Your Right to Know / By Richard Niess

Pull the plug on shadowy business courts

Anyone who doubts that secrecy in government breeds poor public policy should take a look at the [Business Court Pilot Project](https://www.wicourts.gov/services/attorney/comcourtpilot.htm) launched by our Wisconsin Supreme Court.

For the last five years, the project has granted large commercial interests outsized influence over our court system’s handling of their cases, exactly as intended. The business court pilot debuted in 2017 in Waukesha County and the 8th judicial district (encompassing Brown, Marinette, Kewaunee, Oconto, Door, Outagamie and Waupaca Counties). It was expanded to other districts and, in a surprise move, to Dane County in 2020.

Here’s how it works: the Chief Justice, currently Annette Ziegler, receives recommendations from big business and selects a limited number of business court judges. These hand-picked judges then receive training out-of-state from special interests aligned with big business. They follow court procedures drafted by big business lawyers.

The process largely bypasses the voter-controlled and otherwise random judicial assignment of cases. It creates a two-tiered court system — one controlled by business interests and one for everybody else.

It began in September 2016, when then-Chief Justice Patience Roggensack formed the “Business Court Advisory Committee” to develop a specialty court proposed by big business, for big business. Ignoring the Supreme Court’s own internal operating procedures designed to promote transparency and diversity of opinion in appointing court committees, the chief justice stacked the committee with lawyers representing business interests.

The committee included no labor or consumer advocates, no one representing the viewpoints of the public, and no one speaking for other stakeholders in our circuit court system.

Working privately, the advisory committee soon hatched a [petition](https://s3.documentcloud.org/documents/21448822/1605petition.pdf) to establish and control the business court, which it filed with the Supreme Court on October 26, 2016. Less than two weeks later, the court [adopted](https://www.wicourts.gov/sc/rulhear/DisplayDocument.pdf?content=pdf&seqNo=188391) the petition by a 5-2 vote, with no public hearing, no opportunity for public comment, and no public notice that the petition was even scheduled for a vote.

Thus, out of public view, our Supreme Court rapidly and fundamentally changed our circuit courts’ democratic structure for handling big business commercial litigation, simultaneously degrading judicial independence and corrupting a cardinal principle underpinning our court system—that everyone should be treated equally when he or she comes before the court.

The business court model was forced onto the Dane County circuit court system beginning in July 2020. The Supreme Court is now weighing a [petition](https://s3.documentcloud.org/documents/21428556/16-05d-letter-to-interested-persons.pdf) to extend the pilot program, set to expire on June 30, 2022, for another two years.

The big business takeover of circuit court commercial litigation wasn’t the first time our Supreme Court displayed a penchant for secrecy.

For example, in 2012, the Supreme Court majority [voted to close](https://wisconsinwatch.org/2012/02/supreme-court-opts-to-close-some-meetings/) administrative rules conferences to the public, reversing an open meetings policy that had informed Wisconsin voters on important court matters for years. “To sit out here in public and philosophize,” said Justice Roggensack, “is really not the best use of our time.

A more transparent approach might have led to a different outcome on the Business Court pilot project. But it’s not too late to comment on the request to expand the project for another two years. Written comments can be submitted to Attorney Laura Brenner at [lbrenner@reinhartlaw.com](mailto:lbrenner@reinhartlaw.com), and should be received by 4:30 p.m. on April 8.

This time, transparency may produce a better result — a return to normalcy for our courts.

*Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council (*[*wisfoic.org*](https://wisfoic.org/)*), a group dedicated to open government. Attorney Richard G. Niess served as a Dane County Circuit Court judge from 2004 to 2020, including 13 years as presiding judge of the civil division.*

