

FILED

MAY 15 2026

STATE OF WISCONSIN

CLERK OF SUPREME COURT
OF WISCONSIN

IN THE SUPREME COURT

**In re: Petition for Amendments to
Campaign-Related Recusal Rules
SCR 60.04 (4), (5), (6), (7), and (8)**

**PETITIONERS' RESPONSE
TO COMMENTS FROM
INTERESTED PERSONS**

Petitioners appreciate the thoughtful, expansive comments submitted in response to our petition to reform campaign-related recusal rules, all of which appear intended to further the shared goal of strengthening public confidence in the judiciary and in the integrity of judicial decision making.

Because petitioners agree with the observations that our petition, despite a number of strengths, is not complete and would benefit from further discussion and amendment, we join the request from several of the commenters that the Supreme Court postpone the vote on adoption and establish an *ad hoc* "blue-ribbon" committee to further evaluate the various issues and proposals raised. The committee should be comprised of members from the judiciary, election law and ethics experts, practicing attorneys and other representatives of the various interests at stake, including the public. (In fact, participation by Professors Seifter and/or Yablon would be an ideal application of the Wisconsin Idea, if they are willing and able to participate.) The committee's charge should be to craft campaign recusal rules best suited to the Wisconsin court system and those it serves, giving due regard to the approaches adopted in other jurisdictions and the requirements of both the United States and Wisconsin constitutions. At an appropriate and workable deadline, the committee would deliver its proposed rule for further consideration by the Court upon due notice to the public, opportunity for written response by interested persons, and a public hearing.

Because of this recommendation, petitioners will not engage here with the myriad recommendations, criticisms, proposed amendments, observations, and other issues raised by the various comments, all of which would presumably be fully vetted by the appointed committee. These include, among others, consideration of (1) any potential interim appeal procedure for recusal decisions, (2) whether the rules should apply retroactively to contributions made under prior rules, (3) how extensive a judge's duty should be to investigate the source of contributions to the judge's campaign, (4) forestalling the possibility of side-litigation and discovery on recusal issues, and (5) procedures to ensure that the court is not prevented from functioning as intended due to a recusal-caused lack of quorum to decide cases.

Nonetheless, we will be prepared, as best we can, to discuss the specific issues raised by commenters at the public hearing on June 4 if that is the Court's preference, although we doubt such discussions would be particularly illuminating,

In the meantime, we offer the Court these observations.

First, notwithstanding court staff's broad dissemination of the petition and invitation for comment to interested persons, and the widespread media coverage of the petition statewide, not a single voice has been raised in support of the current rules adopted in 2010 and reaffirmed in 2017—not even from those who initially sponsored the rules. We believe this indicates a broad consensus that the current rules are inadequate, even counterproductive to the courts' mission, and that reform is needed.

Second, the interested persons' critiques largely acknowledge that the petitioners' proposed rules relating to campaign comments and procedure to be followed when recusal is at issue (open hearing, opportunity for parties to weigh in, recusal decision on the record) are an improvement to the current rules.

Third, Professors Seifter and Yablon reveal that, to the best of their considerable knowledge, only Wisconsin has adopted the "affirmative disclaimer" that judges need not recuse based solely on campaign contributions or independent expenditures, however large. A central focus of our petition particularly targets this odious disclaimer, which implies a presumption against recusal even in the face of huge donations by a party to a lawsuit or that party's supporters. We agree with the professors that the disclaimer provisions may be viewed by the public as the courts' insensitivity to widespread concerns about the effects of outsized sums of money in judicial elections. Perhaps the petitioners' proposed rule is not the best solution, but the affirmative disclaimer needs to go, one way or another.

Finally, the fact that this Court has accepted our petition for briefing and open public hearing constitutes a meaningful improvement over the closed procedure implemented when recusal rule amendments were considered in 2010 and 2017. It represents a reaffirmation by this Court that the court system exists for all the people in Wisconsin, not just the privileged few who authored the current rules.

Given the high quality of the responses to the petition, and the current palpable and widespread public support for reform, this Court is as favorably situated as ever to craft and adopt rules serving the very best interests of the people in this state. Petitioners are confident that the Court, in line with its highest traditions, will productively seize this prime opportunity to boost the public's confidence in the integrity of our judiciary and court system.

Dated this 9th day of May, 2026.



Richard G. Niess, on behalf of Petitioners
Dane County Circuit Court Judge (ret.)
State Bar # 1005460