FILED

APR 27 2026

CLERK OF SUPREME COURT
OF WISCONSIN

April 27, 2026

Clerk of the Supreme Court
P.O. Box 1688
Madison, WI 53701-1688
clerk@wicourts.gov

In re: Amendments to SCR 60.04(4)-(8), Concerning Judicial Campaign-Related Recusal Rules (26-01)

Comments from Professors Miriam Seifter & Robert Yablon

We are professors at the University of Wisconsin Law School, and we co-direct the Law School's State Democracy Research Initiative. Our scholarship on election law, state courts, and related topics is regularly published in top law journals. Professor Seifter is the co-author of *State Constitutional Law: Cases and Principles*, a leading textbook on state constitutions. Professor Yablon is the co-author of *Election Law in a Nutshell*, a leading resource on election law. Most relevant here, our academic work has included research into state-level recusal law and practice and, relatedly, state systems for regulating judicial ethics.

We appreciate petitioners' attention to the important topic of judicial recusal, and we respect their effort to grapple with the shortcomings of Wisconsin's current recusal standards and procedures. As detailed below, we think a good number of petitioners' proposed revisions are worthwhile, or at least unobjectionable. But we do have concerns about several of the proposals, and there are some important matters that the proposals do not address, including whether the Court can and should adopt a mechanism for substitution of a recused justice.

We respectfully suggest that the Court convene a committee tasked with (1) studying these matters further, including examining the experiences of other states; and (2) producing a more fully vetted proposal. The Court could potentially adopt a subset of petitioners' proposals in the meantime if it is so inclined.

I. Some of petitioners' proposed changes are reasonable and would bring Wisconsin's recusal rules more in line with other states.

Like petitioners, we see room for improvement in Wisconsin's recusal rules, and we agree that the overarching objectives of any revisions should be to promote impartial adjudications and reinforce public confidence in the judiciary. Particularly against the backdrop of polarized politics and the surge of campaign spending in judicial elections, advancing these objectives is no easy task. On one hand, the rules must send a strong message that justice must never be for sale and that judges are duty-bound to step aside when they have conflicts or biases or when there are well-founded concerns about their impartiality. On the other hand, the rules should not invite opportunistic recusal motions by litigants who seek to gain a strategic advantage or weaponize insinuations of impropriety. In recent years, Wisconsin has seen a sharp uptick in such motions, particularly in high-profile, politically tinged cases—something any rule reform should aim to discourage.

In our view, several of petitioners' proposed revisions appear to strike the right balance—promoting judicial impartiality without encouraging litigant opportunism:

First, petitioners propose rewording current SCR 60.04(4)(f), which addresses recusal based on public statements by judges and judicial candidates. (Petitioners' proposal appears in their renumbered SCR 60.04(4)(g).) In our view, petitioners' new wording—requiring recusal when a public statement "expressly and specifically commits the judge" to decide an issue in a certain way—is more precise than the prior version and thus gives clearer guidance to judges, candidates, and litigants.

Second, petitioners propose striking current SCR 60.04(7) and (8), which affirmatively disclaim any requirement to recuse based solely on campaign contributions or independent expenditures. As a substitute, they propose adding SCR 60.04(h) and (i), which list factors a judge should consider when deciding to recuse based on campaign support, contributions, or independent expenditures. As we describe below in Part II, we recommend against adopting (h) and (i) in their current form, but we support in principle replacing 60.04(7) and (8) with an alternative. To the best of our knowledge, no other state has an affirmative disclaimer like 60.04(7) and (8),[1] and those provisions may give the misimpression that the judiciary is insensitive to widespread public concerns about the outsized sums of money deployed in some judicial races. Similar to petitioners' proposal, many states require judges to consider a range of factors in determining whether to recuse, including the amount of the campaign support, the nature of the judge's relationship with the party, the timing of the contribution, and other factors.[2] A smaller set of states draw a brighter line and require judges to recuse when a party or a party's lawyer contribute more than a specified amount to a judge's campaign—an approach in line with the American Bar Association's Model Code of Judicial Conduct.[3]

We also have no objection to several other proposals petitioners make, such as adding references to a judge's "domestic partner" in SCR 60.04(4)(d), (e), and (f), and—with one important exception noted below in Part II—adding new detail to the recusal procedures in current SCR 60.04(6) (which petitioners renumber 60.04(5)).

---

[1] National Center for State Courts, *Judicial Disqualification Based on Campaign Contributions* (Nov. 2016), https://perma.cc/4EVN-YFQN; Derek Clinger & Rob Yablon, *Judicial Recusal in Wisconsin and Beyond*, State Democracy Rsch. Initiative (Sept. 5, 2023), https://statedemocracy.law.wisc.edu/our-work/judicial-recusal-in-wisconsin-and-beyond. Ohio's Code of Judicial Conduct includes comments most akin to Wisconsin's campaign contribution provision, noting that a "judge's knowledge that a lawyer, law firm, or litigant in a proceeding contributed to the judge's election campaign within the limits set forth in Rules 4.4(J) and (K), or publicly supported the judge in the campaign, does not, in and of itself, disqualify the judge." Ohio Code of Judicial Conduct Rule 2.11, Comment [1]. However, the code itself does not disclaim such recusals, and the comment applies only to contributions within specific campaign contribution limits. The commentary also notes that Ohio did not adopt the ABA model code's "disqualification of a judge who receives a campaign contribution in excess of a specific amount, ... in part because Rule 4.4 contains what are considered reasonable contribution limits applicable to individuals and organizations, including parties, lawyers, and law firms." *Id.* at Rule 2.11, Comparison to ABA Model Code of Judicial Conduct.

[2] These factors typically resemble those outlined in *Caperton v. A.T. Massey Coal Company*, 556 U.S. 868 (2009).

[3] *See* Model Code of Judicial Conduct R. 2.11(A)(4) (2020); American Bar Association, Comparison of ABA Model Code of Judicial Conduct and State Variations, R.2.11 (Aug. 16, 2018), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2_11.pdf; National Center for State Courts, *supra* note 1 (listing five states that set specific dollar amounts as of 2016).

II. In contrast, a few of petitioners' proposed revisions raise concerns, at least absent other changes to Wisconsin's recusal process beyond what petitioners request.

As we see it, a major drawback of some of petitioners' proposals is that they risk generating a further increase in opportunistic recusal motions and politicized recusal controversies. This could end up eroding public confidence in the judiciary rather than enhancing it. In particular, we would discourage the Court from adopting the proposed revision to the first paragraph of SCR 60.04(4), some of the language about campaign contributions and independent expenditures proposed in SCR 60.04(4)(h) and (i), and one proposed change to recusal procedures—SCR 60.04(5)(c).

First, the proposed change to the first paragraph of SCR 60.04(4) reduces clarity and could unduly broaden the possible grounds for recusal—or at least unduly broaden the possible grounds for requesting recusal. The current text of 60.04(4) provides for recusal either where the judge "knows or reasonably should know" that a listed basis for recusal is met or "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." The proposed change would eliminate this "reasonable, well-informed persons" language and instead require only that the facts and circumstances "raise a reasonable question concerning the judge's ability to be impartial." This change may expand the circumstances when recusal is required, but the language is amorphous and malleable. In whose eyes must there be a "reasonable question concerning the judge's ability to be impartial"? The average Wisconsinite? The average lawyer? The average judge? We worry that this proposed language would encourage more litigants to file recusal motions while giving judges minimal guidance, which could also produce more inconsistency in how individual judges handle recusal. The current language may not offer a particularly bright line, but it does articulate a somewhat clearer guiding benchmark.[4]

Second, we see similar problems with some of the language in proposed sections 60.04(4)(h) and (i). Petitioners' proposal directs a judge to recuse if campaign contributions, independent expenditures, or other support for the judge's candidacy "raises a reasonable question concerning the judge's ability to be impartial." Again, a "reasonable question" to whom? These proposed provisions then list factors to consider in "determining impartiality." Although we have no objection to such a list, we do think the drafting might be improved to provide more specific guidance. Factor (1), for instance, says to consider the "amount of" the contribution, support, or sponsorship. It might be more helpful to include a sense of when the amount is most likely to raise concerns about impartiality—for example, when it represents a disproportionate share of the total money or support received. We also see possible value in delineating specific thresholds for the sake of creating a brighter line—for example, requiring recusal if more than 20% of a judge's total campaign support came from someone with a direct interest in the case. But there are potential

---

[4] Petitioners explain that they drew this language from Georgia Code of Judicial Conduct Rule 2.11, which in turn draws on the ABA Model Rules. Georgia court rulings have put additional gloss on this language, holding that a "reasonable question as to the judge's impartiality" should be assessed from the perspective of a "fair minded and impartial person based upon objective fact or reasonable inference." *Jones County. v. A Mining Grp., LLC*, 678 S.E.2d 474, 475 (Ga. 2009) (quoting *Baptiste v. State*, 494 S.E.2d 530, 534 (Ga. Ct. App. 1997)). It strikes us as better for such guidance to be offered in the rule itself rather than left open to future interpretation.

tradeoffs, and we express no firm view on whether including a numerical threshold is preferable on balance. Likewise, for factor (2) ("timing"), it might help to specify that concerns about impartiality tend to be greater when an outsized contribution, support, or sponsorship occurs in close proximity to the relevant case.[5] Such refinements could significantly affect recusal requests and decisions and are the sorts of details that a committee could study in depth.

Third, we also have concerns about petitioners' proposed section 60.04(5)(c), which provides: "If the judge believes recusal is not required, but knows any facts or circumstances that the judge believes present *a possible basis for recusal, or that the parties or their lawyers might consider relevant to the question of recusal*, the judge shall disclose the facts and circumstances on the record to the parties" (emphasis added). This provision would place an uncertain and potentially onerous burden on judges. How can a judge who concludes that recusal is not required reliably determine whether a basis for recusal is nevertheless "possible," or whether a lawyer "might consider" information relevant? A risk-averse judge might feel compelled to disclose even relatively trivial information. And the provision could be weaponized. It is easy to imagine judges finding themselves on the receiving end of disruptive complaints if they fail to share something a litigant later says would have been relevant.

III. The petition does not address important recusal-related matters that deserve attention and warrant further study.

Petitioners focus principally on recalibrating the current recusal standards, while leaving unaddressed some procedural matters that we see as important aspects of any serious reform discussion. This is why we ultimately encourage the Court to convene a committee to study the matter further and develop alternative proposals.

First and foremost, the proposed changes discussed in Part II would increase possible grounds for recusal but would continue to leave the Wisconsin Supreme Court without a substitution mechanism for replacing recused justices. When circuit court judges and court of appeals judges recuse from a case, another judge is assigned to hear the case.[6] In contrast, when Wisconsin Supreme Court justices recuse, they are not replaced.[7] As the comment to current SCR 60.04(7) explains, the absence of a substitution mechanism leads to "greater policy implications" from recusal, given that "the recusal of a supreme court justice alters the number of justices reviewing a case as well as the composition of the court."[8] When multiple justices recuse, the Court may even lack a quorum to decide important issues.[9] Conversely, having a well-designed substitution

---

[5] If the Court revises these standards in ways that make recusal based on contributions and expenditures more likely, the Court should consider making clear that the change only applies prospectively. Candidates and donors have operated under the existing framework in past elections with no reason to anticipate that their conduct might later become grounds for recusal. Cabining the rule to contributions and support in future elections would alleviate concerns about an influx of recusal motions based on contributions in past elections.

[6] *See* Wis. Const. art. VII, § 4(3).

[7] *See* SCR 60.04(7) Comment.

[8] *Id.*

[9] *See* Wisconsin Judicial Comm'n v. Prosser, 2012 WI 69, 341 Wis.2d 656, 661 & n.1 (2012); Bruce Vielmetti, *Gableman Joins Recusals in Prosser Discipline Case; Court Now Short Of Quorum*, Milwaukee J. Sentinel (Aug. 10, 2012), https://archive.jsonline.com/blogs/news/165750116.html.

mechanism could discourage litigants from pursuing recusal in a strategic effort to shift the Court's balance.

Wisconsin is one of only seven states that do not replace recused justices.[10] The other 43 states have substitution processes that use a variety of replacement mechanisms.[11] While some substitution mechanisms may raise concerns about politically driven recusals and replacements, the Court can consider options to guard against strategic manipulation. For example, the Court could allow each justice to designate a pool of lower court judges, from which one could be chosen at random to replace them in the event of a recusal. Drawing on other states' procedures and experiences, we see value in developing an appropriate substitution mechanism designed to limit gamesmanship in the recusal process.

Questions may be raised about the Court's legal authority to create a substitution mechanism. The Wisconsin Constitution provides that "[t]he chief justice may assign any judge of a court of record to aid in the proper disposition of judicial business in any court of record *except the supreme court*."[12] While this provision indicates that the chief justice may not unilaterally appoint a judge to replace a recused justice, it does not clearly prohibit the Court from adopting alternate substitution procedures pursuant to its constitutionally conferred superintending and administrative authorities.[13] Although further analysis is necessary, our tentative view is that the Court could lawfully establish a procedure for replacing recused justices.

Beyond substitution of justices, we also encourage consideration of possible review mechanisms for justices' recusal decisions, again exploring other states' practices. Like Wisconsin, about two-thirds of states allow state supreme court justices to decide for themselves whether recusal is warranted. Some states, however, have review processes that involve other members of the court.[14] It is at least worth weighing the benefits and drawbacks of such review mechanisms and considering alternative options, such as an independent advisory or review body.[15] While this Court did conclude in *State v. Henley* that fellow justices cannot require another justice to recuse on a case-by-case basis, it rested this ruling in part on the scope of the Judicial Code.[16] The Court

---

[10] Matthew Menendez & Dorothy Samuels, *Judicial Recusal Reform: Toward Independent Consideration of Disqualification* 15, Brennan Center for Justice (2016), available at https://www.brennancenter.org/media/208/download/Report_Judicial_Recusal_Reform.pdf?inline=1.

[11] Depending on the state, replacements are named by the chief justice, governor, entire court, legislature, or some other mechanism. *Id.* To take one example, when recusals would lead the Florida Supreme Court to lack a quorum, the court replaces justices by appointing the chief judges of the appellate courts on a rotating basis. *See* The Supreme Court of Florida Manual of Internal Operating Procedures X, available at https://flcourts-media.flcourts.gov/content/download/241274/file/02-18-2021-Florida-Supreme-Court-Internal-Operating-Procedures-Manual.pdf.

[12] Wis. Const. art. VII, § 4(3) (emphasis added).

[13] *Id.* art. VII, § 3(1) ("The supreme court shall have superintending and administrative authority over all courts.").

[14] Richard J. Lazarus, *Lessons from the States for Promoting Procedural Regularity in U.S. Supreme Court Justice Recusals*, 111 Iowa L. Rev. 895, 921 (2026); Menendez & Samuels, *supra* note 10, at 10.

[15] *See* Menendez & Samuels, *supra* note 10, at 10 (discussing review mechanisms); Lazarus, *supra* note 14, at 922–23 (discussing avenues for justices to solicit input from others when making recusal decisions). The Court could consider, for example, whether to strengthen the role of the Judicial Conduct Advisory Committee.

[16] 2011 WI 67, ¶¶ 21–23.

may therefore be able to incorporate additional procedures into the Judicial Code. At this time, we express no view on whether such a change would indeed be warranted.

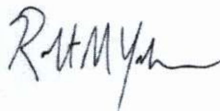
Given the importance and complexity of recusal process questions like these, we believe it would be appropriate for the Court to facilitate further study before changing the rules (at least beyond the subset of petitioners' proposed revisions that we discussed in Part I). Forming a committee to conduct research, consider a range of perspectives, and make recommendations would be one path forward. In addition to exploring potential process reforms, a committee could consider how best to calibrate rules for recusal based on campaign contributions and independent expenditures. After all, these process and substance issues are intertwined: a standard that could prompt new campaign finance-related recusals might be more justifiable if a substitution mechanism were in place.

There is precedent for using such a committee. In 2003, for example, the Court appointed a committee to consider rules for redistricting litigation. In 2010, it appointed a committee to review and provide recommendations on the Court's rulemaking process. The work of the 2003 committee dragged on for years; the 2010 committee, in contrast, produced its report and recommendations in less than a year. We would encourage the Court to stick to a timeline akin to the latter rather than the former.

* * *

In sum, we support adopting recusal reforms designed to ensure impartial adjudications and enhance public confidence in Wisconsin's courts. We see some of petitioners' proposals as a step in the right direction, but we worry that others—specifically, the proposed changes to the first paragraph of SCR 60.04(4), some of the language in proposed 60.04(4)(h) and (i), and proposed paragraph 60.04(5)(c)—might do more harm than good. We also believe it is vital to consider recusal process questions, such as judicial substitution, that the petition does not address. Accordingly, we respectfully suggest undertaking further study and developing carefully crafted alternative recommendations, potentially forming a committee to spearhead this work.

Respectfully submitted,



Miriam Seifter

Richard E. Johnson Bascom Professor of Law
H.I. Romnes Fellow
Faculty Co-Director, State Democracy Research Initiative
University of Wisconsin Law School
miriam.seifter@wisc.edu

Robert Yablon

Professor of Law
Rowe Faculty Fellow in Regulatory Law
Faculty Co-Director, State Democracy Research Initiative
University of Wisconsin Law School
robert.yablon@wisc.edu