



State Democracy Research Initiative

UNIVERSITY OF WISCONSIN LAW SCHOOL

The “Biggest Election” of 2023:

What to know about the upcoming Wisconsin Supreme Court election

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Wisconsin’s upcoming supreme court election is drawing nationwide attention, with some calling it the country’s “[biggest](#)” and “[most important](#)” race of the year. The race has [high stakes](#): The Court may soon decide issues of profound significance, including partisan gerrymandering and abortion, and the election will determine the Court’s balance of power.

The election will proceed in two stages. Early voting is already underway for the February 21st primary, which will winnow the field of four candidates to two finalists. The two finalists will then face off in the April 4th general election.

Of the four candidates, [two identify](#) as judicial conservatives, and [two position themselves](#) as more liberal. Because the February primary is officially nonpartisan, there is no guarantee of getting one finalist from each of these sides; the Court’s ideological direction could conceivably be determined at the primary stage.

This guide addresses some key questions about the election and its significance.

Why is this election such a big deal?

The Wisconsin Supreme Court has the final say in interpreting and applying Wisconsin law, and this election could tip the Court’s balance of power. The Court [frequently divides 4-3](#) between four judicial conservatives (one of whom, Justice Brian Hagedorn, is often a swing vote) and three more liberal jurists. Justice Patience Roggensack, a conservative, is retiring this year, creating an open seat. If one of the more liberal candidates prevails, control of the Court will shift for the first time in 15 years.

All of this comes at a moment when the Court is playing a major role in the state’s governance. Frequent impasses between the legislature and governor on state policy, and the retreat of the U.S. Supreme Court on issues like abortion and partisan gerrymandering, leave the state’s high court with the final word on [a range of high-stakes matters](#).

Two potential blockbuster cases are widely anticipated to reach the Court after a new justice is seated. First, the Court could address whether a state law from 1849 that imposes a near-total ban on abortion came back into effect after the U.S. Supreme Court overturned *Roe v. Wade*.

In a [lawsuit](#) that is now pending at the trial court level, Attorney General Josh Kaul argues the ban is not in effect because it has been superseded by more recent statutes.

Second, the Court last year [rejected calls](#) to improve the partisan fairness of the state's electoral districts and instead [adopted maps](#) that reinforced Republican control of the state legislature. Litigants could potentially bring a new [redistricting lawsuit](#) to challenge the state's legislative and congressional districts as unlawful partisan gerrymanders. A decision to revise the maps could create a more competitive electoral landscape for Democrats for the first time in 14 years.

Whoever wins the race to become the state's next justice could cast a deciding vote in these and other cases. This is the first race in a decade that could tip the Court's balance in this way. The last time was 2013, when the Court had a similar 4-3 split and Justice Roggensack was [reelected](#). Since then, the Court has shifted several times between a 5-2 and 4-3 conservative majority, but has not changed in overall balance. Just six years ago, [no one ran](#) against incumbent Annette Ziegler, who is now the Court's chief justice.

Who is running?

Four candidates will appear on the February 21 primary ballot, all of them current or former judges:

- [Jennifer Dorow](#) is a circuit court judge in Waukesha County. She was appointed by Governor Scott Walker in 2011, and she retained her seat in uncontested elections in 2012 and 2018. She was previously a prosecutor and criminal defense attorney in private practice.
- [Daniel Kelly](#) served as a justice on the Wisconsin Supreme Court from 2016, when he was appointed by Scott Walker, until 2020. He was previously an attorney in private practice, and he is now a senior fellow at the Institute for Reforming Government.
- [Everett Mitchell](#) is a circuit court judge in Dane County, having been elected in uncontested races in 2016 and 2022. He has also taught as an adjunct professor at UW Law School and previously worked as a prosecutor and as community relations director for UW-Madison.
- [Janet Protasiewicz](#) is a circuit court judge in Milwaukee County, having been elected in uncontested races in 2014 and 2020. She previously worked for 25 years as a prosecutor, and she has served as an adjunct professor at Marquette University Law School.

The supreme court race is non-partisan—but "[in name only](#)," according to some. Dorow and Kelly both describe themselves as judicial conservatives. Mitchell and Protasiewicz have positioned themselves as more liberal.

All four candidates shared their views at a January 9 [public forum](#), a video of which can be seen [here](#). The latest news coverage on each candidate is available at these Google News links: [Jennifer Dorow](#), [Daniel Kelly](#), [Everett Mitchell](#), [Janet Protasiewicz](#).

Who are the Court's other members?

Wisconsin Supreme Court justices serve ten-year terms, and no more than one justice can be elected in a single year. The Court has seen significant turnover in the last decade: four of its seven justices joined the Court between 2015 and 2020. Six of the seven justices are women, and a majority of the Court's seats have been held by women since 2007—the longest continuous female majority on any state supreme court.

Since the most recent supreme court election in 2020, the Court has been divided between four judicial conservatives (Chief Justice Annette Ziegler and Justices Patience Roggensack, Rebecca Grassl Bradley, and Brian Hagedorn) and three more liberal jurists (Justices Ann Walsh Bradley, Rebecca Dallet, and Jill Karofsky). Justice Hagedorn, although conservative in judicial philosophy, has often been the Court's swing vote: [last term](#), he joined the majority in all but four of the Court's 4-3 decisions, siding equally with the Court's conservative and liberal blocs.

Justice Roggensack's retirement takes effect at the end of July, leaving a 3-3 split between the remaining justices. The new justice elected this spring will assume office on August 1.

What is the significance of the February primary?

The February 21st primary could decide the Court's ideological makeup. Because the race is formally nonpartisan, the top two candidates—regardless of partisan or ideological bent—will advance. If one conservative and one liberal move on, April's general election will determine majority control of the Court. However, if two conservatives or two liberals claim the top two spots at the primary stage, the Court's direction will be decided then.

[Turnout](#) could make all the difference. Fewer people typically vote in April elections than in November, and turnout for February primaries is lower still. Since 2000, average February turnout has been just over 400,000 voters, with a high of 700,000 in 2020—a figure that still represents just 16 percent of the state's eligible voters. In years without presidential primaries, April turnout often hovers around 20 percent. Compare that to the 3.3 million Wisconsinites who voted in the [November 2020](#) presidential election and the 2.6 million who voted in the [November 2022](#) midterms—turnout of 73 and 57 percent, respectively.

The 2020 state supreme court race well illustrates that much depends on which voters are motivated to show up. In the [February 2020 primary](#), then-Justice Daniel Kelly won a slim majority —[50.04 percent](#)—in a field of three. But when more than twice as many voters turned out for the [April election](#) (1.55 million compared to the primary's 700,000), he [lost](#)—44.7 percent to 55.2 percent—to now-Justice Jill Karofsky. In other words, although a majority of February voters preferred Kelly (who earned more votes than his two opponents combined), Karofsky prevailed by a significant margin in the larger April electorate (when there was also a

presidential primary on the ballot). In the other two most recent supreme court races, turnout in the [February primary](#) was similarly only a fraction of that for the subsequent [April election](#): 54 percent in 2018 and 29 percent in 2016.

When might the Court's composition next be up for grabs?

After this year's race, the next Wisconsin Supreme Court election is anticipated for 2025, when Justice [Ann Walsh Bradley](#)—a liberal who will be the Court's senior member in age and tenure—will either seek reelection or vacate her seat. The following year, Justice [Rebecca Bradley](#)—a conservative—will be up for reelection.

Whether either of those races could shift control of the Court depends on the outcome this spring. If conservatives prevail in this election, liberals likely won't get another chance to assume control until 2026—and only if they hold onto their third seat in 2025. If a liberal candidate wins this year, conservatives can try to swing the Court back in 2025.

What else will be on the ballot?

The Wisconsin Supreme Court election isn't the only thing that will be on the ballot. Municipal and school board elections also take place in April, as do elections for circuit and appellate court judges—with a February primary, if necessary. Those races will vary depending on where a voter lives.

In addition, an off-cycle race for the state senate seat in [District 8](#) will determine whether Republicans win a two-thirds supermajority in that chamber—which they [briefly captured](#) in November but lost with the [retirement](#) of Sen. Alberta Darling. However, the senate could not [override](#) the governor's veto unless Republicans also achieved a supermajority in the state assembly (where they are two seats short).

Finally, April voters will be asked to answer [three ballot questions](#). The first two will ask whether the Wisconsin Constitution should be amended to give judges more flexibility to impose cash bail and other conditions when releasing criminal defendants before trial. If a majority of voters say yes, the amendment will be incorporated into the state constitution. The third ballot question is a nonbinding referendum, asking voters whether they believe that "able-bodied, childless adults" should "be required to look for work in order to receive taxpayer-funded welfare benefits"—something that state law already [requires](#). Some have [described](#) the welfare question's inclusion on the April ballot as an effort by Republican lawmakers to increase conservative turnout—a "[gimmick](#)" that both political parties have attempted to gain an edge in close races.

When will voting occur?

On February 21 and April 4, polls will be open from 7am to 8pm. Voters can [find their polling place](#), [review their ballot](#), or [request an absentee ballot](#) using the preceding links. Absentee ballots must be returned before polls close on the day of the relevant election.

