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No. 117689

IN THE
SUPREME COURT OF ILLINOIS

PHILIP MORRIS USA INC.,	On Motion for Supervisory Order from the Illinois Appellate Court Fifth District, No. 5-13-0017
Movant,	
v.	There Heard on Appeal from the Third Judicial Circuit Madison County, Illinois
ILLINOIS APPELLATE COURT, FIFTH DISTRICT, and SHARON PRICE and MICHAEL FRUTH, on behalf of themselves and all others similarly situated,	No. 00-L-112
	The Hon. Dennis P. Ruth, *Judge Presiding.*
Respondents.	

MEMORANDUM IN SUPPORT OF MOTION
FOR RECUSAL OR DISQUALIFICATION

In March 2003, following a six-week bench trial, the trial court entered a $10.1 billion judgment against Philip Morris for deceiving Illinois consumers by falsely marketing its "Light" cigarettes as safer alternatives to full-tar cigarettes. Just as Philip Morris was filing its opening brief in the Illinois Supreme Court, Justice Karmeier announced his candidacy for the Court's open seat representing the Fifth Judicial District. Over the next eleven months, Philip Morris and its amici funneled almost $3.4 million to Justice Karmeier's campaign—roughly two-thirds of his fundraising total—in what became the most expensive judicial race in Illinois history. A year after taking his seat on the bench, Justice Karmeier cast the deciding vote that overturned the verdict and saved Philip Morris over $10 billion.

The Karmeier candidacy, Philip Morris's contributions to his campaign, and his role in the Court's decision to reverse drew unprecedented scrutiny from local and national media alike, as well as from prominent members of the legal community. While Philip Morris's amici were openly acknowledging that his "election changed the vote,"[1] media outlets ran stories bearing headlines such as "Buying Justice";[2] "The Madness of Electing Judges in Illinois";[3] and "Judging for Dollars."[4] Contemporaneous polling showed that public opinion overwhelmingly echoed this sentiment of skepticism and distrust: a 2004 Zogby poll, for example, found that over 70% of Americans believed that judicial campaign contributions had some influence on judges' ostensibly impartial decisions.[5]

The Due Process Clause of the Fourteenth Amendment guarantees that no State shall "deprive any person of life, liberty, or property, without due process of law." Since this Court decided *Price*, the United States Supreme Court interpreted that clause to require elected judges to recuse themselves from decisions where "objective and reasonable perceptions" indicate a "serious risk of actual bias." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 884 (2009). Importantly, recusal may be appropriate even where there is no evidence of "actual bias"; the reasonable perception of bias is sufficient, such as when someone "with a personal stake in a particular case had a significant and disproportionate influence in placing the judge on the case

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[1] Barbara Rose, *Philip Morris Law Firms, Supporters Backed Judge*, Chicago Tribune, Dec. 16, 2005 (hereinafter "*Philip Morris Law Firms, Supporters Backed Judge* (Dec. 16, 2005)") (attached as Exhibit 1).
[2] Editorial, *Buying Justice*, St. Louis Post-Dispatch, Nov. 5, 2004 (hereinafter "*Buying Justice* (Nov. 5, 2004)") (attached as Exhibit 2).
[3] Mike Lawrence, *The Madness of Electing Judges in Illinois*, St. Louis Post-Dispatch, August 26, 2004 (hereinafter "*The Madness of Electing Judges in Illinois* (August 26, 2004)") (attached as Exhibit 3).
[4] Adam Skaggs, *Judging for Dollars*, Brennan Center for Justice, April 3, 2010 (hereinafter "*Judging for Dollars* (April 3, 2010)") (attached as Exhibit 4).
[5] *See* Justice at Stake Campaign, March 2004 Survey Highlights: Americans Speak Out On Judicial Elections (2004) (hereinafter "Americans Speak Out (2004)") (attached as Exhibit 5).

by raising funds ... when the case was pending or imminent." *Id.* Illinois Supreme Court Rule 63(C) similarly requires recusal when "the judge's impartiality might reasonably be questioned." Ill. S. Ct. R. 63(C) (1).

Given the unprecedented public scrutiny of the potential influence that outsized campaign contributions by Philip Morris and its supporters had on Justice Karmeier's deciding vote in 2005, his participation in this renewed appeal certainly creates an "objective and reasonable perception" of bias. Thus, under both *Caperton* and Rule 63(C), Justice Karmeier should recuse himself from all remaining proceedings in this case. Alternatively, the Court should follow Justice Karmeier's own recent admonishment that judges should rarely, if ever, "be the sole and exclusive arbiters of whether they should continue to participate in a case," by making the disqualification decision. *In re Marriage of O'Brien,* 2011 IL 109039, at ¶ 120 (Karmeier, J., specially concurring).

RELEVANT BACKGROUND

On March 21, 2003—following a six-week bench trial—the trial court found that Philip Morris violated the Illinois Consumer Fraud Act and entered a $10.1 billion judgment in favor of Plaintiffs and a class of over a million other purchasers of Marlboro Lights and Cambridge Lights cigarettes. Philip Morris filed its Notice of Appeal on May 12, 2003, and in September 2003, this Court accepted direct review under Rule 302(b). In December 2003, Philip Morris submitted its opening brief, which was supported by amicus curiae briefs from the United States Chamber of Commerce, the Illinois Chamber of Commerce, the Illinois Civil Justice League, and the Illinois Manufacturers' Association—among others.

That same month, Justice Karmeier announced his candidacy for this Court's seat representing the Fifth Judicial District. Over the course of the following year, Justice Karmeier's

campaign would spend $4,802,119.00 to secure his election. Of that amount, $3,396,457.79 came—directly and indirectly—from Philip Morris, its affiliates, and its supporters before the Court that Karmeier hoped to join.

The U.S. Chamber of Commerce, one of Philip Morris's amici, funneled more than $1.9 million to the Karmeier campaign through the Illinois Republican Party. The Vice President for Public Affairs at Altria Group, Inc., Philip Morris's parent company, was on the Chamber of Commerce's National Chamber Foundation Board of Directors in at least 2003.[6] According to public campaign disclosures, the Chamber donated $2,050,000 to the Illinois Republican Party between September 24, 2004 and October 22, 2004.[7] During roughly that same period—September 24 to October 29—the Illinois Republican Party contributed $1,920,666.75 to the Karmeier campaign.[8]

Affiliates of the U.S. Chamber of Commerce, including the Illinois Chamber of Commerce (also a Philip Morris amicus), the Illinois Chamber PAC, and the Chicagoland Chamber of Commerce PAC, contributed an additional $284,338.32 to Justice Karmeier's campaign.[9] Notably, $50,000 of that money also originally came from the U.S. Chamber.[10] In total, the U.S. Chamber and its affiliates that were vocally supporting Philip Morris in its

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[6] List of National Chamber Foundation's Board of Directors from U.S. Chamber of Commerce's website (attached as Exhibit 6).

[7] *See* Illinois State Board of Elections ("ISBE") Campaign Disclosure for U.S. Chamber of Commerce (attached as Exhibit 7) (showing donations of $750,000, $950,000, and $350,000 on September 24, 2004, October 20, 2004, and October 22, 2004, respectively).

[8] *See* ISBE Campaign Disclosure for Illinois Republican Party (attached as Exhibit 8) (showing contributions of $1,920,666.75 to Citizens for Karmeier between September 24, 2004 and October 29, 2004).

[9] *See* ISBE Campaign Disclosure for Chicagoland Chamber of Commerce PAC, Illinois Chamber of Commerce, and Illinois Chamber PAC (attached as Exhibit 9) (showing contributions of $284,338.32 to Citizens for Karmeier between May 10, 2004 and October 29, 2004).

[10] *See* ISBE Campaign Disclosure for U.S. Chamber of Commerce (attached as Exhibit 7) (showing donation of $50,000 to the Illinois Chamber PAC on September 28, 2004).

pending appeal to this Court contributed $2,205,005.07—almost half of his fundraising total—to Justice Karmeier's effort to join the bench.

JUSTPAC, a political action committee for the Illinois Civil Justice League ("ICJL"), contributed $1,191,452.72 to the Karmeier campaign.[11] Included, notably, in that sum, is a $200,000 contribution from the U.S. Chamber of Commerce to JUSTPAC.[12] Philip Morris's then-affiliate, Kraft General Foods, was a longtime member of, and contributor to, the ICJL.[13,14] The ICJL even attempted to file a separate amicus brief in support of Philip Morris; and though that effort ultimately failed, it was nevertheless well-publicized.[15] The ICJL's influence on the Karmeier campaign was not merely financial: its President, Edward Murnane, effectively directed and managed the campaign.[16] Murnane made candidate Karmeier well aware of JUSTPAC's contributions to his campaign effort.[17]

Murnane's involvement in the campaign ran deeper still—he also served as the treasurer and a board member of the American Tort Reform Association ("ATRA"). ATRA donated

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[11] *See* ISBE Campaign Disclosure for JUSTPAC (attached as Exhibit 10) (showing contributions of $1,191,452.72 to Citizens for Karmeier between March 12, 2004 and October 27, 2004).
[12] *See* ISBE Campaign Disclosure for U.S. Chamber of Commerce (attached as Exhibit 7) (showing donation of $200,000 to JUSTPAC on October 1, 2004).
[13] *See* Illinois Civil Justice League, *About the ICJL: Membership*, (attached as Exhibit 11).
[14] Trisha L. Howard, Paul Hampel, *Four Who Protest the Court System in Madison County Are Subpoenaed,* St. Louis Post-Dispatch, June 7, 2003 (attached as Exhibit 12) (referring to Kraft Foods as a long-time member of the ICJL).
[15] *Philip Morris Law Firms, Supporters Backed Judge* (Dec. 16, 2005) (attached as Exhibit 1).
[16] *See* Email from Ed Murnane to Lloyd Karmeier, et al., Jan. 20, 2004; Email from Ed Murnane to Lloyd Karmeier, date unavailable; Email from Ed Murnane to Dwight Kay, et al., April 29, 2004; Email from Ed Murnane to Dwight Kay, Lloyd Karmeier, et al., Jan. 22, 2004 (attached as Exhibit 13).
[17] *See* Email from Ed Murnane to Lloyd Karmeier, et al., Jan. 20, 2004 (attached as Exhibit 13) (Murnane stating: "The spending report includes contributions from (close your eyes, Judge …) Illinois State Medical Society and Justpac – both $5000.").

$415,000 to JUSTPAC, which in turn contributed that money to the Karmeier campaign.[18] Philip Morris has financially supported ATRA since at least 1994.[19] Altria Client Services continues to be an ATRA member.[20] In addition to the $415,000 contribution ATRA made to JUSTPAC, which was included in the $1.191 million JUSTPAC gave to the Karmeier campaign, ATRA also expended $1.615 million dollars in "voter education expenses" during 2004.[21] ATRA apparently abandoned its "voter education" efforts after Justice Karmeier was elected, as it has not reported any more such expenses since 2004.

With that substantial financial support behind him, Justice Karmeier won the open seat on November 2, 2004—eight days before this Court heard oral arguments in this case—and was sworn in approximately a month later. On December 15, 2005, a divided Court reversed the judgment. *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182 (2005). A year after campaign contributions from Philip Morris and its supporters helped elect him to the bench, Justice Karmeier cast the deciding vote that saved Philip Morris billions of dollars. Justice Karmeier also wrote a special concurrence explaining that he would have reversed the judgment on additional grounds. *Id.* at 275.

LEGAL STANDARD

Under the Due Process Clause of the Fourteenth Amendment, "there are objective standards that require recusal when 'the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.'" *Caperton*, 556 U.S. at 872 (quoting *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). In *Caperton*, the United States Supreme Court for

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[18] *See* ISBE Campaign Disclosure for ATRA (attached as Exhibit 14) (showing contributions of $415,000 to JUSTPAC between June 30, 2004 and October 25, 2004).
[19] *See* Letters on Behalf of Philip Morris to ATRA (attached as Exhibit 15) (showing Philip Morris donations of $240,000 to ATRA).
[20] *See* Sample List of ATRA Members (attached as Exhibit 16).
[21] *See* ATRA 2004 Form 990 (attached as Exhibit 17).

the first time applied this standard in the context of elected judges deciding cases involving campaign contributors. The Court held 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." *Id.* at 884. In assessing whether campaign contributions had a "significant and disproportionate influence," courts should consider "the contribution's relative size in comparison to the total amount of money contributed to the campaign, the total amount spent in the election, and the apparent effect such contribution had on the outcome of the election." *Id.*

Importantly, whether the "campaign contributions were a necessary and sufficient cause of [the judge's] victory is not the proper inquiry." *Id.* at 885. Rather, "[d]ue process requires an objective inquiry into whether the contributor's influence on the election under all the circumstances 'would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true.'" *Id.* (quoting *Tumey v. Ohio*, 273 U.S. 510, 532 (1927)) (alteration in original). In other words, *actual* bias is not necessary for recusal: "[O]bjective standards may also require recusal whether or not actual bias exists or can be proved. Due process 'may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.'" *Id.* at 886 (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)).

The recusal standard in the Illinois Code of Judicial Conduct likewise does not require a showing of actual bias—recusal is appropriate when "the judge's impartiality might reasonably be questioned." Ill. S. Ct. R. 63(C) (1). *See also In re Marriage of O'Brien,* 2011 IL 109039, at ¶ 32 n.4 ("Rule 63(C)(1)'s direction to judges to voluntarily recuse themselves where their

'impartiality might reasonably be questioned' (Ill. S. Ct. R. 63(C)(1)) includes 'situations involving the appearance of impropriety.'") (citing *People v. Buck,* 361 Ill. App. 3d 923, 931 (2005); *People v. McLain,* 226 Ill. App. 3d 892, 902 (1992)).

In sum, both the United States Constitution and Illinois law require judges to recuse themselves when there is an objectively reasonable public perception of bias, regardless of whether any actual bias exists.

ARGUMENT

I. Justice Karmeier must recuse himself from this case because there is a strong and objectively reasonable public perception that he is biased in favor of Philip Morris.

Because actual bias is irrelevant to the recusal analysis under both *Caperton* and Rule 63(C), the Court need only consider one question to resolve this motion: Did the substantial contributions to Justice Karmeier's election campaign by Philip Morris and its allies create an objectively reasonable public perception of bias, such that his impartiality in resolving this appeal might reasonably be questioned? The media coverage concerning Philip Morris's outsized contributions to the Karmeier campaign, juxtaposed with Justice Karmeier's subsequent deciding vote to relieve Philip Morris of a $10.1 billion judgment, yields only one reasonable answer—yes.

The public perception that Philip Morris would attempt to "buy clout" by "bankrolling" the Karmeier campaign—and that doing so "could end up eroding the judges' independence to decide cases free of political influence"—was festering months before any votes were actually cast in the 2004 election.[22] The results of the election only reinforced this perception as the Court prepared to issue its decision. In a November 2004 editorial titled "Buying Justice," for

[22] *See* Mike Robinson, *Doctors, Trial Lawyers Pour Cash Into Nasty Supreme Court Race,* Associated Press, July 10 2004 (hereinafter "*Doctors, Trial Lawyers Pour Cash Into Nasty Supreme Court Race* (July 10, 2004)") (attached as Exhibit 18).

example, the St. Louis Post-Dispatch noted that "Big business won a nice return on a $4.3 million investment in Tuesday's election. It now has a friendly justice on the Illinois Supreme Court. ... And anyone who believes in evenhanded justice should be appalled at the spectacle of a big-money effort to buy a Supreme Court seat."[23] The Post-Dispatch even pointed to the $10.1 billion judgment against Philip Morris as having been "at stake" in the campaign. *Id.*

As the Post-Dispatch recognized, the average citizen would be justified in asking whether Justice Karmeier might be "tempted to do favors for the interests that lavished millions on his campaign" and "wondering if it's payback time." *Id.* That rhetorical question about whether Justice Karmeier's vote was a *fait accompli* was by no means sensationalized—according to a poll by Zogby International around the time of the 2004 Illinois Supreme Court election, over 70% of Americans believed that judicial campaign contributions had some influence on the decisions of elected judges.[24]

The public reaction to Justice Karmeier's deciding vote reflected the same skepticism and distrust. Following the Court's decision, the St. Louis Post-Dispatch published a political cartoon depicting Justice Karmeier on a mule with sacks of money bearing the Philip Morris name. The cartoon parodied advertisements for Marlboro Lights by including a package of "Karmeier Lights" and the tagline "More freedom from class action lawsuits."[25] The cartoon accompanied an article called "Buying Justice?", which linked Philip Morris's substantial contributions to the Karmeier campaign with the Justice's eventual vote:

> Lawyers for Philip Morris USA and a business lobbying group backing the company spent more than $1 million to get Lloyd Karmeier elected to the Illinois Supreme Court last year. Last week, Justice Karmeier cast a deciding vote that

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[23] *Buying Justice* (Nov. 5, 2004) (attached as Exhibit 2).
[24] *See* Americans Speak Out (2004) (attached as Exhibit 5).
[25] *See* R.J. Matson, *Matson's View*, St. Louis Post-Dispatch, Dec. 20, 2005 (attached as Exhibit 19).

> erased a $10.1 billion lower court judgment in a class-action suit against the big tobacco company. An ordinary citizen, jaded by Illinois' long history of government shenanigans, might wonder whether Mr. Karmeier was simply returning the favor. ... [T]he juxtaposition of gigantic campaign contributions and favorable judgments for contributors creates a haze of suspicion over the highest court in Illinois.[26]

Philip Morris's allies did little to assuage this public concern about an unspoken quid-pro-quo. Shortly after the Court's decision, the president of the Illinois Civil Justice League—which filed an amicus brief on Philip Morris's behalf and later donated $1.2 million to the Karmeier campaign—told the Chicago Tribune that "Karmeier's election changed the vote."[27]

The perception of Justice Karmeier's potential bias was no different even among respected members of the legal community. The day after the United States Supreme Court decided *Caperton*, for example, the St. Louis Beacon published on online article by a well-known legal ethicist stating that the decision had "a special resonance in Illinois, where big contributions to state supreme court candidates recently raised questions of bias."[28] The article quoted Cindi Canary, the executive director of the Illinois Campaign for Political Reform, who echoed the sentiment that "'outsized contributions and special interest money can create the appearance of bias in the judicial system.'" *Id.*

The article highlighted the perceived connection between Justice Karmeier's "important vote" to reverse the $10.1 billion judgment and large donations to Justice Karmeier's campaign by two of Philip Morris's amici: the Illinois Civil Justice League ($1.19 million) and the Illinois Chamber of Commerce ($269,338). *Id.* As Ms. Canary explained: "With Karmeier, the issue isn't whether he was truly impartial or not, it was that under the circumstances no one could believe he would be impartial—the appearance factor." *Id.*

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[26] Editorial, *Buying Justice?*, St. Louis Post-Dispatch, Dec. 20, 2005 (attached as Exhibit 20).
[27] *Philip Morris Law Firms, Supporters Backed Judge* (Dec. 16, 2005) (attached as Exhibit 1).
[28] William Freivogel, *Supreme Court Decision on Judges and Campaign Contributions Recalls Race Between Karmeier and Maag*, The St. Louis Beacon, June 9, 2009 (attached as Exhibit 21).

John Jackson, a visiting professor at the Paul Simon Public Policy Institute at Southern Illinois University Carbondale, was also quoted as saying that he "thought of the Karmeier case immediately when [he] heard of the Caperton ruling. If it doesn't apply here, it will not be of much use anywhere." *Id.* In Professor Jackson's view, "the perception of bias issue was raised during the campaign and insistently after the campaign and should have been enough for Karmeier to recuse himself without having the Caperton ruling to tell him the same thing. In my opinion, it was clear as could be." *Id.*

Retired United States Supreme Court Justice Sandra Day O'Connor has likewise analogized the facts in *Caperton* to Justice Karmeier's election.[29] Speaking to the Chicago Bar Association, Justice O'Connor noted that:

> 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?[30]

Justice O'Connor's familiarity with the $9.3 million cost of the 2004 judicial election—the most expensive in United States history—was not surprising given the widespread negative media attention associated with the race.[31]

With a former Supreme Court Justice drawing parallels between *Caperton* and the Illinois election, it is no stretch for Plaintiffs to do the same. In *Caperton*, the CEO of a coal company

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[29] *See* Abdon M. Pallasch, *O'Connor Urges Illinois to Select Judges by Merit*, Chicago Sun-Times, May 20, 2010 (attached as Exhibit 22).

[30] *Id. See also* Chicago DUI Law Blog, *Chicago DUI Attorney Comments on the Impact on Justice When Judges Are Elected*, May 20, 2010 (attached as Exhibit 23).

[31] *See, e.g., Doctors, Trial Lawyers Pour Cash Into Nasty Supreme Court Race* (July 10, 2004) (attached as Exhibit 18); Kevin McDermott, *Race for High Court Hits Low Mark*, St. Louis Post-Dispatch, May 26, 2004 (attached as Exhibit 24); *The Madness of Electing Judges in Illinois*(August 26, 2004) (attached as Exhibit 3); Deborah Goldberg et al., *The New Politics of Judicial Elections 2004*, Justice at Stake Campaign, at 14-15 (attached as Exhibit 25); *Judging for Dollars*(April 3, 2010) (attached as Exhibit 4).

that lost a $50 million trial verdict donated over $3 million to the judicial campaign of the West Virginia justice that eventually cast the deciding vote to reverse. *Caperton*, 556 U.S. at 873-74. The CEO contributed some of his money directly to the campaign, but the bulk—$2.5 million—was funneled through a non-profit organization ostensibly concerned with "The Sake of the Kids." *Id.* at 873. The $3 million figure represented more than 50% of the total spent by all of the justice's supporters, and he eventually won a 53% to 47% victory. *Id.*

Despite the justice's reasoned defense of his impartiality upon the plaintiff's repeated efforts to disqualify, the Court held that his participation in the decision violated due process because the CEO's "campaign efforts had a significant and disproportionate influence in placing [the justice] on the bench." *Id.* at 884. In defending that conclusion, the Court's majority cited both the ABA's and West Virginia's recusal standards—which, like Illinois's, "require[] a judge to 'disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.'" *Id.* at 888 (citing Canon 3E(1) of the West Virginia Code of Judicial Conduct).

The facts leading up to Justice Karmeier's election and eventual deciding vote are eerily similar. After this case was already before the Court, Philip Morris and its amici contributed $3.2 million to the Karmeier campaign—nearly two-thirds of his fundraising total—leading to his 54% to 45% victory. Not only did these outsized contributions have "significant and disproportionate influence" in placing Justice Karmeier on the bench, but the "temporal relationship between the campaign contributions, the justice's election, and the pendency of the case" was much stronger than in *Caperton*, where the justice was elected *before* West Virginia's highest court took the case. *Id.* at 886. Thus, it was not merely "reasonably foreseeable ... that the pending case would be before the newly elected justice," Philip Morris knew that it was

inevitable. *Id.* ("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."). Because Justice Karmeier's further participation in this case would create a constitutionally impermissible risk of bias, he must recuse himself. *See id.*

Illinois law also requires Justice Karmeier to recuse himself. The wealth of media articles and other commentary concerning Philip Morris's influence on Justice Karmeier's election and eventual vote leaves little doubt that his impartiality "might reasonably be questioned"—it has already been questioned repeatedly, and that scrutiny will be renewed now that this case has made its way back to the Court. Ill. S. Ct. R. 63(C) (1). Justice Karmeier's actual bias, if any, is irrelevant: "[D]ue 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.'" *People v. Hawkins,* 181 Ill.2d 41, 51 (1998) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). "But to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *Id.*

If Justice Karmeier does not recuse himself, then the Court should disqualify him. As the Court recently recognized, "[o]ne of the critical concerns in *Caperton* was that recusal motions are decided by the very person who is accused of bias." *In re Marriage of O'Brien,* 2011 IL 109039, at ¶ 47. Indeed, Justice Karmeier himself has deemed "untenable" the "notion that individual judges have sole and exclusive authority for determining whether they should continue to participate in a given case." *Id.* at ¶ 122 (Karmeier, J., specially concurring). "Not only should judges not be the sole and exclusive arbiters..., some have questioned whether they should *ever* be permitted to sit in judgment of requests for their own disqualification." *Id.* at

¶ 123. If Justice Karmeier does not recuse himself, the rest of the Court should step in to ensure that "justice ... satisf[ies] the appearance of justice." *Hawkins,* 181 Ill.2d at 51.

CONCLUSION

Because there is an objective and reasonable public perception that Justice Karmeier is biased in favor of Philip Morris, he should recuse himself from further participation in this matter. Alternatively, this Court should disqualify him from further participation.

DATED: May 28, 2014

Respectfully submitted,

By: _____
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CERTIFICATE OF SERVICE

I, Stephen M. Tillery, an attorney, hereby certify that I caused true and correct copies of the Notice of Filing, Motion of Plaintiffs-Respondents Sharon Price and Michael Fruth for Recusal or Disqualification, Memorandum in Support of Motion for Recusal or Disqualification with Separate Appendix, and Proposed Order to be served on all counsel of record on May 28, 2014 by causing such copies to be sent via courier for overnight delivery to the counsel listed below.

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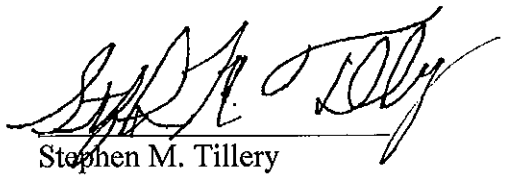

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