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Wisconsin

‘A truly incredible amount of money’: millions ride on one US judicial election

The race for a place on Wisconsin’s supreme court could have major implications for abortion, democracy and the 2024 election

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More than **\$37m** has already been spent in an election that will this month determine control of Wisconsin’s supreme court, easily making it the most expensive judicial contest in US history.

Spending in the race easily shatters the \$10m spent in the 2020 **Wisconsin** supreme court race, the previous record in the state. It also easily surpasses the previous national record, \$15m spent on an Illinois supreme court race in 2004. The race has national implications – it will probably ultimately determine the legality of abortion in the state as well as play a key role in setting voting rules for the 2024 election in one of America’s most competitive states.

“It’s just a truly incredible amount of money,” said Douglas Keith, a lawyer at the Brennan Center for Justice who closely follows state courts. “It’s a sign of what we should expect to see in the future in other state supreme court elections in other states provided that for some reason a particular seat is seen as important.”

A once-in-a-generation set of circumstances have come together to make the state supreme court race between liberal Janet Protasiewicz and conservative Daniel Kelly – typically a little-noticed contest outside Wisconsin’s borders – the most important election this year.

First, the ideological balance of the seven-member court is up for grabs. Second, the outcome of the race will probably directly determine whether abortion is legal in Wisconsin, as the court is expected to weigh in soon on the state's 1849 abortion ban. Third, the court could strike down Wisconsin's gerrymandered legislative maps, ending Republicans' unshakable majority in the state. Lastly, the court is expected to weigh in on a range of disputes over election rules ahead of the 2024 presidential election in Wisconsin, a key battleground state.

Protasiewicz and Kelly have taken different approaches to how that money has been raised. Protasiewicz's campaign has raised \$14.5m in total, a vast haul that dwarfs the \$2.7m Kelly has raised. But Kelly has benefited from an influx of outside spending from third-party groups, most notably Fair Courts America, a Super Pac backed by the **GOP mega-donors** Richard and Elizabeth Uihlein, which has spent nearly \$4.5m on advertising so far. Women Speak Out Pac, which is connected to the anti-abortion group Susan B Anthony Pro-Life America, has also pledged to spend \$2m in support of Kelly and has spent nearly \$1.3m on advertising so far.

The Republican State Leadership Committee (RSLC) – which focuses on state-level elections – has also spent about \$200,000 in support of Kelly through its Judicial Fairness Initiative, according to an analysis by the Center for Political Accountability, a watchdog group. Some of the RSLC's donors since the supreme court's decision overturning Roe v Wade have been companies like **Google**, **Comcast** and **Amazon** that have pledged to support their employees if they want an abortion, according to the Center for Political Accountability.

“You have so many major household name companies come out in support of their employees' access to abortion rights. Offering to cover travel expenses, offering to cover medical expenses, that sort of thing,” said Jeanne Hanna, the Center for Political Accountability's research director, “but then continuing to fund these groups that elect openly anti-abortion judges in battleground states where one judicial seat could make the difference of whether people in this state can access abortion care at all. They're saying one thing and doing another with their political spending.”

Kelly has openly touted his support from outside groups, telling supporters earlier this month not to worry because a “**cavalry**” of outside money was coming to support him.

“What has been most surprising is that Dan Kelly has basically raised no money as a candidate ... So all of his backing has been from outside groups,” said Barry Burden, the director of the Elections Research Center at the University of Wisconsin-Madison. “It’s hard to understand. Legally, they’re not allowed to coordinate. So he’s essentially handed over messaging to groups that he cannot control.”

Protasiewicz’s fundraising has been prolific. She has spent more than \$10.5m on television advertisements alone, compared with Kelly’s \$580,000, **according to a Brennan Center tracker**. And while she has benefited from considerable spending from liberal outside groups – A Better Wisconsin Together, the American Civil Liberties Union, and Everytown for Gun Safety among them – the bulk of the money she’s raised has come from the state Democratic party.

The party’s \$8.8m contribution to her campaign was made possible by a 2015 Republican rewrite of the state’s campaign finance rules. Those changes removed a cap on the amount of money candidates could receive from state parties. They also allowed individual donors to make unlimited contributions to the political parties.

“When the Republicans rewrote the laws in 2015 ... they did it with the expectation that it would advantage them. They felt that the sources of money they could rely on, both outside groups and big contributors, would mean they would always have financial advantages in races like this. Just the opposite has happened,” said Jay Heck, the executive director of the Wisconsin chapter of Common Cause, a watchdog group. “That is the reason why [Wisconsin Democratic party chair] **Ben Wikler** and the Democrats have been able to be such a powerhouse.”

Protasiewicz **has said** she would recuse herself from cases involving the Wisconsin Democratic party. Kelly has declined to make a similar recusal pledge for cases involving his major donors.

“Judges should not be able to hear cases involving major donors or supporters,” said Keith, the Brennan Center expert. “One of the issues that comes with all this money being as opaque as it is is that the public doesn’t actually know who the judge’s major supporters are often. And if the judges do know, then that’s even more troubling that the judge has information that the public doesn’t about what cases they may have a conflict in.”