



INSTITUTE FOR
REFORMING GOVERNMENT

STRUCTURAL REFORM OF JUDICIAL SELECTION IN WISCONSIN

ABOUT THE INSTITUTE FOR REFORMING GOVERNMENT

The Institute for Reforming Government, along with its partner organization IRG Action Fund, is focused on developing free-market and limited-government reforms, taking action on them, and getting results for Wisconsin. Founded in 2018, IRG has quickly grown into one of the state's largest think tanks, boasting an elite policy team with decades of experience in state and federal government, trade associations, and statewide campaigns. Most importantly, IRG gets results for the conservative movement in Wisconsin.

ABOUT THE AUTHORS



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Jake brings a unique skill set to IRG by drawing on his years of experience as a lawyer, strategic advisor, and public official to navigate the intersection of law and policy. Throughout his career he has focused on government relations matters for both public and private sector clients, representing dozens of local units of government and handling administrative matters before WERC, DWD, ETF, DNR, DFI, DATCP and DPI.

Jake's diverse legal experiences have included practicing over a decade in private practice, including at two of Wisconsin's largest firms, serving as the Chief Legal Counsel at the Wisconsin Department of Natural Resources under Governor Scott Walker, as a policy advisor to a Wisconsin State Senator, and leading a groundbreaking litigation initiative at the Wisconsin Institute for Law & Liberty.

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INTRODUCTION

Judicial elections today are hard-fought affairs. The 2008 contest between Justice Louis Butler and challenger Mike Gableman permanently transformed the judicial landscape. With the sole exception of the 2017 non-race for reelection for Justice Annette Ziegler, every race since then has been contested. Most races—Justice David Prosser in 2011; Justice Rebecca G. Bradley in 2016; Justice Rebecca Dallet in 2018; Justice Brian Hagedorn in 2019; Justice Jill Karofsky in 2020; Justice Janet Protasiewicz in 2023; and now Justice Susan Crawford in 2025—were vigorously contested. The idea that an incumbent justice will slide to reelection as long as they don't let the Brewers leave the state is over (before Butler lost in 2008, the last incumbent booted was Chief Justice George R. Currie in 1967, who was part of a controversial majority opinion that allowed the Braves to leave Milwaukee). The hot races for Justices Prosser and Rebecca Bradley and the 2020 loss of gubernatorial appointee Justice Daniel Kelly prove that the era of automatic incumbent wins is definitively over.

The April 2025 election set a record for spending on a judicial election in Wisconsin: over \$100 million. The race was ugly, divisive, confusing, and in so many ways, *not judicial*, not appropriate to the dignity and seriousness of the judicial office. Both sides fed into the nationalization of the race, in an era where “all politics is national,” to turn out their base.

The question now is whether we want to continue to live in this new era of hard-fought races or whether this new way of doing things within the current system should prompt us to revisit the system as a whole.

There are many on the center-right who have defended judicial elections as the ultimate form of accountability. There are many valid arguments in favor of judicial elections, and several of the proposals we offered below would reform and improve but not eliminate judicial elections. And we are ardently opposed to a so-called Missouri Plan or “merit selection” system that would totally remove accountability and place judicial selection in the hands of a small number of state bar insiders.

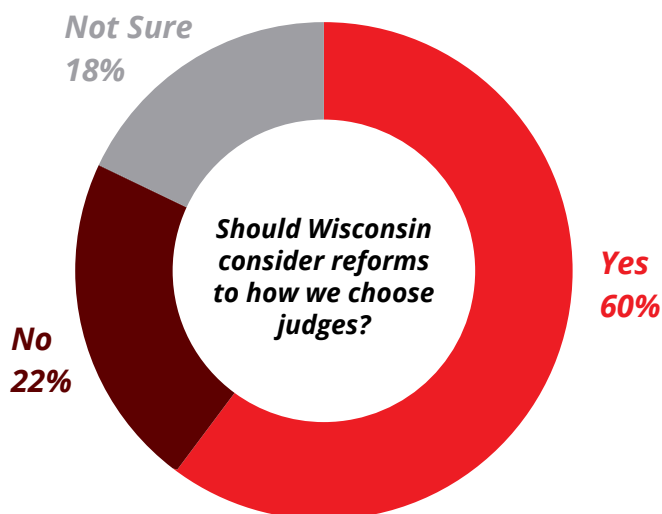
But we think it's important as conservatives to have the conversation whether our state's current electoral system is so broken that a move to the federal model (another idea offered below) may make sense. Frankly, since Justice Protasiewicz's decision to transparently transmit her intended outcomes in cases during her 2023 race, the ethical cat is out of the proverbial bag and likely will never come back for a winning candidate—it's impossible to win if one side will bend ethical rules to motivate its voters and the other side stands firm on principle and consistently gets crushed. To briefly apply game theory, the incentives now are for both sides to push as far as possible against traditional limits on judicial candidates talking about political issues and outcomes, such that fundamental reform is the only way to return to a more ethics-oriented status quo.

With the electorate, the bench, and the bar largely fed up with how we elect judges, it is time for Wisconsin to consider serious structural reforms to our state's highest court. The last time such an effort was undertaken, a bipartisan panel from the Wisconsin State Bar in 2013 [recommended](#) a single 16-year term of office, which would relieve from political pressure as potential candidates for reelection. In other words, justices could afford to disappoint their most partisan supporters and donors if a law or legal principle required them to do so without fearing that those supporters would then desert them at their reelection.

POLLING

The people of Wisconsin are fed up with judicial elections as-is and ready for this conversation about structural reform. They see the attack ads and they understand that the current way of doing things is in tension with our longstanding commitment to judicial independence and integrity. The Institute for Reforming Government, in partnership with Scott Rasmussen's Napolitan News Service, conducted polling in the immediate aftermath of the April 2025 Crawford-Schimmel race. That survey shows an openness to reforms that protect the public's role in judicial selection but reforms the status quo.

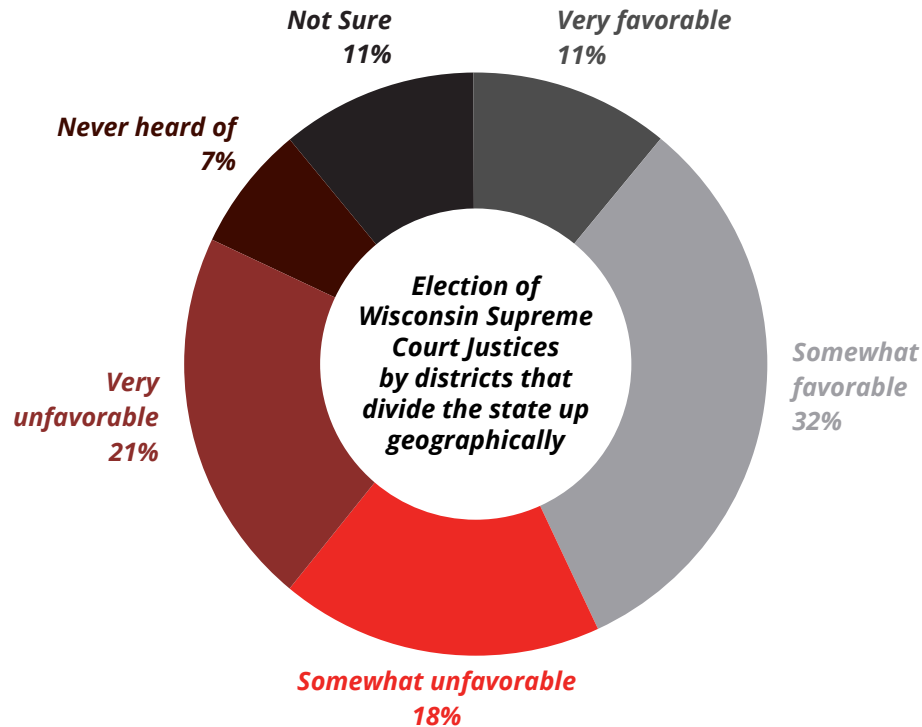
Wisconsin's constitution requires that judges should be elected. The last two elections for the Wisconsin Supreme Court turned into political fights, and spending exceeded \$100 million in the last election.



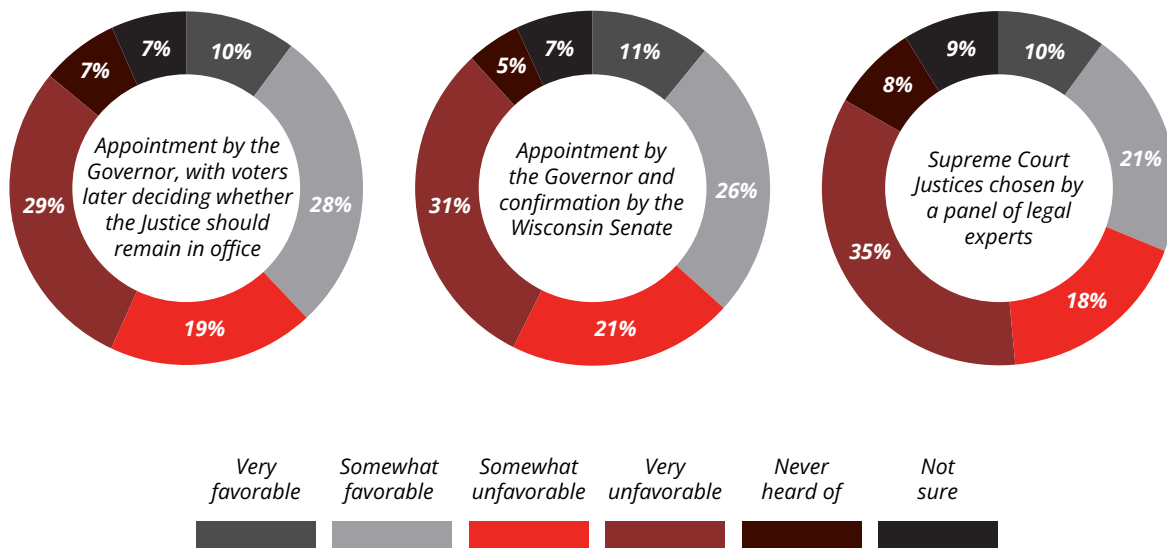
Proposals have been made that Wisconsin Supreme Court justices would no longer be elected statewide. Do you have a favorable or an unfavorable opinion of each of the following alternatives?

	Favorable	Unfavorable	Net
Election of Wisconsin Supreme Court Justices by districts that divide the state up geographically	43%	39%	+4
Appointment by the Governor, with voters later deciding whether the Justice should remain in office	38%	48%	-10
Appointment by the Governor and confirmation by the Wisconsin Senate	37%	52%	-15
Supreme Court Justices chosen by a panel of legal experts	31%	53%	-22

Source: Napolitan News Service



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Methodology: This survey of 800 Registered Voters was conducted online by Scott Rasmussen on April 8–14, 2025. Field work for the survey was conducted by RMG Research, Inc. Certain quotas were applied, and the sample was lightly weighted by geography, gender, age, race, education, internet usage, and political party to reasonably reflect the population of Registered Voters. Other variables were reviewed to ensure that the final sample is representative of that population. The margin of sampling error for the full sample is +/- 3.5 percentage points.

As this polling shows, the people of Wisconsin are open to change, but it will still take thoughtful engagement from policymakers followed by convincing explanations to get them to amend the constitution. This paper lays out a multitude of opinions that policymakers should consider. Some are comprehensive fixes, like moving to the federal model. Others are less drastic steps that can be done separately or in conjunction with one another. All deserve thoughtful debate as we focus on restoring integrity to judicial selection.

1. REALIGN THE CHIEF JUSTICE ELECTION

When the amendment restructuring the chief justice position was first [adopted](#) in April 2015, the Court chose to act promptly to end the Abrahamson regime. The majority acted under the new amendment as soon as the Elections Commission certified the statewide result. The effect of that choice is that the Chief Justiceship [changes](#) over on May 1 while the Court's overall term runs through June 30. That system also means that justices who are retiring get to pick the chief for the next two years even though they will no longer be on the bench for the vast majority of that time. For instance, retiring liberal justice Ann Walsh Bradley voted for a new chief in April to start May 1. If conservative candidate Brad Schimel had won the race for Bradley's open seat, he would not have taken office until August 1. As a result, the court would have had a conservative majority but a liberal chief justice for 22 months. That defeats the purpose of the amendment, which was to encourage greater cohesion on the court by aligning the chief position to the Court's jurisprudential makeup. Changing the election date for the chief justice could be accomplished through the Court's own internal operating procedures or legislation amending the Court's rules.

2. END THE PASS-THRU LOOPHOLE FOR POLITICAL PARTIES

Up until a decade ago, state political parties were treated like any other committee with a hard-and-fast contribution limit to candidates. Campaign finance [reforms](#) changed the law to allow parties to make unlimited transfers to candidates so they could fully support their nominees, which makes sense and protects the parties' First Amendment rights.

Judicial candidates, however, are not nominees of political parties. They run in nonpartisan races. The open-ended transfer rule incentivizes a financial partnership between nonpartisan judges and party committees like never before. Now, a candidate for justice needs the support of a political party in order to run a financially viable campaign; other than total self-funding, it's almost impossible for an independent or unaligned candidate to run and win separate from a party.

Legislation closing this loophole will restore the intent of the non-partisan judicial office. It will also reduce recusal issues as justices continue to hear and decide cases presenting politically sensitive topics like redistricting, where the parties that fund them have an obvious interest in the outcome.

3. ELECT THE JUSTICES REGIONALLY

With the election of Justice Susan Crawford, no justice on the Wisconsin Supreme Court lives north of West Bend. Five of the seven justices come from Milwaukee and Dane Counties, and the other two are from Washington and Waukesha. This geographic tilt is made more likely by our statewide election system, where the donors, news media, and voters are concentrated in the Milwaukee and Madison regions. Though it's not impossible for a candidate from elsewhere to get on the high court, it's certainly more difficult.

Illinois has the same issue to an even greater degree because of Chicagoland—Cook County and the Chicago media market will dominate any statewide election, such that candidates from any other part of the state would face an incredibly uphill battle against the Chicago candidate. To combat that issue, the Illinois Constitution [divides the state](#) into five judicial districts. Three justices are elected from Cook County, and one each from the other four districts. Two of these districts cover greater Chicagoland outside Cook County and two cover the rural areas of the state. This guarantees that the three Cook County justices can never decide a case without the vote of at least one justice from another part of the state. It also means that the Republican-leaning rural areas of the state are guaranteed at least two justices, and the court's ideological majority usually depends on the two suburban districts.

Wisconsin follows a similar principle with its own University of Wisconsin Board of Regents, where the law requires the governor to make nominations that incorporate all congressional districts to ensure geographic and cultural diversity.

Regionalized elections could also change the amount of spending on elections. Though campaign spending is not bad in and of itself (indeed, it is an exercise in First Amendment speech), it can result in voter fatigue, frustration, and confusion. Moving to regionalized elections could reduce the amount of money spent on any individual race by reducing the size of the electorate for that race to the specific region electing that cycle. Wisconsin could redesign the electoral process for the court to have regionalized seats, with seven districts roughly corresponding to the state's eight congressional districts (or the state's seven seats as are likely following the 2030 census).

4. MOVE TO PARTISAN JUDICIAL ELECTIONS

Michigan, Illinois, Texas, and many other states elect judges with an R or D after their names. North Carolina moved to partisan judicial elections in 2016.

Voters understand D judges will often protect abortion, consumers, and the environment. Voters understand R judges will often be pro-life, pro-gun, and pro-cop. It reduces the guesswork for voters and dampens the voter confusion that happens when both candidates run as "tough on crime" and accuse the other of being "soft on crime" (or independent expenditure groups run ads muddying the water in that way).

Moving to partisan judicial elections (whether for all judges or just appellate judges) would provide the voters with the information most relevant to them as they step into the voting booth. This may also mean moving some or all judicial elections to the fall ballot, though this could be complicated in odd-numbered years.

5. MOVE THE PRESIDENTIAL PRIMARY OFF THE APRIL ELECTION DAY

Yes, it saves the state significant dollars to align Wisconsin's presidential primary to the preexisting April election day. But it has wildly distortionate effects on the state Supreme Court races that fall in presidential years.

Rebecca Bradley in 2016 won with a slight advantage from a continuing Republican presidential primary between Donald Trump, Ted Cruz, and John Kasich. Many believe Bernie Sanders extended his campaign beyond its viable life simply to present the charade of a primary to help JoAnne Kloppenburg.

There is no doubt that Jill Karofsky benefited from the 2020 presidential cycle, with an open Democratic primary between Joe Biden and Bernie Sanders and a predetermined Republican primary with incumbent Donald Trump giving her an edge over former justice Dan Kelly.

Though it would be costly to hold a separate statewide primary for president, it would reduce the significant swings in voter turnout and present a more balanced and accurate electorate for the state Supreme Court. This could be accomplished by legislation.

6. REINVIGORATE JUDICIAL ETHICS ENFORCEMENT

The First Amendment to the U.S. Constitution protects free speech, including free speech by judicial candidates. The U.S. Supreme Court in *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), limited the extent to which states can regulate speech by judicial candidates. The U.S. Court of Appeals for the Seventh Circuit (the regional federal appeals court which covers Wisconsin) reached a similar decision applied to Illinois in *Buckley v. Illinois Judicial Inquiry Board*, 997 F. 2d 224 (7th Cir. 1993).

However, Wisconsin still has rules on the books to regulate judicial elections (found in SCR Chapter 60). Those rules were raised in both the Gableman and Protasiewicz elections. Though the Judicial Commission did not achieve a majority in either case to impose discipline, the Commission or Judicial Conduct Advisory Committee could issue a public finding or opinion that reinvigorates appropriate safeguards against judicial candidates making outcomes-oriented promises on the campaign trail.

Alternatively, the Legislature or Supreme Court could revisit the structure of the Judicial Commission, which currently asks appointees of the Supreme Court to police the members of the Court and their ideological allies and opponents on the lower courts.

7. MOVE TO THE FOUNDING FATHERS' MODEL

A final option is to amend the state constitution to reflect the federal model of appointment: the governor appoints subject to Senate confirmation. Local communities can continue to elect circuit court judges, but the state Supreme Court (and potentially the intermediate Court of Appeals) would become appointed.

This could have several beneficial effects: it could reduce the politicization and partisanization of the judiciary; it could improve the quality of the bench, as justices are selected based on merit not on electability; it could improve the quality of the bench as persons unwilling to endure the brutality of a campaign would accept appointment; and it could prompt more moderate, mainstream justices with a Senate check on the governor rather than an emphasis on driving partisan turnout with the most ideologically motivating candidate and positions.

Such a reform could also be combined with a meaningful limit of either a single sixteen-year term or two ten-year terms (with the governor making the decision on reappointment). Even retaining the current unlimited ten-year terms would also ensure regular rotations as each governor is given the opportunity once or twice per term to appoint (or reappoint) a justice.

Kansas and Tennessee adopted reforms along these lines in 2013 and 2014, respectively. Kansas included a provision that a nominee is confirmed by default if the Senate fails to act promptly on a confirmation vote to prevent partisan gamesmanship.

CONCLUSION

There will always be politics in judicial selection—no system can totally eliminate the politics because judges are not interchangeable robots. We do not simply ask who had the best GPA in law school or who has won the most jury trials. Different lawyers view the role of judge differently, and those questions of jurisprudential philosophy have far more real-world impact than whether a judge went to Harvard or made partner at a big firm.

The question, then, is what structure of judicial selection best serves the state? We have relied on elections since 1848. Other states do it differently; America is a true laboratory of democracy when it comes to judicial selection. There are ways to modify the current electoral regime to maintain elections while reducing frustration factors present under the current system. Alternatively, a full-scale constitutional amendment could embrace a different model entirely that shifts the politics into the gubernatorial and legislative context, away from the direct involvement of the courts themselves. These are important conversations to have, as no one seems content with the new status quo.



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