



STATE REPRESENTATIVE
GARY HEBL
46TH ASSEMBLY DISTRICT

Testimony in favor of AB 137

Thank you Mr. Chair, and thank you for the opportunity to testify in favor of Assembly Bill 137.

Assembly Bill 137 is one of a package of bills that I introduced this session to ensure an open and impartial judicial system in Wisconsin. This bill in particular would go a long way in making sure that all parties of an action or proceeding are aware of a possible conflict of interest if one of the parties has contributed to the campaign committee of the presiding judge or justice.

This bill requires disclosure of campaign contributions to a judge or justice. It provides that whenever an interested contributor makes a contribution to the candidate committee of a court of appeals, circuit, or municipal judge or supreme court justice in a pending civil or criminal action or proceeding over which the judge or justice is presiding, the contributor must notify the judge or justice and every party to the action of the fact that the contribution has been made and the date and amount of the contribution. This notification must be in writing and must be submitted within five days of the date that the contribution is made.

For the purposes of this bill, an "interested contributor" is defined as a party to a pending civil or criminal action or proceeding; an affiliate of such a party; a spouse, minor child, or minor stepchild of such a party; an attorney representing such a party; or the law firm, partner, or associate of such an attorney.

Violations of the reporting requirement are subject to a forfeiture of not more than \$500 per violation.

Having an impartial justice system should be a nonpartisan issue. Our judicial system has to be open and fair to all of our citizens, whether conservative, liberal, or anything in between. Even the *appearance* of impropriety is something we should strive to avoid. We must make sure that the people of our state trust in the courts to treat everyone in an equal, honest, and unbiased manner.

Imagine if you lost a case and later came to find out that another party in that case had contributed to the campaign of the judge that had presided. Surely the first thing that would come to your mind is that the other person had an unfair advantage because the judge may have wanted to rule in favor of a campaign contributor in order to continue receiving campaign funds from that person.

Now, I'm not saying that all judges could or will rule in favor of campaign contributors. But non-disclosure of these contributions is the very definition of the appearance of impropriety, and it erodes faith in our judicial system.

This bill fights against that. It allows all parties to an action to be aware, before the proceeding, of any financial contributions to the presiding judge or justice's campaign committee. By allowing an open and free acknowledgement of those contributions, it allows other parties to the action the time to consider how it might affect the proceeding.

It is important to note that this bill does not require recusal from judges or justices. While I have another bill that addresses that issue that I hope will get a hearing before this committee soon, this bill just focuses on disclosure of contributions. There are several practical and prudent measures we can take to strengthen our court system and this bill is really just the first step in addressing impartiality issues.



SENATOR JANET BEWLEY
WISCONSIN STATE SENATE

Assembly Committee on Judiciary
Public Hearing on Assembly Bill 137
April 26, 2017

Thank you Mr. Chair. I'm sorry that I wasn't able to be before the committee in person, but I wanted to submit this testimony in support of AB 137.

I was pleased to join Representative Hebl in sponsoring this bill and appreciate that you are giving it a public hearing.

Regardless of political party, I think that we can all agree that having an impartial justice system is what we all want for Wisconsin's citizens. Unfortunately, the public has lost confidence in the impartiality of our justice system. A big part of that problem is the recent partisan nature of our judicial campaigns. The answer to this is more disclosure.

Even United States Supreme Court Justice Anthony Kennedy, who authored the majority opinion in *Citizens United vs. FEC*, has come out in support of full disclosure. In his landmark opinion, he wrote, "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

Passing AB 137 would go a long way to help restore the public's confidence that our court system is fair, impartial, and balanced.

Again, I apologize that I was unable to attend to hearing in person. Please reach out to my office if you have any questions or concerns.



25th Senate District

State Capitol: P.O. Box 7882, Madison, WI 53707-7882 ★ E-mail: sen.bewley@legis.wi.gov
Web: <http://bewley.senate.wi.gov> ★ (608) 266-3510 ★ Toll-free: (800) 469-6562



Statement to the Assembly Committee on Judiciary

In favor of Assembly Bill 137, relating to notice of certain campaign finance contributions made to a judge or justice

Testimony by Matt Rothschild, Executive Director

April 27, 2017

Chairman Ott, and distinguished members of the Assembly Judiciary Committee, it's an honor to be with you today. I'm Matt Rothschild, the executive director of the Wisconsin Democracy Campaign, now in its 22nd year as a nonprofit and nonpartisan watchdog on the issue of money in politics and an advocate for clean, open, and transparent government, where everyone has an equal voice.

We are in favor Assembly Bill 137 for one very basic reason: It would help prevent some of the corruption that is rotting our judicial branch.

As it is now, judges need to report contributions only in their six-month reports or pre-primary reports and pre-election reports or if there is a contribution over \$2,000 within the last two weeks of the primary election or general election, in which case they need to report within 72 hours. So, except in very rare cases, one party in a civil suit won't know that the other party has given \$20,000 to a Wisconsin Supreme Court justice, or \$5,000 to an appellate or circuit court judge!

↳ the campaign committee of

It's hard for the party that's in the dark to get equal justice under the law when the other party has just put a pile of money in the judge's campaign chest. This is an open invitation to corruption. It interferes with people's constitutional rights to due process. And it only serves to increase the cynicism of the American public toward our governing institutions.

As the U.S. Supreme Court itself ruled in 2015 in a case called *Williams-Yulee v. Florida Bar*: "Even if judges were able to refrain from favoring donors, the mere possibility that judges' decisions may be motivated by the desire to repay campaign contributions is likely to undermine the public's confidence in the judiciary."

↳ the campaign committee of

Notice that I said at the outset that Assembly Bill 137 would help prevent **some corruption**, but it would not prevent all of it, or even the most significant kind, and that's for two reasons.

First, the bill is silent about a party's contribution to an issue advocacy or express advocacy group that runs ads that help elect a judge. These contributions can be unlimited. Why shouldn't a party to a case have to disclose that he or she gave a million dollars to a group that ran an ad saying: "Vote for Judge X, the best judge in the land," when judge X is presiding over that case?

Or take the phony issue ad groups. You've all seen these. "So and so candidate for judge is a horrible scoundrel. Please call this candidate up and tell him to stop being such a scoundrel. Here's his number." If a lawyer who paid the entire bill for that ad has a case before the judge who benefitted from that ad, doesn't the other side have a right to know that?

And second, this bill is silent about the absurdly lax recusal rule that the Wisconsin Supreme Court has adopted, which says it's totally up to the individual judge or justice as to whether they should recuse themselves or not. I know that Rep. Hebl has introduced a package of bills, AB 132-136, on that subject, and I hope they will get a hearing as well.

I was at the Wisconsin Supreme Court one week ago today when it took up the petition from 54 distinguished Wisconsin judges who are now retired and who were urging the justices to tighten their recusal rule. I heard a couple of the conservative justices proclaim that this petition was an insult to every judge in this state because no judge would possibly have his or judgment tainted by such a thing. That struck me not only as highly sanctimonious but as enormously naïve.

Then Justice Rebecca Bradley and Justice Annette Ziegler came up with a ridiculous interpretation of the First Amendment, saying that requiring such recusal would violate the donor's First Amendment rights to participate in the electoral process. Note that recusal doesn't stop donors from voting; nor does it stop them from giving unlimited amounts of money to outside groups. All it stops them from doing is receiving a benefit from those donations, and that benefit is having a judge who is in their pocket sit on their case. And by the way, the U.S. Supreme Court hasn't bought this interpretation of the First Amendment. Not at all. In the *Williams-Yulee* case I cited before, for instance, the Court ruled that "Florida's ban on the personal solicitation of campaign funds by candidates for judgeships does not violate the First Amendment."

So while we at the Wisconsin Democracy Campaign endorse Assembly Bill 137, we recognize that it is only a partial step toward rectifying the problem of corruption in our judiciary, a problem that the Wisconsin Supreme Court refuses to acknowledge, much less address.... Thank you for your time.



LEAGUE OF WOMEN VOTERS®
WISCONSIN

612 W. Main Street, #200
Madison, WI 53703-4714

(608) 256-0827
lwwi.org

April 27, 2017

To: Assembly Committee on Judiciary

Re: Comments on AB 36/AB 117, AB 93, AB 137

The League of Women Voters of Wisconsin believes there are three important measures in establishing criminal sanctions. Society is protected from criminal acts by deterrence, incapacitation and reform. We have a justice system whose purpose is to review criminal acts by citizens and to take appropriate action to protect society and help prevent further criminal acts. The final disposition of these actions is in the hands of judges. It is important that citizens have confidence in the functioning of all aspects of our justice system.

The League of Women Voters of Wisconsin opposes AB 36/AB 117 for the following reasons:

- We believe there is a public perception concern about potentially having an elected official representing a specific religious organization.
- District Attorneys and others in elected positions in law, as part of Professional Standards, are already allowed *pro bono* work when it is in support of efforts to improve the justice system i.e. serving on a Bar Association committee or other organization devoted to improving the justice system such as alternatives to incarceration.
- Being a District, Deputy or Assistant District Attorney is a full-time job. Any civil litigation involving courts would have to be done during the week when these public servants are needed for their public responsibility.
- It could be time consuming and difficult to ensure that parties involved in a prosecution case were not also being given *pro bono* services by someone in the same department regarding a civil matter, i.e., a landlord throwing out someone's belonging when that renter may be getting help on the eviction. All of that has to be coordinated and watched over.
- There are many public service lawyers, including city attorneys, university attorneys and others. Why are only the District Attorneys being singled out?
- This bill only applies to full-time District Attorneys (Deputy and Assistants) and the law already allows elected officials who are in these occupations on a part-time basis to do *pro bono* work.
- This measure could make it difficult for more clients to submit a grievance against a District Attorney.

This legislation has many negative aspects and would enable only a small number of lawyers to add to the *pro bono* work in this state. We urge you to reject it.

The League of Women Voters of Wisconsin supports AB 93. This bill removes the request for an expungement order at the time of sentencing and allows a petition to the court one year after sentence served and with payment of a fee. We support SB53 because it would more easily allow citizens to expunge records of juvenile actions. Such actions, which take place before full development of the brain, should not be allowed to be a long-term stigma which can impede a young person's career development.

(continued)

The League of Women Voters of Wisconsin supports AB 137, which requires notice of certain campaign finance contributions made to a judge or justice. Any citizen who has to appear in court should have absolute confidence that the judge will be fair and impartial. We are not suggesting that campaign gifts automatically undermine a judge's neutrality. Unfortunately, though, campaign contributions and support can erode public trust, even when a judge may be acting fairly. In the absence of recusal rules addressing this problem, notice of financial contributions to a judge or justice by a party in a pending case is essential.

This bill provides that whenever an interested contributor makes a contribution to the candidate committee of a court of appeals, circuit, or municipal judge or supreme court justice in a pending civil or criminal action or proceeding over which the judge or justice is presiding, the contributor must within five days notify in writing the judge or justice and the parties in the case of the date and amount of the contribution.

Public trust is enhanced by public information. Requiring notice of contributions made by parties in a case will boost public confidence in the courts.

Thank you.

Wisconsin Justice Initiative

P.O. Box 100705
Milwaukee, WI 53210

State Rep. Jim Ott
Chair, Assembly Committee on Judiciary
State Capitol – Room 317 North
P.O. Box 8953
Madison, WI 53708

April 25, 2017

Dear Chair Ott:

The Wisconsin Justice Initiative supports AB 137, which would levy modest and much-needed reporting requirements on any judicial campaign contributor who donates to a judge presiding over a case in which the contributor has an interest.

This requirement is hardly onerous. It requires reporting only those donations made during the life of the case.

It is clear the Legislature must act to help restore the reputation of the state's courts, which has been harmed because of the huge amount of money flowing directly and indirectly into some judicial races.

AB 137 is a first step. We urge the committee to support the bill.

Thank you,



Gretchen Schuldt
Executive Director

Cc: State Rep. Gary Hebl
Virginia Mueller, committee clerk