

Committee On Campaign Finance Reform, Rural Issues and Information Technology

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Good afternoon. I am Shirley Abrahamson. Senator Kreitlow asked me to appear to discuss public campaign financing for Wisconsin Supreme Court elections, and I am here in response to that request. I am also here because it is a timely and vital subject, important to the maintenance of a fair, neutral, impartial, non-partisan judiciary.

As you know, I have been a Justice of the Wisconsin Supreme Court for a little more than 30 years and have held the office of Chief Justice of the Wisconsin Supreme Court for just over 10 years. I speak in my individual capacity and not on behalf of the Court.

I have stated my position as favoring public campaign financing for Wisconsin Supreme Court elections publicly and frequently, orally and in writing, since I came on the court in 1976. In the three contested elections in which I was a candidate for justice, in 1979, 1989, and 1999, I accepted public campaign financing under the laws of this state.

My position on public campaign financing for Supreme Court elections has been clear for many years and has not changed. As a general principle, I favor public campaign financing of Wisconsin Supreme Court elections as one means of avoiding problems inherent in raising money in judicial campaigns. Among the many problems of financing judicial campaigns, a significant percentage of people polled believes judges are influenced in decision-making by contributions to their election campaigns, notwithstanding that the code of judicial conduct prohibits a candidate for judicial office from personally soliciting or accepting campaign contributions. The public's awareness of the problems of funding judicial campaigns and the public's perception of possible influence by campaign contributors tends to increase with the amount of money raised and spent. But the risk that the public will believe a judge is beholden to individuals or groups that contribute to his or her campaign is inherent in any non-publicly funded judicial election.

We should try to ensure that campaign financing does not undermine the public trust and confidence in our judiciary and system of government. In our country, judges must decide cases fairly, impartially, and according to the facts and the law. Although all judges do not reason alike or reach the same result, their decisions should be based on the evidence and fidelity to law and the constitutions, not on public opinion polls, personal whim, prejudice or fear, or interference from the legislative or the executive branches or private citizens or special interest groups. Of no less importance, judges must be perceived by the public as being fair, neutral, impartial and nonpartisan. United States Supreme Court Justice Anthony Kennedy said it well: "The law commands allegiance

only if it commands respect. It commands respect only if the public thinks the judges are neutral.”

As I state my general position favoring public financing of campaigns in Wisconsin Supreme Court elections, I recognize, as you all do, that public campaign financing presents legal and policy challenges for the legislature.

It is a legal challenge because inherent in any campaign financing law are significant free speech issues under the federal and state constitutions. Thus, my position favoring public campaign financing in principle acknowledges that not all provisions of public campaign financing may be constitutional when examined by a court. The constitutional issues relating to public campaign financing are fundamental and have been evolving. The United States Supreme Court may within the next few weeks provide additional guidance about constitutional guidelines and parameters.

It is a policy challenge because public financing of campaigns is not useful unless it achieves the desired consequences, namely that judicial candidates will generally accept public financing. If judicial candidates ordinarily will not take public campaign financing because it is unrealistic, then the law has not accomplished its goal.

I conclude where I began with emphasis on the role of the judge as a fair, neutral, impartial, nonpartisan decision maker who settles disputes according to the law and protects the rights of all our people.

I turn to the words of Attorney Edward Ryan, then a delegate to the 1846 Wisconsin constitutional convention. Edward Ryan later became a Chief Justice of the Wisconsin Supreme Court. Ryan described the role of a judge as an interpreter of laws. He said: “Interpretation cannot be a representative function. The judiciary represents no man, no majority, no people. It represents the written law of the land; . . . it holds the balance, and weighs right between man and man, between the rich and the poor, between the weak and the powerful.” Those words were sound then and are sound now.

I favor electing judges in the state of Wisconsin. We must, however, conduct judicial elections in a way that maintains the public’s trust and confidence in the Wisconsin judiciary and Wisconsin government. Public campaign financing for Supreme Court elections is one way that could help accomplish this goal.

I want to thank the committee for exploring the subject of public campaign financing for Supreme Court elections and hearing me on this subject.