org/2023/03/21/state-bar-of-wisconsin-wisc-tv-wispolitics-com-supreme-court-debate.

[12] *See Clarke v. WEC*, 2023 WI 66, ¶¶52–86, 409 Wis. 2d 249, 995 N.W.2d 735 (*Clarke* recusal). The Congressmen do not ask me to overrule or modify my *Clarke* recusal decision resolving the same claims about the same campaign statements they assert here. My analysis of these statements in *Clarke* applies with equal force here and disposes of the Congressmen's claims.

ability to cast a vote and a vote that counts." Supreme Court Debate, *supra* note 11, at 26:10–26:30.

The last statement occurred during an interview on River Channel:

> Interviewer: When you're saying gerrymandering you're referring to the districting that happens after every census every ten years and why we have 75% Republican Representation but we have a state that is about 54% Republican.
>
> Janet Protasiewicz: Accurate. You know, we are a battleground state. I think that everybody would have to agree we're a battleground state. . . . No matter what side you're on, we're a battleground state. And you look at those maps, and something's wrong. They just don't look right. And you know that that was the product of intense gerrymandering of those districts. You just know that. And so, you know, the dissent that was written in [*Johnson*]—the dissent that I believe to be really rooted in the law—I agree with the dissent in that matter. So you know we've got so many issues that are likely to come before our Supreme Court. So many issues.

River Channel, *supra* note 11, at 5:00–6:20.

In addition to their objections to my campaign statements, the Congressmen argue that the DPW's contribution to my campaign creates the objective appearance that I have a personal interest in the outcome of this matter in violation of due process and *Caperton v. A.T. Massey Coal Company, Inc.*, 556 U.S. 868 (2009).

## II. ANALYSIS

I deny the Congressmen's recusal motion. It makes no attempt to connect either my campaign statements or the DPW contribution to the narrow issues actually before the court. Even considering the claims pending in the circuit court, the Congressmen have not overcome the presumption that I will act impartially in this matter. They do not ask me to overrule or reconsider my recusal decision in *Clarke* where I denied virtually the same arguments or my recusal decisions in *Bothfeld I*/*Felton* where I denied the identical arguments. My *Clarke* decision and my prior orders dispose of the Congressmen's claims that I must recuse myself from this case.

A. THE CONGRESSMEN IGNORE THE PROCEDURAL POSTURE OF THIS MATTER.

As an initial matter, I note that the merits of Bothfeld's constitutional challenges to Wisconsin's congressional map are not before us. By statute, our task is limited. If § 801.50(4m) applies, then under § 751.035(1) "the supreme court shall appoint a panel consisting of 3 circuit court judges to hear the matter" and designate venue.

On September 25, 2025, we ordered briefing on one issue: whether "Bothfeld's complaint filed in the circuit court constitutes an 'action to challenge the apportionment of a congressional or state legislative district' under WIS. STAT. § 801.50(4m)." The Congressmen go beyond our order and ask us to wield superintending authority to dismiss the circuit court case on the theory that a § 801.50(4m) panel cannot overrule the map adopted in *Johnson II*.

The Congressmen never argue that I have expressed any view about how to construe § 801.50(4m) or use of the court's superintending authority in a situation like this. Nor do they argue that my campaign statements or the DPW contribution disqualify me from deciding these matters. I will not develop arguments for them. *See Serv. Emps. Int'l Union, Loc. 1 v. Vos*, 2020 WI 67, ¶24, 393 Wis. 2d 38, 946 N.W.2d 35 ("We do not step out of our neutral role to develop or construct arguments for the parties; it is up to them to make their case."). The Congressmen have forfeited any recusal claim tied to the issues presently before the court.

B. THE DUE PROCESS CLAUSE DOES NOT REQUIRE MY RECUSAL.

*1. Campaign Speech*

The Congressmen concede that the Due Process Clause establishes only the outer boundaries for disqualifying a judge from a case. States may impose stricter standards through codes of judicial conduct. *Caperton*, 556 U.S. at 889–90; *see also State v. Pinno*, 2014 WI 74, ¶¶94–97, 356 Wis. 2d 106, 850 N.W.2d 207 (proceeding to judicial bias claims under SCR 60 after rejecting due process claims).

The Congressmen completely ignore the fact that the Judicial Commission dismissed a complaint against me that challenged materially similar campaign statements under SCR 60. The Commission found no probable cause that my campaign statements undermined judicial integrity or independence, demonstrated bias or prejudice, or committed me to a decision on a case, controversy, or issue likely to come before me. *See Clarke* recusal, 409 Wis. 2d 249, ¶¶54–59, 75–76. Because codes of judicial

conduct impose stricter standards than the Due Process Clause, the Commission's decision is powerful evidence that my campaign statements do not violate due process.

Due process requires "[a] fair trial in a fair tribunal." *In re Murchison*, 349 U.S 133, 136 (1955). The Supreme Court has never held that the Due Process Clause requires a judge to recuse from a case because she expressed her opinions about the law or a case while campaigning.[13] To the contrary, judges may express their views on disputed legal issues of the day. *See FTC v. Cement Inst.*, 333 U.S. 683, 702–03 (1948) (no due process violation where a judge previously expressed a view about whether certain conduct is unlawful). Judges routinely express their views—both before and after they take the bench—through teaching, speeches, writing, and prior opinions. *Republican Party of Minn. v. White*, 536 U.S. 765, 779 (2002). What due process forbids is a pledge, a promise, or a commitment to rule a particular way in a particular case. *Duwe v. Alexander*, 490 F. Supp. 2d 968, 976 (W.D. Wis. 2007). Statements like "I will" or "I will not" are pledges. Statements like "I believe" or "it is my opinion that" signal the absence of a commitment. *Id*.

The Congressmen complain about my statements that Wisconsin's congressional map is "gerrymandered," "rigged," or "wrong," in other words, skewed in favor of Republicans. They make no effort to tie my campaign statements to the claims in Bothfeld's complaint. Bothfeld does not request relief because Wisconsin's congressional map is gerrymandered in the abstract. Instead, she claims that the map is gerrymandered *in violation of* separation of powers and Article I, Sections 1, 3, 4, and 22 of the Wisconsin Constitution. The Congressmen do not cite one single pledge, promise, or commitment by me to rule a certain way on Bothfeld's claims (assuming the claims ever reach this court).

The Congressmen's challenge to my campaign statements about *Johnson* and the "least change" approach is even weaker. I made those comments in 2023, before this court decided *Clarke*. *Clarke* is a published opinion, so my campaign statements are irrelevant. Moreover, in *Clarke*, five other current justices staked out positions on *Johnson* and the "least change" approach. It makes no sense to say that my pre-*Clarke* campaign statements require my recusal when justices who expressed their views on the same

[13] *See* Derek Clinger & Robert Yablon, *Explainer: Judicial Recusal in Wisconsin and Beyond*, STATE DEMOCRACY RSCH. INITIATIVE, at 10 (Sep. 5, 2023), https://statedemocracy.law.wisc.edu/wp-content/uploads/sites/1683/2024/06/Explainer-Judicial-Recusal-in-Wisconsin-and-Beyond.pdf [https://perma.cc/A9HC-UVTY].

matters in published opinions are not disqualified. *See Republican Party*, 536 U.S. at 780–81 ("We doubt . . . that a mere statement of position enunciated during the pendency of an election will be regarded by a judge as more binding . . . than a carefully considered holding that the judge set forth in an earlier opinion.").

As for the Congressmen's claim that *Caperton* specifically requires my recusal due to my campaign statements, it has no basis in law. *Caperton* concerned a campaign contribution to a justice's campaign. It did not concern campaign speech, and the Congressmen cite no case where any court has applied *Caperton* to campaign speech. Stretching *Caperton* to require a justice's recusal based on campaign statements would "invent new law and . . . invite recusal motions based on 'spin' instead of whether a justice can be fair and impartial." *See State v. Allen*, 2010 WI 10, ¶269, 322 Wis. 2d 372, 778 N.W.2d 863 (Ziegler, J., concurring).

*2. The DPW Contribution*

The Congressmen present an undeveloped, two-page argument that the DPW's contribution to my campaign violates due process under *Caperton*. I denied this claim once in a robust decision in *Clarke* and again in *Bothfeld I/Felton*. *See Clarke* recusal, 409 Wis. 2d 249, ¶¶25–51; *supra* note 9. The only new wrinkle since *Clarke* is the claim that Bothfeld's counsel is a law firm that likes to help Democrats win and that exacerbates the alleged due process violation.

*Caperton* is the only time the Supreme Court has found a due process violation in the context of a judicial election, and its facts were "extreme by any measure." *Caperton*, 556 U.S. at 887. It held that a campaign contribution offends due process only where there is "a serious risk of actual bias—based on objective and reasonable perceptions." *Id*. at 884. That occurs "when a person with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case by raising funds or directing the judge's election campaign when the case was pending or imminent." *Id.* In *Caperton*, the CEO of a litigant contributed $3 million to install a justice on the West Virginia Supreme Court while a judgment was pending, but before the litigant had filed an appeal. It was clear that without recusal, the justice "would review a judgment that cost his biggest donor's company $50 million." *Id*. at 886.

This case is nothing like *Caperton*. First, the DPW is not "a person with a personal stake" in this matter. The DPW is not a party to this case. None of Bothfeld's claims involve or mention the DPW. The Congressmen do not allege that Bothfeld or counsel for

Bothfeld contributed to my campaign.[14] They therefore fail to satisfy *Caperton*'s foundational requirement: that a person with a direct stake in this case raised funds for or directed my campaign. *See Clarke* recusal, 409 Wis. 2d 249, ¶¶37–41.

Second, the size of the DPW's contribution relative to my campaign committee's total spending is unremarkable for a Wisconsin Supreme Court race. *Id*., ¶43. More importantly, the DPW's contribution did not "place" me on the court. Voters did. The electoral history underscores this point. In 2020, then Judge Jill Karofsky defeated Justice Dan Kelly by almost 11 points. In 2023, I defeated him by a similar margin. That pattern, which is absent from *Caperton*, undercuts any claim that the DPW's contribution had a "disproportionate influence" within *Caperton*'s framework. *Id.*, ¶¶42–45.

Third, the timing of the DPW's contribution defeats the Congressmen's claim. In *Caperton*, the decisive donation came while the litigant's case was pending but before it reached the supreme court. Here, the DPW's contribution was made over two years before Bothfeld filed this circuit court action. And, in the intervening time, my conduct has confirmed adherence to process and the law. I declined to participate in the *Johnson II* motion for relief from judgment because I had not participated in the earlier stages of the case. And I voted to deny the *Bothfeld I*/*Felton* original actions raising the same claims now before the circuit court. On *Caperton*'s timing factor, the Congressmen have no footing whatsoever. *Id*., ¶¶46–51.

The bottom line is, the Due Process Clause does not require my recusal based on my campaign statements or the DPW's contribution.

### C. WISCONSIN LAW DOES NOT REQUIRE MY RECUSAL.

The Congressmen also invoke SCR 60 and WIS. STAT. § 757.19(2)(f)–(g) as grounds for my recusal. SCR 60 is not a recusal statute. It provides judges notice of prohibited conduct and procedures for imposing discipline. *See Henley*, 338 Wis. 2d 610, ¶22. A claimed violation of SCR 60 is addressed through the Judicial Commission. It does not disqualify a judge from pending case. *State v. Am. T.V. & Appliance of Madison, Inc*., 151 Wis. 2d 175, 185, 443 N.W.2d 662 (1989). The Commission has already dismissed a substantially similar complaint about my campaign statements. The Congressmen have

[14] Even if Bothfeld's attorneys had made a lawful contribution to or endorsed my campaign, I would not be required to recuse. SCR 60.04(7).

had years to file a new complaint against me. Instead, they wait to assert stale SCR 60 violations in a pending case to try to change the composition of this court.

The procedure for removing a judge from a pending case is set forth in § 757.19. A judge shall disqualify herself if she "has a significant financial or personal interest in the outcome of the matter." WIS. STAT. § 757.19(2)(f). The judge must make an objective determination of her alleged interest as established by evidence and reasonable inferences. *State ex rel. Dressler v. Cir. Ct. for Racine Cnty.*, 163 Wis. 2d 622, 643, 472 N.W.2d 532 (Ct. App. 1991). The Congressmen do not allege that I have a financial interest in the outcome of this case. And their "personal interest" theory reduces to this: my campaign statements give me a personal stake or compulsion to rule a particular way when and if the merits of this case come before the court.

The Congressmen fail to cite a single case holding that § 757.19(2)(f) requires a judge to recuse from a matter due to her campaign statements. In fact, the Supreme Court has foreclosed any presumption that judges feel bound by positions they express while campaigning. *Republican Party*, 536 U.S. at 780–81; *see Clarke* recusal, 409 Wis. 2d 249, ¶¶87–93. I have no personal stake in the outcome of this case—certainly no more than any other justice who wrote in *Clarke*.

The Congressmen also resort to § 757.19(2)(g), which requires a judge to recuse from a proceeding when she determines that, for any reason, she cannot, or it appears that she cannot, "act in an impartial manner." This inquiry is subjective. The judge alone decides whether she can be impartial or whether there is an appearance of partiality. *Am. T.V. & Appliance*, 151 Wis. 2d at 183. Once again, I have carefully reviewed the statements at issue, the cited cases, and my prior rulings in *Clarke* and in *Bothfeld I/Felton*. I have determined that I can, in fact and appearance, act impartially here. *See Clarke* recusal, 409 Wis. 2d 249, ¶¶80–86.

### D. MY NON-PARTICIPATION IN *Johnson* IS IRRELEVANT.

I declined to participate on the motion for relief from judgment in *Johnson II* because I had not participated in earlier stages of that case. The Congressmen contend that I should recuse from this case for the same reason. Their argument has no basis in fact or law. This case is not a continuation of *Johnson*. It involves different parties, a different procedural posture, and a different case number. My non-participation in *Johnson* has no bearing here.

## III. CONCLUSION

The Congressmen have failed to carry their burden of proving that I must recuse from the narrow matters before the court or from this case in general. The presumption of impartiality stands. I therefore deny the motion for my recusal.

IT IS ORDERED that the Motion to Recuse Justice Janet C. Protasiewicz filed by intervening defendants Congressman Glenn Grothman et al. is denied.

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Samuel A. Christensen
Clerk of Supreme Court

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