



INSTITUTE FOR REFORMING GOVERNMENT

THE WISCONSIN SUPREME COURT CAN SAVE OR DESTROY VOTER ID AND ELECTION INTEGRITY

OVERVIEW

Wisconsinites overwhelmingly support voter ID and other common-sense election integrity measures. **The current liberal majority on the Wisconsin Supreme Court has already reversed two key election law cases, and more could be in the pipeline.**

WHAT YOU SHOULD KNOW

- » The rules for Wisconsin's elections are written into state law, so they are frequently interpreted and applied by Wisconsin courts. That means Voter ID, absentee balloting, redistricting, and decisions from the Wisconsin Elections Commission often end up in court.
- » The liberal majority has already overturned a key election integrity case that had limited the use of absentee ballot drop boxes.

WHAT COULD HAPPEN

Though voter ID is a widely popular¹ election security measure in Wisconsin, left-wing activists still consider it a tool of voter suppression and actively litigate against it. Some have also suggested² the Court could revisit the congressional maps, overturning another precedent to impose Court-drawn lines that favor Democrats for two additional US House seats.

LEGAL BACKGROUND

Free and fair elections, conducted according to law, with transparent and verifiable results, are absolutely essential to our republic. Questions of election administration are resolved either in state law or by the Wisconsin Elections Commission; either way, they regularly end up before the state courts. Public confidence in our elections depends on a court that follows the law.

Yet the current majority on the Wisconsin Supreme Court has displayed a disregard for the law as it is written and previous election decisions in this area. In *Teigen v. Wisconsin Elections Commission*, 2022 WI 64, the Court had held absentee ballot drop boxes did not meet statutory requirements for ballot security. Just two years later, in *Priorities USA v. Wisconsin Elections Commission*, 2024 WI 32, the Court reversed that holding. The only thing that changed was the replacement of conservative Justice Roggensack by liberal Justice Protasiewicz.

Voter ID remains a top issue of concern for many Wisconsinites. The Wisconsin Supreme Court has upheld voter ID in two separate cases. *Milwaukee Branch of the NAACP v. Walker*, 2014 WI 98, and *League of Women Voters of Wisconsin Education Network, Inc. v. Walker*, 2014 WI 97. If another Voter ID case is brought, the current majority could reverse these precedents just like it reversed *Teigen* and *Johnson*.

WHAT'S NEXT

There is an election in April for a Supreme Court seat that will decide if the majority of the Court is liberal or conservative leaning. Here's who is running and their past history on this issue.

Brad Schimel: While serving as Wisconsin's Attorney General, Brad Schimel supported Voter ID³, fighting to keep it in place in Wisconsin.

Susan Crawford: Susan Crawford was one of the attorneys in 2011 who brought litigation charging that Voter ID was unconstitutional. *League of Women Voters v. Walker*, 2014 WI 97.



Brad Schimel
Current Waukesha
County Judge



Susan Crawford
Current Dane
County Judge

ZOOM IN

Other important election issues also depend on the Court. In *Jefferson v. Dane County*, 2020 WI 90, the then-extant conservative majority on the Wisconsin Supreme Court granted a petition from the Republican Party of Wisconsin to clarify that the “indefinitely confined voter” exception could not be abused to avoid the voter identification requirements of state law. The Court rejected an attempt by the Dane County Clerk to expand the “indefinitely confined voter” under the guise of COVID to create a permanent vote-by-mail option without a requirement to show ID.

Other issues remain on the horizon, including the legal authority of Wisconsin Elections Commission to issue guidance, including on the requirements for witness signatures on absentee ballots (some issues were left unresolved after *Trump v. Biden*, 2020 WI 91), interpretation of the new constitutional amendment barring non-citizen voting, and efforts to clean up the voter rolls (a question initially confronted in *State ex rel. Zignego v. Wis. Elections Commission*, 2021 WI 32).

The same is true of the legislative districts, where the Court, through a raw exercise of judicial power, changed the outcome from its prior ruling, impacting which political party had the upper hand in legislative elections. Compare *Clarke v. Wisconsin Elections Commission*, 2023 WI 79, with *Johnson v. Wisconsin Elections Commission*, 2021 WI 87.

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Endnotes

- 1 [Pew Research Center](#)
- 2 [Milwaukee Journal Sentinel](#)
- 3 [Court House News](#)



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