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No. 91494

CLERK
SUPREME COURT

In the
Supreme Court of Illinois

**MICHAEL E. AVERY, et al., on behalf of
themselves and all others similarly situated,**
Class Plaintiffs – Appellees - Petitioners,

v.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,**
Defendant-Appellant-Respondent.

) On Appeal from Appellate Court
) of Illinois, Fifth Judicial District,
) No. 5-99-0830, there heard on
) Appeal from Circuit Court, First
) Judicial Circuit, Williamson
) County, Illinois, No. 97-L-114
) Hon. John Speroni,
) Judge Presiding
)

**PETITION TO RECALL MANDATE
AND VACATE AUGUST 18, 2005 JUDGMENT**

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ORAL ARGUMENT REQUESTED

MAY IT PLEASE THE COURT:

Petitioners, pursuant to the Court's inherent powers to correct a judgment obtained through fraud and concealment, 735 ILCS 5/2-1401(f), and Rule 366(a)(5) of Article III of the Illinois Civil Appeals Rules, seek an order vacating this Court's August 18, 2005 judgment in this matter and determining – *for the first time* – that State Farm's extraordinary financial and political support for Justice Karmeier's 2004 campaign created a constitutionally-unacceptable risk of bias such that his participation and vote to reverse the \$1.05 billion judgment deprived Petitioners of their due process rights under the Fourteenth Amendment to the United States Constitution, Article II, § 2 of the Illinois Constitution, and well-established United States and Illinois Supreme Court precedent. *See Caperton v. A.T. Massey Coal Co.*, 129 S. Ct. 2252 (2009); *Aetna Life Ins. Co. v. Lavoie*, 106 S. Ct. 1580 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *In re Murchison*, 349 U.S. 133, 136 (1955); *Tumey v. Ohio*, 273 U.S. 510, 532 (1927); *In re Marriage of O'Brien*, 2011 IL 109039, ¶48.¹

1. This petition is based upon newly-discovered evidence (coupled with facts previously presented to this Court) which recently came to light after key individuals who were involved in or supported that campaign finally broke their silence regarding the extraordinary efforts and substantial funding made by State Farm to Justice Karmeier's² 2004 campaign while the appeal of this matter was pending. This new evidence was predominantly accumulated through person-to-person interviews by Daniel L. Reece, a

¹A copy of the August 18, 2005 judgment is attached hereto as Exhibit 1.

²Prior to being elected to this Court in 2004, Justice Karmeier was a Circuit Judge in Washington County. For consistency, while some references to Justice Karmeier below refer to matters which preceded his election, Justice Karmeier will be referred to hereafter according to his current appellation.

retired 28-year Special Agent for the Federal Bureau of Investigation (“FBI”), who spent his career investigating and unraveling cases of public corruption and fraud in California, North Carolina, Tennessee, West Virginia, and Illinois.

2. In the final analysis, this evidence not only substantiates, but confirms, once and for all, that State Farm deliberately lied to and misled this Court, and concealed information from this Court in 2005 in an effort to conceal its extraordinary support of Justice Karameier’s campaign and to thwart Justice Karameier’s disqualification.

PRELIMINARY STATEMENT

3. Retired FBI Special Agent Reece conducted a six-month long investigation into State Farm’s involvement in the 2004 campaign of Justice Karameier for a seat on this Court. Agent Reece’s interviews confirmed the following facts:

- State Farm lawyer and lobbyist William G. (“Bill”) Shepherd³ was on the Executive Committee of the Illinois Civil Justice League (“ICJL”) that recruited Justice Karameier to run for the seat;
- Shepherd and CNA’s Karen Melchert chose Ed Murnane to head the ICJL in 1993, and also selected Murnane to run Judge Karameier’s 2004 Illinois Supreme Court campaign;
- State Farm, through Shepherd and Murnane, used the ICJL’s PAC (JUSTPAC) to raise \$1,191,453 and funnel that money to Justice Karameier’s campaign;
- Nearly 90% of the contributions made to JUSTPAC in 2004 went to Justice Karameier’s campaign;

³According to the Attorney Registration & Disciplinary Commission of the Supreme Court of Illinois (“ARDC”), William G. Shepherd, whose registered business address is “State Farm Insurance Companies, 1 State Farm Plz, 1 State Farm Plz Corporate Law A3 Bloomington, IL 61710-0001,” was admitted as a lawyer by the Illinois Supreme Court on November 1, 1977. *See* ARDC Individual Attorney Record of Public Registration and Public Disciplinary and Disability Information as of August 24, 2011 at 1:17:10 PM, Separate Appendix of Exhibits to Petition (“Separate Appendix”).

- State Farm was responsible for at least \$2.5 million of Judge Karameier's campaign contributions;
- Justice Karameier's campaign consultant, Al Adomite, and ICJL Executive Committee members Melchert and Kim Maisch stated that State Farm gave Justice Karameier's campaign "*significant*" or "*tremendous*" support; and
- Justice Karameier knew the extent of State Farm's involvement in his campaign.

See Affidavit of Daniel L. Reece, ¶ 33, 65 (Separate Appendix, Exhibit 2).

4. As Petitioners, named representatives for millions of State Farm policyholders, demonstrate, the judgment in this case was procured through State Farm's concealment of a fraud on this Court, including misleading statements attempting to conceal the significant role State Farm played in the campaign and election of Justice Karameier. Accordingly, Petitioners ask this Court to recall the mandate, vacate the fraud-induced August 18, 2005 judgment, and reinstate the judgment of the Appellate Court.

5. The issues raised by Petitioners go well beyond the interests of the private parties, being of exceptional importance to millions of State Farm policyholders all across the United States, as well as the general public – for the conduct of State Farm, as described below, “is a wrong against the institutions set up to protect and safeguard the public.” *See Skelly Oil Co. v. Universal Oil Products Co.*, 338 Ill. App. 79, 87 (Ill. App. 1949).

6. While this appeal was pending, State Farm engineered the candidacy and election of Justice Karameier to this Court in 2004. State Farm – acting through its lawyer and lobbyist Shepherd, Murnane, the Illinois Civil Justice League, and JUSTPAC – was ultimately responsible for recruiting Justice Karameier to run for the seat, for pushing Justice Karameier as the “pro-business” candidate, for running his campaign, and above

all, for infusing not just \$350,000 (as initially believed), but well over *\$2.5 million* – and perhaps as much as or more than *\$4 million* – into the campaign. Nine months after his election, unmoved by requests for his recusal in the appeal based on State Farm’s substantial support of his campaign, Justice Karmeier voted in favor of State Farm to overturn the \$1.05 billion judgment of the Appellate Court.

7. It is now unmistakably certain that State Farm deliberately (and successfully) deceived members of this Court in 2005 into believing that its support of Justice Karmeier was “quite modest” when, in fact, as retired Special Agent Reece’s extensive investigation has established, its financial and political support of Justice Karmeier was nothing short of “tremendous.” *See* Reece Affidavit, ¶¶ 57-59.

8. Foremost among the newly-discovered facts unearthed by retired Special Agent Reece is that State Farm failed to disclose the prominent role played by State Farm lawyer and lobbyist Shepherd in creating the ICJL, in hiring Murnane to head that organization, and as a charter member of the politically-powerful ICJL Executive Committee. Contrary to State Farm’s efforts to downplay its own role in Justice Karmeier’s campaign as “quite modest,” it now appears certain that the ICJL and its Executive Committee functioned throughout the 2004 campaign as State Farm’s “vehicle” to: (1) help recruit Justice Karmeier, (2) manage his campaign, (3) lend credibility to his campaign via endorsement, and (4) assure that Justice Karmeier’s campaign was incredibly well-funded. *See* State Farm’s Opposition to Appellees’ Conditional Motion for Non-Participation (“State Farm’s Opposition”), at pp. 12-13 (Separate Appendix, Exhibit 3). Led by Murnane, the ICJL was the “glue” that held together the pieces of State Farm’s extraordinary efforts to have Justice Karmeier elected.

9. The extraordinary support State Farm allocated to Justice Karmeier's campaign – all while its appeal remained pending in this Court – is evidenced not only by the Affidavit of retired Special Agent Reece, but also by the Affidavit of former Murnane associate and Illinois tort reform-insider Douglas B. Wojcieszak, by campaign finance disclosures and discarded emails, and by the statements of key individuals with joint-interests in electing Justice Karmeier, including CNA's Karen Melchert, tort-reform insider Kim Maisch, and campaign consultant Al Adomite. This information demonstrates the immensely powerful magnitude of State Farm's control over and support of Justice Karmeier's campaign. *See* Reece Affidavit, ¶¶ 57-59; Affidavit of Douglas B. Wojcieszak, ¶ 13 ("Wojcieszak Affidavit") (Separate Appendix, Exhibit 4).

10. Finally, one of Justice Karmeier's key campaign consultants (Adomite) candidly acknowledged that Justice Karmeier was undoubtedly aware of the sources of his campaign funds. Still, Justice Karmeier chose to participate in *Avery* and vote in State Farm's favor. Along the way, however, Justice Karmeier had a number of opportunities to disqualify himself from participating. For instance, he could have entered a voluntary non-participation order, as did Justice Thomas; or he could have granted Petitioners' initial conditional motion for non-participation; or entered a non-participation order in response to Petitioners' motion for recusal to the full Court; or he could have simply declined to participate in the opinion.

11. Asked to disqualify Justice Karmeier, the full Court declined. Ultimately, knowing he was being called upon to decide an appeal which could restore over ***\$1.05 billion*** to his principal supporter, Justice Karmeier opted to do just that, voting in State Farm's favor in all parts of the Court's decision.

12. Almost six years later – on August 4, 2011 – in a special concurring opinion, Justice Karameier belatedly endorsed Petitioners’ view from 2005, observing:

The notion that individual judges have sole and exclusive authority for determining whether they should continue to participate in a given case is untenable for another reason as well. It would enable judges to continue to sit on cases even where their participation in the case would deprive one of the litigants of a fair trial. Such a result is impermissible under the due process clause of the United States Constitution. See *Caperton v. A.T. Massey Coal Co.*, 556 U.S. ___, 129 S. Ct. 2252 (2009) (reversing judgment of the Supreme Court of Appeals of West Virginia on federal due process grounds where one of the participating justices should have recused himself but refused to do so).

Not only should judges not be the sole and exclusive arbiters of whether they should continue to participate in a case, some have questioned whether they should *ever* be permitted to sit in judgment of requests for their own disqualification.

In re Marriage of O'Brien, 2011 IL 109039, ¶ 122-23 (Karameier, J., specially concurring).

13. In the final analysis, the evidence of State Farm’s actions - through Shepherd, Murnane and others - in recruiting Justice Karameier, providing him substantial financial support and managing his campaign, paired with Justice Karameier’s decision to participate in the appeal, created a constitutionally – unacceptable risk of bias which deprived Petitioners of their due process rights. This evidence also requires the recall of the mandate in this case, an order vacating that judgment, an order quashing the grant of State Farm’s petition for leave to appeal, and finally, reinstatement of the Appellate Court’s decision.

JURISDICTIONAL STATEMENT

14. This Court has jurisdiction over this matter because, as established above, State Farm committed an extrinsic fraud on this Court through concealment of its extraordinary support of Justice Karmeier's election campaign. This extrinsic fraud renders the Court's judgment void and reviewable pursuant to this Petition. This is especially true here, where State Farm actively concealed facts which, if known, would have shown the severe risk of bias and thus, violation of Petitioners' constitutional protections. Illinois has a strong policy against concealment of evidence in legal proceedings. *See e.g. Lubbers v. Norfolk & Western Ry. Co.*, 105 Ill.2d 201, 209-10 (1984), affirming 118 Ill.App.3d 705, 708-10 (1983).

15. A petition to vacate may be filed in any proceeding "regardless of the nature of the order or judgment from which relief is sought; or of the proceedings in which it was entered." 735 ILCS 5/2-1401(f). While the petition "must be filed in the same proceeding in which the order or judgment was entered," it "is not a continuation thereof." 735 ILCS 5/2-1401(b). Such a motion or petition to vacate a void judgment can be brought in any court. *Evans v. Corporate Services*, 207 Ill. App. 3d 297, 565 N.E.2d 724 (1990) ("a void judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"). "The duty to vacate a void judgment is based on the inherent power of the court to expunge from its records void acts of which it has knowledge." *People v. Magnus*, 262 Ill. App. 3d 362, 365 (1st Dist. 1994).

16. Moreover, no time limit exists within which such a petition must be filed. *People v. Wade*, 116 Ill. 2d 1, 6 (1987) (“A void judgment may be attacked at any time, either directly or collaterally.”). Finally, the proponent of the petition does not have to demonstrate due diligence in seeking such relief. 735 ILCS 5/2-1401.

PROCEDURAL BACKGROUND IN COURTS BELOW

17. The proceedings below were extensive and resulted in the largest class action judgment in Illinois history. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 321 Ill. App. 3d 269, 275 (Ill. App. Ct. 5th Dist. 2001). The judgment included an award of \$456,636,180 in breach of contract damages, punitive damages of \$600,000,000, and disgorgement damages of \$130,000,000. State Farm appealed. The Appellate Court upheld the jury verdict in all respects, upheld a \$1.05 billion judgment for the Class, but disallowed the award of disgorgement damages. *Id.* at 292.

18. Petitioners provide the following summarized procedural chronology:

July 1997	Class Action Complaint filed.
August 16, 1999	Trial begins, ending in \$1.18 billion judgment.
April 05, 2001	Illinois Appellate Court reverses jury's award of disgorgement damages (\$130,000,000) but affirms judgment in all other respects (\$1.05 billion).
October 2, 2002	Illinois Supreme Court granted leave to appeal.
May 2003	Oral Argument in <i>Avery</i> heard in the Illinois Supreme Court.
May 2003 – Nov. 2004	<i>Avery</i> case left pending before Supreme Court during Justice Karmeier's campaign.
2004	Illinois Supreme Court campaign.
November, 2004	Justice Karmeier prevails in election.
January 26, 2005	Avery asked Justice Karmeier to recuse himself because much of his \$4.8 million in campaign funds came directly from State Farm and its agents or from groups of which State Farm was an active member and supporter.
March 16, 2005	Justice Karmeier took no action on Avery's motion to recuse. The Illinois Supreme Court denied Avery's motion, ruling that the subject of Justice Karmeier's recusal was up to Justice Karmeier, and not subject to further review by the Illinois Supreme Court.
May 20, 2005	Illinois Supreme Court issued a second order stating that, because Justice Karmeier had declined to recuse himself, Avery's recusal motion was "moot."
August 18, 2005	Well over two years after the case was argued, Justice Karmeier casts his vote to overturn \$1.05 billion judgment against State Farm. (Justice Thomas did not participate in the case). Absent Justice Karmeier's participation, only those portions of the court's opinion joined by one of the two dissenting Justices would have had the votes required by law to overturn the judgment, and part of the judgment would have stood.
September 8, 2005	Avery moved for rehearing and again challenged Justice Karmeier's participation.
September 26, 2005	Avery's petition for rehearing was denied without comment, with Justice Thomas again not participating, but Justice Karmeier sitting.
March, 2006	U.S. Supreme Court denied certiorari.
December 2010 May 2011	Counsel for Avery retained retired FBI Agent who conducts a 6-month investigation regarding the role State Farm played in Justice Karmeier campaign/election.

19. Undoubtedly, the stakes in this appeal were huge, and State Farm ultimately asked this Court to review the Appellate Court's decision. On October 2, 2002, this Court accepted State Farm's appeal. And although the Court heard oral argument seven months later, from October 2, 2002 to August 18, 2005 – a period of thirty-four (34) months – the appeal remained pending before this Court.

20. It was during the latter part of this period – in 2004 – when the campaign between Justice Karneier and Judge Gordon Maag was waged, with State Farm exerting its powerful and tremendous financial and political influence to support Justice Karneier's election. The actions by State Farm created a constitutionally-unacceptable risk and/or intolerable probability of bias.

21. Several individuals and entities were key players in State Farm's record-breaking support of Justice Karneier in the 2004 Supreme Court election, including:

- William G. ("Bill") Shepherd. Shepherd is a State Farm lawyer and lobbyist (a direct employee of State Farm). He was also a member of the Illinois Civil Justice League ("ICJL") and sat on ICJL's unpublicized "Executive Committee." Shepherd's membership on the Executive Committee was unknown to Avery's attorneys until discovered by retired FBI agent Daniel L. Reece. *See* Reece Affidavit, at ¶¶ 20, 33-34, 40; Wojcieszak Affidavit, at ¶¶ 11-12, 34, 60-61.
- Ed Murnane. Murnane is the head of the ICJL and treasurer of its political action committee ("JUSTPAC"). He was hired by Shepherd and co-founding ICJL-member and Executive Committee member, Karen Melchert; and
- The Illinois Civil Justice League and JUSTPAC.

**JUSTICE KARMEIER'S ELECTION AND DENIAL
OF PETITIONERS' REQUEST FOR RECUSAL**

22. While the appeal was pending, the ICJL's Ed Murnane evaluated possible candidates for the open Fifth District Supreme Court seat. Working at the direction of Shepherd and the IJCL Executive Committee, Murnane was the principal recruiter of Justice Karmeier to run for that seat.

23. Ultimately, Murnane, Shepherd, and other members of the Executive Committee "vetted" and placed the considerable support of the State Farm-backed ICJL and JUSTPAC behind Justice Karmeier. *See* Reece Affidavit, at ¶¶ 32-59; Wojcieszak Affidavit, at ¶¶ 27, 34, 61. Backed by State Farm's "tremendous" financial and political support, Justice Karmeier's campaign culminated in his election in November 2004. *See* Reece Affidavit, at ¶¶ 57-59; Wojcieszak Affidavit, at ¶ 13.

24. Petitioners learned that Justice Karmeier had received as much as \$350,000 in contributions from employees, lawyers, and others involved with State Farm and its appeal. Once the appeal came before the newly-reconstituted Court, Petitioners sought Justice Karmeier's recusal, pointing to evidence that suggested State Farm had a huge financial stake in the appeal. *See* "Appellees' Conditional Motion for Non-Participation" ("Recusal Motion") and "Memorandum in Support of Appellees' Conditional Motion for Non-Participation" (Separate Appendix, Collective Exhibit 5) filed on January 26, 2005.

25. Predictably, State Farm opposed the request for recusal, arguing Justice Karmeier had a "right, duty and obligation to participate" in pending appeals, that his "impartiality" had "not been questioned," and that "no appearance of partiality" had been shown or existed. *See* State Farm's Opposition (Separate Appendix, Exhibit 3). State

Farm deceptively understated and downplayed not only the magnitude of its financial support, but also the degree of participation by its executives, surrogates, lawyers, and employees in the minutiae of the campaign. *See* State Farm's Opposition, at pp. 10-18 (Separate Appendix, Exhibit 3).

26. Petitioners fully expected Justice Karmeier to recuse himself under Ill. Sup. Ct. Rule 63(C)(1) and controlling due process principles. Surprisingly, he did not. In the end, Justice Karmeier simply took no action on Petitioners' motion and the full-Court declined to intercede. *See* Supreme Court Notice of Order (Separate Appendix, Exhibit 6). Reversal of the \$1.05 billion judgment followed, with Justice Karmeier presumably participating in the Court's deliberations and ultimately casting his vote in State Farm's favor. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 835 N.E.2d 801 (Ill. 2005).

27. Under the Illinois Constitution, the Illinois Supreme Court "shall consist of seven judges." Three are selected from the First Judicial District (comprising Cook County), the other four are selected from each of the other four judicial districts. Ill. Const. Art. VI, §§ 2-3. Absent concurrence of four justices, no Appellate Court opinions can be overturned. Ill. Const. Art. VI, § 3. Thus, as to the 4-2 part of the opinion, his vote was the decisive vote, since a 3-2 decision, as the Court well knows, is constitutionally insufficient to overturn the Appellate Court's judgment. Significantly, the opinion *made no reference whatsoever to Petitioners' request for recusal or their due process concerns*. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill.2d 100, 835 N.E.2d 801 (Ill. 2005). For all of this, Petitioners were deprived of their due process rights under the federal and Illinois Constitutions.

28. Justice Karmeier's special concurring opinion in *O'Brien* illustrates the imminent danger posed when recusal rests exclusively with the challenged judge:

Recusal motions are not like other procedural motions. They challenge the fundamental legitimacy of the adjudication. They also challenge the judge in a very personal manner; they speculate on her interests and biases; they may imply unattractive things about her. Allowing judges to decide on their own recusal motions is in tension not only with the guarantee of a neutral decision-maker, but also with our explicit commitment to objectivity in this arena. 'Since the question whether a judge's impartiality "might reasonably be questioned" is a "purely objective" standard, it would seem to follow logically that *the judge whose impartiality is being challenged should not have the final word on the question whether his or her recusal is "necessary" or required.*'"

Id., at ¶ 123 (citing Deborah Goldberg, James Sample & David E. Pozen, *The Best Defense: Why Elected Courts Should Lead Recusal Reform*, 46 Washburn L. J. 503, 530 (2007)) (hereinafter, "*Goldberg*") (emphasis added).

29. Justice Karmeier's citation to the *Goldberg* article is perhaps the most telling aspect of his special concurrence, as the authors of that article had criticized Justice Karmeier's participation in the *Avery* decision, remarking that because of his participation, "public trust in the courts invariably suffers":

In the end, Karmeier won both the fundraising battle and the election. Karmeier described the expense of the campaign as "obscene" and expressed unease about its impact on public trust in the courts, but his concern for appearances waned almost immediately upon election. Once seated on the Illinois high court, he refused to recuse himself from the *Avery* appeal. Karmeier then cast the deciding vote on the breach of contract claims, overturning that verdict against State Farm. The public, not to mention the opposing litigants, could be forgiven for questioning whether justice was truly served.

Was Justice Karameier's decision unbiased? Very possibly yes, but we will never know. Overshadowing the merits of his decision is a single stark fact: without Karameier's vote, State Farm would have faced further proceedings on claims valued at up to \$ 456 million. That result is either a coincidence or an impressive rate of return on State Farm's investment. Because we cannot know which it is, public trust in the courts invariably suffers.

Goldberg, 46 Washburn L. J. at 510-11 (footnotes omitted).

30. State Farm's extraordinary efforts to secure Justice Karameier's election – undertaken in the midst of State Farm's appeal of a *\$1.05 billion* judgment before the very Court to which Justice Karameier sought election – are fully-described in the following pages and in the Affidavit of retired Special Agent Reece and the Affidavit of Douglas B. Wojcieszak. Significantly, three Illinois tort reform-insiders – Justice Karameier's 2004 campaign consultant, Al Adomite, and ICJL Executive Committee members Karen Melchert and Kim Maisch – candidly explained to Reece that State Farm's support of Justice Karameier's campaign was considerable, referring to State Farm's support as either “*significant*” or “*tremendous*.” Such a level of support unquestionably created a constitutionally-unacceptable risk of bias. As the foregoing excerpts from Justice Karameier's special concurring opinion in *O'Brien* suggest, that Justice Karameier's decision to participate in the appeal was not subject to review by any other Supreme Court Justice further bolstered this risk. *See* Reece Affidavit, ¶ 57-59.

31. The prime inquiry – neither addressed nor answered by the Court – was posed succinctly by Theodore B. Olson, counsel for Hugh Caperton, at oral argument before the United States Supreme Court in *Caperton v. A. T. Massey Coal Co., Inc.*:

Would a detached observer conclude that a fair and impartial hearing would be possible? . . . I would like to ask

you to ask this question: If this was going to be the judge in your case, would you think it would be fair, and would it be a fair tribunal, if the judge in your case was selected with a \$3 million subsidy by your opponent?

See Transcript of Oral Argument, at p. 55-56, *Caperton v. A. T. Massey Coal Co., Inc.*, No. 08-22 (Separate Appendix, Exhibit 7).

32. From the facts presented to this Court, it is clear that genuine federal and Illinois constitutional due process implications exist and the integrity of the Illinois judicial system is at stake in these proceedings. The Illinois Constitution requires the same due process considerations.

**STATE FARM’S EFFORTS ON BEHALF OF JUSTICE
KARMEIER’S ELECTION DURING ITS APPEAL
CREATED AN UNACCEPTABLE “RISK OF BIAS”**

33. Settled United States Supreme Court precedent – endorsed by this Court in *People v. Hawkins*, 181 Ill. 2d 41, 51, 690 N.E.2d 999, 1003 (Ill. 1998) – has long mandated that “fairness at trial requires not only the absence of actual bias *but also the absence of the probability of bias.*” See e.g., *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 825 (1986); *Withrow v. Larkin*, 421 U.S. 35, 47 (1975); *In re Murchison*, 349 U.S. 133, 136 (1955); *Tumey v. Ohio*, 273 U.S. 510, 532 (1927); see also *In re Marriage of O’Brien*, 2011 IL 109039, ¶ 48.

34. These same basic principles were extended in 2009 by the U.S. Supreme Court in *Caperton v. Massey Coal Co., Inc.* to apply to a situation where someone with a personal stake in an imminent appeal had used his financial and political influence to place a judge on West Virginia’s Supreme Court of Appeals. In contrast to *Caperton*, where the judicial campaign occurred *before* Massey Coal’s appeal had even reached the West Virginia Supreme Court of Appeals, Justice Karmeier was elected to this Court in

November 2004, a full twenty-five (25) months *after* State Farm’s petition for leave to appeal to this Court was granted. *See Avery v. State Farm Mut. Auto. Ins. Co.*, 201 Ill.2d 560 (Oct. 2, 2002). There, writing for the majority, Justice Kennedy opined:

“We conclude that there is a *serious risk of actual bias – based on objective and reasonable perceptions* – when a person with a personal stake in a particular case had a *significant and disproportionate influence* in placing the judge on the case by raising funds or directing the judge’s election campaign when the case was pending or imminent.” *Caperton*, 129 S. Ct. at 2263-64.

35. Here, Justice Karmeier’s participation and the *serious risk of actual bias* precipitated by that participation (and his vote) deprived Petitioners of their basic federal and Illinois constitutional due process rights, especially in view of the United States Supreme Court’s adherence in *Caperton* to the long-established precedent that a “risk of actual bias – based on objective standards and reasonable perceptions” is the standard for finding a due process violation. As recently as August 2011, this Court recognized the importance of these principles in *In re Marriage of O’Brien*, 2011 IL 109039, at ¶ 48.

36. To be sure, while the facts presented in *Caperton* were unusually “extreme,” the facts presented by Petitioners to this Court in 2005 – bolstered by the newly-discovered evidence and now-unmasked efforts by State Farm to lie to, deliberately mislead, and conceal facts from this Court in 2005 – surpass even the facts in *Caperton*. Comparing the two cases, former Justice Sandra Day O’Connor observed:

In 2004, there was a race for the Illinois Supreme Court, right here. It cost just over \$9 million for that race. As you might have guessed, the winner of that race got his biggest contributions from a company that had an appeal pending before the Illinois Supreme Court. You like that? Sounds a lot like the Caperton case, doesn’t it?⁴

⁴See A.M. Pallasch, *O’Connor Urges Illinois to Select Judges by Merit*, Chi.Sun-

37. Based on what was known in 2005, Justice O'Connor's comparison is compelling:

- the 2004 Karmeier-Maag race for the 5th District seat on the Illinois Supreme Court had been the most expensive judicial race in United States history;
- State Farm – a principal contributor to/supporter of Justice Karmeier's campaign – had a substantial pecuniary interest (an adverse judgment of \$1.05 billion) in an appeal pending before the Court;
- State Farm's appeal was pending before this Court throughout the 2004 judicial campaign (and had been since October 2002); and
- Justice Karmeier did not disqualify himself, the full Court declined to review that decision, and Justice Karmeier then cast his vote in favor of State Farm.

**NEWLY-DISCOVERED EVIDENCE OF STATE FARM'S
EXTRAORDINARY EFFORTS IN SUPPORT OF JUSTICE KARMEIER**

38. However, in addition to the foregoing facts (first presented to the Court in 2005), Petitioners have recently uncovered substantial evidence – described in the affidavits of Reece and Wojcieszak – which establishes that State Farm concealed from this Court its *significant and disproportionate influence* in Justice Karmeier's campaign and played a pivotal role in Justice Karmeier's election in 2004 while State Farm's appeal was pending. Among other things, Petitioners demonstrate:

- State Farm and CNA Insurance Companies ("CNA") helped organize the ICJL in the early 1990's;
- State Farm lawyer and lobbyist Bill Shepherd was a founding member of the ICJL's Executive Committee and along with founding member Karen Melchert ("Melchert") of CNA, hired Murnane to head the ICJL in 1993;

times, May 20, 2010, available http://www.suntimes.com/news/politics/2295078_CST-NWS-oconnor20.article.

- The Executive Committee endorsed Justice Karameier's candidacy, raised funds for his campaign, and chose Murnane to direct his campaign;
- ICJL-head Murnane ran all phases of Justice Karameier's campaign, including hiring staff and directing day-to-day operations, media relations, and fund raising;
- Shepherd was in weekly-contact with Murnane during the race, engaging in weekly conference calls;
- Justice Karameier – who was on the campaign's inter-office email list, was informed of significant campaign events by Murnane, and was aware of the source of his campaign contributions;
- Executive Committee members Melchert and Kim Maisch confirmed that State Farm's support of Justice Karameier in 2004 was "tremendous;"
- ICJL Vice President Allen Adomite stated that State Farm gave "significant" financial support to Karameier;
- State Farm, through Shepherd and Murnane, used the ICJL's political action committee (JUSTPAC) as a vehicle to raise \$1,191,453 and funnel that sum to "Citizens for Karameier"; and
- State Farm-influenced contributions to Justice Karameier's campaign easily surpassed \$2.5 million and State Farm and its corporate/political partners may have provided Justice Karameier's campaign as much as or more than \$4 million in direct, indirect, and in-kind support.

STATE FARM'S EFFORTS TO MISLEAD THE COURT

39. State Farm's lies, deliberate misrepresentations, and concealment, committed through a series of intentionally-misleading statements and deliberate omissions in its court-filing, grossly understated State Farm's "tremendous" support of Justice Karameier's campaign. Statements contained in State Farm's court-filing opposing Petitioners' recusal motion best exemplify these efforts to mislead and conceal the truth

from this Court. There, State Farm falsely represented its support of Justice Karameier as consisting of “quite modest contributions” and characterized as “incorrect and meritless” Petitioners’ claim that State Farm had funneled substantial cash contributions and peddled its enormous political influence to Justice Karameier’s benefit. *See* State Farm’s Opposition, at pp. 12-13 (Separate Appendix, Exhibit 3).

State Farm failed to disclose Bill Shepherd’s prominent role with the ICJL

40. Foremost among its concealment and misleading statements is State Farm’s failure to disclose to the Court the prominent role played by its lawyer and lobbyist, Bill Shepherd, in forming the ICJL, as a member of the ICJL Executive Committee, and more specifically, as a central figure in Justice Karameier’s campaign. It was unknown to Petitioners in 2005 that State Farm’s Shepherd had helped found the ICJL and was a charter member of its “Executive Committee” which engineered Justice Karameier’s candidacy – through ICJL-head Murnane, “vetted” Justice Karameier, endorsed his candidacy, and insured a substantial flow of cash to Justice Karameier’s campaign from State Farm executives, employees, and corporate and political partners. *See* Reece Affidavit, at ¶¶ 32-59.

State Farm falsely denied that Murnane ran all phases of Justice Karameier’s campaign

41. The newly-discovered evidence further demonstrates that ICJL-head Ed Murnane ran Justice Karameier’s campaign, with the help of the ICJL’s Al Adomite, Steve Shoeffel from I-LAW, and Steve Tomaszewski from Congressman Shimkus’ office. State Farm’s Shepherd discussed campaign developments with Murnane via weekly-Friday conference calls through the duration of the campaign. *See* Reece Affidavit, at ¶¶ 42-43. Yet, in opposing recusal, not only did State Farm deny Murnane’s involvement in

Justice Karameier's campaign but it boldly and flippantly declared "Mr. Murnane . . . was not Justice Karameier's campaign manager or campaign finance chairman and was not employed by Justice Karameier's campaign" *See* State Farm's Opposition, at pp. 15-16 (Separate Appendix, Exhibit 3). However, several lawfully obtained e-mails generated within Justice Karameier's campaign organization unmistakably show that Murnane directed Justice Karameier's fund raising, media relations, and speeches. *See* Reece Affidavit, at ¶¶ 20, 47. In fact, Adomite, a consultant with Justice Karameier's campaign, flatly confirmed that it was Murnane who actually ran the campaign.

42. In the fall of 2003, Douglas B. Wojcieszak, whose affidavit is attached hereto (Separate Appendix, Exhibit 4), was contacted by Murnane, who said that he had been asked by State Farm's Shepherd to approach Wojcieszak about filling the role of campaign manager for Justice Karameier's 2004 Supreme Court. Wojcieszak was contacted by State Farm's Shepherd, who offered him still another job, this time with a non-profit group that supported tort reform. *See* Reece Affidavit, ¶¶ 43-44.

43. In truth, it was Murnane who advised Justice Karameier of campaign details, including the source of contributions (assuring that Justice Karameier had knowledge of State Farm's "tremendous support"). *See* Reece Affidavit, at ¶¶ 55-59. The "Citizens for Karameier" campaign disclosure reports to the Illinois State Board of Elections show that Murnane's professional time and expenses were not declared as in-kind contributions to Justice Karameier campaign. *See* Wojcieszak Affidavit, at ¶¶ 41-47.

44. What's more, hard copies of discarded emails lawfully obtained by investigators clearly listed Murnane's ICJL email address as "sender" and Justice Karameier as "recipient" (a) stated that Murnane would be recommending Justice

Karmeier's campaign to the ICJL Executive Committee which, along with the ICJL, had been "actively supporting" Justice Karmeier's candidacy from "Day One," (b) discussed how the Executive Committee voted to endorse Justice Karmeier's candidacy, and (c) confirmed to Justice Karmeier that "*You've passed all the tryouts we need.*" See Reece Affidavit, ¶ 41; Wojcieszak Affidavit, ¶ 33.

State Farm grossly misrepresented and understated its financial support of Justice Karmeier

45. State Farm's extraordinary financial support of Justice Karmeier's campaign evokes obvious comparisons to the level of support Massey Coal Co. executive Don Blankenship heaped on West Virginia Supreme Court of Appeals candidate Brent Benjamin, as discussed in the *Caperton* decision. In an amicus brief submitted in support of Hugh M. Caperton, a group of former Chief Justices and Justices successfully prevailed on the Court to understand that:

Substantial financial support of a judicial candidate – whether contributions to the judge's campaign committee or independent expenditures – can influence a judge's future decisions, both consciously and unconsciously.

See Brief Amicus Curiae of 27 Former Chief Justices and Justices in Support of Petitioner Hugh M. Caperton, at p. 5.

46. In 2005, Petitioners charged State Farm with giving this very type of support to Justice Karmeier's campaign. Responding, State Farm flatly denied "engineering contributions" to Justice Karmeier's campaign "for the purpose of impacting the outcome of this case" (*see* State Farm's Opposition, at p. 11, Separate Appendix, Exhibit 3) and saw fit to downplay Petitioners' charge that it was responsible for \$350,000 in direct contributions to Justice Karmeier's campaign by suggesting that

Petitioners' counsel had presented "no evidence whatsoever to back up" their claim that those contributions were made by State Farm "front groups." *See* State Farm's Opposition, at p. 11 (Separate Appendix, Exhibit 3).

47. The following is illustrative of how State Farm downplayed its financial support for Justice Karneier:

Although plaintiffs attempt to link large sums in contributions by a variety of persons and organizations to Justice Karneier's campaign to state Farm, their moving papers and supporting documentation in fact reveal that a limited number of State Farm officers and employees made *quite modest contributions* to the Justice Karneier's campaign.

See State Farm's Opposition, at p. 13 (emphasis added) (Separate Appendix, Exhibit 3).

48. In truth, the supporting submissions make it readily clear that although Petitioners' 2005 evidence was compelling, a significant amount of "evidence to back up" Petitioners' 2005 claim was concealed and even suppressed by State Farm until recently.

49. For certain, retired Special Agent Reece's investigation accumulated substantial evidence to "back up" Petitioners' original claims of State Farm support. More importantly, that investigation unraveled the true extent of State Farm's financial support for Justice Karneier by establishing the ICJL's role as State Farm's vehicle to control the campaign. At bottom, State Farm's 2005 representations to the Court of "quite modest" support could hardly be more misleading. For example, in view of State Farm's Shepherd's prominent role with the ICJL, the \$1,191,453 contributed by the ICJL's PAC (JUSTPAC) to Justice Karneier's campaign may now be attributed to State Farm, as State Farm controlled the ICJL and JUSTPAC and used those entities as its

vehicles to support Justice Karmeier's campaign. And while Avery's counsel were aware of Justice Karmeier's campaign disclosures in January 2005, as well as the \$1.19 million in contributions by JUSTPAC, they were not aware of Shepherd's affiliation with the ICJL (as a founder and Executive Committee member), or that Shepherd had helped choose Murnane – JUSTPAC's treasurer – as head of the ICJL.

50. Moreover, deposition testimony in unrelated litigation identified State Farm CEO Ed Rust as part of U.S. Chamber of Commerce leadership team that selected judicial races to target in 2004. Illinois was prioritized as a "Tier I" race. The Karmeier-Maag race was the *only* major judicial race in Illinois that year, thus making that race the "Tier I" priority race. *See* Wojcieszak Affidavit , ¶¶ 48-50. State Farm contributed \$1 million to the U.S. Chamber, which contributed \$2.05 million to the Illinois Republican Party, and the Illinois Republican Party contributed \$1,922,294 to Justice Karmeier's campaign. State Farm's \$1 million donation to the United States Chamber of Commerce ("U.S. Chamber") in Washington DC wound up back in Illinois after the U.S. Chamber contributed more than twice that sum to the Illinois Republican Party, which promptly paid the bill for nearly \$2 million in media advertisement for Justice Karmeier. *See* Wojcieszak Affidavit , ¶¶ 50-55.

51. Significantly, the "round-trip" made by State Farm's \$1 million U.S. Chamber donation was not disclosed by State Farm as part of its claim of "quite modest" support toward Justice Karmeier's campaign. *See* Wojcieszak Affidavit, ¶¶ 50-55.

52. *Three* contributions – the combined \$350,000 in direct State Farm-influenced contributions, the \$1,191,453 JUSTPAC contribution, and the \$1 million U.S. Chamber contribution – alone surpass ***\$2.5 million in State Farm-influenced***

contributions (fully 56% of Justice Karameier's contributions). However, yet a fourth set of State Farm-influenced contributions may be added to this already extraordinary total.

53. Along with the foregoing contributions, Petitioners have uncovered nearly \$719,000 of unreported in-kind contributions from the ICJL to Justice Karameier's campaign which can be added to the \$2.5 million, raising the State Farm-influenced contributions to over \$3.2 million. Specifically, the Internal Revenue Service Form 990 report from 2004 for the ICJL (which was not available to Petitioners' counsel when the 2005 recusal motions were filed) shows that the ICJL had a grand total of \$718,965 for expenditures, including Murnane's salary, benefits, and expenses (\$177,749), as well as media, advertising, and fundraising, and other managerial expenses that almost exclusively benefitted Justice Karameier's campaign, yet were unreported as in-kind donations by Citizens for Karameier. *See Wojcieszak Affidavit*, ¶ 47.

54. Justice Karameier's campaign financial disclosures reveal that while Murnane was "running the campaign," and using his ICJL e-mail address for campaign activities, his professional time and expenses went unreported, undisclosed, and otherwise undeclared as "in-kind" contributions to the campaign. Other major expenses of the ICJL were also unreported as in-kind contributions in Justice Karameier's financial disclosures. *See Wojcieszak Affidavit*, ¶¶ 42-43. According to disclosures submitted by "Citizens for Karameier" and Internal Revenue Service forms filed by the ICJL, Justice Karameier's campaign failed to disclose nearly \$719,000 in *unreported* in-kind contributions from the ICJL for Murnane's and others' professional time managing the campaign, advertising, and operational expenses. *See Wojcieszak Affidavit*, at ¶ 52.

55. Beyond even this, Petitioners have uncovered additional evidence that shows State Farm-influenced contributions to Justice Karmeier's campaign – including direct, indirect, and in-kind support – exceeded \$4 million. See Wojcieszak Affidavit, ¶¶ 62-66.

56. For all of this, when State Farm opposed Petitioners' recusal motion in January 2005 and belittled Petitioners' evidence of financial support, State Farm gave not so much as a hint from that it was responsible – directly or indirectly – for giving such extraordinary aid to Justice Karmeier's campaign.

57. Petitioners were – and remain – entitled, on due process grounds, to have all of these facts considered by this Court. Such consideration would have likely eliminated any possibility of Justice Karmeier's influence over the Court's decision as a whole and would have left the portions of the Appellate Court judgment that were reversed by a mere 4-2 vote (with Justice Karmeier being one of the 4) unimpaired. Simply put, State Farm's lies, omissions, and deliberate concealment were so well-disguised and potent that they interfered with the Court having the necessary information to effectively address Petitioners' due process claim.

58. There can be no dispute that this level of support for Justice Karmeier during his campaign by a litigant in a pending appeal must not only be condemned, but required his disqualification. Significantly, the Conference of Chief Justices submitted an amicus brief in *Caperton* which was mentioned no fewer than ten times by Justices during oral argument, which strongly suggested that State Farm's actions in 2005 required Justice Karmeier to disqualify himself:

“ . . . the Constitution may require the disqualification of a judge in a particular matter because of *extraordinarily out-of-line campaign support* from a source that has a *substantial stake* in the proceedings.”

See Brief of Conference of Chief Justices as Amicus Curiae in Support of Neither Party, at p. 4, *Caperton v. A.T. Massey Coal Co.*, No. 08-22 (U.S. Jan. 5, 2009) (emphasis added) (Tab/Exhibit 8 to Supplemental Appendix).

59. As the Chief Justices suggest, State Farm’s role in substantially facilitating Justice Karmeier’s election – just like Massey CEO Don Blankenship’s role in facilitating Justice Benjamin’s election in *Caperton* – “created a constitutionally intolerable probability of actual bias. Though not a bribe or criminal influence, Justice [Karmeier] would nevertheless feel a debt of gratitude to [State Farm] for [its] extraordinary efforts to get him elected.” See *Caperton*, 129 S. Ct. at 2262. And while

there is no allegation of a quid pro quo agreement, the fact remains that [State Farm’s] extraordinary contributions were made at a time when [it] had a vested stake in the outcome. Just as no man is allowed to be a judge in his own cause, similar fears of bias can arise when – without the consent of the other parties – a man chooses the judge in his own cause. And applying this principle to the judicial election process, there was here a serious, objective risk of actual bias that required Justice [Karmeier’s] recusal.

Id. at 2264-65.

JUSTICE KARMEIER’S PERSONAL AND CAREER INTERESTS WERE PECUNIARY INTERESTS WHICH REQUIRED DISQUALIFICATION

60. In addition to Petitioners’ claim that a constitutionally intolerable probability of bias required Justice Karmeier’s disqualification, Petitioners were also denied a “fair trial before an impartial trier of fact.” The Court in *People v. Hawkins*, 181 Ill. 2d 41, 51, 690 N.E.2d 999, 1003 (Ill. 1998) observed, “Fairness at trial requires not

only the absence of actual bias but also the absence of the probability of bias.” *Id.* After all, “no person is permitted to judge cases in which he or she has an interest in the outcome.” *Id.* (citations omitted). In the final analysis, as this Court recognized, the inquiry is whether the judge “could have been tempted not to hold the balance between the parties ‘nice, clear and true.’” *Id.* (citing *Lavoie*, 475 U.S. at 822; *Ward*, 409 U.S. at 60; *Tumey*, 273 U.S. at 532).

61. Importantly, to show a due process violation here, Petitioners “need not show actual bias” on the part of Justice Karmeier. *Id.* At bottom, the interest was that Justice Karmeier – a Circuit Judge from a rural county in southern Illinois – needed State Farm’s enormous financial and powerful political support to secure election to a seat on this Court and to retain that seat in the future. After all, career interests are also pecuniary objectives. As one commentator has observed with reference to Justice Benjamin’s interests in *Caperton*:

Judges who are not reelected lose their jobs and their income. Although the Court focused on Justice Benjamin's potential gratitude toward Blankenship, the opposite side of the coin is relevant. Just as Blankenship could be instrumental in advancing a Benjamin candidacy, he could also just as easily turn and help defeat a Benjamin reelection campaign if displeased with his protegee's failure to perform as anticipated. ***Career objectives are pecuniary objectives.*** Even though Justice Benjamin would not directly benefit from the outcome of *Caperton v. Massey* on the merits, it is only a small step to an impact on his career and compensation should he support an outcome adverse to Blankenship.

Stempel, Jeffrey W., *Playing Forty Questions: Responding to Justice Roberts's Concerns in Caperton and Some Tentative Answers about Operationalizing Judicial Recusal and Due Process*, 39 Sw. L. Rev. 1, n. 87 (2009).

62. Just as this Court observed in *Hawkins*, citing precedent by the United States Supreme Court,

due process will sometimes “bar trial by judges who have no actual bias and would do their very best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way ‘justice must satisfy the appearance of justice.’”

181 Ill. 2d at 51.

63. In the end analysis, State Farm’s immense efforts on behalf of Justice Karameier’s campaign, undertaken while State Farm’s appeal was pending before this Court, engendered an overpowering risk that Justice Karameier was biased in favor of State Farm, and thus violated Petitioners’ due process rights. Petitioners’ new evidence of State Farm’s extraordinary efforts to support Justice Karameier and State Farm’s lies, misleading statements, omissions, and concealment to cover-up that extraordinary support justifies a critical examination of whether Petitioners were denied their fundamental due process rights.

64. If this Court finds that there was a serious risk of actual bias and that recusal of Justice Karameier was warranted, it necessarily follows that the entire decision must be set aside, as it must be assumed that the presence and participation of Justice Karameier had, or could have had, from an objective observer’s viewpoint, some influence on the panel. Put another way, where in a deliberation it is discovered that for extensive reasons that an individual should not have participated, it is presumed that such person had an influence on the entire outcome.

65. For all of this, Petitioners request that the mandate be recalled, that the August 18, 2005 decision of the Court be vacated, that the October 2, 2002 order granting

State Farm leave to appeal be quashed, and that the April 5, 2001 judgment of the Appellate Court be fully reinstated. These sanctions are the only ones appropriate to deter State Farm from future misconduct while at the same time protecting Petitioners and adequately remedying their harm.

66. Alternatively, Petitioners request that the entire decision of this Court be vacated and that the Court decide the matter without the presence and/or influence of Justice Karameier. Alternatively, Petitioners request that the portions of the opinion to which there would not be the Constitutionality required concurrence of four Justices of the Court, absent Justice Karameier's decision vote to overturn the Appellate Court opinion be reinstated.

67. Petitioners would respectfully ask the Court to decide all remaining proceedings in the case without the participation of Justice Karameier. A motion for Justice Karameier's recusal is separately submitted, in conjunction with this Petition.

The Affidavits of Daniel L. Reece and Douglas B. Wojcieszak, Separate Appendix, Exhibits 2 and 4, are also incorporated herein by reference. The Affidavit of Gordon Ball is annexed hereto as Exhibit 2 to this Petition.

WHEREFORE, Petitioners respectfully submit that the integrity of the judicial process has been fatally compromised by Justice Karameier's participation in the August 18, 2005 decision. Accordingly, under this Court's inherent powers, Petitioners seek all appropriate relief, including, but not limited to:

- (1) recalling the mandate;
- (2) vacating the August 18, 2005 opinion and judgment of this Court;

(3) quashing the October 2, 2002 order granting State Farm's petition for leave to appeal;

(4) reinstating in full the April 5, 2001 opinion and judgment of the Appellate Court;

(5) entering an order of disqualification as to Justice Karameier if Justice Karameier chooses to participate in these proceedings; and

(6) granting such other relief as proper under the Court's inherent powers.

Respectfully submitted, this 8th day of September, 2011.



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