

No. _____

In The
Supreme Court of the United States

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DEBRA K. SANDS,

Petitioner,

v.

JOHN R. MENARD, JR.,
MENARD THOROUGHBREDS, INC., MENARD, INC.,
WEBSTER HART AS TRUSTEE OF THE JOHN R.
MENARD, JR. 2002 TRUST AND RELATED TRUSTS,
ANGELA L. BOWE AS TRUSTEE OF THE JOHN R.
MENARD, JR. 2002 TRUST AND RELATED TRUSTS
AND ALPHONS PITTLERLE AS TRUSTEE OF THE
JOHN R. MENARD, JR. 2002 TRUST AND
RELATED TRUSTS,

Respondents.

—◆—

**On Petition for Writ of Certiorari
To The Wisconsin Supreme Court**

—◆—

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Fourteenth Amendment prohibits a State from depriving any person of property without due process of law. For more than nine years, the Petitioner in this case, Debra K. Sands, litigated a claim for unjust enrichment against her fiancé, John R. Menard, Jr., reported to be the richest man in Wisconsin and a major contributor to organizations supporting the candidacy of multiple Wisconsin Supreme Court Justices. During those nine years, which never resulted in a trial, the sole issue contested by the parties was whether Sands' claim was barred by a Wisconsin Supreme Court Rule of Professional Responsibility. On December 29, 2017, the Wisconsin Supreme Court, finding for Sands on the ethical issue, nevertheless ruled that Sands' complaint failed to state a claim for unjust enrichment, an issue never raised, briefed, or previously argued. The questions presented are:

1. Did the Wisconsin Supreme Court violate the due process clause, U.S. Const. amend. XIV § 1, when, after almost a decade of litigation, it dismissed an action on a ground that was never raised, argued, or briefed, thereby denying the plaintiff an opportunity to be heard, while rewarding a substantial donor who supported the election campaigns of the majority of the Justices on the court?

2. To safeguard the Fourteenth Amendment rights of private citizens, as well as maintain judicial integrity and public confidence in the judicial system, should the Wisconsin judges and justices who have benefited from substantial spending by a party or an entity associated with a party be required to recuse themselves?

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**OPINIONS AND ORDERS
ENTERED IN THE CASE**

February 21, 2018, Wisconsin Supreme Court Order denying Motion for Reconsideration

Sands v. Menard, 2017 WI 110, 379 Wis.2d 1, 904 N.W.2d 789 (Wis. 2017)

Sands v. Menard, 2016 WI 76, 372 Wis.2d 126 887 N.W.2d 94 (Wis. Ct. App. 2016)

September 4, 2013, Wisconsin Circuit Court Order Granting the Menard Defendants' Motion to Strike All of Plaintiff's Claims for Non-Legal Services and Denying the Menard Defendants' Motion to Strike Certain of Plaintiff's Claims for Legal Services

August 12, 2013, Reporter's Transcript of Wisconsin Circuit Court oral ruling

October 22, 2012, Wisconsin Circuit Court Order Granting Menard Defendants' Motion for Partial Summary Judgment Dismissing All of Plaintiff's Claims By Which She Sought a Portion of John Menard's Net Worth or Assets, Ownership Interests in the Menard Companies, or Any Part of the Increase in Value of the Menard Companies

October 12, 2012, Reporter's Transcript of Wisconsin Circuit Court oral ruling

**BASIS FOR UNITED STATES SUPREME
COURT JURISDICTION**

(i) The judgment in this case for which review is

sought was entered on December 29, 2017.

(ii) On January 17, 2018, Petitioner Debra K. Sands timely filed a Motion for Reconsideration pursuant to Wisconsin Statutes §§ 809.64 and 809.14.¹ The motion was denied by the Wisconsin Supreme Court on February 21, 2018.

(iii) This Court has jurisdiction to review the decision of the Wisconsin Supreme Court in this case pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

U.S. Const. Amend. XIV, § 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Wisconsin Supreme Court Rule 20:1.8(a):

(a) A lawyer shall not enter into a business trans-

¹ A motion for reconsideration in Wisconsin Supreme Court practice is the equivalent of a motion for rehearing: “Rule 809.64 replaces former Rules 251.65, 251.67 to 251.69, which provided for motions for rehearing. . . . The term “reconsideration” is used rather than rehearing because in a case decided without oral argument there has been no initial hearing.” Wis. Stat. § 809.64, Judicial Council Committee’s Note, 1978 (emphasis added).

action with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

STATEMENT OF THE CASE

The Fourteenth Amendment of the United States Constitution prohibits a State from depriving any person of property without due process of law. In this case, the Wisconsin Supreme Court dismissed Petitioner's unjust enrichment claim on a ground never raised, argued, or briefed in nearly a decade of litigation, thereby preventing a jury from ever hearing Petitioner's claim, and rewarding a billionaire multimillion-dollar-contributor and director of organizations that had spent multiple millions backing the campaigns of the justices ruling in his favor.

In *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), this Court held that a campaign expenditure of over \$3 million by a corporate litigant to influence

the election of a judge to the court that would hear its case, though permitted by law, was an “extreme fact” that created a “probability of bias,” requiring the judge to be recused from hearing the case.

Six months later, on January 21, 2010, disregarding this Court’s decision in *Caperton*, the Wisconsin Supreme Court voted 4-3 to amend the State Code of Judicial Conduct with changes authored by the Wisconsin Manufacturers & Commerce (“WMC”) and the Wisconsin Realtors Association, to permit judicial involvement in campaigns to solicit and accept unlimited contributions and then sit on cases involving their campaign contributors regardless of the amount contributed. The Wisconsin Court further rejected a proposal from one of its members to require recusal if a Justice had received substantial election support from one of the parties in the case.

In April, 2017, the Wisconsin Supreme Court again disregarded *Caperton* by rejecting a petition from 56 retired jurists, including two former members of the Court, to modify the 2010 non-recusal rule authored by the WMC. The Petition stated, “As money becomes more predominant, citizens rightfully ask whether justice is for sale. The appearance of partiality that large donations cause strikes at the heart of the judicial function, which depends on the public’s respect for its judgments.”² This concern has not abated, as the latest Justice elected to the Court in 2018, after defeating the WMC-backed candidate, publicly stated that “money has been buying justice or a justice” in

² See Joe Forward, *Retired Judges Request New Recusal Rules for Campaign Contributions*, State Bar of Wisconsin, Jan. 12, 2017, available at <https://www.wisbar.org/newspublications/insidetrack/pages/article.aspx?volume=0&issue=0&articleid=25339>.

Wisconsin.

This Petition presents the questions of (1) whether state courts can with impunity deprive litigants of their constitutional rights by dismissing their claims without due process of law, and (2) how to protect litigants in their return to state courts with sitting justices whose financial backing has not only created a “probability of bias,” but a great risk of actual bias.

A. History of the Litigation

From 1998 to 2006, Petitioner Debra K. Sands (“Sands”) was engaged to marry and cohabited with Respondent John R. Menard, Jr. (“Menard”), the founder and owner of the Menard, Inc., chain of home improvement stores. During that time, at Menard’s request and based on his repeated promises and assurances that she would share in the fruits of her labors, Sands abandoned her own business interests and opportunities, and worked tirelessly in a joint enterprise with Menard to grow and improve his businesses, accumulate and grow assets, manage his personal affairs, and contribute to the operation of his various enterprises. Pet. App. 4a-5a at ¶¶ 5-7, 40a-41a at ¶ 87. During that time Menard’s wealth increased substantially. Menard is now widely reported to be the richest man in the state of Wisconsin.³

Although not licensed to practice in Wisconsin,

³ See Paul Gores, *Forbes 400: Menard remains Wisconsin’s richest person, while Faulkner and Hendricks climb*, Milwaukee Journal Sentinel, Oct. 17, 2017, available at <https://www.jsonline.com/story/money/2017/10/17/forbes-400-menard-remains-wisconsin-richest-person-while-faulkner-and-hendricks-climb-annual-rankin/773450001/>; Bloomberg Billionaires Index: #88 John Menard Jr., Bloomberg.com (last visited May 11, 2018), <https://www.bloomberg.com/billionaires/profiles/john-r-menard/>.

Sands had a law degree and was licensed in Minnesota. Pet. App. 4a at ¶ 5. At various times beginning in 2003, at Menard’s request, she provided legal services to Menard’s businesses in aid of their joint enterprise, in addition to her substantial other responsibilities. Pet. App. 6a-7a at ¶ 10. Their relationship and engagement terminated in 2006 after Menard unlawfully discharged Sands’ sister, Dawn, who was Vice-President and General Counsel of Menard, Inc., and Sands refused to take his side in an ensuing arbitration involving claims of unequal pay and gender discrimination, in which her sister prevailed.⁴ Pet App. 7a at ¶ 12. Sands has received nothing from Menard after their relationship ended. Pet. App. 7a-8a at ¶ 13.

In 1987, the Wisconsin Supreme Court held in *Watts v. Watts*, 405 N.W.2d 303 (Wis. 1987) (Abrahamson, J.) (“*Watts*”), that an unmarried cohabitant could maintain a claim for unjust enrichment against her former partner “based upon proof of three elements: (1) a benefit conferred on the defendant by the plaintiff, (2) appreciation or knowledge by the defendant of the benefit, and (3) acceptance or retention of the benefit by the defendant under circumstances making it inequitable for the defendant to retain the benefit.” *Id.* at 313.⁵

⁴ See *Sands v. Menard, Inc.*, 2010 WI 96, 328 Wis. 2d 647, 787 N.W.2d 384 (Wis. 2010); *Sands v. Menard, Inc.*, 2013 WI App 47, 347 Wis. 2d 446, 831 N.W.2d 805 (Wis. Ct. App. 2013). Both the end of Sands’ relationship and the termination of Sands’ sister were marked by threats of violence from Menard. R.219.

⁵ The *Watts* doctrine yielded a number of subsequent cases: *Lawlis v. Thompson*, 137 Wis. 2d 490, 405 N.W.2d 317 (Wis. 1987); *Watts v. Watts*, 152 Wis. 2d 370, 448 N.W.2d 292 (Wis. Ct. App. 1989); *Waage v. Borer*, 188 Wis. 2d 324, 525 N.W.2d 96 (Wis. Ct. App. 1994); *Ward v. Jahnke*, 220 Wis. 2d 539, 583 N.W.2d 656 (Wis. Ct. App. 1998); *Ulrich v. Zemke*, 2002 WI App 246, 258 Wis. 2d 180, 654 N.W.2d 458 (Wis. Ct. App. 2002).

The court found that the allegations of the complaint sufficiently established that “the parties intended their relationship to be in the nature of a joint enterprise, financially as well as personally,” and therefore stated a claim in unjust enrichment. *Id.*

Relying on *Watts*, Sands filed suit asserting an unjust enrichment claim against Menard on November 3, 2008, in Eau Claire County, Wisconsin, Circuit Court.⁶ Pet. App. 8a at ¶ 14. Menard moved to dismiss the complaint arguing that Sands was allegedly practicing law in Wisconsin without a license in her work for the joint enterprise and had failed to comply with Wisconsin Supreme Court Rule 20:1.8(a) (“the Rule”), prohibiting business transactions between a lawyer and client unless certain conditions of disclosure and consent set forth in the Rule are met. Pet. App. 8a-19a at ¶ 16. This allegation—Sands’ alleged noncompliance with the Rule—became the sole basis and issue on which this case was litigated by the parties for the rest of its nine-year life in the Wisconsin courts.

While Menard’s motion to dismiss was pending, Sands filed an Amended Complaint on November 19, 2009, dropping certain claims and parties, but still maintaining the *Watts* unjust enrichment claim against Menard. In her Count for unjust enrichment against Menard, Sands alleged,

50. The conduct of defendant Menard described in the foregoing paragraphs constitutes unjust enrichment in violation of the common law of the State of Wisconsin, in that, during the eight-year period

⁶ In her original complaint, Sands also sued a number of Menard’s related businesses and included additional causes of action, none of which were still asserted when her case reached the Wisconsin Supreme Court or are relevant to her Petition.

of Sands's cohabitation and engagement with Menard, the substantial and continuing efforts of Sands resulted directly in the acquisition of valuable property, wealth, and substantial increase in the net worth of Menard, who now attempts to retain not merely an unreasonable amount of the property, wealth, and increased net worth acquired through the efforts of Sands, but all of the property, wealth, and increased net worth acquired through the efforts of Sands.

51. By reason of Menard's unjust enrichment described hereinabove, Sands is entitled to judgment in an amount equal to a fair and reasonable share of the property, wealth, and increased net worth acquired by Menard through the efforts of Sands during the eight-year period of Sands's cohabitation and engagement with Menard.

R.100, p. 11.

On December 1, 2009, Menard filed a Renewed Motion to Dismiss based "on a single issue that this Court must decide sooner or later: Can a lawyer enforce a promise or undertaking to obtain ownership interests in her client's business in exchange for legal or other services, if she has not complied SCR 20:1.8(a) [the Rule]?" R.101. Finding that the existence of an attorney-client relationship had not been established, the Circuit Court denied the motion in an oral ruling on February 5, 2010, and written Order of February 10, 2010. R.124. On May 10, 2011, having recently discovered that, beginning in 2002, Menard had secretly transferred assets to a number of trusts, Sands filed a Second Amended Complaint adding the trustees as defendants. R.217. Menard did not move to dismiss

the Second Amended Complaint.

To this point in the litigation, Menard had never moved, briefed, or argued that any of Sands' three complaints failed to state a *Watts* unjust enrichment claim.

Following the Second Amended Complaint and the substantial completion of discovery, Menard moved for summary judgment on three grounds on April 12, 2012. R.287–97. The first was, once again, Menard's argument that Sands had failed to comply with the Rule. Alternatively, Menard argued that, on the evidence of record, Sands did not have a joint enterprise with John Menard under *Watts*, as a matter of law, and Sands could not prove the amount by which the Menard companies increased in value because of her alleged services. R. 290. The motion for summary judgment did **not** challenge the sufficiency of the allegations of the Second Amended Complaint to state a *Watts* unjust enrichment claim. Sands responded to all three alleged grounds for summary judgment, including both of Menard's alternative grounds, with voluminous evidence of her contributions to the parties' joint enterprise and its increase in value. R.306–11.

On October 22, 2012, following an October 12 oral ruling, the Circuit Court entered an order granting Menard's motion for summary judgment on the sole ground that Sands' alleged failure to comply with the Rule constituted a complete defense to her *Watts* unjust enrichment claim. The Circuit Court neither discussed nor decided the alternative grounds. Pet. App. 100a-101a.

Because of the pendency of other claims by Sands and an untimely, meritless, and punitive counterclaim by Menard, Inc., seeking \$300 million from

Sands, whom Menard knew to be destitute, all claims of all parties were not reduced to a final judgment until April 8, 2015, following which Sands appealed to the Wisconsin Court of Appeals, and Menard, Inc., cross-appealed the dismissal of the counterclaim. R.509–10.

In Sands’ opening brief in the Court of Appeals, the Issue Presented for Review was:

Whether the Circuit Court erred in holding that Supreme Court Rule 20:1.8(a), which regulates the professional conduct of attorneys, was applicable, constituted a defense, and required summary judgment on claims for unjust enrichment, breach of contract, and promissory estoppel under *Watts v. Watts*, 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987) (“*Watts*”), by Plaintiff-Appellant Debra K. Sands (“Sands”), the former fiancée and long-term cohabiting partner of Defendant-Respondent John R. Menard, Jr. (“Menard”), simply because Sands was a licensed attorney.

Brief of Appellant at 1, *Sands v. Menard*, 2016 WI 76 (No. 2012AP2377/2015AP870). Sands identified six “subsidiary issues,” all of which related to the unavailability of the Rule as an affirmative defense. *Id.* at 1-3.

The issues, as framed by Menard in the Court of appeals were:

I. Are Debra Sands’ (“Sands”) claims to recover an ownership interest in Menard, Inc. (“Menards”), as compensation for her legal and non-legal services, unenforce-

able because at all relevant times she had an attorney-client relationship with the Menard Defendants, but did not comply with SCR 20:1.8(a), by, among other things, obtaining her client's consent to such a transaction in writing?

II. Are Sands' quasi-contract claims to recover an ownership interest in her client's business, as compensation for her legal and non-legal services, waived because she has not challenged on appeal two separate trial court orders finding that she had an express contract to be paid \$145/hour for her legal services and had no expectation of compensation for her non-legal services?

Brief of Respondent at 1 Sands v. Menard, 2016 WI 76 (No. 2012AP2377/2015AP870).

The sufficiency of Sands' complaint to state a *Watts* unjust enrichment claim was not raised as an issue and was never briefed or argued.⁷

On September 20, 2016, the Court of Appeals affirmed the Circuit Court by finding, on grounds wholly different from the Circuit Court, that the Rule was a complete bar to Sands' unjust enrichment claim. Pet. App. 47a–84a. The opinion said nothing regarding the sufficiency of Sands' complaint to state a *Watts* unjust enrichment claim.

⁷ Sands notes that Menard has continually misrepresented her claim as seeking an ownership interest in Menard's businesses, rather than to recover for his unjust enrichment at her expense.

B. The Wisconsin Supreme Court

1. The Issues Presented for Review

Sands then petitioned the Wisconsin Supreme Court for review of the Court of Appeals decision. The Supreme Court granted review of Sands' Petition and a Cross-Petition of Menard, Inc., seeking review of dismissal of its counterclaim on September 20, 2017.

Sands' Statement of Issues Presented for Review included:

1. May a fiancé/cohabitant use alleged non-compliance with Supreme Court Rule 20:1.8(a) ("the Rule") as a defense to a civil suit for unjust enrichment under *Watts v. Watts*, 137 Wis. 2d 506, 405 N.W.2d 303 (Wis. 1987), brought by his significant other, who happens to hold a law degree?
2. If the Rule can be raised as a defense to a *Watts* claim arising from a long-term personal, romantic relationship, may the non-attorney cohabitant be found to have waived, ratified, or be estopped to assert the other cohabitant's alleged non-compliance with the Rule, particularly when the non-attorney is a sophisticated, experienced business person who proposed and induced the parties' cohabitation and joint enterprise?
3. If the Court of Appeals had considered the issues of waiver, ratification, and estoppel, does the record contain sufficient evidence to create genuine issues of

material fact precluding summary judgment?

Petition for Review at i-ii, *Sands v. Menard* 2017 WI 110 (No. 2012AP2377/2015AP870).

Menard's Statement of Issues in response was:

1. Did Debra Sands' failure to comply with SCR 20:1.8(a)'s requirements bar her claims in a civil proceeding by which she, an attorney, sought to enforce a business transaction with her client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to her client?

2. Did Debra Sands' failure to appeal from the circuit court's order dismissing all of her claims to recover damages in connection with the non-legal services that she allegedly rendered to the Menard Defendants result in a waiver of those claims and the issues decided in that order?

3. Did Debra Sands' failure to appeal from the circuit court's order dismissing her claim to recover the value of her legal services under quantum meruit, based on the court's finding that she had an express contract to be paid for these services, bar Sands' claims to recover any damages in connection with those services under any quasi-contract theories?

Brief of Respondent at 1-2, *Sands v. Menard* 2017 WI

110 (No. 2012AP2377/2015AP870).

As is apparent, neither party raised or briefed the issue of whether Sands' complaint *pleaded* a *Watts* unjust enrichment claim on which relief could be granted. Nor was the issue raised or addressed at oral argument. Sept. 12, 2017, Oral Argument, Sands v. Menard (No. 2012AP2377/2015AP870), *available at* <http://www.wiseye.org/Video-Archive/Event-Detail/evhdid/11796>. To the contrary, the focus of the argument on Sands' appeal was *exclusively* the applicability of the Rule. *Id.*⁸

2. The Majority Decision Affirming on a Ground Never Raised

Nonetheless, on December 29, 2017, the Wisconsin Supreme Court affirmed the Court of Appeals, in a five-to-two decision, on the sole ground that Sands' ***complaint*** failed to state a *Watts* unjust enrichment claim, Pet. App. 22a–25a, while also holding that Sands was correct that noncompliance with the Rule could not be asserted as a defense in a civil action. Pet. App. 25a-26a at ¶ 53. Thus, Sands prevailed on the sole issue the parties had litigated for the past nine years, but nevertheless lost her entire right to recover on an issue never raised, briefed, or argued during the entire course of the litigation.

3. The Dissent

Justice Shirley S. Abrahamson, the author of the *Watts* opinion, dissented, joined by Justice Ann Walsh Bradley.⁹ Pet. App. 35a-46a. Justice Abrahamson

⁸ The parties also addressed and argued issues related to Menard, Inc.'s cross-appeal, which are not material to this Petition.

⁹ Justices Abrahamson and Bradley concurred with the

wrote, “I conclude that the facts alleged in Sands’ complaint, taken as true (as we must), adequately state a claim for unjust enrichment against Menard.” Pet. App. 37a at ¶ 80. The dissent added, “In the instant case, Sands pleaded extensive facts spanning approximately eight pages of her complaint supporting her unjust enrichment claim against Menard.” Pet. App. 40a at ¶ 86. In support, the dissent quoted from Sands’ summary of her contributions in her brief:

Sands relied on Menard’s promises, representations, and conduct, and devoted over eight years to working with and helping him in his business and personal matters. Sands contributed to their enterprise in numerous ways. She was Menard’s life partner, social companion, and manager and hostess of his households. Sands protected Menard from unwanted approaches by serving as a “gate-keeper.” She supervised his health care and medical needs; managed the remodeling of three residences; and advised on the acquisition of airplanes and their design and décor. She provided ideas for new products and product lines for the Menard, Inc., stores, such as garden centers; and scouted and proposed new store locations, store layouts, and product displays. She represented Menard, Inc., as a product buyer. She reviewed and suggested changes and additions to Menard, Inc., marketing plans. She assisted with government and public relations. She participated in the redesign of store signs and logos. She helped find new business and in-

majority’s holdings that the Rule could not be raised as a defense and that summary judgment was appropriate dismissing the counterclaim. Pet. App. 35a at n.1.

vestment opportunities. She assisted in the management of the Team Menard auto racing venture and newly-acquired businesses, including two engine design companies in England, a thoroughbred racing business, and a \$400 million private equity fund. She made her joint enterprise with Menard her focus, which occupied her every moment.

Pet. App. 40a-41 at ¶ 87. After distinguishing authority cited by the majority, the dissent stated,

In addition to relying on inapposite cases, the majority misunderstands what facts were relevant to the court's holding in *Watts* vis-à-vis the plaintiff's unjust enrichment claim. The majority magnifies differences in Sands' and Menard's personal relationship and in the personal relationship of the parties at the center of *Watts*.

Pet. App. 43a at ¶ 95.

The dissent further noted that the majority erroneously relied on facts from *Watts* that had no bearing on the claim of unjust enrichment, but were only "relevant to the plaintiff's claim that the plaintiff, the defendant, and their children constituted a 'family,' thus entitling her to bring an action for property division under Wisconsin's marriage dissolution statute." Pet. App. 44a-45a at ¶ 99. Finally, the dissent observed,

Clearly, the majority reaches beyond the pleadings and has substituted itself as the finder of fact in order to resolve genuine issues of material fact in favor of Menard. At this stage, it is not the court's task to "decide issues of credibility, weigh the evidence,

or choose between differing but reasonable inferences from the undisputed facts.”

Pet. App. 45a-46a, n.6.¹⁰

If anyone should know “what facts were relevant to the court’s holding in *Watts* vis-à-vis the plaintiffs’ unjust enrichment claim,” it was Justice Abrahamson, who wrote the *Watts* decision for a unanimous Court. Almost equally qualified was Justice Ann Walsh Bradley, who first joined the Court in 1995, after sitting as a Circuit Court Judge for the previous 10 years. In contrast, none of the five Justices in the current majority were sitting on the Supreme Court at the time of the *Watts* decision, or any of the decisions interpreting and applying *Watts* cited in the majority opinion in *Sands*’ case.¹¹

¹⁰ For example, the majority found that *Sands* failed to “demonstrate that the benefits she conferred to Menard are not offset by the benefits she derived from him.” Pet. App. 24a-25a. To arrive at this conclusion, the majority reached beyond the pleadings and the evidence to conclude “that *Sands* enjoyed an expansive lifestyle as the companion of a wealthy man.” *Id.* at n. 21. Besides impermissibly commingling summary judgment procedures with those on a motion to dismiss for failure to state a claim, as well as resolving disputed issues of fact, this reasoning perpetuates a dangerous and wholly inappropriately sexist perspective that merely being in a relationship with an extremely wealthy and powerful man is such a “privilege” for the woman that it constituted enough “benefit” to *Sands* to eradicate nine years of the unstinting labor and contributions that she provided. It further assumes facts not in evidence while wholly ignoring actual evidence that *Sands* herself was accomplished, highly educated, well-traveled, and politically connected from work in Washington, D.C. As such, she had conferred substantial benefits on Menard and his businesses, and the jury should have been allowed to consider and value her contributions.

¹¹ *Waage v. Borer*, 525 N.W.2d 96 (Wis. Ct. App. 1994); *Ward v. Jahnke*, 583 N.W.2d 656 (Wis. Ct. App. 1998); *Ulrich v. Zemke*, 258 Wis.2d 180, 654 N.W.2d 458 (Wis. Ct. App. 2002).

Indeed, the cases relied on by the majority were not even Supreme Court cases, but intermediate appellate decisions.¹²

4. Sands' Motion for Reconsideration

Following the December 29, 2017, decision, Sands filed a timely Motion for Reconsideration on January 17, 2018. In the Motion, Sands asked the Court to reconsider its decision on the grounds that the Court had impermissibly misapplied and commingled the standards for deciding summary judgment with standards for deciding motions to dismiss; the Court had decided the case on an issue never raised, briefed, or argued; and in doing so the Court had violated Sands' Constitutional right to due process under the Four-

See Wisconsin Supreme Court Biographies, *available at* <https://wicourts.gov/courts/supreme/justices/index.htm>.

¹² At the time of *Ward v. Jahnke* and *Ulrich v. Zemke*, current Chief Justice Patience Drake Roggensack, the author of the majority decision in *Sands*, was a sitting Court of Appeals Judge. She did not sit on *Ward v. Jahnke*, but in fact wrote *Ulrich v. Zemke*. That decision closely followed *Watts*, and sustained in large part a judgment for the claimant against her former cohabitant. *Ulrich v. Zemke*, however, was an appeal from a final judgment following a court trial, not a decision on a motion for failure to state a claim. 258 Wis.2d at 186-87. In her opinion in *Sands*, Justice Roggensack quoted language from *Ulrich v. Zemke* on how a court should determine the existence of a joint enterprise giving rise to a *Watts* unjust enrichment claim: "A court makes this determination by considering the total circumstances of the parties' relationship, specifically whether the parties contributed property and services to the relationship producing an increase in wealth." Pet. App. 18a-19a at ¶ 40. This analysis was obviously not undertaken in *Sands*, which the Court purported to decide solely on the allegations of the complaint, impermissibly reaching outside the complaint for "evidence" to support its conclusion, while failing to consider "the total circumstances of the parties' relationship."

teenth Amendment. *Id.*¹³

On February 21, 2018, the Wisconsin Supreme Court issued an Order, without comment, denying Sands’ Motion for Reconsideration, five to two, with Justices Abrahamson and Bradley again dissenting. Pet. App. 112a–15a. The dissent states, in part:

¶ 2. In the instant case the court has overlooked controlling legal precedent and a party’s constitutional right to procedural due process.

¶ 3. The court has sua sponte wrongfully dismissed a lawsuit, depriving a party of due process, namely the opportunity to be heard in support of its claim.

¶ 4. Ruling sua sponte on issues not briefed by the parties is becoming a recurring bad habit of this court.

Id.

C. Politics, Big Money, and the Wisconsin Supreme Court

It is well known that Wisconsin has become one of the more contentious, judicially politicized states since the election of Governor Scott Walker, and that its political battles have extensively involved the judiciary, particularly through the appointment, election, and decision-making of Wisconsin Supreme Court Justices.

¹³ The Motion for Reconsideration was the first occasion on which Sands raised her Constitutional claim of a due process violation, because the violation did not occur until the Court’s decision on December 29, 2017.

Governor Walker was elected in 2010, due in large part to substantial so-called “dark money.”¹⁴ He thereafter secured the passage of legislation weakening collective bargaining rights for public school teachers and other state employees, among other things. This prompted a recall election in 2012, which he survived again with the help of millions in dark money, principally from two organizations—the WMC and Wisconsin Club for Growth (“WCFCG”). At the time, Menard was a Director of the WMC. His son, John R. (“J.R.”) Menard, III, Executive Vice President and Treasurer of Menard, Inc., was a WMC Director as of January, 2018. Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right* 338-44 (2016).¹⁵

As Jane Mayer noted in her book, *Dark Money*:

Soon, a handful of Wisconsin’s wealthiest magnates, who were part of the Koch donor network, started writing checks, too. John Menard, Jr., for instance, the richest man in Wisconsin, was both a million-dollar donor at the Kochs’ June 2011 summit and a

¹⁴ “Dark money” is defined as funds given to nonprofit organizations, such as 501(c)(4) (social welfare), 501(c)(5) (unions), and 501(c)(6) (trade association) entities that can receive unlimited donations from corporations, individuals, and unions, and use those funds to influence elections without being required to disclose their donors. See Wikipedia, *Dark Money*, https://en.wikipedia.org/w/index.php?title=Dark_money&oldid=838067664.

¹⁵ See also *Wisconsin Manufacturers and Commerce*, Sourcewatch.org, https://www.sourcewatch.org/index.php/Wisconsin_Manufacturers_and_Commerce (last visited May 10, 2018); Ed Pilkington, *Because Scott Walker Asked*, The Guardian, (Sept. 14, 2016), <https://www.theguardian.com/us-news/ng-interactive/2016/sep/14/john-doe-files-scott-walker-corporate-cash-american-politics>.

million-and-a-half-dollar donor to the Wisconsin Club for Growth... Like many of Menard's investments, the political contributions more than paid off. Once in office, Walker chaired a state economic development corporation that bestowed \$1.8 million in special tax credits on Menard's business. Walker's administration also eased up on enforcement actions against polluters.¹⁶

Id. at 309. Menard was also of course defending major lawsuits from both Sands and her sister.

During the recall election, evidence surfaced that contributions to the WMC, the WCFG, and other Walker-friendly organizations were directly solicited and coordinated by the Walker campaign, in violation of Wisconsin law. The largest known of these potentially illegal contributions, \$1.5 million, came from Menard. *Id.* An email from the Walker campaign stated, "I got \$1m from John Menard today."¹⁷ That payment and another \$500,000 on corporate checks from Menard, Inc., were sent to and routed through the WCFG.¹⁸ As a result of this and suspicious pay-

¹⁶ Menard was one of those favored polluters. Menard has paid approximately \$3.9 million in fines since 1994 for violating environmental laws. Despite this record, the WMC awarded Menard, Inc. a Business Friend of the Environment Award in 2016. See Wisconsin Democracy Campaign, *WMC Gives Menard Inc. An Environmental Award* (May 26, 2016), <http://www.wisdc.org/pr052616.php>; Uppity Wisconsin, *Walker and Menards: Gov's dark money exploits worse than previously reported ... \$1.5 million worse* (last visited May 10, 2018), <https://www.wiscommunity.com/blogarticle/walker-and-menards-govs-dark-money-exploits-worse-previously-reported-15-million-worse>; see also, *State v. Menard, Inc.*, Case No. 1997CF000657 (Eau Claire Cnty. 1997).

¹⁷ See Pilkington, *supra* note 15.

¹⁸ See Uppity Wisconsin, *supra* note 16. Menard's total

ments by other donors, several Wisconsin County Attorneys opened criminal investigations. *State ex rel. Two Unnamed Petitioner v. Peterson*, 2015 WI 85, 363 Wis. 2d 1, 866 N.W.2d 165, 176-77 (Wis. 2015).

As far back as 2007, however, the same dark money sources had recognized the value of having Justices sympathetic to their agendas and causes on the Wisconsin Supreme Court. In that year, in their effort to elect Justice Annette Ziegler, one of the Justices in the majority in Sands' case, the WMC spent \$2.5 million and the WCFG \$400,000, more than double Ziegler's own campaign spending.¹⁹

In 2008, the WMC spent \$2.25 million to secure the election of Justice Michael Gabelman (more than 5.5 times his own campaign's spending), also one of the majority in Sands' case.²⁰

In 2011, the WMC spent \$2 million to re-elect Jus-

contributions to Supreme Court Justices and their campaigns are unknowable. Contributions to such organizations as the WMC, WCFG, and a network of other dark money groups are now unlimited and un-reportable under Wisconsin law. Thus, as a practical matter, Menard's resources and ability to make contributions are unlimited. WMC alone has spent an estimated \$18.4 million since 2006 on issue ads to support candidates for the Wisconsin Supreme Court and other State offices. See Wisconsin Democracy Campaign, *Hijacking Campaign* 2013 (Apr. 24, 2014), <http://www.wisdc.org/wmc2013.php>.

¹⁹ Emily Mills, *The Unbelievably True Story of Wisconsin's Supreme Court and What's at Stake*, Rewire News (Mar. 22, 2018), <https://rewire.news/article/2018/03/22/unbelievable-true-story-wisconsins-supreme-court-whats-stake/>; See Wisconsin Democracy Campaign, *Wisconsin Supreme Court Financing Summaries* (Mar. 20, 2018), http://www.wisdc.org/wdc_supreme_fin_summary.php.

²⁰ See *Wisconsin Manufacturers and Commerce*, *supra* note 15.

tice David Prosser, with another \$1.5 million from the WCFG, of which \$985,000 was funneled secretly through a new front group, Citizens for a Strong America. This amounted to almost 4.3 times as much money as Prosser’s own campaign spent. Justice Prosser later wrote a note to a donor and campaign worker to thank him for “the coordination you provided with friendly organizations outside the Republican Party” saying such coordination “[was] absolutely indispensable.”²¹

In 2013, the WMC spent an estimated \$500,000 and the WCFG \$350,000 to re-elect Justice Roggensack, now the Chief Justice and the author of the majority opinion in *Sands*’ case. This was 1.3 times the amount spent by Justice Roggensack’s own campaign.²²

In 2015, the fourth member of the majority in *Sands*, Justice Rebecca Bradley, was appointed by Governor Walker to fill the seat of moderate Justice Patrick Crooks, who died unexpectedly while in his chambers. Justice Bradley then stood successfully for election in 2016, backed by \$2.6 million in dark money from the conservative Wisconsin Alliance for Reform, among other contributors. The Republican State Leadership Committee contributed an additional \$114,000. The total from these organizations was 2.6 times the spending of Justice Bradley’s own campaign.²³

²¹ *Id.*

²² *Id.* Justice Roggensack eventually became Chief Justice as a result of a voter-approved change to the Wisconsin Constitution on April 7, 2015, which allowed the new Supreme Court majority by a 4-3 vote to supplant long-time Chief Justice Abrahamson, who later authored the *Sands* dissent. The WMC spent \$600,000 on television ads supporting that amendment to change the way the Chief Justice in Wisconsin was chosen.

²³ Associated Press, *Wisconsin Supreme Court: Rebecca*

Finally, Justice Prosser retired in 2016, five years before the expiration of his term, allowing Governor Walker to make his second Supreme Court appointment, Justice Daniel Kelly, an attorney who had represented the state Republican Party in defending its 2011 redistricting plan, and had also served as a director for the newly-formed Wisconsin Institute for Law and Liberty, which helped finance the defense of Governor Walker's legislation curtailing collective bargaining rights for public employees.²⁴ Previously, Justice Kelly had served as Vice President and General Counsel for the Kern Family Foundation, which has donated over \$30 million annually to organizations that advocate privatizing public schools—one of Governor Walker's top legislative priorities.²⁵ The Kerns also have donated \$220,000 to Governor Walker's campaigns since 2012.²⁶ Justice Kelly was the fifth member of the majority in the Sands decision.

The Supreme Court election spending of WMC, the WCFG, and other dark money groups produced divi-

Bradley win adds another conservative vote, Pioneer Press, Apr. 6, 2016, available at <https://www.twincities.com/2016/04/06/wisconsin-supreme-court-rebecca-bradley-win-adds-another-conservative-vote/>.

²⁴ See Daniel Kelly, Ballotpedia.org (last visited May 10, 2018), [https://ballotpedia.org/Daniel_Kelly_\(Wisconsin\)](https://ballotpedia.org/Daniel_Kelly_(Wisconsin)); Molly Beck, *Scott Walker picks Waukesha lawyer Daniel Kelly for seat on Supreme Court*, Wisconsin State Journal, July 23, 2016, available at http://host.madison.com/wsj/news/local/govt-and-politics/scott-walker-picks-waukesha-lawyer-daniel-kelly-for-seat-on/article_17eb913d-91d2-5c8a-8921-45409b8b65c8.html.

²⁵ Chris Malina and Bill Martens, wpr.org (July 27, 2016), <https://www.wpr.org/walkers-wisconsin-supreme-court-pick-draws-criticism-praise>.

²⁶ Wisconsin Democracy Campaign, *Republican Governor Scott Walker's Top Individual Contributors* (Apr. 26, 2018), <http://www.wisdc.org/walkertop.php>.

dends, in 2010, when, adopting language written by the WMC, the new majority prevailed 4-3 in amending the Court's recusal rule to permit Justices to hear cases involving donors supporting their election campaigns²⁷; in 2014, when the Supreme Court voted 5-2, in an opinion by Justice Gabelman, upholding Governor Walker's legislation curtailing the collective bargaining rights of school teachers and other public employees, reversing a decision holding the law unconstitutional²⁸; and in 2015, when, in another opinion by Justice Gabelman, the Court held, 4-3, that the investigations into campaign contributions in Governor Walker's recall election were unconstitutional, and ordered the investigations shut down and all documents in the possession of the investigators destroyed.²⁹

The past decade of the Wisconsin Supreme Court

²⁷ *In re amendment of the Code of Judicial Conduct's rules on recusal*, 2010 WI 73 (Wis. 2010), available at <https://www.wicourts.gov/sc/rulhear/DisplayDocument.html?content=html&seqNo=51874>. The Wisconsin Institute for Law and Liberty supported the WMC-authored change. Thereafter, on April 20, 2017, without hearing, the Supreme Court rejected a petition from 56 former judges to amend the ethics rules to prohibit judges from sitting on cases involving their campaign donors. Billy Corriher, *Wisconsin Supreme Court rejects request from 56 judges to address judicial campaign cash*, Thinkprogress.org (Apr. 20, 2017), <https://thinkprogress.org/wisconsin-supreme-court-campaign-finance-23d81ba9889f/>.

²⁸ *Madison Teachers, Inc. v. Walker*, 2014 WI 99, 358 Wis. 2d 1, 851 N.W.2d 337 (Wis. 2014).

²⁹ *Unnamed Petitioners*, 2015 WI 85 at ¶¶ 10-11. The documents, including extensive emails from the Walker campaign, became public when they were leaked to The Guardian newspaper, which published a lengthy article, *Because Scott Walker Asked; Leaked court documents from 'John Doe investigation' in Wisconsin lay bare pervasive influence of corporate cash on modern US elections*, and also made the complete documents available on-line. See Pilkington, *supra* note 15.

was recently summarized by newly elected Justice Rebecca Dallet, who scored a 12-point victory on April 3, 2018, over a candidate endorsed by Governor Walker and backed by the WMC, WCFG, and other dark money interests in a hotly contested election to replace retiring Justice Gabelman. In a nationally televised April 4 interview with Lawrence O'Donnell of MSNBC, Justice Dallet said:

Well, we have had a situation in Wisconsin for the last decade, the years that I've been a judge, where we've had special interest money pouring into these Supreme Court races, and money like—groups like the NRA and other business lobbies and other groups. ***And that money has been buying justice or a justice.*** We've then had Supreme Court justices like the one I announced against, Justice Gableman, sitting on cases that involve parties that spent that money and refusing to step off of those cases, and then ruling in the favor of those groups that spent the money. Wisconsinites have seen that this isn't fair, and they've lost confidence in our courts. [Emphasis added.]³⁰

Indeed, the Supreme Court made clear in amending the recusal rules in 2010 that its “intent is to allow for the solicitation and receipt of a contribution from a litigant with a case currently pending before the judge.” *In re amendment of the Code of Judicial Conduct*, 2010 WI 73, at ¶ 29.

This is the Court that decided Sands' appeal on a

³⁰ The Last Word with Lawrence O'Donnell (MSNBC television broadcast April 4, 2018), *available at* <http://www.msnbc.com/the-last-word/watch/another-big-progressive-win-in-trump-country-1202988611888>.

ground never raised, briefed, or argued, and allowed a major donor, Menard, to escape all legal and financial responsibility for his treatment of Sands, for nine years his fiancée and partner in life and business.

REASONS FOR GRANTING THE WRIT

This Court should grant the writ because constitutional rights that it has long protected are now under serious threat from politically constituted state courts that serve the interests of their financial backers, instead of the interests of justice. Ordinary American citizens have nowhere else to turn except this Court when such state courts flout well-established constitutional rights and law.

I. The Wisconsin Supreme Court violated Sands' right to due process by dismissing her case on a ground never before raised without giving her an opportunity to be heard, in direct contravention of this Court's decisions.

This Court has long held that the Due Process Clause of the Fourteenth Amendment requires that states may not deprive a person of property without an opportunity to be heard. *Link v. Wabash R. Co.*, 370 U.S. 626, 632 (1962) ("The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." (quoting *Anderson Nat. Bank v. Luckett*, 321 U.S. 233, 246 (1944))); *Schroeder v. City of New York*, 371 U.S. 208, 211 (1962); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest."); *U.S. v. James Daniel Good Real Property, et al.*, 510

U.S. 43, 48 (1993) (“Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property.”).

As this Court made clear in *Boddie v. Connecticut*, 401 U.S. 371 (1971):

Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a “legal system,” social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society.

Id. at 374. Without question, property interests protectable under the Due Process Clause include a plaintiff’s cause of action recognized under state law. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 571-72, 576, 577 (1972); *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428, 429-30 (1982) (“The Court traditionally has held that the Due Process Clauses protect civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances.”); *Hunter v. School Dist. of Gale-Ettrick-Trempealeau*, 97 Wis. 2d 435, 293 N.W.2d 515, 520 (Wis. 1980) (“As noted earlier, the appellant, Betty Hunter, acquired a distinct vested property right in a cause of action for negligence at the time of her injury....”).

This case of course also involves the Wisconsin Supreme Court’s allowing Menard to deprive Sands of the fruits of her labor. From the era of Reconstruction to the present day, the decisions of this Court have been vigilant in their concern both that persons should be able to enjoy the fruits of their labor and that others should not unjustly usurp them. *Slaughterhouse Cases*, 83 U.S. 36, 90 (1872) (“The abolition of slavery and involuntary servitude was intended to make every one born in this country a freeman, and as such to give to him the right to pursue the ordinary avocations of life without other restraint than such as affects all others, and to enjoy equally with them the fruits of his labor.”) (Field, J., dissenting); *Atherton v. Fowler*, 96 U.S. 513, 520 (1877) (condemning “a wrongful attempt to seize the fruits of other men’s labor”); *Usery v. Turner Elkhorn Mining Company*, 428 U.S. 1, 18 (1976) (upholding legislation “to spread the costs of the employees’ disabilities to those who have profited from the fruits of their labor, the operators and the coal consumers”); *see also Oil States Energy Servs., LLC v. Greene’s Energy Grp., LLC*, 138 S. Ct. 1365, 1380 (2018) (Gorsuch, J., dissenting).

In so stating, this Court echoed the views of Abraham Lincoln, who, in defining slaves as workers who had been denied the fruits of their labors, said,

“But it has so happened in all ages of the world, that some have laboured, and others have, without labour, enjoyed a large proportion of the fruits. This is wrong, and should not continue. To [secure] to each labourer the whole product of his labour, or as nearly as possible, is a most worthy object of any good government.”³¹

³¹ Abraham Lincoln, “Fragments of a Tariff Discussion”

It is clear that in this case Sands had a protectable property interest in her claim for unjust enrichment against Menard to share in the fruits of her labor, and that the Wisconsin Supreme Court deprived her of that property interest without giving her an opportunity to be heard, by dismissing her case on a ground never raised, briefed, or argued. Two of the Justices on the Wisconsin Supreme Court expressly concluded that the majority had violated Sands' right to due process. Sands submits that this Court should as well.

II. The Wisconsin Supreme Court violated Sands' right to due process by denying her right to have her case heard and decided by an impartial tribunal in contravention of this Court's decisions.

There is, as well, another line of cases from this Court, warranting the granting of Sands' Petition. This Court has recognized the need to protect litigants when political influences threaten or create the appearance of impinging on what should be independent judicial decision-making. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 872, 884 (2009)³²; see, *Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1662, (2015). As this Court said in *Caperton*, "It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" 556 U.S. at 876. Indeed, the Wisconsin Supreme Court itself has recently so acknowledged. *State v. Herrmann*, 2015 WI 84, 364

(December 1, 1847), *The Collected Works of Abraham Lincoln* Vol. I, 412 (Roy P. Basler ed. 1953).

³² In *Caperton*, this Court ruled that Constitutional Due Process is violated when campaign contributions in support of a judge create a "probability of actual bias [that] rises to an unconstitutional level," without the need to show actual bias. 556 U.S. at 886-87.

Wis. 2d 336, 867 N.W.2d 772, 781 (Wis. 2015) (Ann Walsh Bradley, J.):

A fundamental principle of our democracy is that judges must be perceived as beyond price. Likewise, we recognize that the precedent established by the United States Supreme Court and our court of appeals provides that in limited situations the appearance of bias can offend due process. Specifically, the appearance of bias violates due process when there is “a great risk of actual bias.”

As former U.S. Supreme Court Justice Sandra Day O’Connor has observed, “In too many states, judicial elections are becoming political prizefights where partisans and special interests seek to install judges who will answer to them instead of the law and the Constitution.”³³

Unfortunately, the majority in Sands’ case failed to heed these admonitions, violating Ms. Sands’ due process right to be heard in their haste to rule for the benefit of Menard, his wealth, and those receiving his largesse, including the five Justices in the majority. Indeed, Justice Abrahamson cautioned the Justices against this when the Court adopted the WMC-authored rule allowing non-recusal. Justice Abrahamson reminded the Court that “the issue presented by the recusal rules concerned preservation of a litigant’s due process right to a fair tribunal.”³⁴

³³ Notable Quotes, Justice at Stake (last visited May 10, 2018), http://www.justiceatstake.org/resources/facts_stats_and_quotes/notable-quotes-23127-23127/ .

³⁴ Alex De Grand, *Wisconsin Supreme Court adopts amended recusal rules*, State Bar of Wisconsin, Jan. 22, 2010, available at <https://www.wisbar.org/NewsPublications/InsideTrack/Pages/Article.aspx?Volume=2&Issue=3&ArticleID=5794>.

Justice Abrahamson is not alone in this view, as more than 90 percent of Americans believe judges should not hear cases involving individuals or groups that contributed to their campaigns, according to a 2009 USA Today/Gallup National Poll.³⁵

Newly elected Wisconsin Supreme Court Justice Rebecca Dallet successfully ran for election on this very issue, telling voters,

We should all care about our Supreme Court because right now, our Supreme Court is broken and dysfunctional. For the past decade, millions of special-interest dollars have flooded into Wisconsin's Supreme Court elections to buy influence on the court, and it worked. When our courts are bought and paid for by special interests, the people of Wisconsin don't have a chance at a fair shake when they enter the courtroom. Special-interest dollars have soiled our courts and it's time we do something about it. Since day one of my campaign, I have said that I will work to establish a stronger, clear recusal rule so this undue influence stops once and for all.

* * *

What we need to do is fix our broken Wisconsin Supreme Court. Big-money special interests have taken over. Justices refuse to recuse themselves even when their donors—who've given massive amounts of money—want the court to rule in a certain way.³⁶

³⁵ Hoover, Heidi, *Elected v. Appointed Judges: The Struggle for Accountability and Non-Partisanship in the Judicial Branch* (December 17, 2013), available at <https://ssrn.com/abstract=2410679> or <http://dx.doi.org/10.2139/ssrn.2410679>.

³⁶ Wisconsin Supreme Court Elections, 2018, Ballotpedia.

The voters heard her and agreed, regretfully too late for Sands.

III. Review by this Court is essential to secure and safeguard Sands' due process rights.

This Court should grant Sands' Petition for a writ of certiorari because in disregarding well-established law and denying Sands her rights to be heard and not be deprived of her property without due process of law in a proceeding before an impartial tribunal, the Wisconsin Supreme Court decided important federal questions in a way that conflicts with relevant decisions of this Court.

The Constitution's framers expressed an active desire to fight corruption, which they understood to include, beyond mere bribery, the undue influence of wealth on our democratic systems. "This independence of the judges is . . . requisite to guard the Constitution and the rights of individuals." Alexander Hamilton, Federalist Paper No. 78. Former Justice Sandra Day O'Connor observed, "The founders realized there has to be someplace where being right is more important than being popular or powerful, and where fairness trumps strength. And in our country, that place is supposed to be the courtroom."³⁷

Sadly, there has been a firestorm of disregard for this precept in state courthouses, which has not gone unnoticed:

"The improper appearance created by

org (last visited May 10, 2018), https://ballotpedia.org/Wisconsin_Supreme_Court_elections,_2018.

³⁷ Nina Totenberg, *Justice O'Connor Criticizes Campaign Finance Ruling*, NPR (Jan. 26, 2010), <https://www.npr.org/templates/story/story.php?storyId=122993740>.

money in judicial elections is one of the most important issues facing our judicial system today.” Theodore B. Olson, former U.S. Solicitor General.

“Essential to public confidence in the judiciary is the assurance that justice is not for sale and that legal disputes will be resolved by fair and impartial judicial officers.” Committee for Economic Development, in a U.S. Supreme Court brief signed by Wal-Mart, Pepsico, Intel and Lockheed Martin.

“Judicial races, once staid, low-budget affairs, have in the past decade turned into mudslinging, multimillion-dollar brawls that have shaken public confidence in justice.” USA Today editorial, Mar. 3, 2009.

“Across the country, state courts are drowning in a sea of special-interest money.” New York Times editorial, Sept. 7, 2008.

“I never felt so much like a hooker down by the bus station . . . as I did in a judicial race. Everyone interested in contributing has very specific interests. They mean to be buying a vote.” Paul Pfeifer, Ohio Supreme Court Justice.

“There’s now a crooked sign hanging on every courthouse in America reading ‘Justice for Sale.’” Bill Moyers, Feb. 19, 2010.³⁸

Wisconsin can claim the dubious distinction of leading this trend, as from 2007 through 2015, outside interest groups spent an estimated \$13.2 million on issue ads alone on behalf of Supreme Court can-

³⁸ Notable Quotes, *supra* note 33.

didates, according to data compiled by the Wisconsin Democracy Campaign.³⁹ The Wisconsin Supreme Court has become “the textbook example of a court that has fallen prey to special interest influence and special interest spending.” *Id.*

This Court’s review is thus sorely needed. It is important for state courts to hear from this Court that their first loyalty must be to the Constitution of the United States, as embodied in this Court’s decisions, and not to their wealthy donors and financial patrons. This is an issue of concern to all Americans, regardless of party affiliation or political beliefs. It is equally important for ordinary litigants and the vast majority of American citizens, especially those of limited means, to know that justice cannot be bought and ordinary individuals may still seek and receive justice from this Court even in today’s highly politicized environment, which has now reached into state courthouses and allowed money to tip the scales of justice. This Court alone stands as the last resort and bulwark for the preservation of constitutional rights and an independent, impartial judiciary.

As Thomas Jefferson wrote, “the most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens.”⁴⁰ This Court should grant review as the guardian of this most sacred duty.

³⁹ Molly Beck, *Analysis: Last 6 state Supreme Court races attracted \$13.2M in issue ad spending*, Wisconsin State Journal (Jan. 11, 2016), http://host.madison.com/wsj/news/local/govt-and-politics/analysis-last-state-supreme-court-races-attracted-m-in-issue/article_b670e7c4-7bb5-5771-9153-c224ce696389.html.

⁴⁰ Letter to Joseph Milligan, April 6, 1816, *available at* <http://www.marksqquotes.com/Founding-Fathers/Jefferson/index2.htm>.

CONCLUSION

For all these reasons, this Court should grant the petition.

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Respectfully submitted,

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