Republican Supreme Court justice defeated in Wisconsin vote

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14 April 2020

Republican incumbent state Supreme Court Justice Daniel Kelly lost his bid for election to a full ten-year term, as vote-counting continued into Monday night for the election held in Wisconsin last Tuesday, April 7. Efforts by the Republican-controlled state legislature to rig the vote in Kelly's favor appeared to have blown up in their faces.

Kelly, who had high-profile support from President Trump and indirect support from the five-member Republican-appointed majority on the US Supreme Court, was trailing Democratic Party-backed challenger Jill Karofsky by nearly 100,000 votes, with more than 90 percent of precincts reporting.

Karofsky's margin of victory, 53 percent to 47 percent, was a landslide compared to other recent statewide contests. Trump won the state over Hillary Clinton in 2016 by 22,000 votes, while Democratic Governor Tony Evers unseated incumbent Republican Scott Walker by 29,000 votes in 2018. Republican state Supreme Court Justice Brian Hagedorn won his seat in 2019 by only 6,000 votes.

About half an hour after the Associated Press called the race in favor of Karofsky, a circuit court judge in Dane County (Madison), Kelly conceded and made a statement of congratulations. Karofsky will replace him on the court September 1, reducing the conservative majority from 5-2 to 4-3.

The statewide election coincided with the presidential primary, in which former Vice President Joe Biden defeated Senator Bernie Sanders by better than two-to-one, winning virtually every county in the state. The primary result was made irrelevant by Sanders' suspension of his campaign on April 8, the day after in-person voting was carried out.

The Wisconsin state Democratic Party was preparing for an adverse result in the state Supreme Court election, as the result of the virtual shutdown of polling places in Milwaukee because of coronavirus fears. The city operated only five of 180 voting stations, causing lengthy lines that frequently violated social distancing rules in place because of the epidemic.

Democratic National Committee Chairman Tom Perez called the decision by the state Supreme Court to authorize in-person voting, based on a lawsuit by the Republican leadership of the state legislature, "voter suppression on steroids." State Democratic Party Chair Ben Wikler said lawsuits would be filed by voters unable to cast absentee ballots, or by defeated candidates in nearly 4,000 local contests that were decided in the election.

In the end, however, efforts to promote the casting of absentee ballots before the election appear to have been decisive in the outcome. About one million absentee ballots and early votes were cast, more than half of the total vote, with the biggest percentage of absentee ballots cast in Milwaukee and Madison, the state's two largest cities.

The effort to drive down the in-person vote did have some success: fewer than 20,000 people cast in-person votes in Milwaukee, compared to 54,000 who voted by mail. More than 160,000 voted in the city in the 2016 primary election.

What is not yet known are the public health consequences of more than half a million people turning out to vote on April 7 under conditions of a raging pandemic. While coronavirus has not yet hit Wisconsin as hard as neighboring Illinois and Michigan, the death toll nearly doubled during the week following the April 7 vote, rising from 80 to 154, while the number of reported cases rose by 75 percent.

The Republican-led state legislature had initially tried to move the state Supreme Court contest to another

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date, rather than scheduling it to coincide with the presidential primary, out of fears that a contested Democratic race would attract more voters than the uncontested Republican primary, thus creating an unfavorable arena for Kelly's election effort.

After this effort failed, the Republican Party leadership sought to use the coronavirus outbreak as a club to reduce the vote in Democratic Party strongholds like Milwaukee and Madison, where most of the COVID-19 cases and deaths have been reported, by insisting on in-person voting in the midst of the pandemic.

After Democratic Governor Tony Evers sought to postpone in-person voting until June, and issued an executive order April 6 to do so, the Republican leaders of the state legislature went to court and the Wisconsin state Supreme Court overturned the executive order by a 4-2 party-line vote, with Kelly recusing himself since he was on the ballot.

President Trump hailed the state court's intervention, tweeting out his support for Kelly and making repeated statements throughout the week denouncing mail-in votes as a Democratic plot to steal the 2020 presidential election. The Wisconsin experience was widely discussed in the national media as a template for what may happen in November, assuming that the coronavirus epidemic has either not subsided or comes back in a new wave in the fall.

The US Supreme Court also weighed in with an election-eve decision overturning a ruling by a lower federal court that would have allowed the state to count mail-in votes that were not postmarked by April 7, the date of the in-person vote. The court did not rule, however, on the treatment of mail-in votes that had no postmark at all, and this turned out to be many tens of thousands—more than 2,000 just in Dane County, which includes Madison.

Republican Party officials opposed counting non-postmarked votes even when they were received on Wednesday, April 8, and therefore must have been put in the mail by the previous day, demonstrating that their main concern was to exclude votes, reduce the turnout, and hope that Kelly could win the election under those conditions.

The result appears to demonstrate that many voters were angered by the open attempt to suppress the vote and went to the polls, either to vote in person or to deliver mail ballots by hand, one of the legal methods of casting a ballot.

Turnout in Dane County, which includes Madison and the main campus of the University of Wisconsin, was actually substantially higher this year than in 2016, when Bernie Sanders defeated Hillary Clinton in a hotly contested primary.

Karofsky is only the second challenger to defeat a sitting Supreme Court justice in Wisconsin in the past 50 years. She issued a statement thanking her supporters, but adding, "Although we were successful in this race, the circumstances under which this election was conducted were simply unacceptable, and raise serious concerns for the future of our democracy… Nobody in this state or in this country should have been forced to choose between their safety and participating in an election."

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