

## ACLU questionnaire for Wisconsin Supreme Court candidates Judge Rebecca Dallet Responses

*We invite your answers to the following questions, so that we may share information about your views on issues of ACLU concern. Please ensure that we receive your responses by 5pm on Thursday, March 15, 2018, by sending them to [REDACTED]*

*Thank you.*

### **voting rights**

What is your view of Wisconsin's Voter ID law, which has been reported to have kept thousands of eligible voters from the polls during the 2016 election? Is it good policy? Is it legally suspect?

*I can't weigh in on whether something is "good policy" or not, that is a question for the legislative and executive branches of government. The issue before our courts is whether or not a law violates constitutional rights. Federal courts have generally upheld these laws as constitutional, provided that voters have sufficient options for what type of ID they can use, and provided there is some sort of reasonable failsafe for those who cannot obtain an ID. However, there is likely to be additional litigation. I think it's safe to say that I am very concerned about the suppressive effect of these laws and whether or not that results in an unconstitutional burden on an individual's or a group's ability to cast a ballot.*

### **reproductive freedom**

What is your view of restrictions on access to abortion services that have cropped up around the nation, such as requirements that clinics have affiliations with hospitals, waiting periods, or mandatory counseling for those seeking healthcare assistance? Are they good policy? Are they legally suspect?

*Roe v Wade, as modified by Casey and other cases, is the law of the land. My read is that federal courts have accepted the general idea that states can impose some requirements on access to abortion care where they have a compelling interest, but have taken a dim view of restrictions that are designed simply to make it harder to for women to access care. Again, I can't address whether a policy is "good" or not - only whether a policy imposes unconstitutional burdens. I think it's fair to say that restrictions proposed and passed by legislatures today regarding abortion care should be seen as "legally suspect" given the legal and political history -- they should at least be examined with a very tough eye.*

### **criminal justice reform**

Mass incarceration is a significant problem in Wisconsin, and our state spends heavily to imprison Wisconsin residents who have committed minor crimes that often result from substance abuse problems or mental illness. What do you believe is the role of the Wisconsin judiciary in addressing this problem? What do you believe are the key measures that lawmakers and police departments can take to prevent discriminatory, unlawful police searches? What role should the courts play?

*There is clearly a problem with mass incarceration, and the racial bias that permeates the system. Wisconsin should especially be ashamed that we incarcerate African-Americans at a*

*vastly higher rate than other racial groups -- racial bias in Wisconsin is reportedly the worst in America.*

*I feel strongly that judges and courts can inform policymakers about our experience to help craft better policy, understanding that the policy decisions are ultimately taken by legislators and executives.*

*One important example that my county circuit court has led on is the drug court, which seeks to find alternatives to incarceration for offenders who face substance abuse issues. We also have a veterans court to help find services and support for those in need. Judges should speak up when we see the results of policies and help inform policy-makers about our experience.*

*The courts have an important role to play in preventing the implementation of unconstitutional policies in the executive branch, not just the legislative branch. Appellate courts have set boundaries for police regarding search and seizure, and continue to do so. I myself have ruled countless times both upholding and overturning police searches. I have been upheld by appellate courts more than 90% of the time, but even I have occasionally seen a ruling overturned as the appellate courts refine the constitutional boundaries. The courts must continue to act to ensure constitutional rights are upheld for all our people.*

### **immigrants' rights**

Do you believe judges should allow sentence enhancements because the accused is an undocumented individual?

*I would have to examine this issue further, as it's not one I have deep expertise in. However, sentence enhancements due to someone's status should be viewed with a very, very critical eye to ensure they don't violate someone's constitutional rights.*

### **open government**

How broadly should open records and open meetings laws apply to the state legislature?

*I think it's fair to say that it should be constitutionally suspect for elected officials to treat themselves as a protected class. Sunlight is critical to the functioning of democratic government. I have called for previously open meetings of the Court, especially administrative meetings, to be once again open to the public.*

### **LGBT rights**

Do you believe that anti-discrimination provisions under state and federal law cover LGBT people, similar to the way they cover racial minorities and women? What role do courts have in the interpretation of these laws in the context of LGBT plaintiffs?

*I've often told the story that the best day I had on the bench was to come in one day and finally be able to marry loving couples regardless of their sexual orientation and identity, when federal courts protected marriage equality. I do think that the Constitution requires courts to step in when people are discriminated against due to their status or identity. I cannot speak directly to whether or not current law is adequate, as that issue may come before the court.*

### **role of state courts in protecting individual rights**

Former U.S. Supreme Court Justice William Brennan once expressed the view that state supreme courts could interpret their state constitutions as providing greater protections for individual liberties than the U.S. Constitution. Do you view the Wisconsin Constitution as providing any greater protections in this way, in areas such as equality and individual rights, privacy, freedom of religion and belief, freedom of expression and association, and voting rights? If so, how?

*I recently had the pleasure of being asked this very question by Justice Shirley Abrahamson at the Dane County Bar Association forum. I do believe that the Wisconsin Constitution can be read to afford greater protections for our resident's constitutional rights than the U.S. Constitution. For example, there are explicit, stronger protections for the individual right to keep and bear arms, and the right to hunt and fish, in the state Constitution. (Article I, Sections 25 & 26) There are requirements that don't exist in the U.S. Constitution regarding access to public schools and a public university. (Article X, Sections 3 & 6) And if you look at the rights of free speech and equality, they are more explicit and strongly worded in Wisconsin's document. (Article I, Sections 1 & 3.)*