

EDITORIAL: The value of a signature withheld

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Pure objectivity is a myth.

In that respect, Dane County Circuit Judge David Flanagan did nothing wrong when he signed a petition in November to recall Gov. Scott Walker and then, in March, granted a temporary injunction to stop the law that requires every voter show a photo ID before casting a ballot.

His signature on the petition does no more than confirm the obvious: If you think, you form opinions.

He simply put on the record a bias that existed with or without a petition.

In a perfect world, the public would understand the difference between Flanagan, the citizen, and Flanagan, the judge, and trust him to separate the two.

In that respect, Flanagan is in trouble.

Perception rules people in positions such as Flanagan's, and he forgot it.

But committing publicly to a bias was just his first mistake. He followed that by failing to notify the parties in the voter identification case that he had signed the petition. Then he chose not to recuse himself.

He had no option but recusal. When he signed the petition, his personal opinion created an obvious anti-Walker perception. He lost the public's confidence that he could judge impartially.

Less than a week after Flanagan's ruling, Dane County Circuit Judge Richard Niess, in a separate case, permanently struck down the voter identification law.

Flanagan probably did rule based only on the merits of the case. He probably did honor the trust given to members of the judiciary.

It's what judges do all the time when they set aside their opinions of the lawmaker and instead focus on the law. That's all that should matter, but it isn't.

Flanagan showed his hand, revealing a potential crack in the integrity of the bench for others to exploit and manipulate. And they will, by arguing Flanagan violated the Code of Judicial Conduct rule restricting judges from participating in the affairs of political parties.

He could have complied with the letter of the code by withholding his signature on the petition and privately casting a ballot in the recall vote. Then no one legitimately could have questioned his ruling in the case.

The only difference between the two is public perception. But that's the reality for Flanagan.

Judges not only must rule fairly, they also must offer the false comfort that they do so objectively.