

Wisconsin Public Television

Transcript: We the People Wisconsin State Supreme Court Candidate Forum

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Announcer:

“We the People Wisconsin State Supreme Court Candidate Forum” is made possible in part by WEAC. WEAC members believe teachers, school staff, parents and policymakers can work together to make all Wisconsin schools great, because great schools benefit everyone; American Family Insurance, all your protection under one roof; American Transmission Company, helping to keep the lights on, businesses running, and communities strong; and Madison Gas and Electric Company, meeting the growing needs of our community while helping customers protect the environment through conservation.

It's the We the People Wisconsin State Supreme Court Candidate Forum. Live from Wisconsin Public Television in Madison. Here's Erik Franke of WISC-TV and Frederica Freyberg of Wisconsin Public Television.

Frederica Freyberg:

Good evening. Tuesday is election day, the day we elect a justice for the state's highest court, the supreme court. We hope tonight's forum will help you get to know the issues and the candidates a little better.

Erik Franke:

It is a forum. It is a debate. But it's also a town hall meeting. That's because citizens from around Wisconsin will ask questions of the candidates.

Freyberg:

The citizens have been studying the issues in anticipation of our broadcast. They even spent some time together tonight before we went on the air, helping one another hone their questions.

Franke:

We'll meet them as the questioning begins. But first, hello, and welcome to the candidates for State Supreme Court. Michael Gableman is a Burnett County Circuit Court judge. The former district attorney for Ashland County also served as a prosecutor in Marathon County.

Freyberg:

Louis Butler is an incumbent Supreme Court justice. He was appointed to the high court in 2004. A former public defender, he also presided in the Milwaukee Municipal Court and spent two years on the bench of the Milwaukee Circuit court.

Franke:

Welcome to you both. Before we take our first question, a quick look at just how the hour will work.

Freyberg:

The candidates will each have one minute to respond to a given question. After that, the candidates will discuss the topic further just between themselves. We'll keep track of time, but we will not interrupt them.

Franke:

That is meant to be a period of give-and-take, a brief conversation. Later, the candidates will also have an opportunity to ask each other a question.

Freyberg:

We've also asked the candidates to do something the rest of us have been doing over the past week or so, and that is watch their own ads and discuss them.

Franke:

Each candidate will make a closing statement at the end of the hour. Let's go to our first questioner. That is Helen from Milwaukee. Your question will be for Justice Butler. Helen, go ahead.

Helen:

Can you be more aggressive in disavowing the disgusting ads?

Louis Butler:

Absolutely. What we've been aggressive from the beginning, when the very first ad came out, it was done ostensibly done on my behalf, not put out by me. And without seeing the ad, I was actually in an oral argument that day. When I heard that the ad had gone up, I came out of oral arguments and said quite across the board that we wished that all independent groups would stand down, stand aside, and let the people hear from us, the candidates, because they have-- The public has to ascertain who is qualified, who is competent to serve as a Wisconsin Supreme Court justice.

From the beginning I've decried all of the independent ads. I've actually asked recently, just this past week, an ad that was run on my behalf my WEAC, I asked to be taken down. I've done that across the board. We have not run any negative ads whatsoever in my campaign and I will not do so.

Franke:

Justice Butler, thank you. Judge Gableman, your opportunity to respond to the same question.

Michael Gableman:

Do you know, I, like all citizens across the state, am sick and tired of the third-party interests, negative ads. We've seen all sorts of examples of them. But the fact remains that the really important issues in this race, the really important issues include the fact of the stark contrast between my opponent and me. I come from a longstanding prosecutor's background in a former career. I'm a judicial conservative. My opponent has been

legislating from the bench, and has been expanding the rights of criminals and criminal defendants and tying the hands of law enforcement. These are stark contrasts and these are real differences. These are real differences that are of interest to the people of this state and the people have a right to know exactly what's been happening and exactly what their choice is in this race. They have a choice between me, a judicial conservative, and my opponent, a judicial activist.

Butler:

There you go again. Once again, you don't answer the question that was put to you about calling for the negative ads to be pulled aside. You instead go back to pattern lines that you have been maintaining throughout the entire campaign. And you have once again, issuing these ridiculous charges that are not borne by the facts, and that are not supported by any evidence out there.

From the beginning of this campaign, from the very first fund-raising letter that your campaign sent out that misrepresented cases from the Wisconsin Supreme Court, which you've stood by, and from your very own ad that has demeaned the voter here in this state, that was completely misleading, that has been decried by all independent organizations that have looked at it, including a former Supreme Court justice and including one of your own supporters, who has withdrawn his support. Independent groups like Newsweek and like the Annenberg Study Group in Pennsylvania, the nation is looking at our race and how disgusting it's become. Instead of talking about calling for these ads to step aside, and instead of repudiating your own ad, you're sitting here and standing up and giving these pattern campaign lines. You're not answering the question.

Gableman:

Well, you know, the fact remains. The fact remains that I have publicly said before that these third party groups and third party interests ought to take their interests elsewhere and let the voters decide. Let the voters decide on the very real and stark contrasts between you and me. We do have stark contrasts. In fact, in the State v. Ralph Armstrong case, you ignored existing law and voted to reverse a 24-year-old rape and homicide conviction, based on a new law—

Butler:

That's ridiculous. That is absolutely ridiculous.

Gableman:

I let you talk. I let you talk. I did not interrupt you, even though that you were saying some things which I vehemently disagree with.

Butler:

But at least get the cases right.

Gableman:

Oh, in State v—

Bulter:
Get the cases right.

Gableman:
Oh, I have them right, and so will the voters on Tuesday. In *State v. Knapp* you changed the law to give more rights to criminals than the United States Supreme Court. You didn't even follow. You didn't even follow the State Supreme Court's own precedent.

Freyberg:
Judge Gableman, that is two minutes of open discussion.

Gableman:
All right.

Freyberg:
And we are there. I'm sure we'll have more opportunity as the hour progresses to talk about these matters. We go now to our second citizen panelist, that is Jonathan from Milwaukee. You should first address your question to Judge Gableman.

Jonathan:
Sure. Judge Gableman, why shouldn't the Supreme Court justices be appointed?

Gableman:
Well, I think, the question for those in the studio who may not have heard it, is why shouldn't State Supreme Court justices be appointed. And I think that the fact is that there are areas for reform. There are certainly areas for consideration for any State Supreme Court justice to review reform in our electoral process.

But the fact is, Jonathan, and to all those who hear my message, I have been very proud to take my message to the people of this state. I have been very proud of the fact that I, as a judicial conservative, I will not legislate from the bench. I will not substitute my own personal political opinion for the rule of law, as my opponent as developed a clear and consistent track record of doing. There's a very significant reason why I enjoy the public support of about three-quarters of the sheriffs across this state, over ten times the number of sheriffs publicly endorse my campaign than endorse my opponent's campaign. That's because my message is resonating with the voters and I'm proud to take my message and make my case to the voters.

Freyberg:
Justice.

Butler:
Well, in terms of the question, why shouldn't justices be appointed, I think my opponent is basically making a case for maybe the very point that you ask in the question. Because the elections in Wisconsin for the judicial office that I hold are being tainted by the way that campaigns are being run.

Now, I've always been a fan and I continue to be a fan of having the voters choose who are going to make the difficult decision about their futures. And I've always said that and I will continue to say that. But I think we have to recognize, particularly when we look at the last two elections for the Wisconsin Supreme Court, that something is very broken in our elective justice system. The influx of outside money that's being spent to try to buy a seat on the court and the nastiness and the negativity of the campaigns that are being run. And not my campaign. I challenge everyone. Look at the ads that we have been running. You can find them at my Web site, louisbutler.com, I made it easy for people to find me. That says it all.

Freyberg:

We now move into the two minutes of open discourse and discussion.

Gableman:

I don't believe that that response takes into account the fact that the voters of this state have every right to hear the record of each candidate for this job, and to consider not only our professional backgrounds and careers, but also our judicial philosophies.

I am very proud to take my message to the people. And I think that by taking my message to the people, I have successfully let them know exactly what my background is, in comparison to what my opponent's is, and what my judicial philosophy is, as opposed to my opponent's. There's a very good reason why over 50 police chiefs across this state, democrats and republicans, have come forward to endorse my campaign, why the Wisconsin Sheriffs and Deputy Sheriffs Association has publicly endorsed my campaign. That's because they know that they're going to get from Justice Gableman not only scrupulously upholding the rights of defendants and criminals, but also remembering the rights of victims as well. That's an important message. That's what I believe. And that's exactly why I believe my message has been resonating with the voters.

Butler:

Well, the question really talked about the reform of the elective system of justice here in the state. And there are things that we can do to try to correct that. And each member of the Wisconsin Supreme Court has signed a letter indicating that we are in favor of some form of realistic, meaningful campaign finance reform.

I'm trying to answer your question instead of giving you a pat campaign line that turns it back to my supporters, or things of that nature. We can talk about endorsements. We can talk about who's supporting who. I know my opponent has been running as the friend of law enforcement. And of course, he's excluded the police who are largely supporting me in this election. He's also excluding the judges in the state, almost 250 of the judges. These are the referees that are out there that don't take sides in the justice system. They favor returning me to the bench. But I think you deserve an answer to your question. And there are things that we can do to reform the system.

Franke:

All right. Time is up. Thank you, Justice Butler and Judge Gableman. We move on to our next question from Steve in Madison. Steve, I remind you, again, this is for Justice Butler first.

Steve:

Justice Butler, when does a loophole become a constitutional right and a constitutional right become a loophole?

Butler:

I'm glad you asked that question. Because this goes right to the heart of one of the ads that has been run in this election. I've been serving the people in the legal field for the past 30 years. I've done it as a public defender. I've represented individuals on an appeal. I've represented people at trial. I've been a municipal judge. I've been a circuit court judge. I've been a criminal court judge and domestic violence judge. And I've been serving as a Supreme Court justice for the last three and a half years.

And I have never before heard a judge in an ad refer to the constitution and the laws of Wisconsin as a loophole. This is a first in judicial elective politics. I've never heard before groups like Wisconsin Manufacturers and Commerce refer to the Sixth Amendment to the United States Constitution as a technicality.

Every citizen is entitled to the right to counsel. Our fundamental system of justice is envied throughout the world. People want to have what we have in our country. We should not be trashing it. We should be upholding our constitution. It protects our way of life.

Franke:

Thank you, Justice Butler. Judge Gableman, your chance to respond to that question.

Gableman:

Well, upholding the law, including the constitution, is exactly what my campaign and what I'm all about in terms of not only being a Circuit Court judge with over twice as much experience on the Circuit Court as my opponent had before his appointment by Governor Doyle to the State Supreme Court in 2004.

The fact of the matter is, the fact of the matter is, we must not only honor the rights of the defendants, but keep in mind the rights of victims, as well. And furthermore, as far as loopholes versus technicalities, as a judicial conservative, I believe in giving a fair application to the plain language of the law. As a judicial conservative, I won't look for ways to expand the fertile fields of litigation and create new causes of action against the innocent, as my opponent did when he authored the case of *Thomas v. Malek*, the lead paint case, where now, thanks to that decision, Wisconsin is the only state in the union to allow the innocent to be dragged into court to be held accountable for something they may not have had anything to do with, but might not have even been in existence at the time the harmful condition was created. Thank you.

Franke:

Your minute is up. And now, two minutes to discuss it among yourselves.

Butler:

All right. A number of things. You indicate that you're a judicial conservative that would give a fair application to the plain language of the law. So I think we should explore the ad that you have run, because you had a unanimous Court of Appeals and you had a unanimous Supreme Court indicate in the very case that you run in your ad that there was error at the trial court level, and that the evidence that was proffered should not have been admitted. Now, if you're going to give a fair application to the plain language of the law, and if you want to be a judicial conservative, then instead of decrying the rulings of the Wisconsin Supreme Court and the Wisconsin Court of Appeals, you ought to repudiate your own ad. And you ought to say, "Well, I'm here to follow the law." You're either going to follow the law or you're not. You can't pick and choose when you're going to follow it.

Gableman:

Well, I think that's an interesting comment, because I believe that if you're going to be a judicial activist, and if you're going to take the philosophy that judicial activism is the appropriate role for a State Supreme Court justice, then you should simply say so and you should simply argue the merits, the true merits of your position.

Butler:

But I haven't taken that position.

Gableman:

Oh, now, there you go again.

Butler:

In your ad—

Gableman:

There you go again. I did not interrupt you.

Butler:

This is unmoderated. Your very ad takes that very position, because you say you're not going to follow the law in your ad.

Gableman:

This is another example—

Butler:

You're ought to either repudiate the ad or defend it.

Gableman:

This is another example of how you can't win on the merits, so you have to talk about everything else under the sun, except what the people need to know, and what the people will try truly important in their decision-making process.

The fact is you have been a judicial activist. You've been consistently expanding the rights of criminals based on a personal or social view. You've been consistently tying the hands of law enforcement and making them less able to keep people safe in the streets and their homes. And, you've been doing it out of a personal, or political, or social philosophy. I think it would be a truly interesting debate to understand why you think that's an appropriate judicial philosophy, whereas I have had a clear and consistent judicial conservatism of applying the law, not making it.

Butler:

That's not my philosophy, and you know it. Those are ridiculous charges.

Freyberg:

We leave it there, on the two minutes from that question. We go now to Thom, of Madison, with the next question. Again, this one will be addressed first to Judge Gableman.

Thom:

Judge, what are the grounds on which a judge or a justice must recuse him or herself from deciding a case, and should a judge or a justice's recusal be explained?

Gableman:

Well, I think that there are two different bases for why a judge should recuse himself, and that goes to either an objective bias or subjective bias. And that might be, first, is dictated by the common requirements of the law and relations from the judge or in between the judge and the justice to particular individuals.

Also, the subjective bias would run more towards what the appearance of impropriety might be. I know that my opponent has found it perfectly fine to have accepted \$4,500 from an attorney who has a case pending before him right now. Also, I know that he had promised to disclose campaign contributions, which had been provided to him by lawyers appearing in front of him, but last November waited until a few hours after the Milwaukee Journal Sentinel contacted him about a donation, and then released that information to the public.

I believe that transparency of such contributions is a hallmark of a good judge or good justice and that's exactly what I would follow, Thom.

Freyberg:

Justice Butler, go ahead.

Butler:

First of all, we talk about transparency. I do note, and I think my opponent said this at the last debate, that he has not followed a policy of disclosure to this point, that he indicated that he would wait until after the election to make a determination as to how he would proceed.

But with respect to the question that you asked on recusal, it is an objective versus subjective bias determination that we have to make. If we are either objectively or subjectively biased, we should recuse ourselves. Under the internal operating procedures of the Wisconsin Supreme Court, the Supreme Court justices are not required to give reasons, and I have not up to this point.

But I would note based upon my opponent's statements, that I think it would be helpful to understand the rules that govern judicial elections. Because he's casting aspersions here without knowing the rule. The rule is 60.06(4) that talks about how elections are run, when campaigns can't accept donations. The only requirement that we have to follow is to file a campaign finance disclosure form, as required. And we have done that, but we've done more than that. I think we'll get into it in the two-minute period.

Freyberg:
And go ahead.

Butler:
What we've done beyond that is we've taken up a voluntary disclosure system that we had just implemented about the time we had been contacted. I know he's trying to make a big deal out of the fact that we have disclosed. But we have disclosed. We have been transparent. We are doing what he is not. And people should press him on this issue as well. If we're disclosing, and he wants to make a big deal about the way we disclose, why isn't he disclosing. Why hasn't he been making that known to the parties in the cases before him? That's a legitimate question to ask.

With respect to how we've handled ourselves in this race, we have followed and will continue to follow the code of judicial conduct. We have made it clear. We've got a triple blind system to try to make sure that we can get the information out to the parties so that they understand that we received money from individual attorneys on cases. We have done that repeatedly throughout this campaign. Even though we don't have to and even though it's quite difficult for my campaign staff and for my court staff to try to keep up with, we've still taken that responsibility on because we think it's appropriate.

Gableman:
Well, I think it would be very interesting to hear how accepting over \$4,000, \$4,500 from a lawyer representing a litigant in a case which is pending before him, is somehow appropriate in the eyes of my opponent, and how that does not raise legitimate concerns. We don't only have to think about the letter of the law. We have to think about the appearance, and the appearance of how things would appear to reasonable people. And I think reasonable people would look at \$4,500 from a lawyer who's representing a litigant in a case that a justice is currently taking under advisement, would be a matter of some concern.

And I still have not heard from my opponent why he thinks that's appropriate and why he doesn't think that would raise legitimate concerns from the people in front of him.

Butler:

Oh, you have heard. It's 60.06(4). And I suggest you review the rule if you're going to cast aspersions, and at least understand the rules that we're all obligated to follow.

Franke:

Thank you, gentlemen, the two minutes is up. We now move on to Margaret, from Brooklyn. Your opportunity to ask a question first of Justice Butler.

Margaret:

Good evening. Judge Butler, what do you mean by conservative or liberal in judicial terms? How do you define a judicial philosophy in terms of conservative or liberal? And what is yours? How do these terms apply in close calls of interpretation on the court?

Butler:

They don't. And you have not heard me use those terms. And I will not use those terms in this campaign. I have not used them as a justice of the Wisconsin Supreme Court. We have an obligation to make decisions based upon the facts of your case, and then based upon the law as it applies to those facts.

My judicial philosophy is simple, to uphold the constitution and to hold all wrongdoers accountable, whoever they may be. And in doing so, there's a framework that I work with. And it starts with the fact and it ends with the facts. And in between, I apply the United States Constitution, the Wisconsin Constitution, State Statute, the common law and our prior precedent. I apply that legal analysis to the facts of the given case. I do not take sides in advance. I think it is inappropriate for a judge or a justice to tell you that I'm a conservative or a liberal, or I'm a candidate of big business, or law enforcement, or labor, or whoever, because you're trying to send the signal that if you vote with me, I'll vote with you. And that's not what justice system is all about.

Franke:

Judge Gableman.

Gableman:

I think that's a terrific response for my opponent. And it sounds great. If I thought any of it accurately represented what he'd been doing since his appointment by Governor Doyle in 2004, I wouldn't even be in this race. I see a clear and consistent pattern of my opponent's judicial activism.

I'm very careful when I use the words conservative and liberal to put them in their proper context in a judicial role in terms of a judicial philosophy. I am a judicial conservative who gives a fair application to the plain language of the law, and my opponent has been

acting as a judicial activist. And he says he applies the U.S. Constitution, but that certainly wasn't the case when he authored the decision of *State v. Knapp*, in which he disregarded the United States Constitution to expand the rights of criminals and criminal defendants in this state, when he ignored the fact that the United States Supreme Court had vacated his decision originally, he and his co-authors, other justices, had ignored the United States Supreme Court and they vacated that decision.

Franke:
Thank you.

Gableman:
That wasn't following the United States Constitution.

Franke:
Thank you, Judge Gableman. And the discussion can continue for two minutes.

Gableman:
I think very much so that if my opponent was actually involved in the kind of work as a judicial conservative, giving a fair application to the plain language of the law, we wouldn't have such a holding in *Thomas v. Malek*, which expanded the rights of litigation to drag the innocent into court, in which the Wall Street Journal referred to as our state as becoming Alabama north because of that decision. And the fact is that the people of Alabama, through their elected legislators and leaders wrote a letter back to the Wall Street Journal saying please stop comparing us to Wisconsin. We've already taken remedial steps to do away with that bad judge-made law. That is not applying the plain language of the law. That is not applying all of the rules. Even the author of the decision, even the author of the decision, which my opponent claims to be basing his decision on says that was a misapplication of the existing law to fulfill a particular political purpose.

Butler:
Well, let me ask you, Judge, now you have indicated this is-- I can't remember how many times you have critiqued the Wisconsin Supreme Court in *State v. Knapp*. So here's your opportunity. That involved a deliberate Miranda violation. When the United States Supreme Court sent the case back, they sent it back to reevaluate in light of their ruling in another case. Given the fact that they came out with two decisions on the same day, one involving a non-intentional Miranda violation, one involving an intentional Miranda violation, and given the fact that we were involved with an intentional Miranda violation, which line of cases would you have followed and how would you have reached a result different from the one that the court reached?

Gableman:
I think the larger question is why is it that you have been engaged in a clear and consistent pattern of judicial activism, substituting your own personal, political and social views for the clear and plain language of the law and the prior case precedent? You have

ignored, you have ignored the fact that in *Thomas v. Malek*, even the author of the original decision said you misapplied the law.

Freyberg:

That's where we need to leave it. Thank you for that two minutes. We move now to David, of Madison, with a question which is directed first, again, to Judge Gableman.

Gableman:

Judge Gableman, how do you think the courts can improve the due process rights and access for low-income defendants in criminal and civil cases?

Gableman:

Well, I believe that as far as due process, that the due process rights and access to the indigent, for the indigent to the courts, must be of a paramount concern to all good judges and good justices. And I think that there are many steps, many commonsense steps that can be taken.

The fact is, though, that in addition to the rights of the criminal defendants, that the good judge and good justice always keeps in mind the rights of victims, as well. And the fact remains, the fact remains that I have the overwhelming support of law enforcement throughout this state, because they recognize, they recognize that in my former role as a long-serving prosecutor, I worked not only to prosecutor people. I worked to do justice. And not just to hold people accountable, but to hold the right person accountable, in the right measure, and in the right degree. I'm the only candidate in this race who can say they worked with victims for justice and to hold offenders accountable. I'm very proud of that.

Freyberg:

Thank you. We'll leave that there. But I wanted to jump in at this juncture before Justice Butler responds and ask David whether or not you think Judge Gableman's answer adequately addressed your question.

David:

No. What I'm looking for, really, is what you see as your role as a Supreme Court justice to ensure that due process rights were looked at for low-income defendants in civil and criminal cases. Not who is outside of the Supreme Court system, such as police departments. What would you do in your role to ensure that people are getting due process rights attended to?

Gableman:

And I think that the most appropriate thing for a Supreme Court justice in regard to scrupulously honoring everybody's due process rights is to give a fair application to the plain language of the law. And I believe that fairness and consistency run very closely together, and that the rules should not change just because of who the temporary occupant of the judges' or justices' seat is more sympathetic to, or has a personal or political or social view. I believe that similarly situated people ought to be treated the

same way. And that our decisions as judges and justices shouldn't be based on a personal view, such as that which would be applied by a judicial activist, but on the longstanding rule of law, scrupulously honoring the letter, and words, and intent of all laws, including the Constitution.

Freyberg:
Judge Gableman.

Gableman:
From which we derive our due process rights.

Freyberg:
Thank you for responding more so to David's question, but now we should go to Justice Butler, and allow you answer that same question.

Butler:
David, you are entitled to an answer to your question, and not just an attack on the opponent's, you know, character or record as a Supreme Court justice, but you're entitled to an answer to your question.

And in answering your question, one of the things the Supreme Court is very proud of is doing what it can to try to create self-help centers throughout the state so that people who are not represented by attorneys will at least be able to navigate themselves through the justice system. We have a wonderful system in Waukesha. Milwaukee County has a self-help center. We actually put forms up on our Web site, wicourts.gov, so that people will have an opportunity to be able to navigate through the justice system in the civil area.

In the criminal area, we are very cognizant of the issues involving right to counsel and the fact that the standards for indigency in criminal courts has not changed since 1987. And we've worked with and encouraged the legislature to revisit and look at that, to ensure that everyone has the right to an attorney to handle their cases in the important cases before the courts.

Freyberg:
Two minutes now open discussion should you choose on this topic.

Gableman:
I think that that raises some very important considerations that all good judges and good justices simply follow. And as I mentioned the other night during our most recent debate, we in Burnett County, too, have taken what I view as a leadership role, of making access available to all the forms necessary, to ensure that those who are trying to navigate the oftentimes complex legal system without the benefit of legal counsel, can have the most appropriate, can have the best chance to have full and fair access to the courts that they as citizens of this country have every right to expect. Also, to make sure that the participation is not simply fulfilling the formalities of participation, but ensuring to as

great and substantial effect as possible, the substantive rights of the people who are appearing. For instance, if there are language barriers, we have taken the lead in securing certified interpreters, for instance, rather than an informal system. We have taken the lead in securing those people who are trained substantively to make sure that all may have access to justice.

Butler:

And that's an important point, because the Supreme Court has been behind that effort. We have broadened the role of interpreters throughout the state. That's something that we have done. But it's also important to look at what's happening with right to counsel issues. When I say that the standards haven't changed since 1987, if you make more than \$202 per month, you are not indigent under state guidelines for appointing a public defender. That means you have a ton of poor people out there that simply do not have counsel available to them, which forces the counties to then foot the bill, because there's still a constitutional right to counsel. And the judges still have the obligation to appoint counsel when somebody is indigent. That just shifts the burden off of the state and to the counties. That's why we have worked with the legislature and encouraged them to revisit the standards to bring them up-to-date.

Franke:

Thank you Judge Gableman and Justice Butler. Thank you for the questions. We are going to get to some more citizen questions for the candidates a little bit later. But next, those much talked about campaign ads. This is the segment in our forum when the candidates will watch their own ads and then talk to each other about them. We are not going to play the ads tonight that were paid for by groups other than the candidate's own campaigns.

The Butler ad we will see was paid for by the Butler campaign. The Gableman ad by the Gableman campaign.

So, first, a Gableman ad. We will watch it and then the candidates will discuss it, with no moderation, for two minutes. Now, two minutes. Gentlemen, you can turn to the monitor to watch the ad. We'll have two minutes of discussion on this specific ad.

Gableman Campaign Ad:

Unbelievable. Shadowy special interests supporting Louis Butler are attacking Judge Michael Gableman. It's not true. Judge, District Attorney Michael Gableman has committed his life to locking up criminals to keep families safe, putting child molesters behind bars for over 100 years. Louis Butler worked to put criminals on the street, like Reuben Lee Mitchell, who raped an 11-year-old girl with learning disabilities. Butler found a loophole. Mitchell went on to molest another child. Can Wisconsin families feel safe with Louis Butler on the Supreme Court?

Franke:

Now discussion for two minutes about the ad.

Gableman:

Well, you know, the primary purpose of the ad I think was fulfilled, which is to illustrate the backgrounds, the stark differences in the professional backgrounds and careers of the two opponents, of the two candidates, for the next elected position on the State Supreme Court.

I know that in 2000, which is the last time my opponent ran for election for his seat, shortly before being defeated by about a two-to-one margin by another judicial conservative, he indicated in no uncertain terms that the professional backgrounds and careers of the candidates for this office were a fair topic of consideration, and a fair topic of examination.

The fact is that I spent my former career as a prosecutor, working hard to get justice for victims, working hard with law enforcement to hold offenders accountable. The fact also is that in his former career, my opponent was a longstanding criminal defense attorney. I don't know what has changed in my opponent's view since 2000.

Butler:

Do I get a chance? You're well over a minute now. Let me have a chance at this.

Gableman:

By three seconds, Louie.

Butler:

With respect to the ad itself, and you've just heard from my opponent, he sees nothing wrong with the ad. He thinks it's drawing contrasts here. But this is what others are saying about the ad. The Milwaukee Journal Sentinel called it purposeful distortion and unworthy of any campaign. Newsweek said that it was designed to dupe voters. The Sheboygan Press said it hit below the belt. A former Wisconsin Supreme Court justice called it a new low in judicial politics. Thirty Wisconsin judges across the state have said this campaign and this ad have tarnished the entire justice system across all boundaries of fairness, honesty and integrity. And the district attorney, a republican district attorney in Dodge County who had endorsed my opponent pulled his endorsement calling the ad, "revolting, quite frankly, I am troubled that Gableman would belittle our constitutional right to counsel. I'm equally troubled by his cavalier disregard for accuracy."

Freyberg:

That's two minutes for the discussion of that ad. I know that you both could take it to more minutes than that, but we need to leave it there for time's sake. My director would like the candidates, please, when we watch the next ad, which we are about to do, to look at the larger monitor here.

Butler:

This one, gotcha.

Freyberg:

That would be somehow helpful for him. So I'm doing what I'm told.

Gableman:

Well, that's what we're here for.

Freyberg:

So we will now watch the Louis Butler campaign ad. Afterwards, two minutes.

Butler Campaign Ad:

Mike Gableman is making despicable attacks. Here's what Wisconsin law officers think about it. It's foolish and it's not true. It's absolute malarkey. Those charges are not true. News media say false. Dupes voters. Gableman is running a sleazy campaign that seeks to mislead. Over 200 judges and DAs, and groups representing over 18,000 law enforcement officers endorse Justice Louis Butler. Justice Butler has been a great justice for law enforcement. Justice Louis Butler.

Gableman:

Well, the fact of the matter is that despite any comment about any district attorney, who for his own personal or political reasons, may have withdrawn support, the fact is I do enjoy the public endorsement of the vast majority of bipartisan district attorneys across the state. The fact is, as well, that I enjoy the endorsement of over twice as many democratic sheriffs as my opponent has announced sheriffs who are endorsing his campaign. The fact is over 50 police chiefs across the state, democrats and republicans, publicly endorsed my campaign. The fact also is that Sheriff Maury Straub of Ozaukee County, who I don't think, even my opponent could say you could find a better example across this entire state of a more highly-respected law enforcement officer, wrote this and it was published in Madison, "Since the liberal mind set became the majority opinion, the state Supreme Court has become left leaning and has repeatedly demonstrated a propensity for legislating from the bench, furthermore..."

Butler:

Do I get a chance to jump in here?

Gableman:

Well, you will just as soon as I'm done. "Furthermore, the current court..."

Butler:

I think he's taking the entire two minutes.

Gableman:

Well, I kind of let you have the majority of the last one, so I guess we can agree. "Furthermore, the current court, through liberal interpretation of the Constitution has shown a general bias against good, honest law enforcement, and against the victims of crime in favor of criminals and defense lawyers. Simply put, the current court has made it more difficult for law enforcement to protect the public from criminals." That's what a well-respected member of law enforcement has to say.

Butler:

Now, with the 21 seconds that I have left, that ad was run in response to the ad that you had seen previously. And there's a recognition, and we all understand, that regardless of what's thrown out there, no matter how misleading it is, that if you do not respond to it, the fiction becomes the reality. So you can't just leave falsehoods out there. You have to respond to it. My opponent has repeatedly said throughout this campaign that he is the candidate and the choice of law enforcement, when in fact I have five organizations, police organizations, representing over 18,000 individuals, who have endorsed me in this campaign.

Franke:
Thank you.

Butler:
So it's just false and you need to know that and he had a minute and a half. I should be allowed to finish.

Franke:
Okay. Thank you, Justice Butler. We'll now return to some citizen questions. We resume the format as we did before. Patricia, from Appleton, to Justice Butler.

Patricia:
Justice Butler, what do you like about your opponent in one sentence, as to his qualifications for State Supreme Court?

Butler:
Well, he has been a judge for almost six years, and that I think goes towards his qualifications.

Franke:
Judge Gableman, you can answer the question as well.

Gableman:
I believe that in looking at my opponent's track record, he does have some experience on the court. It's not experience that I agree with at all, though. It's been experience that's been exercising a judicial philosophy, which I completely disagree with. I think that he sincerely believes, Patricia, to answer your question, I think that my opponent sincerely believes that the judicial activist model is the model that's more appropriate for Supreme Court justices. I think that he genuinely believes he's doing the right thing when he engages in an unprecedented expansion of the rights of criminals and criminal defendants, and consistently votes to tie the hands of law enforcement. And so I think he has a sincere, I think my opponent is sincere, that he believes that his philosophy and his track record of judicial activism are the appropriate philosophies and cases for a State Supreme Court justice.

Freyberg:

We got kind of off track here because Patricia, this excellent question, which was in “one sentence,” and there we were. So let's go ahead and take a couple minutes and talk back and forth about particularly what Judge Gableman has just discussed.

Butler:

I think one of the things that we need to make clear here, and it's been, voters are being misled throughout the state. You have aspersions that are being cast, pejoratives that are being thrown about, calling me a judicial activist, calling the Wisconsin Supreme Court a judicial activist. That's in an ad by Wisconsin Manufacturers and Commerce on their YouTube ad, that has cast aspersions to the integrity of the judicial integrity committee, that have attacked supporters of mine, that have attacked, everything is attack, attack, attack, attack, attack, attack.

And you're not hearing why someone should be on the Supreme Court. Now, I have a record, a demonstrated record, of experience, of integrity, and of an impartial approach to justice that I have exhibited over the past 16 years. The law enforcement officers that know me best, the Milwaukee Police Association, which is a conservative organization, endorsed me because they understand that I do follow the law and I uphold the constitution and I hold everyone's feet to the fire, as any good judge should do. So, to throw these pejoratives out just because you can get it into a 30-second sound byte, and because it polls well, everybody thinks that an activist is bad.

Gableman:

Now I get some time.

Butler:

Go right ahead.

Gableman:

All right. Thank you. Thank you very much. The fact is, the fact is I was being sincere when I said that I believe my opponent sincerely believes that his track record of judicial activism, and consistently voting to expand the rights of criminals and criminal defendants, is the right thing to do. We just have a very real and substantive different viewpoint of judicial philosophy and of what the appropriate tact to take is when it comes to being a State Supreme Court justice. I have a different view. The fact of the matter is, there's nothing about the fact of my overwhelming law enforcement support as opposed to a few union bosses having endorsed you, if you ask --

Butler:

Discount the police?

Gableman:

But if you ask those police on the beat, if you ask Sheriff Pedley, who summed it up best in a recent newspaper article--

Freyberg:

I think we're there before we sum up in an article. I'm sorry. The clock has ticked down to what we call zero.

Gableman:

Well, I think that's, the clock has gone over a few other times too, but it's one sentence, if I may.

Freyberg:

Go ahead.

Gableman:

Sheriff Pedley wrote, "I am opposed to Louis Butler because I believe he is in lock step formation with the chief justice who is so liberal and has done so much harm to Wisconsin law enforcement's ability to do its job."

Butler:

We could do worse than our chief justice. She's a wonderful chief justice. I think it's wrong for anyone to try suggest that anything is wrong with anyone on our Supreme Court.

Freyberg:

Thank you Justice Butler and Judge Gableman. We move now to Barbara, from Fond du Lac, who has a question, which will be directed first to Judge Gableman.

Barbara:

Thank you. Judge Gableman, if you would help us to hear, how do you define your job as an agent of the people, employee/employer or as an arbitrator hired as an outside expert?

Gableman:

I think the question runs to how do I view my job and what predominant characteristics or what predominant factors go to that, and how do I most see the substantive role of a Circuit Court judge. The fact is the role of a Circuit Court judge is very similar to that of a State Supreme Court justice, in that at the heart of it our job is to do justice, but not to do justice under some subjective, personal belief about what we happen to think is fair, or if we happen to be sympathetic towards a party or an individual who's in front of us.

Our job is to do justice under law, and that law includes the Constitution of the United States and scrupulously honoring the rights, including the rights to due process in both the civil and criminal realms and all other realms. And as a judicial conservative, I believe very strongly that the best way to maintain the faith and confidence of the people of this state in the integrity of the judges and justices is to stick closely to the plain language of the law, the constitutional rights of everyone, every individual who appears in front of me, as well as the rights afforded under the statute and the case precedent. To do so fairly and consistently.

Freyberg:
Thank you.

Gableman:
Okay.

Freyberg:
Justice Butler.

Butler:

Well, we serve under the third branch of government, and as part of that branch of government we are an agent of the people, but we're an agent of the people by upholding the Constitution of the United States and the Constitution of the State of Wisconsin, and upholding the laws of this great state. And that is our function.

Many times we find ourselves in the role of sometimes being a referee. Sometimes we find our role being that of a decision-maker. Sometimes we have, most of the time, we're interpreting and applying the law. And it depends on whether we're talking at a Circuit Court level or Municipal Court level, or Appeals Court, or Supreme Court. But our job is to interpret and apply the law to a given set of facts and circumstances. We should not pre-judge cases. We should not be making up our minds in advance, before we've ever heard from the parties. We should not be signaling or suggesting that we're going to vote a particular way, because groups are supporting us, or endorsing us, or will give us money. No. We have to be detached, and neutral, and non-partial, and non-biased, and independent in every single case we decide. That's the function of a Supreme Court justice.

Freyberg:
Two minutes now.

Gableman:

I think one of the roles of being a Circuit Court judge that I have enjoyed as well, is trying to exhibit genuine leadership. And the fact is that the leadership doesn't begin or end at the bench, and with our formal case appearances.

The fact that I am a judicial conservative should not take away in the least from the fact that I do see room for creativity within the legal setting. I have, for instance, as a Circuit Court judge, in addition to my more than full-time caseload, my caseload has ranged anywhere from what's normally assigned, 1.2 to 1.6 full-time judges. But I've led the establishment of a Drug and Alcohol Court, over which I still preside. I've led the establishment of an Inmate Community Service Program. I've led the establishment of a Restorative Justice Program, as well as a Truancy Court. I've tried to be a leader. I've tried to recognize the genuine concerns that all of us in this community, and I define community as statewide. I don't view it as a locality. I think that we're dealing with many of the issues, and I know I'm going over into my friend's minute. But that's one of the roles of genuine and general leadership.

Butler:

And I commend my opponent for some of the things he has done as a Circuit Court judge in that regard. As a former Municipal Court judge and Circuit Court judge, I similarly did those things. I also do those things at the Supreme Court level.

But I think if we're going to talk about leadership, and that's what my opponent has said here. We have to look at who is following, and who the people in the system view as a leader in the system. And that's why, when I look at the almost 250 judges at the Court of Appeals level, the Circuit Court level, and Municipal Court level, who have supported me. These are the people that are interpreting the law every day for the citizens of Wisconsin. We have 12 who've supported my opponent. The people that administer the justice system trust the work that I've done as a leader in the state on the Wisconsin Supreme Court and I appreciate their support greatly.

Freyberg:

All right. Well, thank you, both of you, for that. And that concludes really our citizen participation, unless something crazy happens and we come back to you near the end. Thank you very much for your participation.

Now the time has come for the candidates to ask a question of each other, to include one and a half minutes, that's the question and the answer. One and a half minutes. We go first to Michael Gableman and ask you what is your question for Louis Butler?

Gableman:

All right. Well, the question that comes to mind is that since your appointment by Governor Doyle to the bench, you've obviously had a significant amount of time to rule on many different cases involving substantive rights, touching and concerning criminal law and criminal procedure and other things. And the fact of the matter is over 50 sheriffs, about three-quarters of the sheriffs across this state, and the bipartisan majority of the district attorneys across this state say that you should not be retained for a ten-year term, elected to that position. Why do you think that is?

Butler:

Well, I know why a number of the sheriffs have opposed and you know this as well. It has to do with a collective bargaining decision that the court made last year in Sheriff Cockin's case up in Green Bay. It had largely to do with the decision of the Wisconsin Supreme Court held, that as a matter of following state law, and you indicated you want to give fair application to the plain meaning of the law, that he was above the law, that as a constitutional officer, he did not have to follow the law and didn't have to follow the process that was set forth by the legislature in ending or trying to remain a contract that was already in place between the county and a union that was in place there.

And so, for that reason, a number of the sheriffs were upset because the Wisconsin Supreme Court said that if Presidents of the United States have to abide by the law, if

justices of the Wisconsin Supreme Court have to abide by the law, then so do sheriffs. That was, in large part, the reason they're not supporting me.

As far as the district attorneys are concerned, it had to do with some misleading information that was mailed to the district attorneys as this race started and you know what that information is.

Franke:

Thank you, Justice Butler. Now your opportunity to ask Judge Gableman a question. Justice Butler, go ahead.

Butler:

Well, you talked about the ad. We've had an opportunity to see the ad that you've entitled "Prosecutor." And you've stood by it. But given the statements that have been made by all of the independent groups, by Justice Geske, by Newsweek, by the Annenberg Study Group, and given the fact that you have maintained throughout this campaign. At the last debate, I think you said you were running a clean and positive campaign. How can you stand by that statement? How can you stand by the statement that you have run an aboveboard, positive campaign when everyone else in the state, when everyone else in the country is looking at this ad and saying that this is the worst campaign in Wisconsin judicial history?

Gableman:

Well, the very fact is that in 2000, the last time you ran for this job, and shortly before you were defeated by about a two-to-one margin, you told the Milwaukee Journal Sentinel that consideration of the backgrounds and professional careers of the candidates for this job was "fair game."

The very fact of that ad and what your comments disregard are the fact that significant portion, just about half of that ad, was based on my prior background and prior experience working as a prosecutor, working very hard for justice for victims.

I have seen no ads on your part. I know that you say how proud you are, and I think at the last debate you said how proud you were of all the people that you've represented. I don't know how proud you can really be of Reuben Lee Mitchell. But the fact is, the fact is that your career was spent doing one thing, and my former career was spent doing another and that ad illustrated that point which you said was fair game. And now I guess you've changed your mind on that.

Freyberg:

Well, we will leave that there. Thanks to both of you. The time has now come in this program for the closing statements of the candidates. They will have one minute each to do that. A final pitch for your vote, as it were, on Tuesday. Before the broadcast, we flipped a coin to determine the order foreclosing statements. Justice Butler won that toss. He chose to go last. So Michael Gableman begins his closing remarks first.

Gableman:

Ladies and gentlemen, I have served, I have been very proud to serve in a former career as a longstanding prosecutor. I developed a reputation of working very hard for justice for victims and holding offenders accountable. That was my former career.

Now as a Circuit Court judge for over the last five years, I have developed a reputation as being a law and order judge, who not only scrupulously honors the rights of the defendants and the criminals, but does very good and hard work of honoring the rights of victims of crime, as well, and keeping the victims in mind.

I have worked hard to develop that kind of reputation and the very fact is that over ten times the number of sheriffs across this state who are endorsing my opponent's campaign, over ten times that number are publicly endorsing my campaign. A bipartisan majority of district attorneys across this state are endorsing my campaign. The Wisconsin Sheriffs and Deputy Sheriffs Association--

Franke:

That is one minute, Judge Gableman. Thank you. Justice Butler, you have one minute.

Butler:

Ladies and gentlemen, there is a clear choice in this race for the Supreme Court. Third party groups have done what they can to muddy the waters, confuse voters and to try to buy a seat on the Wisconsin Supreme Court. But as candidates we have a choice in how we run our own campaigns. You've seen the two of us make very different choices. I've run a completely positive campaign. I've not run any negative ads demeaning my opponent. I've not repeated any of the third party allegations against him.

It is the responsibility of every member of the judiciary to uphold the integrity of the justice system. I am a sitting Supreme Court justice. I hold that office in the highest regard. And I refuse to compromise my integrity or the integrity of that office just to win an election.

Unfortunately, my opponent has chosen to run a very different campaign, one that demeans the voters of this state. I hope that on April 1, voters will rise up and put an end to this negativity and say enough is enough. That is the only way we can end this nonsense and protect our justice system. I respectfully ask for your vote on April 1. Thank you.

Freyberg:

Justice Butler, Judge Gableman, thank you very much. That does conclude our "We the People" Supreme Court Forum. Thank you so much. That concludes our forum, but we do again want to thank Louis Butler and Michael Gableman for participating. We want to thank our citizen panel and audience as well. I'm Frederica Freyberg.

Franke:

I'm Erik Franke. Tuesday is election day. Look for more campaign reports in the final days of the election from our media partners, Wisconsin Public Radio, WISC-TV, the Wisconsin State Journal, and online, WisPolitics.com

Thanks for being with us. Good night.

Announcer:

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