



Unions Try to  
Buy Supreme  
Court Majority

Pro-job  
Victories

# Wisconsin's Future Is in the Balance



# Unions Target Supreme Court in April

In the 1990s, the Wisconsin Legislature passed significant lawsuit reform, including caps on medical malpractice awards and punitive damage awards. Duly passed acts of the Legislature, signed by Governor

Tommy G. Thompson, and presumed to be the law of the land. But, in 2004, Governor Jim Doyle appointed activist Judge Louis Butler to the Wisconsin Supreme Court to replace conservative Justice Diane Sykes, who had been appointed to the federal appeals court in Chicago. Doyle and Butler both had close ties to personal injury lawyers, and Butler made a career as a public defender.

The Butler appointment created a 4-3 activist majority on the seven-member court, and it set about derailing lawsuit reforms and creating new laws such as a guilty-until-proven-innocent standard for lead paint manufacturers. It was a shocking development that drew rebukes from Main Street to Wall Street. *The Wall Street Journal* warned: "The four judges toppled what had been a highly successful medical liability reform passed by the state Legislature in 1995 . . . A day after this disaster, the court doubled its damage with its 4-2 lead paint ruling . . . The decision is the first of its kind in the country and establishes a dangerous precedent." The Wisconsin high court ruled that all lead paint manufacturers were responsible for any harm caused by lead paint in Wisconsin. "The decision gives defendants every incentive to settle rather than risk a trial, rigging the system in favor of trial lawyers."

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WMC sprang into action to defend the Wisconsin business community from the high court's rulings. WMC worked with lawmakers to pass bills to overturn the court's rulings, including restoring caps on malpractice awards, limits on punitive damages and setting aside the guilty until innocent lead paint ruling. WMC ran an award-winning media and grassroots campaign to promote the legislation, and urge Gov. Doyle to sign the bills. But, Doyle sided with personal injury lawyers and vetoed the legislation. So, WMC set out to make sure this dark episode in our judicial history was not repeated.

In 2007, WMC spent \$2.5 million on issue ads educating the public about Justice Annette Ziegler and lawyer Linda Clifford. One WMC ad – Zero – highlighted the fact that Clifford had "zero" experience as a judge, while Ziegler was a judge and former federal prosecutor. Ziegler won handily. But, that only preserved the 4-3 activist majority because Ziegler replaced conservative Justice Jon Wilcox.

In 2008, WMC spent \$2.25 million on issue ads about Justice Louis Butler and his opponent Judge Michael Gableman of Burnett County. One WMC ad – Loopholes – featured Justice Butler's rulings that provided loopholes to protect criminal defendants. Butler had issued a news release embracing his nickname "Loophole Louie" and that became the centerpiece of the ad. Gableman won, and established a new conservative majority on the high court. The 4-3 majority has served to preserve new laws passed by the Legislature, such as Act 10, collective bargaining reforms passed by the Legislature and signed by Governor Walker. The court has also deferred to the Legislature on many issues, refusing to serve as a policymaking court.

In 2011, conservative Justice David Prosser was challenged by liberal lawyer JoAnne Kloppenburg. Unions and trial lawyers spent millions of dollars trying to defeat Prosser to re-establish an activist high court majority, largely in the hopes of overturning the collective bargaining reforms. WMC spent \$2 million on issue ads to fight back against the unions and trial lawyers to explain Prosser's record. Prosser narrowly won the election, and thwarted that drive. WMC worked to pass historic lawsuit reforms that overturned the 2005 Supreme Court rulings – re-establishing limits on medical malpractice awards, punitive damage awards and repealing the lead paint ruling.

Now, union activists are poised to strike again to create a 4-3 activist majority by defeating conservative Justice Patience Roggensack. The unions already have a case in the works from the liberal Dane County Court that would overturn the collective bargaining reforms.



Justice Patience Roggensack

*The Wall Street Journal* reported: "The case also provides a stalking horse for the fight over the future of the Wisconsin Supreme Court. Liberals tried and failed last year to defeat conservative Justice David Prosser in the closely divided court. But in April they will get another chance to lock in a four-liberal majority when conservative Justice Pat Roggensack is up for electoral retention. "The left has lost every electoral attempt to roll back Mr. Walker's reforms, which have saved taxpayers a bundle and prevented teacher layoffs throughout the state. What an offense against democracy it would be if the clear will of Wisconsin's people were overturned by partisan liberal judges."

Roggensack faces lemon law lawyer Vince Megna and Marquette University Law Professor Edward A. Fallone. If Megna or Fallone are elected to the high court, they would establish an activist majority. All of the reforms of Governor Scott Walker and the business community would hang in the balance. The stakes are high this spring. WMC intends to be fully engaged educating the public about the Wisconsin Supreme Court, continuing our winning tradition.

# WMC: A History of Policy Victories!



- ✓ Spent \$7 million on issue advocacy to counter union misinformation regarding the positive benefits of Governor Scott Walker's business and economic reforms and legislative advocacy. (2012)
- ✓ Spent \$2 million on an issue advocacy campaign about public policy regarding jobs and the economy and the policy agenda of Governor Scott Walker and pro-business lawmakers. (2011)
- ✓ Executed WMC's "Wisconsin Jobs 2010" public relations and issue advocacy campaign. Spent \$2.7 million to educate the public and urge Governor Walker and the Legislature to approve historic lawsuit reform, regulation relief, collective bargaining reform and business tax cuts. (2010-2011)
- ✓ Spent \$2 million on a successful television issue advocacy campaign regarding the public policy implications of Wisconsin Supreme Court and Justice David Prosser's rulings. (2011)
- ✓ Executed WMC's award-winning public relations and grassroots campaign to defeat global warming bill from Governor Jim Doyle, saving businesses from higher energy bills and taxes. (2010)
- ✓ Executed WMC's award-winning public relations and grassroots campaign to defeat the Employee Free Choice Act. (2009)
- ✓ Executed award-winning grassroots campaign to defeat the expansion of joint-and-several liability in the Wisconsin state budget. (2009)
- ✓ Spent \$2.25 million on a successful television, radio and direct mail issue advocacy campaign regarding the public policy implications of the Wisconsin Supreme Court and the rulings of activist Supreme Court Justice Louis Butler. (2008)
- ✓ Spent \$2.5 million on a successful television, radio, and direct mail issue advocacy campaign regarding the public policy implications of the Wisconsin Supreme Court and the rulings of Justice Annette Ziegler. (2007)
- ✓ Spent \$3 million on an issue advocacy media campaign regarding the policy agenda of Attorney General J.B. Van Hollen. (2006)
- ✓ Executed award-winning public relations and grassroots campaign about activist Wisconsin Supreme Court and civil justice reforms. (2005)

## Wisconsin's Judicial Recall

Wisconsin Governor Scott Walker's recall victory in June was a stinging defeat for organized labor. But just

when Wisconsinites thought they were getting past this fight, the left is staging a last gasp coup in the courts.

On Monday, the Seventh Circuit Court of Appeals in Chicago heard oral arguments in a federal case challenging the law's limits on collective bargaining for government unions. In March, U.S. District Judge William Conley upheld most of the new law but ruled that its requirements that union members vote annually to retain the union as their representative and end the automatic deduction of union dues from employee paychecks were unconstitutional.

In a separate case earlier this month, Dane County Circuit Judge Juan Colas ruled the entire law unconstitutional in *Madison Teachers, Inc. v. Scott Walker*. According to Judge Colas's novel reasoning, the reform of government unions violates the First Amendment and equal protection rights of public employees because it bans collective bargaining for benefits and eliminates automatic payroll deductions for union dues. By doing so, the judge says, the law treats people who are in unions differently than people who are not in unions and threatens their First Amendment rights of free speech and association.

This logic is really something. If Judge Colas is correct, every right-to-work law in the country would be illegal. But last we checked, there was no constitutional right to collective bargaining. Mr. Walker's union reforms don't prevent people from associating with any group they choose. And they don't stop anyone's free speech, judging by the Athens-via-Madison protests that greeted the law.

*Unions want liberal judges to overturn Scott Walker's reforms.*

Unions are trying these moonshot legal theories because they are desperate to maintain political clout through mandatory measures like automatic dues deduction. Since Mr. Walker's law went into effect, more than a third of the American Federation of Teachers and more than half of the members of the American

Federation of State, County and Municipal Employees in the state have left the unions.

That follows the pattern in right-to-work states, where unions lose political power when they must persuade workers to voluntarily contribute union dues.

In Wisconsin's Dane County, municipal unions are now engaged in a mad dash to push new contracts before the ruling can be stayed or overturned. Wisconsin Attorney General J.B. Van Hollen has asked the state appeals court to take up the case, and Judge Colas's oddball opinion is unlikely to convince the higher court or the state Supreme Court where it will likely end up.

The case also provides a stalking horse for the fight over the future of the Wisconsin Supreme Court. Liberals tried and failed last year to defeat conservative Justice David Prosser in the closely divided court. But in April they'll get another chance to lock in a four-liberal majority when conservative Justice Pat Roggensack is up for electoral retention.

The left has lost every electoral attempt to roll back Mr. Walker's reforms, which have saved taxpayers a bundle and prevented teacher layoffs throughout the state. What an offense against democracy it would be if the clear will of Wisconsin's people were overturned by partisan liberal judges.