

Wisconsin Democracy Campaign: Discusses Clarence Thomas, recusal, and Wisconsin

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MADISON—If he doesn't resign, as Rep. Alexander Ocasio Cortez has properly [asked him to](#), Justice Clarence Thomas at least needs to recuse himself from any cases dealing with the Jan. 6 uprising.

And he sure should have recused himself when he was the lone dissenter in a case earlier this year about the release of Donald Trump's records relating to Jan. 6.

Because Thomas's wife Ginni not only attended the "Stop the Steal" rally. She also sent a couple dozen text messages to Trump's chief of staff urging him to do whatever it takes to keep Trump in power. Her texts were part of Trump's records that were of issue in the case. Thomas had a clear conflict of interest, and he violated judicial ethics by sitting on the case and actually ruling in favor of Trump, thus shielding his wife.

There's absolutely no way Clarence Thomas can be a neutral arbiter in any future Jan. 6 cases.

Thomas's flagrant conflict of interest reminds me that here in Wisconsin, we need better recusal rules for judges and justices, too.

This matter has come up several times over the last dozen years. First, the League of Women Voters of Wisconsin in 2010 petitioned the Wisconsin Supreme Court to tighten its recusal rules. Instead of doing so, the conservative justices on the court chose to accept a rule, written by [Wisconsin Manufacturers & Commerce and the Wisconsin Realtors Association](#), which is essentially no rule at all. It says it's totally

up to the judge or justice whether to get off a case or not.

In 2015, in the [John Doe II](#) case against Scott Walker, the issue arose again. The special prosecutor was investigating whether Walker had broken the law by coordinating with outside electioneering groups during a campaign. Two of those groups were Wisconsin Manufacturers & Commerce and Wisconsin Club for Growth. The special prosecutor asked two of the justices – David Prosser and a guy named Michael Gableman – to recuse themselves because they had benefitted from vast expenditures by those groups when they were running for office — to the tune of \$1.6 million to help elect Prosser and \$2.26 million to help elect Gableman. But neither recused themselves. Instead, they sat on the case, ruled in favor of Walker, fired the special prosecutor, and shut down the investigation.

Then, in 2017, 54 retired judges in Wisconsin urged the Wisconsin Supreme Court again to tighten its recusal rules. The petition states: “As money in elections becomes more predominant, citizens rightfully ask whether justice is for sale. The appearance of partiality that large campaign donations cause strikes at the heart of the judicial function, which depends on the public’s respect for its judgments.”

The conservatives on the Wisconsin Supreme Court rejected this petition, as well. Justice Rebecca Bradley claimed that it was an offense to even imagine that judges could be so corrupted: “ Every judge in Wisconsin should be offended by this. It attacks their integrity and character,” she huffed.

Then-Justice Shirley Abrahamson rebutted this naïve claim: “Due process requires recusal if there is an actual conflict of interest or the appearance of a conflict of interest,” Abrahamson noted.

But to no avail.

So today in Wisconsin, just as on the U.S. Supreme Court, it’s up to the judge or justice to decide for himself or herself.

And there’s no transparency here, either.

Things are so lax in Wisconsin that that if I’m a lawyer in a case before a judge, I can give a check for \$2,000 to that judge’s reelection campaign while he’s sitting on my case, and neither I nor the judge needs to inform the lawyer on the other side.

That’s an invitation to legalized judicial corruption.

And unlike Rebecca Bradley, I wouldn't be surprised if some judges accept the invitation.