

Majority at stake in Wisconsin Supreme Court election

Episode #171



ON THE BALLOT

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Podcast Transcript

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[00:00:00] **Geoff Pallay** : Welcome to On the Ballot with Ballotpedia, where we connect people to politics by providing neutral, nonpartisan, and reliable information on our government, how it works, and where it's headed. I'm Geoff Pallay and thanks for being with us. One of the highest profile state level elections we're following this year, It's for an open seat on Wisconsin's state Supreme Court.

On April 1st, the state will elect a new justice to replace retiring incumbent Justice Ann Walsh Bradley, one of the court's liberal members. So with a current 4 3 liberal leaning majority soon to revert back to an even split, both parties are looking at the race as a chance to either retain or regain ideological balance of the court.

Wisconsin always seems to be in the news as a swing state. And this year is no different with the ideological balance of the court at state. More and more often these days, it seems like major policy battles are being decided in courts and ultimately by the Supreme Court of any given state. And as today's guest will explain, that is the lost on Wisconsinites.

I'm [00:01:00] joined now by Anya Van Wagtendonk, Wisconsin Public Radio's state capital reporter. Anya, thanks so much for coming on the show. Thanks

[00:01:08] **Anya van Wagtendonk**: for having me.

[00:01:08] **Geoff Pallay** : So, why do these Wisconsin state Supreme Court elections seem to matter so much, both in Wisconsin and nationally?

[00:01:16] **Anya van Wagtendonk**: Yeah, you know. Government doesn't really work a lot of the time, right?

The sort of like legislative branch and the executive branch that we typically turn to to make policy happen. And especially when government is divided as it is here in Wisconsin. We have a Democratic governor and a Republican held legislature and it's been that way for quite a while. And so increasingly important issues are just not getting decided by the legislature, and then they end up getting kicked to the courts.

I think also, you know, most notably, abortion got sent to the states to decide in 2022 when Roe vs. Wade was overturned. And so one area where a lot of abortion related battles are playing out is in state court, but also decide all kinds of other issues, and so They're increasingly just an important arm of [00:02:00] political decision making.

[00:02:01] **Geoff Pallay** : Yes, and the Wisconsin Supreme Court race, it feels like it's always a big deal. I've been working at Balpe for 15 years now and it just seems like every year we're, you know, getting ready to do our big spring Wisconsin Supreme Court elections coverage. So what makes this year different from any of the prior big ones?

[00:02:19] **Anya van Wagtendonk**: Yeah, it definitely feels like it is always election season in Wisconsin. 2023 was definitely, though, I think, the year that blew all the other years out of the water. From what I understand, it was sort of just a perfect storm of, you know, again, this increasing recognition that courts were important. Plus the abortion issue.

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Plus the fact that, you know, an ideological balance of the court was at play in a way that it hadn't been previously. And so I think that's what we're also about to see here in 2025. This time around, it's a little bit of a repeat of that 2023 dynamic. The ideological balance is that play. And now there's a bit of a precedent for millions and millions of dollars to get poured into a race like this.

And so, uh, yeah, we are [00:03:00] gearing up for this, this round to be kind of as, as crazy as two years ago.

[00:03:04] **Geoff Pallay** : Yeah, and you know, in some races, the race is close in terms of the final margin of victory. Uh, there were, there was a race a few years ago where the margin of victory was less than 1%. There were some years with less than 5%.

The one most recently was an 11 percent margin of victory. Tell us a little bit about what's the early indication on the ground. Does it look like it's going to be closer to a toss up or is it looking like it might be a double a digit margin of victory? Or is it too soon to tell?

[00:03:28] **Anya van Wagtendonk**: Yeah, an 11 point margin of victory is, like, very unheard of by Wisconsin in terms of presidential races, for example.

They are historically, and most recently, have always been decided by less than a percentage point. We are a very, very, very 50 50 kind of state. And so there were, again, I think a number of factors that went into that kind of blowout outcome in 2023. They had a primary race, and I think that also kind of, like, weakened the final candidate, the final conservative backed candidate, Dan Kelly, in certain ways.

And it was also a little bit [00:04:00] the first time that this was a very politicized court race. These are technically non partisan races. And so I think in certain ways, It was a testing ground for the politicization of that campaign model. Really, you know, Janet Portisiewicz, who ended up winning, took 10 million from the Democratic Party, which is, has been contested, but is a legal approach.

And this time around, both parties are highly involved monetarily. There was no primary this time around, and so those candidates are coming in from a position of relative strength, you know, according to their side of the aisle, if you will. And then also the conservative candidate, Brad Schimel, is a former attorney general, and so he does have a little bit more name recognition.

And so I think all of those signs point to this idea that it's going to be quite a bit closer.

[00:04:47] **Geoff Pallay** : Yeah, it's one of the interesting elements of nonpartisan races is, you know, we see this nationally. Races are nonpartisan in name, but you know, essentially what happens is both major political parties will endorse in a race, [00:05:00] other major political figures will endorse, donations come in from specific ideological or actual party side.

So even though voters will get to the polls and they'll see nonpartisan on the ticket. is an ideological partisan race. So we see that quite often, um, and actually Michigan is one of my, my favorite, most interesting examples because they have partisan primaries. But nonpartisan generals. Interesting. So one of the many interesting elements of our election system.

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So. You briefly mentioned the, the two candidates in this race, um, so introduce to our listeners a little bit, you know, what's the pitch that Susan Crawford and Brad Schmueller are, are making in their candidacies?

[00:05:38] **Anya van Wagtenonk:** Yeah, so as you say, they both really do need to kind of make clear where they're situated because when voters go to the ballot here, there will not be an R or a D next to anyone's name, so they need to kind of go in.

informed in that way. So Brad Schimmel is the former Republican Attorney General. He served one term as Attorney General, and he's now a circuit court judge in Waukesha [00:06:00] County. If folks are familiar with Waukesha County, it's because it's one of these, you know, conservative suburban areas outside of Milwaukee, and he's running with that sort of conservative rule of law message.

He's touted being backed by law enforcement. He's pushing kind of a tough on crime message. And he's also self described as pro life, he's backed by pro life groups. In his past jobs, he joined lawsuits against Planned Parenthood and the Affordable Care Act. And so that tells you a little bit about his politics, and he's also very firmly backed by the state Republican Party.

And then Susan Crawford, interestingly, so she's a circuit court judge in Dane County, and that is sort of like the most prominent liberal county, and so we're seeing almost like a battle of the two courts here. Dane County is where the capital city of Madison is. It's where the flagship UW campus is.

It's a very, very liberal city. And she worked for former governor Jim Doyle. When he was in office, he's a Democratic governor. She's represented Planned Parenthood in the past, and so you see that juxtaposition. And she [00:07:00] is being backed by the Democratic Party. Uh, one sort of interesting thing with messaging so far is that she's actually been going after Schimmel's record on crime, essentially saying he was soft on crime while AG.

And so it's been interesting seeing this messaging around crime play out, because of course, at the Supreme Court level, you know, criminal cases are really not adjudicated there. But that's been the messaging so far is it's more about kind of typical. Judge issues like crime.

[00:07:26] **Geoff Pallay :** These are races for Supreme Court, but it sounds like they're running campaigns almost as if they're running for governor or state legislator or congressional member.

That's almost like the campaign actually about specific issues that come before the Supreme Court, or are these just more like. You know, issues that relate to just, you know, them resonate with voters, so to speak.

[00:07:47] **Anya van Wagtenonk:** I think right now, because they are really just trying to get their names out there and get some recognition among, you know, people who do not follow this kind of stuff for a living like you or me, that they are really focused on these [00:08:00] broader issues that voters care about, which really can be, you know, so called like bread and butter issues.

Or when you're a judge, it does often boil down. to, to how you handle crime and so I think eventually we will see a little bit more around certain big issues and certainly, you know, I'm thinking about this time two years

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ago or actually I should say post primary two years ago when you started getting more issues related things, especially again around abortion or sort of, um, alluding to, let's say, women's issues as a way of Speaking about abortion.

So I, I, one of the things I'll be looking out for in the coming weeks is how they start to pivot towards things that they will actually have a role deciding as Supreme Court justices.

[00:08:41] **Geoff Pallay** : Yeah. So let's revisit that a little bit then. Are there some known hypothetical outcomes at play? So are there decisions that are facing the court or expect to be coming before the court?

That will be impacted by whether it's retained by a liberal majority or established as a conservative majority.

[00:08:58] **Anya van Wagtendonk**: Yeah, so two really major [00:09:00] decisions sort of coming down the pike, and it does depend a little bit on timing, whoever wins this election will be seated in August, and so it's unclear, you know, whether these two cases I'm about to discuss will be decided before then or not.

But the, the biggest one for sure is the abortion case. So when Roe was overturned, you know, a number of states had trigger laws. Wisconsin had for about a year, a trigger law went into effect. And it was, it's written in about 1849 and it essentially outlawed all abortion. And so that was in effect for about a year until a lower court decided, the Democratic Attorney General filed suit.

It went to a lower court. Lower court decided that actually does not mean that abortion is outlawed. And so now abortion is being practiced again in the state of Wisconsin. And so it's up before the Supreme Court. They've heard oral arguments on it. And so essentially this decision will decide, does that lower court decision stay or do we go back to that, that standard of the trigger law where it's outlawed in the state?

So that's, I think, the really big one that was a huge motivating factor in [00:10:00] 2023. And so I, I will be very shocked if that is not, again, a major sort of message in this election. And then the other one that's really interesting, perhaps a bit more localized, there is something here called Act 10. It was established about 15 years ago with the signature policy of Republican Governor Scott Walker.

and essentially undid collective bargaining rights for most public employees. That's been the law of the land for about 15 years. People may remember huge protests and people occupying the state capitol, Democratic lawmakers fleeing the state, all in protest of this law. And so that was recently ruled unconstitutional by a lower court.

And that's going to go before the Supreme Court. I would guess just from a timing perspective, the abortion case already, you know, again, oral arguments have already begun. That 10 1 has not gotten there yet. And so I would guess that one is more likely to hit the newer court.

[00:10:51] **Geoff Pallay** : Yeah, lots of recall elections as well, back in that 2011 2012 era of Wisconsin politics.

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So the [00:11:00] 2023 election was the most expensive judicial race in U. S. history, and we're between 42 and 56 million, depending on whose counting you're using, so to speak. But what are your early indications this year? More expensive? About the same? Less money pouring in? What's it looking like?

[00:11:18] **Anya van Wagtendonk**: Yeah, so definitely going to be expensive as well.

And one of the things to sort of pay attention to is, again, because there was no primary, how the money is going to kind of shake out. So Crawford, for example, has outraised where Janet Protasewicz, the other liberal candidate who won two years ago, she's outraised where Protasewicz was. So, I'm going to go ahead and jump into the conversation.

So, um, let's see what's going on. So, I think we're going to be talking about, you know, there's a lot of things that have been going on. I think, you know, with the, with the race, like, you know, the race is in the process of being, you know, the, the, the, the, the, the, uh, the, the, the, the, the, the, the, the, the, balance. And then.

We've seen some outside spending [00:12:00] start to come in, but I think the really big flood of outside spending will start in a couple of weeks. I'd say that's where a ton of that money comes from.

[00:12:08] **Geoff Pally** : Well, it's always an exciting time when Wisconsin's, uh, spring elections roll around, and, uh, we will be sure to keep you updated.

Following along with your reporting in the race. So Anya, thanks so much for coming on the show today. Thank you. And for our listeners, you can learn more about our elections coverage at the link in our show notes. We'll be back next week with another episode. Make sure you subscribe to On The Ballot or every listening podcast.

I'm Geoff Pally, and thanks for listening.