

# WMC: Big Stakes for Supreme Court Election

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([https://www.wmc.org/wp-content/uploads/PughJim-21\\_web.jpg](https://www.wmc.org/wp-content/uploads/PughJim-21_web.jpg)) **Anti-business Forces Target Rule-of-Law High Court**  
**WMC Delivers Business Message to Protect Pro-Growth Reforms**

*By Jim Pugh, WMC Director of Public Relations & Issues Management*

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.”

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. Butler was the first incumbent to lose since 1967, and only the fourth in state history.

The historic defeat of Butler, who played an integral role in the activist majority, was in large measure a testament to the steadfast fortitude of the Wisconsin business community to re-establish a rule-of-law high court. In 2009, WMC successfully waged a grassroots, public relations and lobbying campaign to defeat Governor Doyle’s plan to re-establish joint and several liability.

The new 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 as was the case in 2005 during the Butler era.

In 2011, conservative Justice David Prosser was challenged by liberal lawyer JoAnne Kloppenburg, an environmental lawyer. 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. In 2011, 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. Major victories for business and our business climate.

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

*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. Fallon. If Megna or Fallon are elected to the high court, they would establish an activist majority. And, all of the reforms of Governor Scott Walker and the business community would hang in the balance. The stakes are high this spring. And, WMC intends to be fully engaged educating the public about the Wisconsin Supreme Court, continuing our winning tradition.

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