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CLERK OF WISCONSIN
SUPREME COURT

No. 25AP2859-CRLV

In the Supreme Court of Wisconsin

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

JAMES R. TROUPIS,
Defendant-Petitioner.

**JAMES R. TROUPIS’S MOTION
TO DISQUALIFY CHIEF JUSTICE KAROFSKY & JUSTICE DALLET**

Skylar R. Croy
Wisconsin Bar No. 1117831
Joseph A. Bugni
Wisconsin Bar No. 1062514
HURLEY BURISH, S.C.
P.O. Box 1528
Madison, WI 53701
scroy@hurleyburish.com
(608) 257-0945

*Attorneys for James R. Troupis,
Defendant-Petitioner*

I. Introduction.

“What you want is you want us to overturn this election so that your king can stay in power, and that is so un-American.”¹ That’s how then-Justice Karofsky described Troupis’s motives when he represented President Trump in an important election dispute. In her view, Troupis’s conduct (filing the case) was “unheard of in American history” and “smacked of racism.”² After that lawsuit concluded, she continued to criticize Troupis’s character and professional judgment. Among other things, she went on a prominent podcast and stated: “I know I said it at the day of oral argument, and I will say it again: *the lawsuit smacked of racism.*”³ She also expressed her view that “when that Big Lie is being perpetuated, we need to stop it in its tracks.”⁴ Years later, in the face of a judicial misconduct complaint, she went on another podcast and stated: “I will repeat what I said then: *the lawsuit smacked of racism* and it did smack of racism. ... And there were a lot of people who were upset by my comment. *And I stand by what I said*”⁵ Around this time, she also issued a press release, writing to the media: “The Judicial Code ... does not require a judge to turn a blind-eye to dangerous, bad-faith conduct by a lawyer [i.e., Troupis] It is beyond reason to read the Code to require judges to be mouse-like quiet when parties are arguing in favor of a slow-motion coup.”⁶ Notably, she made these statements not only in the midst of the misconduct complaint but also during an ongoing civil lawsuit against Troupis for the very conduct she condemned.⁷ To the defense’s knowledge, she’s never publicly walked back any of her comments about Troupis’s character.

¹ Oral Argument, at 01:34:42, *Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568 (No. 2020AP2038).

² *Id.* at 4:50.

³ Black Like Me, Podcast, *If Our Grandparents and Other Civil Rights Leaders Could See Us Now*, YouTube, at 20:55 (Apr. 13, 2021), <https://tinyurl.com/38tcs5ff> (emphasis added).

⁴ *Id.* at 22:23.

⁵ Amicus, Podcast, *The “Stop the Steal” Fight that Never Ended: A State Supreme Court Justice Reveals the Long-Term Toll of Calling Out the Big Lie*, Slate, at 25:30 (Feb. 11, 2023), <https://tinyurl.com/ycxewxss> (emphasis added).

⁶ *Justice Karofsky: Decries Weaponization of Disciplinary Process by Anti-Democracy Forces*, WisPolitics (Feb. 11, 2023), <https://tinyurl.com/mw62v2ta>.

⁷ *Penebaker v. Hitt*, Dane Cnty. Cir. Ct. No. 22CV1178, <https://tinyurl.com/4ntzeypt>.

Chief Justice Karofsky hasn't been alone in disparaging Troupis's integrity. Here's a remark by Justice Dallet: "The only votes you wanna throw out are the votes in ... the two most diverse non-white urban counties"⁸ That is, Troupis had brought a racist lawsuit. Like Chief Justice Karofsky, Justice Dallet didn't stop her criticisms when the lawsuit was over. Here's a statement she made to the Capital Times more than two years after the case had concluded: "Troupis is a partisan who appears often in court and was just before us in a widely reported, highly controversial case, which resulted in an attempted weaponization of the disciplinary process against Justice Karofsky and me."⁹ For good measure, she added that Troupis is a "divisive" figure.¹⁰ Just to be clear, the disciplinary complaint referenced above wasn't filed by Troupis but by a concerned citizen. And yet, Justice Dallet's statement suggests the complaint was somehow Troupis's fault and an attempt to "weaponize" the law.

Given this history, Troupis respectfully moves that Chief Justice Karofsky and Justice Dallet recuse themselves from this case. Judges must avoid even the appearance of bias. Because of their statements—on and off the bench—neither can comply with this standard while deciding a permissive appeal about Troupis and the very conduct they've repeatedly condemned. Their statements, spanning years, not only create the appearance of bias but also demonstrate *actual* bias against Troupis. Indeed, Chief Justice Karofsky went so far as to allege Troupis led a "slow-motion coup."¹¹ And in the face of a serious judicial misconduct complaint, both justices doubled down. To again quote Chief Justice Karofsky: "I stand by what I said."¹² For these reasons, if they sat on this case, that would violate the Due Process Clause, the Wisconsin Statutes, and the Judicial Code.

⁸ Oral Argument, at 20:34, *Trump*, 394 Wis. 2d 629.

⁹ Jessie Opoien, *Trump Lawyer Returns to Conduct Committee: State Supreme Court Splits Vote 4-3 to Reappoint James Troupis*, Cap Times, Mar. 3, 2023, at O3.

¹⁰ *Id.*

¹¹ See *Justice Karofsky, supra*.

¹² Amicus, *supra*, at 25:30.

II. Chief Justice Karofsky and Justice Dallet have impugned Troupis's integrity and professional judgment.

As just alluded to, during oral argument in *Trump*, the case Troupis brought, one thing became clear: two justices didn't like him.¹³ Then-Justice Karofsky decried the case, calling out Troupis for allegedly targeting racial minorities: "This lawsuit, Mr. Troupis, smacks of racism."¹⁴ The full quote is below:

In your lawsuit, what you have done here is targeted the vote of almost a quarter of a million people, ... a quarter of a million people who live only in Dane County and Milwaukee County – two of our 72 counties, two counties that are targeted because of their diverse populations, because they're urban *This lawsuit, Mr. Troupis, smacks of racism.* And I do not know how you can come before this Court and possibly ask us for a remedy that is unheard of in American history, a remedy asking us to say to 227,000 of our fellow Wisconsinites, "Your vote doesn't matter. We don't care if you think you followed all the rules."¹⁵

She followed that up with this line: "What you want is you want us to overturn this election so that *your king can stay in power*, and that is so un-American."¹⁶ By "your king," she meant President Trump, Troupis's client.

Justice Dallet made a similar comment, not about Troupis serving his "king" but about the view that Troupis brought a racist case: "The only votes you wanna throw out are the votes in the two largest counties, the two most diverse non-white urban counties [President Trump] chose to only challenge votes in the most urban, non-white counties that voted for Joe Biden."¹⁷

¹³ Oral Argument, at 01:33:44, *Trump*, 394 Wis. 2d 629.

¹⁴ *Id.* at 4:50.

¹⁵ *Id.* at 4:14 (emphasis added).

¹⁶ *Id.* at 01:34:42 (emphasis added).

¹⁷ *Id.* at 20:16.

After the case was over, those same two justices made numerous extra-judicial statements. For example, then-Justice Karofsky went on a podcast, *Black Like Me*, and reiterated that she stood by what she'd said.¹⁸

Host: All the recounts that happened and the accusations of fake elections and that you know that they would be recounted in Milwaukee that a place where voters earlier that year risked their lives to vote and now to sort of insinuate that these same groups of folks, ... are somehow illegally voting, it's really an affront to people who are trusting and relying on this electoral process. I just thought that was very offensive to go to that community in Milwaukee and particular and question those votes knowing that that community had already shown to what degree they are willing to vote.

Karofsky: I could not possibly agree with you more The lawsuit was only in Dane and Milwaukee counties and those counties as you know ... , they're the most diverse counties, they have the highest population of African-Americans. ... *And I know I said it at the day of oral argument and I will say it again: the lawsuit smacked of racism.*

Host: I think that's smacked of racism too. ...

Karofsky: [I]f you look back on history and you look at how fascists – dictators – take over, they begin with the Big Lie ... and they say it over and over and over again: a big lie such as the election was fraud. And so we who care about our democracy who are protectors of our democracy who are willing to take whatever steps are necessary to preserve our democracy ... when that Big Lie is being perpetuated, we need to stop it in its tracks.¹⁹

¹⁸ See generally About, *Dr. Alex Gee* (last visited Feb. 14, 2026), <https://tinyurl.com/52bv2au9>.

¹⁹ *Black Like Me*, *supra*, at 18:50–22:32 (emphasis added).

Notably, the justices made these statements even while they faced allegations of judicial misconduct for their comments about Troupis.²⁰ In fact, the Judicial Commission admonished then-Justice Karofsky, warning her to avoid “sarcastic remarks” that call into question whether she’s “neutral.”²¹ Yet despite that admonishment, in February 2023, she went on another podcast, *Amicus*.²² That full episode is worth a listen, but here’s a key highlight:

So I had watched Donald Trump’s lawyer, Jim Troupis, argue the day before in Milwaukee County before the case came to us. And I was getting increasingly concerned about the fact that if we heard the case ... , that we were suddenly, the Supreme Court, was going to be a stage for their Big Lie theater. ...

I will repeat what I said then: *the lawsuit smacked of racism* and it did smack of racism. ... And there were a lot of people who were upset by my comment. *And I stand by what I said*²³

Around that same time, she issued this press release: “The Judicial Code ... does not require a judge to turn a blind-eye to dangerous, bad-faith conduct by a lawyer or litigant, [i.e., Troupis]. ... It is beyond reason to read the Code to require judges to be mouse-like quiet when parties are arguing in favor of a slow-motion coup.”²⁴

About a month later, Justice Dallet told the Capital Times that “Troupis is a partisan who appears often in court and was just before us in a widely reported, highly controversial case, which resulted in an attempted weaponization of the disciplinary process against Justice Karofsky and me.”²⁵ She also called him “divisive.”²⁶ Notably, at this point, Troupis was facing a civil lawsuit for the conduct these justices had condemned as racist and part of the “Big Lie.”²⁷

²⁰ See *Panel Scolds Wisconsin Justice for Remarks in Trump Case*, CBS News (Feb. 11, 2023), <https://tinyurl.com/ht78azep>.

²¹ *Id.*

²² *Amicus, supra.*

²³ *Id.* at 24:32 (emphasis added).

²⁴ *Justice Karofsky, supra.*

²⁵ *Opoien, supra*, at O3.

²⁶ *Id.*

²⁷ *Supra* n.7.

In sum, from oral argument in December 2020 to today, the justices have never backed away from their assessment of Troupis. And even in the face of serious allegations that maybe those weren't the most measured statements, they stood by everything they'd said.

III. Chief Justice Karofsky and Justice Dallet shouldn't rule on Troupis's case.

Because of these statements, the Due Process Clause, the Wisconsin Statutes, and the Judicial Code require Chief Justice Karofsky and Justice Dallet to step aside. Their statements establish not only the appearance of bias but *actual* bias – especially because both justices have doubled down. In short, the tempers from that infamous oral argument haven't cooled. Not only have they said that, in service to his “king,” he brought a “racist” lawsuit: they've maintained that position. Chief Justice Karofsky made that explicit on the *Amicus* podcast: “I stand by what I said.”²⁸ Given the extreme and unique circumstances, an objective, reasonable person would conclude they can't fairly rule on Troupis's case.

A. A judge must avoid the appearance of bias, let alone actual bias.

This Court has explained: “A fair trial in a fair tribunal is a basic requirement of due process.”²⁹ For that reason, an impartial judge is a necessary structural component of every case.³⁰ Simply put, “all judicial proceedings,” require a “fair, impartial, neutral judge.”³¹ That demand requires both: (1) “the appearance of justice,” and (2) “[the] absence of actual bias.”³² Either is a due process problem: “both the appearance of bias and actual bias violate due process principles.”³³

²⁸ *Amicus*, *supra*, at 25:45.

²⁹ *Miller v. Carroll*, 2020 WI 56, ¶21, 392 Wis. 2d 49, 944 N.W.2d 542 (quoted source omitted).

³⁰ *Id.*, ¶16.

³¹ *Wis. Jud. Comm'n v. Prosser*, 2012 WI 43, ¶26, 340 Wis. 2d 292, 813 N.W.2d 208 (Roggensack, J., recusal decision) (cleaned up); *see also Ward v. Vill. of Monroeville*, 409 U.S. 57, 61–62 (1972).

³² *In re Murchison*, 349 U.S. 133, 136 (1955) (quoting *Offutt v. United States*, 348 U.S. 11, 14 (1954)).

³³ *Franklin v. McCaughtry*, 398 F.3d 955, 961 (7th Cir. 2005) (cleaned up).

The Court of Appeals has summarized the constitutional appearance-of-bias test as follows: “the appearance of bias offends constitutional due process principles whenever a reasonable person—taking into consideration human psychological tendencies and weaknesses—concludes that the average judge could not be trusted to ‘hold the balance nice, clear and true’ under all the circumstances.”³⁴ In other words, the test isn’t about whether the judge thinks he or she is biased. It’s about what a reasonable person would think about the judge’s impartiality.³⁵

A similar appearance-of-bias test is also codified in the Wisconsin Statutes. The key section provides: “Any judge shall disqualify himself or herself from any civil or criminal action or proceeding ... [w]hen a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner.”³⁶ Relatedly, the Judicial Code adds: “A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.”³⁷ For this reason, the Code further provides: “A judge shall conduct all of the judge’s extra-judicial activities so that they do none of the following: ... Cast reasonable doubt on the judge’s capacity to act impartially as a judge.”³⁸

The appearance of bias is closely related to the concept of actual bias. Simply put, while judges are presumed to be impartial, a judge must recuse if, based on “reasonable perceptions,” the judge’s participation creates a “serious risk of actual bias.”³⁹ For example, this Court held that a judge who presided over a child-custody case should have recused under the actual bias standard when:

³⁴ *State v. Gudgeon*, 2006 WI App 143, ¶24, 295 Wis. 2d 189, 720 N.W.2d 114; *see also Murchison*, 349 U.S. at 136.

³⁵ *Jackson v. Cool*, 111 F.4th 689, 697 (6th Cir. 2024).

³⁶ Wis. Stat. § 757.19(2)(g).

³⁷ SCR 60.03.

³⁸ SCR 60.05(1)(a).

³⁹ *Miller*, 392 Wis. 2d 49, ¶22 (quoted source omitted).

- (1) the judge accepted a Facebook friend request from the mom while the case was before him;
- (2) the mom posted extensively, and the judge likely saw some of the posts;
- (3) the content of the posts related to the “context and nature” of the case (at a high level of generality); and
- (4) the judge did not disclose the Facebook relationship.⁴⁰

Unlike closer calls, the judge’s own activities (as opposed to those of a third party) raised concern.⁴¹ He was not the passive beneficiary of some PAC’s campaign-related expenditures – he took “*affirmative steps*” that called into question his impartiality.⁴² Accordingly, this Court held that the “extreme facts” rose to the level of “a serious risk of actual bias.”⁴³

B. Chief Justice Karofsky and Justice Dallet’s statements create an appearance of bias and demonstrate actual bias.

To an objective, reasonable person, Chief Justice Karofsky and Justice Dallet’s comments have shown they can’t judge Troupis’s case fairly. The defense won’t belabor the point. The statements they made – both on and off the bench – over a period of years speak for themselves. Moreover, those statements weren’t off-the-cuff remarks but part of a coordinated, premediated effort to justify their conduct at oral argument. They wanted the public to know they stood by everything they’d said: they were “right,” and their critics (including the Judicial Commission) were “wrong.” In other words, their statements are premised on the justices’ moral and legal views of the very conduct that underlies Troupis’s case: in service of his “king,” he brought a “racist” lawsuit, while leading a “slow-motion coup.” If the implications weren’t clear already, Justice Dallet made them explicit: Troupis is a “divisive partisan.” These statements justify recusal.

⁴⁰ *Id.*, ¶25.

⁴¹ *Compare Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), with *Miller*, 392 Wis. 2d 49, ¶27.

⁴² *See Miller*, 392 Wis. 2d 49, ¶27.

⁴³ *Id.*, ¶35.

Recusal is consistent with caselaw both inside and outside of Wisconsin. For example, in *Cooley*, a judge appeared on a television show and made comments about anti-abortion protesters.⁴⁴ The Tenth Circuit held he had to recuse, noting not only his explicit comments but that the very act of making the media appearance was troubling, admonishing “the judge’s expressive conduct in deliberately making the choice to appear [in the media] at a sensitive time to deliver strong views on matters which were likely to be ongoing before him.”⁴⁵ The judge’s “volunteer appearance on national television,” the court reasoned, would cause an objective, reasonable person to “harbor a justified doubt as to his impartiality.”⁴⁶

Here, after *Trump* had been decided, Chief Justice Karofsky made multiple media appearances. She first went on *Black Like Me* and then on *Amicus*. And both her and Justice Dallet issued press releases. All of these acts were voluntary – i.e., not required by judicial duties. Even if the justices at oral argument were merely teasing out rhetorical points (that’s their job), they took things much further with the media appearances. They could’ve not done media or even taken the chance to walk back their statements from oral argument. They doubled down, showing continued animosity towards Troupis. Because of their statements at oral argument, and because both have said they maintain all the same views in an extra-judicial setting, neither can sit on Troupis’s case.

IV. Conclusion.

In the end, Troupis is a defendant in a criminal action. And he is cloaked with certain guarantees – chief among them that his case will be decided fairly by an impartial tribunal. In securing that right, the Due Process Clause, the Wisconsin Statutes, and the Judicial Code make clear that when an objective, reasonable person would harbor doubt about a justice’s impartiality, he or she must step aside. That’s the standard. And here, the justices’ comments (on and off the bench) about Troupis more than meet that standard. Therefore, Troupis respectfully requests that Chief Justice Karofsky and Justice Dallet recuse themselves in deciding this case.

⁴⁴ *United States v. Cooley*, 1 F.3d 985, 988 (10th Cir. 1993) (cleaned up).

⁴⁵ *Id.* at 995.

⁴⁶ *Id.*; see also *In re Boston’s Child. First*, 244 F.3d 164 (1st Cir. 2001).

Respectfully submitted, February 20th, 2026.

Electronically Signed by Skylar R. Croy

Skylar R. Croy

Wisconsin Bar No. 1117831

Joseph A. Bugni

Wisconsin Bar No. 1062514

HURLEY BURISH, S.C.

P.O. Box 1528

Madison, WI 53701

scroy@hurleyburish.com

(608) 257-0945

*Attorneys for James R. Troupis,
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