

Recusal Testimony to Joint Legislative Committee on Judicial
Discipline and Recusal
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I want to begin my remarks by explaining why the LWV petitioned the court. As you probably know, the League of Women Voters is America's premier grassroots citizen organization. It was formally organized in February 1920 six months before the 19th amendment to the Constitution was ratified which gave women the right to vote following a 57 year struggle. The League is a nonpartisan political organization that encourages informed and active participation in government, works to increase understanding of major public policy issues and influences public policy through education and advocacy. Since our founding we have helped millions of American citizens to become informed participants in government. So it is in keeping with our long history that we petitioned the court to enact recusal rules following the US Supreme Court's Caperton decision and the awareness that Wisconsin had no meaningful ones.

The judiciary is one of the oldest institutions in our society and is a foundation on which it was established. Therefore, it is very important that citizens have confidence in it. As Justice O'Connor has said "the legitimacy of the judicial branch rests entirely on its promise to be fair and impartial." If the public loses faith in the integrity of the courts it will be a very bad situation. Clearly in recent years in several venues questions have been raised about the large number of wrongful convictions that have occurred as we have seen a significant number of people being granted their freedom sometimes after decades of imprisonment. These cases reflected very badly on the judicial system and I would say at present it is not generally viewed in a positive manner. Here we witness many Supreme Court decisions being made on a 4-3 basis and the decisions often have the same justices voting together. Also, the fact that our Supreme Court has refused to establish

any meaningful recusal rules adds to the public's negative view of the system.

I have read Justice Roggensack's testimony before this committee and it would appear that she is claiming that her concern about recusal rules is really a concern about a citizen's right to vote. I found her arguments difficult to comprehend. It is my opinion that when a citizen votes for a judge the vote is based on two issues: the competency of the candidate and that the candidate would act with integrity. No one knows when voting for anyone what issues might arise that would have been unknown or even unimaginable at the time of voting. The assumption would be to trust the elected official to act with fairness and integrity. However, I do not believe most reasonable people would consider it a reflection of integrity if they were to appear before a judge and knew an opposing party had contributed a significant amount to the election campaign of that judge who continued to preside.

We think it is very important for this committee to amend or add to Wisconsin statutes the following:

1. An objective standard for determining when a judge's impartiality can reasonably be questioned. The present code is entirely a subjective one. In our petition we set a dollar amount that could be used. However, we fully understand that amount may need to be different than the one we proposed. There are models from other states that can be used in establishing the amount. Again perception is critical. In the Caperton decision there had been a contribution of three million dollars. Most members of the public think in terms of their own finances and even several thousand dollars can seem unreasonable.
2. The standard should not leave it up to the judge being targeted whether or not to recuse him or herself. If a judge denies a request for recusal the rule should have the final decision made by another judge or perhaps a panel retired judges and with a system in place to provide a quick review.

3. In order for the public to have faith in the judicial system much more transparency is needed in this state. It is our belief that when a judge is asked to recuse him or herself and refuses, that judge should be required to put in writing the reasons for the refusal. Certainly this is very important in a state where we elect judges as it would give voters valuable information on how judges reach a decision when their impartiality is challenged.

In conclusion I would like the record to show that the LWVWI has always supported the election of judges. Additionally, on the issue of transparency we try to practice what we preach. Our 990 tax form is included on our website and that includes any large donors that we have as required by law. It would be nice if there were more of them.

This issue is both complicated and extremely important. In state after state there is evidence that for the courts to establish the rules has been almost impossible. Self regulation has often been a failure where entities are supposed to act in the public interest. That is why we welcome this committee and hope that its deliberations will result in decisions that will strengthen the judicial system in our state and restore the public's faith in it.