No. 23-510

In The
Supreme Court of the United States

DAN CAULKINS; PERRY LEWIN;
DECATUR JEWELRY & ANTIQUES INC.; and
LAW-ABIDING GUN OWNERS OF MACON COUNTY,
a voluntary unincorporated association,

Petitioners,

v.

Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,

Respondents.

On Petition For A Writ Of Certiorari To The Illinois Supreme Court

SUPPLEMENTAL BRIEF TO PETITION FOR WRIT OF CERTIORARI

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SUPPLEMENTAL STATEMENT OF THE CASE

Newly discovered material[1] (by *Caulkins*) discloses Seven Million Three Hundred Thousand Dollars additional (to the $2.6 Million direct financial contributions in the original Petition) indirect campaign expenditures supporting the candidacies of Justices Rochford and O'Brien by a political committee backed by Defendant, Illinois Senate President Don Harmon. Supp. App. 1-18.[2] The sole officer of the political committee, All for Justice, is Luke Casson, counsel of record for Defendant Harmon in the proceedings below in this case. The expenditures for the benefit of Justices Rochford and O'Brien were concealed from the public until several months after the election. Supp. App. 6, 19-51.[3] On November 21, 2023, All for Justice was fined $99,500.00[4] for violating campaign disclosure laws with the delayed public disclosure of the expenditures supporting Justices Rochford and O'Brien. Supp. App. 10. Funds controlled by Defendant Harmon contributed $700,000 to All for Justice. Supp. App. 6. Neither Justice Rochford, nor Justice O'Brien, disclosed or otherwise acknowledged the All for Justice expenditures supporting their campaigns originating

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[1] For purposes of US Supreme Court Rule 15.8.

[2] All citations herein to "Supp. App." are to the appendix filed with this Supplemental Brief. All citations herein to "App." are to the Appendix filed with the Petition for Writ of Certiorari.

[3] The cited documents from the Illinois State Board of Elections are known as Schedule B-9 Reports of Independent Expenditures.

[4] One of the largest penalties ever assessed by the Illinois State Board of Elections. Supp. App. 9.

with one of the Defendants, including his counsel of record in this case, when issuing their Orders denying the Motion for Recusal/Disqualification. App. 56-69.

SUPPLEMENTAL REASONS FOR GRANTING WRIT

The Illinois Supreme Court reversed a Circuit Court Final Judgment declaring the Assault Weapons Partial Ban unconstitutional. Two Justices who participated in the case were challenged for bias and for a prior commitment to the outcome. At Part I (Subparts A-D) of the Petition for Writ of Certiorari, *Caulkins* advanced the Illinois Supreme Court's denial of due process under the Fourteenth Amendment and this Court's Opinion in *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868 (2009), as a basis to grant the Writ. Since the November 9, 2023, filing of the original Petition, *Caulkins* discovered additional material augmenting the grounds stated in the original Petition and expanding the extreme facts and circumstances far beyond those circumstances deemed too extreme to satisfy minimal due process in *Caperton*.

The intolerably extreme nature of the cash contributions from Defendants—the leaders of the other branches of Illinois government—to the challenged Justices is inescapable when compared to the facts of *Caperton*. In *Caperton*, Justice Benjamin received $1,000 in direct contributions from an interested litigant. *Caperton*, 556 US. at 873. That litigant held no

position in the separate branches of West Virginia government. Justice Benjamin was the beneficiary of indirect campaign expenditures by the litigant in the total sum of $3,000,000. *Id*. Here, Justices Rochford and O'Brien received an aggregate sum exceeding $2,500,000 in direct contributions from Defendants (a 2,500 to 1 comparison to *Caperton*) and received $7,300,000 in indirect campaign expenditures benefitting their respective campaigns (a 2 to 1 comparison[5]). The combined expenditures to benefit Justice Benjamin in *Caperton* exceeded the total amount spent by all other supporters of Justice Benjamin and was three times more than was spent by Justice Benjamin's own committee. *Id*. In the present case, the combined expenditures originating with or controlled by Defendants or their counsel to benefit Justices Rochford and O'Brien was 10 Million Dollars, totaling 55% to 60% of all expenditures to support their campaigns. Like in *Caperton*, the amounts provided by Defendants or their counsel exceeded all expenditures on behalf of their respective opponents. *Id.* Comparatively, it eludes reconciliation to find intolerable unconstitutional bias or appearance of bias in *Caperton* and reject the same finding as it respects Justices Rochford and O'Brien.

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[5] One could assert that the ratios should be split. Even if they were, the disproportion remains greater than in *Caperton*. However, splitting is not valid because the All for Justice expenditures were allocated for reporting while the messaging was inclusive, for the benefit of both, and the aggregate did benefit both.

Here, it is not just the money that animates the extreme circumstances de-legitimizing the Illinois Supreme Court Opinion below. As explained in the original Petition, Justice Rochford's and Justice O'Brien's shared commitment to the outcome, including the process by which the outcome would be achieved, is incompatible with due process. And the identity of the contributing Defendants as leaders of the separate branches of government strips the Illinois Supreme Court of any appearance that it stands as an independent, co-equal branch of government. The newly discovered material, alone and in combination with all grounds, begs review.

As noted in the original Petition, the Illinois Supreme Court reposed the disqualification/recusal question to the challenged Justices themselves, without any procedure available to *Caulkins* to develop the bias. Here, it is vitally important to recognize that, while *Caulkins* did not know about the $7,300,000 of indirect campaign expenditures that the donor PAC concealed from public disclosures, Justices Rochford and O'Brien *would have known* when *Caulkins*' Motion for Recusal/Disqualification was filed and presented to each for their self-evaluative review. Justices Rochford and O'Brien would have known that *Caulkins* only discovered 25% of the campaign assistance originating with Defendants, including their respective counsel, and, nonetheless, issued an Order boldly admonishing *Caulkins* for not proving actual bias and for casting "sinister aspersions." App. 59, 67. But it was not *Caulkins*' duty to discover the $7,300,000 of indirect

campaign expenditures. Rather, it was each Justice's obligation to disclose it and explain why it did not affect her ability to hear the case. "A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification." Ill. Code of Jud. Conduct, R. 2.11 cmt. 5. No reasonable person could conclude that $7,300,000 in Defendant Harmon-influenced support would not be relevant given the issues raised in the Motion for Recusal/Disqualification. Any presumption favoring a judge's independence must dissolve when the judge conceals additional facts known to the judge exercising her self-evaluative review. The silence of Justices Rochford and O'Brien in their respective Orders when charged with a duty to disclose fairly carries the appearance of fraud and, when coupled with the content of the Orders denying recusal, reinforces an intent to conceal bias utterly hostile to due process. The public interest in an impartial and independent judiciary suffers grave injury if these circumstances are tolerated. The legitimacy of law and the institutions of government are undermined by these circumstances.

Justice Rochford dismissed *Caulkins'* challenge to her independence as a tactic to gain an advantage in the case. Specifically, she described the challenge as "subterfuge to circumvent anticipated adverse rulings." App. 67. *Caulkins* had cause to anticipate Justice Rochford's adverse ruling for the very reasons stated

in the Motion for Recusal/Disqualification and now supplemented by the newly available material (then known by Justice Rochford when declining recusal). However, would not every case where evidence of bias exists present circumstances where the litigant anticipated an adverse ruling? *Caulkins* appreciates that recusal motions cannot be used as a cudgel to shape an ideologically friendly bench. It is true that interests motivated by political ends may sensationalize a judge's financial entanglements to diminish that judge's legitimacy. Under this Court's standard, "[n]ot every attack on a judge disqualifies the judge from sitting." *Caperton*, 556 U.S. at 881. The standard required is an objective one, requiring the Court to ask "not whether the judge is actually, subjectively biased, but whether the average judge in [her] position is 'likely' to be neutral, or whether there is an unconstitutional 'potential for bias.'" *Id.* at 881. This case presents the opportunity for this court to distinguish *pro forma* claims of financial interest raised in abusive recusal motions to obtain unfair advantage. This case exposes substantial proof for "advantage" to the Defendants and a shared commitment to outcome that, collectively and individually, infected the case and eroded the impartiality and independence of the Illinois Supreme Court. The extreme and cumulative circumstances here are neither imagined nor remote. This case is *Caperton* by magnitudes.

Experience teaches that the circumstances support a probability of actual bias that is too high to be constitutionally tolerable. See *id*. at 872. Here, the lack of transparency by the Justices and the subordination of judicial integrity to the attainment of shared political ends, irrespective of the constitutionality of that end or the process by which that shared end was achieved, warrants action by this Court. Vacating the Illinois Supreme Court Opinion because *Caulkins* was denied due process or because of the breakdown of the republican form of government will affirm the Circuit Court Final Judgment thereby restoring fundamental rights to all Illinois citizens and protecting the institutions of the Illinois republican form of government from the oppressive influences of political factions which place political ends above constitutional processes.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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