

ACLU of Wisconsin Comment in Support of *In re recusal rule when a party or lawyer has made a large campaign contribution*, Petition No. 17-01 (S.Ct. Jan. 11, 2017):

The ACLU of Wisconsin supports the adoption of codes of judicial conduct that require a judge's recusal whenever a reasonable person knowledgeable of all relevant circumstances would have substantial reason to question the impartiality or independence of the judge's professional judgment. An appearance of personal bias is likely when a party with an interest in the outcome of a case has provided substantial financial support in the judge's previous and ongoing election campaigns.

Wisconsin's constitution prescribes a judicial system in which the people elect judges to office. Because campaigning for judicial office requires money, judicial campaigns solicit and receive contributions from the public. Because courts, especially appellate courts, make decisions that can have a significant impact on matters of profound public concern, other groups and individuals also promote their preferred judicial candidates through expenditures on campaign advertising and other forms of advocacy.

But judges are not simply politicians in robes, dispensing justice to their supporters and denying it to their opponents. Constitutional principles of due process require that judges make decisions based on the merits of the case before them, not personal or political preferences for litigants who have contributed substantially to their election. Indeed, the very legitimacy of the courts depends upon eliminating even the appearance that a judge may be influenced by a litigant's campaign contributions. *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009).

The rule proposed by Petition No. 17-01 addresses this risk of real or apparent bias by prescribing thresholds at which campaign support triggers recusal and by establishing an independent review of a judge's or justice's recusal decisions. It reasonably includes purportedly "independent" campaign expenditures by litigants in support of the judge's election. The inclusion of such expenditures is particularly necessary because of the Wisconsin Supreme Court's decision in *State ex rel. Three Unnamed Petitioners v. Peterson*, 2015 WI 85, which abolished any requirement that such "independent" groups or individuals refrain from coordinating with the campaign. Thus, such independent expenditures by litigants on behalf of a candidate have the same potential to create the reality or appearance of bias.

RECEIVED
APR 06 2017
CLERK OF SUPREME COURT
OF WISCONSIN