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*This morning, my colleague Reid Epstein, who's been covering the Supreme Court election in Wisconsin, explains why it's become such a closely watched race. The vote is tomorrow. — David Leonhardt*

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By [Reid J. Epstein](#)

**Good morning. The status of abortion rights in Wisconsin is a major issue that hangs in the balance in this election.**



The Wisconsin State Capitol. Taylor Glascock for The New York Times

# A powerful seat

Wisconsin is a microcosm of the country. It is narrowly divided politically, though Democrats have a slight advantage in the popular vote in statewide elections. And, as in Washington, Republicans have structural advantages in the government that give them outsize power.

Conservatives have controlled the state's Supreme Court since 2008, and Republicans have held a [hammerlock on the Legislature](#) since 2011, when the party drew itself an impenetrable majority after taking control in a wave election.

Tomorrow, Wisconsin will hold an election for a seat on its Supreme Court, and it is no exaggeration to call the race, for a 10-year term, the [single most important American election of 2023](#). It is already the [most expensive judicial race](#) in the nation's history. The candidates and the super PACs supporting them have spent nearly three times as much on this race as in any prior court election.

Why is a single state race crucial? Because whichever side prevails will hold a 4-to-3 court majority, and this is the first American election in which the winner will single-handedly determine two big issues: the fate of abortion rights and whether the state has a functional representative democracy. The winner will also set the course for the 2024 presidential election in a state where fewer than 23,000 votes decided four of the last six such races.

If the liberal candidate, Janet Protasiewicz, wins, Wisconsin will almost certainly become the first state to allow abortion again after outlawing it with last summer's ruling overturning *Roe v. Wade*. And because Democrats are likely to challenge the makeup of the state's legislative districts if the court has a liberal majority, the [near supermajorities that Republicans enjoy](#) in the State Legislature would also probably not survive until the 2024 election.

A victory for the conservative candidate, Daniel Kelly, would mean abortion remains illegal, the gerrymandered maps stay in place, and Wisconsin remains a dysfunctional democracy for the foreseeable future.



Janet Protasiewicz and Daniel Kelly. Jamie Kelter Davis for The New York Times

## The biggest prize

Abortion became illegal in the state last June, when the U.S. Supreme Court eliminated the constitutional right to an abortion, throwing the question to the states. Wisconsin's near-total ban on abortion — enacted in 1849, a year after statehood and seven decades before women could vote — suddenly became the law again.

Protasiewicz (pronounced pro-tuh-SAY-witz) is a judge and former prosecutor from Milwaukee who has so emphasized her support for abortion rights that nobody could be confused about how she'd rule on the 1849 law. [In interviews](#) and television advertisements and during the lone general election debate, she has stressed her belief that abortion decisions should be left to women and their doctors, not to state legislators.

Kelly, a conservative former state Supreme Court justice who [lost a re-election bid in 2020](#), has the backing of the state's leading anti-abortion organizations and has repeatedly stressed his opposition to the practice.

Protasiewicz has bet that her support for abortion rights will energize Democratic voters and persuade enough independents and moderate Republicans to win. It is a big wager on the continuation of the politics that helped Democrats exceed expectations in last year's midterm elections.

## **Democracy is on the line**

When I got my first full-time job in journalism at The Milwaukee Journal Sentinel in 2002, Wisconsin was an evenly divided state but one where control regularly switched back and forth between the two parties.

That ended after the 2010 Republican wave, when the party took both chambers of the Legislature and Scott Walker was elected governor. The G.O.P. weakened public-sector labor unions and drew itself the most aggressive gerrymander in the country — near supermajority control of both chambers in a 50-50 state. In 2020, Joe Biden won Wisconsin [but carried only 37 out of 99](#) State Assembly districts.

Republicans also changed state law to make voting more onerous, enacting a strict voter ID law, while the state's Supreme Court banned drop boxes for absentee ballots last year. Wisconsin now ranks [47th out of 50 states on how easy it is to vote](#), according to the 2022 Cost of Voting Index.

Protasiewicz calls the Republican-drawn maps “rigged,” has suggested the labor law is unconstitutional and says she agrees with the liberal dissent in last year's Supreme Court drop box ruling. Kelly says redistricting is a political problem to be solved by legislators — the very people who created it.

This race will have real impact on national issues, too.

Wisconsin's Supreme Court was the only one in the country that agreed to hear Donald Trump's challenge to the 2020 election, eventually rejecting — by a single vote — [his attempt to throw out 200,000 ballots](#) in the state's two big Democratic

counties. Kelly, when I interviewed him in February, declined to say whether he agreed with the decision to uphold the 2020 results.

The 2024 presidential election in the state may be close enough to be contested in the courts again. New congressional maps could also put up to three Republican-held House seats in play.