

STATE OF WISCONSIN

IN THE SUPREME COURT

**In re creation of rules for recusal when
a party or a lawyer in a case made
contribution affecting a judicial campaign**

**AMENDED
PETITION**

08-16

Petitioner, The League of Women Voters of Wisconsin Education Fund (hereafter referred to as "The League") has petitioned the Wisconsin Supreme Court to create Supreme Court Rule 60.01 (5m), (10e), (10g), (10k), and (10m) and 60.04 (4) (g) and (6) under the Court's rulemaking authority under section 751.12 of the statutes and its administrative authority over all courts conferred by Article VII, §3 of the Wisconsin Constitution. In light of the U.S. Supreme Court's recent decision in *Caperton v. A.T. Massey Coal Co., Inc.* and developments across the country related to recusal rules and standards, The League submits this Amended Petition.

The League asks the Court to adopt rules for recusal when a party in an action or the lawyer or law firm in an action has previously made a campaign contribution to or spent money on a media campaign relating to a judicial election for a judge who is presiding in the case. The League is a nonpartisan political organization which encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. Based on our position supporting a system of justice which assures adults and juveniles prompt and equal treatment before the law, we believe it is necessary to have rules for recusal which remove any perception that injustices and judges are beholden to those who contribute to their campaigns. People who go before a judge should be able to trust that the judge is a fair and impartial decision maker.

In April 2008, the Brennan Center for Justice issued a report describing the threats to the impartiality of state courts due to the growing influence of money in judicial elections. In 2002, U.S.

Supreme Court Justice Anthony Kennedy wrote in *Republican Party of Minnesota v. White* that in response to dynamics perceived to threaten the impartiality of the courts, states “may adopt recusal standards more rigorous than due process requires, and censure judges who violate these standards.”

Rules for recusal relating to campaign contributions are intended to remove any perception that large donors and others who spend money to influence campaigns exercise an undue influence on court decisions. The rules will help maintain public confidence that judges are fair and impartial in the Wisconsin tradition. The petition sets forth a proposal for recusal which ensures that an electoral system that relies on campaign contributions and educational campaigns by interested groups does not erode the Courts’ commitment to a fair judiciary whose decisions are based on the facts of the case and the issues before them.

As the third independent branch of government, the judicial system regulates itself, creating rules and procedures under the

Judicial Code. The League recognizes that the regulation of the judicial system and the activities of judges fall under the jurisdiction of the Supreme Court. Petitioner asks the Court to exercise its authority and amend the Judicial Codes in order to achieve three goals: 1) Create rules for recusal that increase public confidence that campaign contributions will not influence a judge's decisions; 2) Give notice to donors and others who spend money to influence campaigns that their election activities will trigger recusal rules; and 3) Create a procedure which allows the non-contributing party in a case to waive the recusal rules.

The League therefore asks the Court to amend the Judicial Code as follows:

Section 1. 60.01 (5m) of the Supreme Court rules is created to read:

60.01 (5m) "Entity" means an association, company, cooperative, corporation, or partnership organized under chapter 178, 179, 180, 181, 183, 184, 185, or 193 of the statutes.

Section 2. 60.01 (10e) of the Supreme Court rules is created to read:

60.01 (10e) "Mass communication" means a message that is

disseminated by means of one or more communications media, a mass electronic communication, a mass distribution, or a mass telephoning, but not including a bona fide poll conducted for the purpose of objectively identifying or collecting data concerning the attitudes or preferences of electors.

Section 3. 60.01 (10g) of the Supreme Court rules is created to read:

60.01 (10g) "Mass distribution" means the distribution of 50 or more pieces of substantially identical material.

Section 4. 60.01 (10k) of the Supreme Court rules is created to read:

60.01 (10k) "Mass electronic communication" means the transmission of 50 or more substantially identical materials by means of electronic mail or facsimile transmission.

Section 5. 60.01 (10m) of the Supreme Court rules is created to read:

60.01 (10m) "Mass telephoning" means the making of 50 or more telephone calls conveying a substantially identical message.

Section 6. 60.01 (13m) of the Supreme Court rules is created to read:

60.01 (13m) "Organization" means any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial

society or association; historical, military, or veterans organization; labor union; federation; or any other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the constitution and laws of the United States or of this state.

Section 7. 60.04 (4) (g) of the Supreme Court rules is created to read:

60.04 (4) (g) 1. That a party to the proceeding or an attorney or the law firm for a party to the proceeding made a contribution of \$1,000 or more, or multiple contributions totaling \$1,000 or more, within the preceding two years, to support the judge's election to the judge's current or prospective judicial position.

2. That a party to the proceeding or attorney or law firm for a party to the proceeding was an entity or organization, or a member of the board of directors of that entity or organization, that within the preceding two years paid in full or in part for a mass communication that was disseminated in support of the judge's election to the judge's current or prospective judicial position.

3. That a party to the proceeding was an entity or organization, or a member of the board of directors of that entity or organization, that paid in full or in part for a mass communication that was disseminated during the period beginning on the 60th day preceding an election for the judge's current or prospective judicial position and ending on the date of that election, and that includes a reference to the judge or another candidate for that position.

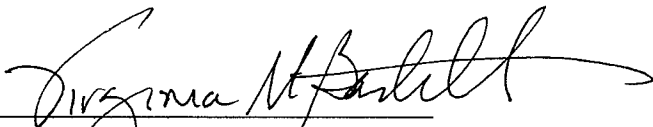
Section 8. 60.04 (6) of the Supreme Court rules is amended to read:

(6) A judge required to recuse himself or herself under sub. (4) may disclose on the record the basis of the judge's recusal and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive recusal. If, following disclosure of any basis for recusal other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be required to recuse himself or herself and the judge is then willing to participate, the judge may participate in the proceeding. If, following disclosure that the basis

for the recusal is under sub. (4) (g), the party who is opposed to the party or the party's attorney or law firm that made a contribution or paid for a mass communication may waive the recusal of the judge and the judge, if willing, may participate in the proceeding. The agreement or waiver shall be incorporated in the record of the proceeding.

Respectfully submitted on the 28th day of July, 2009.

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