

League of Women Voters of Dane County Forum

## Wisconsin Supreme Court: Why Your Vote Matters

February 9, 2023, 6:30–8:00 p.m.  
Online via Zoom



### Speakers

#### Christa O. Westerberg

Christa Westerberg is partner in the Litigation Practice Group of the law firm of Pines Bach in Madison Wisconsin. While experienced in a variety of civil litigation, Westerberg concentrates her practice in open government laws, as well as environmental and land use law.

#### Robert Yablon

Robert Yablon is Associate Professor of law at University of Wisconsin–Madison and faculty co-director of the [State Democracy Research Initiative](#).

### Moderator

Marjorie Schuett is on the Board of the League of Women Voters of Dane County.

### Discussion Questions

- What is the role of the Supreme Court in the Wisconsin court system?
- What issues do we expect the Wisconsin Supreme Court to address in the next two years?
- How might the Court serve as a backstop to put some limits on the effects of gerrymandering?
- How can League members publicize the importance of the Wisconsin Supreme Court election?
- How can each League member help citizens to vote?

### The League's Positions

The League of Women Voters believes in representative government and in the individual liberties established in the Constitution of the United States. The League of Women Voters of the United States believes that all powers of the U.S. government should be exercised within the constitutional framework of a balance among the three branches of government: legislative, executive, and judicial. [Impact on Issues 2020-2022](#)

## **The Wisconsin Court System**

There are four levels to the Wisconsin court system. The first level is the Municipal court which hears and decides cases involving traffic, parking, and ordinance matters, including first-time drunken driving offenses and non-criminal juvenile matters. [Wisconsin Court System - Municipal courts](#)

The next level is the Circuit Court, the state's trial courts. Circuit courts have original jurisdiction in all civil and criminal matters within the state, including probate, juvenile, and traffic matters, as well as civil and criminal jury trials. [Wisconsin Court System - Circuit courts](#)

The Court of Appeals is the state's intermediate appellate court. The court is composed of 16 judges from four districts headquartered in Milwaukee, Waukesha, Wausau, and Madison. [Wisconsin Court System - Court of Appeals](#)

The Supreme Court, composed of seven justices, is the state's highest court. Located in the state capitol, the Supreme Court has appellate jurisdiction over all Wisconsin courts and has discretion to determine which cases it will review. The Supreme Court also may hear original actions—cases that have not been heard previously in another Wisconsin court. [Wisconsin Court System - Supreme Court](#)

## **Facts, Issues, and the Role of the Wisconsin Supreme Court**

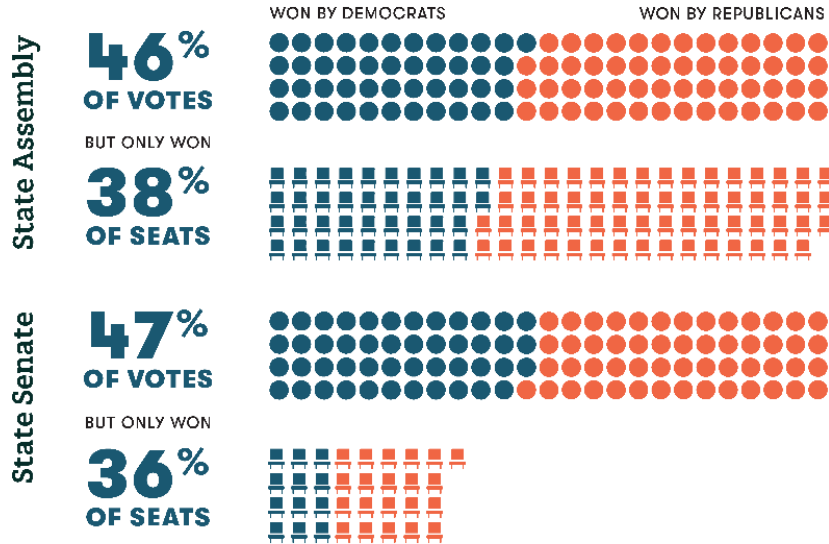
The role of the Wisconsin Supreme Court should be to protect the rights of all, including voting rights, and to preserve the separation of powers that is an essential part of the balance of powers in our democracy. Instead, the current Supreme Court has, in a number of cases, put forth decisions that do the opposite. These decisions have made our legislature less representative, made it harder for citizens to vote, and shifted power away from the executive to the legislative and judicial branches of government. The following cases have been critical in undermining democracy.

### **Gerrymandering and Separation of Power**

In [Johnson v. Wisconsin Elections Commission](#), the court imposed a set of electoral maps which is unbalanced (gerrymandered), making it highly unlikely that the State Legislature will reflect the popular vote of the people for the next decade. Gerrymandering means that the maps for voting districts were rigged to favor one political party over the other. The Legislature will continue to be unrepresentative of the electorate as long as these maps stand.

# PARTISAN GERRYMANDERING IN WISCONSIN

## 2020 LEGISLATIVE ELECTION



## 2018 LEGISLATIVE ELECTION

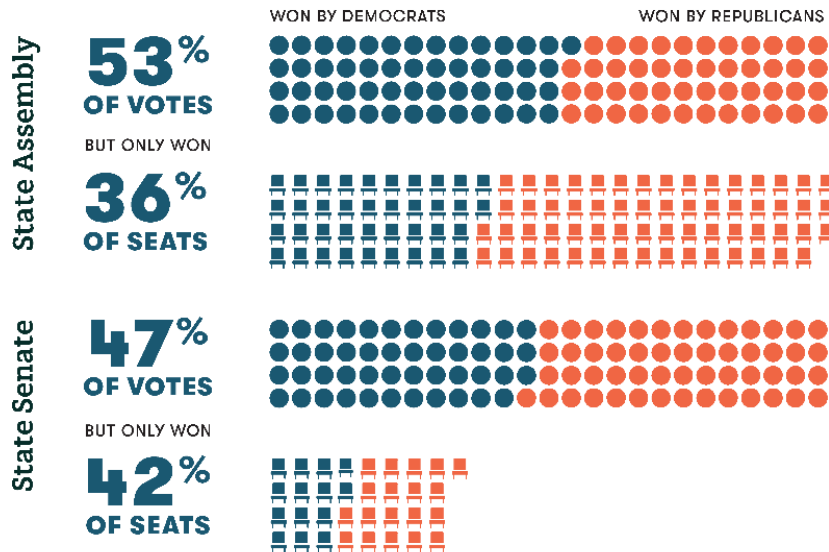


Image from [Deconstructing Democracy: The Wisconsin Supreme Court, 2021-22, Law Forward](#)

## **Participating in direct elections for statewide offices, including Governor, Attorney General, and Supreme Court Justices, is the best way for people to have their voices heard.**

A nonpartisan report from Princeton University [stated](#), “Wisconsin is home to some of the most extreme partisan gerrymanders in the United States.”

This Marquette University article explains in depth how gerrymandering, combined with existing geographical trends, leads to continued overrepresentation:

[Why Do Republicans Overperform in the Wisconsin State Assembly? Partisan Gerrymandering vs. Political Geography](#)

The Badger Project, nonprofit, nonpartisan investigative journalism in Wisconsin, discusses the importance of the Supreme Court election, especially as it relates to redistricting:

[The 2022 Election is over. Wisconsin turns to redistricting \(again\) - The Badger Project](#)

The Wisconsin Supreme Court has had, and will continue to have before it, many cases in which the Legislature seeks to impose its will on the popularly elected Executive branch.

In [State ex rel. Kaul v. Prehn](#), the Court’s decision effectively gives individual executive appointees and the Legislature together veto power over the Governor’s appointments, holding that the following sequence of events is acceptable:

The Legislature has refused to hold hearings on executive agency appointments, meaning the Governor can only make provisional appointments

The former position holder can then refuse to step down, even when his term has ended, because the Governor’s new appointees have never been officially confirmed

The Governor’s appointee is therefore never seated, and the prior Governor’s appointees can holdover indefinitely

Details on the *Prehn* case, explained in [this Wisconsin Public Radio article](#), show the impact of this decision both for the DNR committee which Prehn refused to leave and on Wisconsin’s government as a whole.

## **Voting Rights Before the Court**

In [Teigen v. Wisconsin Elections Commission](#), the Court outlawed drop boxes and banned the return of absentee ballots via a third party or agent. This decision is perceived to suppress votes.

- This decision substitutes the Court’s judgment for that of the bipartisan Wisconsin Election Commission, whose members are appointed by officials from both political parties.
- This decision takes power away from local town clerks and others who best know the needs of their communities.

The federal case [Carey v. Wisconsin Elections](#), as it stands now, does allow for ballot return assistance for those who are disabled. However, some members of the Wisconsin Supreme Court have stated they would not allow such assistance even for persons with disabilities.

## Limits on the Jurisdiction of the Court

The current court has also taken up cases that are arguably not in its domain, disregarding legislative limits on its power and further eating away at the balance of power. The Supreme Court has the authority to take original action in cases in which no facts are in dispute. The current court has taken original action on several cases in which facts are in dispute,

For example, in [Waity v. LeMahieu](#), the Court directly took up a case about gerrymandering and taxpayer funds from the Dane County Circuit Court without having the case go through the Court of Appeals as a typical intermediate step, and then overruled the decision of the Circuit Court.

- The legislature committed more than \$1 million in taxpayer money to hire private attorneys to support the gerrymandered redistricting before any litigation about the redistricting even began.
- The Circuit Court issued an order to end the engagement and stop all payments
- The Supreme Court took the case and authorized the payments of such taxpayer funds.

## Action Steps

### Action Steps to support sharing information on the importance of the Supreme Court Election

- Talk with your friends, neighbors, and relatives about the importance of the election.
- Find information about each candidate and consider how each relates to your values.
- Post signs on community boards and in common areas to raise awareness of the election date.
- Put out yard signs advertising the date of the election.
- Write letters to the editors publicizing what is at stake in this election.
- Volunteer to distribute educational materials and talk to the public.

## Resources

This report from the State Democracy Research Institute of the University of Wisconsin - Madison is brief and easy to understand. [Maps, Elections, and Governmental Power: A review of the Wisconsin Supreme Court's 2021-22 Term & preview of 2022-23](#)

LRB Survey of [Significant Wisconsin Court Decisions](#), July 2020–July 2022

This report from the nonpartisan Legislative Review Bureau (LRB) describes the facts of selected legal cases decided by the Wisconsin Supreme Court during the past two years.

[Deconstructing Democracy, the Wisconsin Supreme Court 2021-2022](#)

An analysis and commentary from Law Forward, a partner of the League, on recent trends in Wisconsin Supreme Court decisions, focusing especially on cases that impact voting rights and allocation of governmental powers. This report highlights the vital importance of the Supreme Court election and forecasts what cases may be most important in future terms. See page 5 for an especially useful table highlighting decisions most impacting democracy.

Article from WisPolitics, an online magazine and news service covering government and political news, on the critical importance of the upcoming Supreme Court race:  
[WisDems: Democracy “nearly died in Wisconsin,” the Supreme Court race is critical to defending it - WisPolitics](#)

Article from the Wisconsin State Journal citing both parties expressing how vital this race is; addresses the importance of voter turnout:  
[Here's why the Wisconsin Supreme Court race matters](#)

Wisconsin Public Radio discusses the importance of the election; contains brief biographies of leading candidates:  
[Wisconsin's next partisan battle will be over the balance of power on its Supreme Court](#)

Wisconsin Fair Maps, working for nonpartisan redistricting legislation:  
[Wisconsin Fair Maps Coalition](#)

The Brennan Center for Justice reported on reproductive rights decisions in the state courts.  
[Abortion Cases Take Originalism Debate to the States | Brennan Center for Justice](#)

Work Group on Judicial Integrity: Janine Edwards, Lili Crane, Betty Eberle, Mary Eberle, Erin Everett, Sue Jennik, Elizabeth Kanne, Jordan Nickell, Marjorie Schuett