

March 31, 2017

Clerk of Wisconsin Supreme Court
Attn: Deputy Clerk-Rules
P.O. Box 1688
Madison, WI 53701-1688

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CLERK OF SUPREME COURT
OF WISCONSIN

*Re: Response in Opposition to Rule Petition 17-01
In re rule for recusal when a party or lawyer has made a large campaign contribution*

Greetings:

On January 11, 2017, 54 retired members of the Wisconsin Judiciary petitioned the Wisconsin Supreme Court, requesting it consider rule petition 17-01. The petition proposes amending SCR Chapter 60 ("Judicial Code") to change the rules requiring recusal or disqualification of a judge who has received a legal campaign contribution of a certain amount.

We, the following retired members of the Wisconsin judiciary, having reviewed the petition, oppose it for, among other reasons, a lack of necessity, respect for the elective process, a lack of constitutionality under the First Amendment, and the reality that the petition adds nothing new since the issue was last taken up in 2010.

First, the petition is unnecessary. Having served as judges in Wisconsin it is our observation that the proposed rules change addresses a "problem" that does not actually exist. As our petitioner colleagues certainly know, as a practical matter, litigants or their counsel are already afforded the ability under Wisconsin law to substitute the trial judge assigned to a case, for any reason or no reason at all. In addition, as others have pointed out, petitioners utterly fail to offer any support for their claim that money in judicial campaigns has overwhelmed the process. In fact, in our collective experience, campaign contributions were a relatively minor factor in most of our judicial campaigns, particularly those at the circuit court level.

Second, Wisconsin has had judicial elections for its entire history and election campaigns (including contributions and endorsements) are an expected part of the process. Contributions made to candidates for judicial office within the legal limits set by the legislature do not lead to impropriety or even the appearance of impropriety. Wisconsin's founders debated the issue of an elected or appointed judiciary and ultimately determined that the people of Wisconsin should maintain control over who presides over judicial proceedings in our great state. That naturally results in competitive elections, all of which require campaign funds. Petitioners attempt to force the recusal of judges who accept legal campaign contributions, a necessary act in a state that for close to 170 years has elected its judges. This is nothing more than a poorly veiled attempt to weaken the ability of Wisconsin residents to choose its judges and justices.

Third, the petition purports to regulate independent expenditure made for issue advocacy. Any such regulation would be unconstitutional under the First Amendment based upon current U.S. Supreme Court case law. Here too our judicial colleagues may be attempting to undermine a feature of an elected judiciary that they don't personally support. Cases such as *Buckley v.*

Valeo, 424 U.S. 1 (1976), established that money is speech. When individuals make contributions to judicial campaigns, they are exercising one of their most cherished rights, the right to freely express themselves by supporting the campaign of the judicial candidate of their choice. To mandate that a constitutionally protected right result in the forced recusal of a judge can lead to gamesmanship and more importantly, serve as a deterrent for voters to fully participate in future elections.

Finally, this Court already ruled on this same issue in 2010. Nothing significant has changed since then and continued criticism of the courts on this issue undercuts the integrity of and public confidence in the courts. The petition is simply another attempt to cast doubt on the process by which Wisconsin has chosen its judges and justices for almost 170 years.

For the foregoing reasons, the following retired members of the Wisconsin judiciary respectively urge the Court to deny the petition.

Sincerely,

/s/ Hon. J. Mac Davis – Waukesha Circuit Judge 1990 – 2015 – 23 years.

/s/ Hon. Louis J. Ceci – Milwaukee County Judge 1968 – 1974; Milwaukee County Circuit Judge 1974 – 1982; Wisconsin Supreme Court Justice 1982 – 1993
24 years.

/s/ Hon. George S. Curry – Grant County Circuit Judge – 19 years.

/s/ Hon. Stephen A. Simanek – Racine County Circuit Judge 1980 – 2010 – 30 years.

/s/ Hon. Richard O. Wright – Marquette County Circuit Judge 1995 – 2013 – 18 years.

/s/ Hon. John W. Roethe – Rock County Circuit Judge 1995 – 2007 – 12 years.

/s/ Hon. Earl W. Schmidt – Menomonee/ Shawano County Circuit Judge – 19 years.

/s/ Hon. Jon P. Wilcox – Waushara County Circuit Judge 1979 – 1992; Wisconsin Supreme Court Justice 1992 – 2007 – 28 years.

/s/ Hon. Donald A. Poppy – Calumet County Circuit Judge 1992 – 2011 – 19 years.

/s/ Hon. Richard T. Werner – Rock County Circuit Judge – 20 years.

/s/ Hon. Allan “Pat” Torhorst – Racine County Circuit Judge – 1991 – 2017 – 26 years.