No.2026AP1168

In the Supreme Court of Wisconsin

ELIZABETH BOTHFELD, JO ELLEN BURKE, MARY COLLINS, CHARLENE GAEBLER-UHING, KATHLEEN GILMORE, PAUL HAYES, SALLY HUCK, THOMAS KLOOSTERBOER, ELIZABETH LUDEMAN, GREGORY ST. ONGE, *and* LINDA WEAVER,

PLAINTIFFS-APPELLANTS,

v.

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, ANN S. JACOBS, DON M. MILLIS, ROBERT F. SPINDELL, JR., CARRIE RIEPL, MARK L. THOMPSON *and* MEAGAN WOLFE,

DEFENDANTS-RESPONDENTS,

GLENN GROTHMAN, BRYAN STEIL, TOM TIFFANY, SCOTT FITZGERALD, DERRICK VAN ORDEN, TONY WIED, GREGORY HUTCHESON, PATRICK KELLER, PATRICK MCCALVY, MIKE MOELLER, WISCONSIN STATE LEGISLATURE, BILLIE JOHNSON, CHRIS GOEBEL, AARON GUENTHER, CHARLES HANNA, TIM HIGGINS, LOU KOWIESKI, CHRIS MULLER, ERIC O'KEEFE, CRAIG ROSAND, RUTH STRECK, *and* RONALD ZAHN,

INTERVENORS-DEFENDANTS-RESPONDENTS.

On Appeal From The Dane County Circuit Court,
The Honorable Julie Genovese, Mark Sanders,
and Emily Lonergan, Presiding
Case No.2025CV2432

MOTION OF INTERVENORS-DEFENDANTS-RESPONDENTS CONGRESSMEN GLENN GROTHMAN, BRYAN STEIL, TOM TIFFANY, SCOTT FITZGERALD, DERRICK VAN ORDEN, AND TONY WIED, AND INDIVIDUAL VOTERS GREGORY HUTCHESON, PATRICK KELLER, PATRICK MCCALVY, AND MIKE MOELLER TO RECUSE JUSTICE SUSAN M. CRAWFORD

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INTRODUCTION[1]

Due-process principles can require judges to recuse themselves in the face of the conduct of major donors taking extraordinary actions to influence the outcome of particular disputes. Such a situation arose in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), where the CEO of a coal company donated millions of dollars to a state supreme court justice's campaign while that court was poised to hear an appeal of a large verdict against the company. *Id.* at 873–74. An analogous factual circumstance has, unfortunately, arisen here. Top donors to then-

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[1] The Congressmen and Individual Voters have also moved for Justice Crawford's recusal in *Wisconsin Business Leaders for Democracy ("WBLD") v. Wisconsin Elections Commission ("WEC")*, No.2026AP1008 (Wis. Aug. 6, 2026), which similarly involves a challenge to Wisconsin's congressional map adopted by this Court. Given the similarity between these two cases, the Congressmen and Individual Voters submit here substantially the same Motion to Recuse, except for limited changes reflecting the differences between the two cases.

This Motion is also nearly identical to the Motion to Recuse Justice Crawford that the Congressmen and Individual Voters filed at the panel-appointment stage of this case, *see* Proposed Mot. of Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, and Tony Wied, and Individual Voters Gregory Hutcheson, Patrick Keller, Patrick McCalvy, and Mike Moeller to Recuse Justice Susan M. Crawford, *Bothfeld v. WEC*, No.2025XX1438 (Wis. Oct. 9, 2025), which Justice Crawford denied, R.56. The Congressmen and Individual Voters file this separate Motion out of an abundance of caution to ensure that there can be no dispute that the issue of Justice Crawford's recusal is preserved for any future appeal to the U.S. Supreme Court. The Congressmen and Individual Voters make clear that their present Motion necessarily includes a request that Justice Crawford overturn any aspects of her denial of their prior recusal motion when this case last came before this Court in the miscellaneous matter, for all the reasons articulated in this Motion.

Judge Susan M. Crawford's campaign held a fundraiser that specifically promised donors that electing then-Judge Crawford "could [ ] result in Democrats being able to win two additional US House seats, half the seats needed to win control of the House in 2026." App.26–32.[2] The Democratic Party—propelled by the fundraising efforts of party-aligned groups seeking to flip congressional seats in favor of Democrats by winning state supreme court races—went on to become one of then-Judge Crawford's largest donors, contributing over $10 million to her campaign and accounting for nearly a third of her total campaign spending.

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While the undersigned appreciate that Justice Crawford has not made the type of statements prejudging this case that have, unfortunately, marred recent campaigns in our State, *see* Mot. Of Intervenors-Defendants-Respondents Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, And Tony Wied, And Individual Voters Gregory Hutcheson, Patrick Keller, Patrick McCalvy, And Mike Moeller To Recuse Justice Janet C. Protasiewicz, *Bothfeld v. WEC*,

[2] Citations of "App." refer to the Appendix that the Congressmen and Individual Voters have filed to support this Motion.

No.2026AP1168 (Wis. Aug. 20, 2026), it is indisputable that the public perception that arose from this highly unusual fundraiser, combined with the vast sums given to Justice Crawford's campaign by politically aligned parties, has created just the perception that the U.S. Supreme Court in *Caperton* found dispositive. Given that this case seeks to fulfill the very purpose for which these donors promoted and fundraised for Justice Crawford's candidacy—obtaining additional congressional seats for the Democratic Party—due-process principles require recusal.[3]

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BACKGROUND

A. In 2011, the Legislature and Governor undertook a "bipartisan process" to craft and adopt Wisconsin's congressional lines. *Baldus v. Members of Wis. Gov't Accountability Bd.*, 849 F. Supp. 2d 840, 853–54 (E.D. Wis. 2012) (per curiam); *Johnson v.*

[3] In Justice Crawford's August 20, 2026 Order denying recusal in *WBLD*, Justice Crawford faulted the Congressmen and Individual Voters for "ignor[ing] and disregard[ing] relevant factual clarifications [she] provided in [her] previous order" denying the prior recusal motion at the panel-appointment stage. Aug. 20, 2026 Order at 1, *WBLD v. WEC*, No.2026AP1008 (Wis.). The Congressmen and Individual Voters did not intend to ignore or disregard Justice Crawford's prior decision denying their recusal motion, which they respect and understand that Justice Crawford continues to abide by. Instead, as the Congressmen and Individual Voters made clear in their cover letter to their renewed motion in *WBLD* and in the present Motion, they are only renewing their recusal motion to ensure that the due-process arguments that they made at the panel-appointment stage are fully preserved for any review before the U.S. Supreme Court.

WEC, 2021 WI 87, ¶ 4, 399 Wis. 2d 623, 967 N.W.2d 469 (*"Johnson I"*) (citing *Baldus v. Members of Wis. Gov't Accountability Bd.*, 862 F. Supp. 2d 860, 863 (E.D. Wis. 2012)). By 2021, changes in the geographic distribution of Wisconsin's population required modifications to the lines to ensure population equality between the districts. *Johnson I*, 2021 WI 87, ¶ 2. When the political branches deadlocked, this Court confronted the "unwelcome task" of "redraw[ing] the boundaries" through an exercise of its original jurisdiction in *Johnson*. *Johnson v. WEC*, 2022 WI 14, ¶¶ 1–2, 400 Wis. 2d 626, 971 N.W.2d 402 ("*Johnson II*"). Certain of the Congressmen here and various individual voters intervened in *Johnson* to protect their interests in the contours of these new lines. *See* App.2–4. Ultimately, in *Johnson II*, this Court adopted the congressional districting map that Governor Evers proposed. *See* 2022 WI 14, ¶¶ 7, 25. The Court's decision adopting the *Johnson II* congressional map found that it "compl[ies] with all relevant state and federal laws," 2022 WI 14, ¶ 25—a conclusion that no inferior court in Wisconsin has the authority to second-guess.

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B. Following this Court's adoption of the *Johnson II* map, each of the Congressmen here was elected or reelected to represent

his respective congressional district, as drawn in that map. App.56–73. Further, most of the Congressmen intend to seek reelection under the *Johnson II* map in the upcoming 2026 election. App.56–73.[4] The Individual Voters devoted significant time and resources supporting and campaigning for the Congressmen in the 2024 election, and they intend to do the same in the 2026 election cycle. App.74–85.

C. In 2024, Justice Ann Walsh Bradley announced that she would not seek re-election, creating an open seat on this Court. App.5–6. By June 10, 2024, then-Judge Crawford announced that she would run for the open seat to replace Justice Ann Walsh Bradley. App.7–8.

On January 13, 2025, Focus For Democracy hosted a "donor advisors briefing" fundraising event for then-Judge Crawford. App.26–32; *see* App.9–17. Focus For Democracy is a Democratic-Party-aligned non-profit organization that had previously provided targeted advertising services that were "crucial" to Justice Protasiewicz's election. App.49–51. Around the same time

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[4] Representative Tiffany is running for Governor for the upcoming 2026 election. Representative Tiffany maintains a significant interest in the boundaries of the district he represents for the duration of his current term in Congress.

as Focus For Democracy's January 2025 donor advisors briefing, then-Judge Crawford's campaign had already received a reported $1 million from the Wisconsin Democratic Party. App.20–25; *see* App.32.

Focus For Democracy framed its donor advisors briefing and then-Judge Crawford's campaign as the means to alter Wisconsin's congressional map to favor the Democratic Party. App.20–25; App.32. The publicly disseminated invitation for the donor advisors briefing advised recipients that "one of the judges who make up the pro-democracy majority is retiring, putting control of the WI Supreme Court up for grabs again." App.26–32. The invitation then stated that then-Judge Crawford's campaign was a "[c]hance to put two more House seats in play for 2026." App.26–32. The invitation concluded that then-Judge Crawford "winning this race could [ ] result in Democrats being able to win two additional US House seats, half the seats needed to win control of the House in 2026." App.26–32. Then-Judge Crawford attended Focus For Democracy's donor advisors briefing. App.9–17.

Just a few weeks later, Eric Holder—a former United States Attorney General and the Chairman of the National Democratic Redistricting Committee—endorsed then-Judge Crawford and

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personally campaigned for her in the State. App.18–19. The National Democratic Redistricting Committee is a Democratic-Party aligned political campaigning and fundraising organization focused on redistricting. App.52–55. In particular, the National Democratic Redistricting Committee targets state supreme court races because "State Supreme Courts have the power to . . . overturn redistricting plans," App.52–55, and it cites the "elect[ion of] Democratic candidates" as one of its "primary goals," App.41–43. As relevant here, the National Democratic Redistricting Committee has described Wisconsin as having "an egregiously gerrymandered congressional map"—*i.e.*, this Court's *Johnson II* map—"that has not accurately reflected the competitive nature of [Wisconsin's] purple state for over a decade." App.40.

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Following Focus For Democracy's donor advisors briefing, and in large part due to the efforts of Democratic-Party aligned organizations like the National Democratic Redistricting Committee, Justice Crawford's campaign continued to receive millions from the Democratic Party in the months leading up to her election. In all, the Democratic Party of Wisconsin gave Justice Crawford a total of "more than $10 million for her

campaign," just under one-third of the spending on her campaign. App.33–39.

After Justice Crawford won election to this Court on April 1, 2025, with roughly 55% of the vote, *see* WEC, *WEC Canvass Reporting System: Canvass Results for 2025 Spring Election – 4/1/2025 5:00:00 AM*,[5] the National Democratic Redistricting Committee claimed that its "most recent[ ]" "electoral success" was Justice Crawford's victory "in the 2025 Wisconsin Supreme Court election," App.41–43. Justice Crawford was sworn in on August 1, 2025. App.47–48; App.44–46.

D. On July 21, 2025, Plaintiffs filed a complaint in Dane County Circuit Court challenging the *Johnson II* map under the same partisan gerrymandering theory that they had previously raised against the *Johnson II* map in an unsuccessful original-action petition to this Court. *See* R.9 ¶¶ 76–97 (hereinafter "Compl."); App.86–119. Thus, Plaintiffs' Complaint alleges that the *Johnson II* congressional map adopted by this Court constitutes an "unlawful partisan gerrymander" under the

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[5] Available at https://elections.wi.gov/sites/default/files/documents/April%201%202025%20Spring%20Election_Summary%20Results_0.pdf (all webpages last accessed on Aug. 20, 2026).

Wisconsin Constitution, *see* Compl. ¶¶ 83–97 (citation modified), that must be cast aside because it "disadvantages voters based on their political views and partisan affiliation," *id.* ¶ 1. Specifically, Plaintiffs claim the *Johnson II* congressional map "systematically disfavor[s] Democrats because they are Democrats," "condemn[ing]" them "to permanent minority status in the state's congressional delegation." *Id.* ¶¶ 1–2. The Complaint also claims that *Johnson II*'s utilization of the "least change" approach as a remedy for congressional redistricting violated the separation of powers, *see id.* ¶¶ 76–82, as the Wisconsin Constitution requires the Court to engage in a remedial map-drawing process that does "not 'ignore partisan impact'" and "consideration[s] of [partisan] fairness," *id.* ¶¶ 49–50 (citations omitted). Plaintiffs also asked this Court to appoint a three-judge panel of circuit-court judges under Wis. Stat. § 801.50(4m) and Wis. Stat. § 751.035(1) to adjudicate their constitutional challenges to the *Johnson II* map. Compl. at 5. Plaintiffs requested that the panel, if appointed, invalidate that map and "[p]rescribe procedures for the adoption" of a new congressional map before the 2026 congressional election. *Id.* at 26.

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On July 22, 2025, the Dane County Clerk of Courts sent written notice to this Court of Plaintiffs' Complaint and three-judge-panel request under Wis. Stat. § 801.50(4m) and Wis. Stat. § 751.035(1), and this Court opened a miscellaneous matter. *See* R.49 at 1.

On September 25, 2025, this Court issued an order in the miscellaneous matter directing the parties to file briefs "addressing whether [Plaintiffs'] complaint filed in the circuit court constitutes an action to challenge the apportionment of a congressional or state legislative district under Wis. Stat. § 801.50(4m)." R.49:2 (citation omitted). The Court also provided that the Congressmen and Individual Voters—who had filed nonparty correspondence with the Court shortly after it opened the miscellaneous matter—may "move in th[e] miscellaneous matter for intervention or for leave to participate as amicus curiae." R.49:2. The Congressmen and Individual Voters then intervened in that miscellaneous proceeding and opposed Plaintiffs' request. *See* Proposed Br. Of Proposed Intervenor-Defendants Congressmen Glenn Grothman, Bryan Steil, Tom Tiffany, Scott Fitzgerald, Derrick Van Orden, And Tony Wied, And Individual Voters Gregory Hutcheson, Patrick Keller, Patrick McCalvy, and

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Mike Moeller, Per This Court's September 25, 2025 Order, No.2025XX1438 (Wis. Oct. 9, 2025). The Congressmen and Individual Voters also moved to recuse Justices Crawford and Protasiewicz on the same bases that they invoke in the present motions. The Justices individually denied these motions. R.56; R.57.

On November 26, 2025, this Court appointed a three-judge panel of the Circuit Court ("Panel") under Sections 801.50(4m) and 751.035, while selecting Dane County as the venue. R.58:4–5. In entering that order, the Court explained that Section 801.50(4m) statutorily "required" the Court "to appoint a three-judge panel." R.58:4. Writing separately, Justice Hagedorn emphasized that whether Plaintiffs could obtain their requested relief was not before the Court "at this stage," while also flagging the significant "legal roadblocks" that would need to "be reckoned with" before the Panel could grant the "extraordinary" relief of declaring an "order of this court unconstitutional." R.58:6–7 (Hagedorn, J., concurring).

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E. In the Circuit Court, Plaintiffs moved for judgment on the pleadings on their separation-of-powers argument, R.44, and the Congressmen and Individual Voters moved for dismissal of all of

Plaintiffs' claims, R.145. The Congressmen and Individual Voters, made four arguments as relevant here. First, the Panel could not constitutionally afford Plaintiffs relief because doing so would require an inferior tribunal to declare unlawful this Court's *Johnson II* judgment. R.145:10–17. Second, Plaintiffs' claims were all nonjusticiable political questions under *Johnson I* and, regardless, failed as a matter of law. R.145:17–29. Third, granting Plaintiffs relief would violate the U.S. Constitution's Elections Clause. R.145:29–38. Finally, laches barred Plaintiffs' challenge to the *Johnson II* map. R.145:38–40.

The Panel denied the Motion for Judgment on the Pleadings and granted the Motion To Dismiss, R.158, along with similar motions filed by the *Johnson* Intervenors, R.138, and the Legislature, R.141. Before considering the parties' arguments, the Panel questioned its "scope of authority" in this action, R.158:6–7 (formatting altered), and ultimately determined it was a "circuit court"—as opposed to "an arm of the state supreme court" or a "referee"—with "no endowment of additional powers" or "authority to supersede decisions of th[is Court]," R.158:7.

The Panel then concluded that Plaintiffs failed to show "that they are entitled to judgment as a matter of law" on their

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separation-of-powers claim. R.158:11. Plaintiffs' separation-of-powers theory asked the Panel to "read into *Clarke* an analysis that it does not contain," R.158:11, as *Clarke* neither overruled *Johnson II* nor "reject[ed]" the least-change approach "based on a finding that there was a separation-of-powers violation," R.158:10. As to Plaintiffs' partisan-gerrymandering claims, the Panel determined that such claims are nonjusticiable under this Court's precedent. R.158:16–17.

Plaintiffs appealed, R.159, and filed their Opening Brief. The Congressmen and Individual Voters, simultaneously with the filing of their Response Brief, file this Motion to Recuse Justice Crawford.

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ARGUMENT

I. *Caperton* Requires Justice Crawford To Recuse Under The Federal Due Process Clause

A. Because "justice must satisfy the *appearance* of justice," *In re Murchison*, 349 U.S. 133, 136 (1955) (emphasis added) (citation omitted), the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution requires judges to recuse where "objective and reasonable *perceptions*" reveal a "serious *risk*" of "actual bias or prejudgment," without need to show any

"proof of actual bias," *Caperton*, 556 U.S. at 883–84 (emphases added) (citation omitted). So, the relevant question for purposes of the arguments in this Motion is "whether, as an objective matter . . . there is an unconstitutional *potential* for bias." *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016) (emphasis added) (citation omitted); *see Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 822 (1986). "Recusal is required when, objectively speaking, the *probability* of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Rippo v. Baker*, 580 U.S. 285, 287 (2017) (per curiam) (emphasis added) (citations omitted).

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The U.S. Supreme Court's decision in *Caperton* is the leading modern case in this area of law. There, Mr. Don Blankenship, the CEO of A.T. Massey Coal Company ("Massey"), donated $3 million to the campaign of then-attorney Brent Benjamin for the Supreme Court of Appeals of West Virginia, while that court was expected to hear Massey's appeal of a $50 million verdict against it. *Caperton*, 556 U.S. at 873. "[A]lmost $2.5 million" of Blankenship's donations went to "a political organization" that "supported Benjamin," and Blankenship spent the other "$500,000 on independent expenditures" to support Benjamin, including

"direct mailings and letters soliciting donations as well as television and newspaper advertisements." *Id.* (citation omitted). In total, Blankenship spent more than "all other Benjamin supporters" and "accounted for more than two-thirds of the total funds" that the political organization supporting Benjamin raised. *Id.* Then-attorney Benjamin won the election, *id.*, and the Supreme Court of Appeals of West Virginia ultimately agreed to hear the Massey case, *id.* at 874. The plaintiff who obtained the verdict against Massey moved to disqualify newly elected Justice Benjamin; Justice Benjamin denied recusal; and the Supreme Court of Appeals of West Virginia ultimately ruled in Massey's favor, with Justice Benjamin in the majority. *Id.* at 874–75 (also describing subsequent rehearing proceedings, which also ended in Massey's favor, with Justice Benjamin in the majority).

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On certiorari review, the U.S. Supreme Court reversed, concluding that the confluence of "extreme facts" created "reasonable perceptions" of "a serious risk of actual bias" requiring Justice Benjamin to recuse from the Massey case under the Due Process Clause. *Id.* at 884–87. "[T]he temporal relationship between the campaign contributions, the justice's election, and the pendency of the case" created "a serious, objective risk of actual

bias." *Id.* at 884, 886. Importantly, this conclusion did not rest in any way on a "question[ing]" of Justice Benjamin's "subjective findings of impartiality and propriety," nor on a "determin[ation of] whether there was actual bias." *Id.* at 882.

B. Here, the undersigned respectfully submit that, as in *Caperton*, the Fourteenth Amendment's Due Process Clause requires Justice Crawford's recusal, due to "reasonable perceptions" of bias, *id.* at 884, caused by Focus For Democracy's highly unusual donor advisors briefing, as well as the significant campaign contributions of Democratic Party allies of that group.

In the present case, Plaintiffs asked the Panel to determine whether the *Johnson II* congressional map constitutes an "unlawful partisan gerrymander" under our Constitution, *see* Compl. ¶¶ 83–97 (citation modified), that must be cast aside because it "systematically disfavor[s] Democrats because they are Democrats," "condemn[ing]" them "to permanent minority status in the state's congressional delegation," *id.* ¶¶ 1–2. Thus, Plaintiffs' objective in this litigation is plain from their Complaint: to obtain a new congressional map that is more favorable to the Democratic Party. *See id.* ¶¶ 1–2, 83–97.

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Here, there is an analogous "reasonable perception[ ]" of a "serious risk" of "actual bias or prejudgment" for an "imminent" case as arose in *Caperton*, requiring Justice Crawford's recusal. 556 U.S. at 884–85 (citation omitted). An organization aligned with the Democratic Party hosted a donor advisors briefing that Justice Crawford attended, while openly advertising that Justice Crawford "winning [her] race" "could [ ] result in Democrats being able to win two additional US House seats" in Wisconsin. App.26–32. And Justice Crawford received an overwhelming amount of campaign contributions from the Democratic Party that is allied with this group, totaling over $10 million, *supra* pp.12–13, as well as the support of Democratic-Party aligned groups like the National Democratic Redistricting Committee that publicly target "State Supreme Courts" for their "power to . . . overturn redistricting plans," App.52–55. This situation creates the same reasonable public perception that was present in *Caperton*: an influential sponsor and donor (here, the Democratic Party and its political allies; there, Don Blankenship, the CEO of Massey) exerts "a significant and disproportionate influence" "on the outcome of the [judge's] election" through "campaign efforts" in relation to "a particular case" that the sponsor and donor has "a personal stake

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in," where such a "case was pending or imminent" before the court. 556 U.S. at 884.

Indeed, the situation in this case is arguably *more* "extreme," *id.* at 886–87, than the circumstances in *Caperton*, due to the highly unusual fundraiser specifically advertised in public to secure a particular judicial result. Focus For Democracy's fundraiser was focused on a judicial goal: elect Justice Crawford in order to "win two additional US House seats" in Wisconsin for Democrats. App.26–32. Then, only a matter of months after Justice Crawford's election, Plaintiffs brought this case seeking the very outcome that Justice Crawford's Democratic-Party aligned donors promoted: redrawing Wisconsin's congressional map to give more seats to Democrats. *Supra* pp.13–14. Moreover, the political party that stands to benefit most directly from that outcome—the Democratic Party—spent more than $10 million to elect Justice Crawford. *Supra* pp.12–13. That is more than three times the amount at issue in *Caperton* and was contributed by the most directly benefitted party, as opposed to the officer of the company that stood to benefit most from a favorable verdict in *Caperton*. *See* 556 U.S. at 884.

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Because Plaintiffs' requested relief is *the very same issue* that Focus For Democracy publicly touted in its donor advisors briefing for Justice Crawford and that her Democratic-Party aligned donors campaigned for, *see supra* pp.10–13, the public will, unfortunately, "reasonabl[y] perce[ive]" a "serious risk" of bias here, *see Caperton*, 556 U.S. at 884. And "[t]he temporal relationship between the campaign contributions, the justice's election, and the pendency of the case" further create "a serious, objective risk of actual bias." *Id.* at 886.

Just as the U.S. Supreme Court in *Caperton*, the undersigned here emphasize that the prior analysis does not in any way depend upon a "question[ing]" of Justice Crawford's "subjective . . . impartiality and propriety" or any accusations of "actual bias." *Id.* at 882. The Congressmen and Individual Voters, like the Court in *Caperton*, do not question Justice Crawford's "actual motives and inclinations" or claim that she engaged in "any actual conduct or activity . . . which could be termed 'improper.'" *Id.* (citation omitted). Rather, the relevant inquiry here is whether, under "objective rules," *id.* at 883, there are "reasonable perceptions" of "a serious risk of actual bias," *id.* at 884–87. Unfortunately, and with respect, the confluence of factors here—

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and especially the highly unusual Focus For Democracy fundraiser—have created just such a reasonable perception in this case.

II. Wisconsin Law Likewise Requires Justice Crawford's Recusal

A. The federal Due Process Clause establishes "only the outer boundaries of judicial disqualifications," and "[S]tates . . . remain free to impose more rigorous standards for judicial disqualification" through laws and "codes of judicial conduct" that "provide more protection than due process requires." *Id.* at 889–90 (citation omitted). Wisconsin has provided such heightened protection by enacting statutes and rules that "create[ ] a mandatory duty for judges to disqualify themselves in certain circumstances," *State v. Allen*, 2010 WI 10, ¶ 43 n.17, 322 Wis. 2d 372, 778 N.W.2d 863 (per curiam), including under circumstances that do not necessarily implicate federal due process concerns. As relevant here, Wis. Stat. § 757.19 provides that "[a]ny judge"—including any "supreme court justice[ ]"—"shall disqualify . . . herself" from "any" case where "she cannot, or it appears . . . she cannot, act in an impartial manner." Wis. Stat. § 757.19(1), (2)(f)–(g). Notably, Section 757.19 is a "mandatory

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disqualification statute," *State v. Am. TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 181, 443 N.W.2d 662 (1989), meaning that Wisconsin law requires recusal if either of the circumstances identified in the statute is present, Wis. Stat. § 757.19(4).

Wisconsin's Code of Judicial Conduct further defines the circumstances in which judges should recuse themselves. *See* Wis. Sup. Ct. R. ("SCR") 60.04. As relevant here, a judge must recuse "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." SCR 60.04(4). This requires recusal where, among other things, there is an objective perception of partiality. *See id.*; *see also Am. TV*, 151 Wis. 2d at 186. So, where applicable, a judge must determine whether "it appear[s] that . . . she could act in an impartial manner." *See Ozanne v. Fitzgerald*, 2012 WI 82, ¶ 5, 822 N.W.2d 67 (opinion of Abrahamson, C.J.).

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Wisconsin law provides that even "the appearance of bias," *State v. Herrmann*, 2015 WI 84, ¶ 3, 364 Wis. 2d 336, 867 N.W.2d 772, or "prejudgment" "can require recusal," *id.* ¶ 148 n.14 (Ziegler, J., concurring). Thus, "Wisconsin's Judicial Code and

disqualification statute" may "requir[e] recusal" based on "the appearance of bias . . . even though the judge is actually unbiased," *id.* ¶ 120 (Ziegler, J., concurring), if an objective observer could reasonably conclude that the judge cannot maintain "the absence of bias" or "an open mind in considering" the issues in a given case, SCR 60.01(7m); *see* Wis. Stat. § 757.19(2)(g).

B. Here, Wisconsin law requires Justice Crawford's recusal because of Focus For Democracy's donor advisors briefing, the Democratic Party's overwhelming campaign contributions, and the National Democratic Redistricting Committee's support. Again, Focus For Democracy's donor advisors briefing alone created a reasonable perception of an "appearance of bias," *Herrmann*, 2015 WI 84, ¶ 3, concerning an "issue in the proceeding," SCR 60.04(4)(f); *see also Herrmann*, 2015 WI 84, ¶¶ 120, 148 n.14 (Ziegler, J., concurring), given its focus on promoting Justice Crawford's election as an outcome that "could [ ] result in Democrats being able to win two additional US House seats" in Wisconsin, App.26–32. These reasonable public perceptions were also strengthened by the Democratic Party's overwhelming campaign contributions. *Supra* pp.12–13. In light of these factors,

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Wisconsin law requires Justice Crawford's recusal. Wis. Stat. § 757.19(1), (2)(f)–(g).

CONCLUSION

Justice Susan M. Crawford should recuse from this case.

Dated: August 20, 2026

Respectfully submitted,

Electronically signed by Misha Tseytlin
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