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CLERK OF WISCONSIN
SUPREME COURT

No. 25AP2859-CRLV

In the Supreme Court of Wisconsin

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

JAMES R. TROUPIS,
Defendant-Petitioner.

Permissive Appeal from the
Dane County Circuit Court,
the Honorable John D. Hyland, Presiding
Case No. 24CF1295

JAMES R. TROUPIS'S PETITION FOR REVIEW

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I. Issue Statements.

This appeal presents two issues:

1. Based primarily on a forensic linguist's expert report, the defense alleged that Judge Hyland signed an order under the false belief that a law clerk had drafted it; in fact, the clerk's father had. That would make the order the product of misconduct and demonstrate that judicial staff subjected Troupis's case to a different (less fair) process than every other defendant.[1] To develop the record, the defense asked for an evidentiary hearing before a different judge. Judge Hyland denied that request. Should the defense have received a hearing?

2. In *Jendusa*, a 4-3 majority of this Court held that "it is not necessary for the Court of Appeals to explain why it denied a party leave to file an interlocutory appeal."[2] The dissent recognized that "without the reasoning, we have nothing to actually review, and our constitutional power to review is gutted."[3] Here, in denying Troupis's appeal, the Court of Appeals didn't explain its reasoning. Should this Court modify or overrule its holding in *Jendusa* to ensure that this Court can fulfill its constitutional duties as Wisconsin's supreme tribunal?

[1] *See In re Tesmer*, 219 Wis. 2d 708, 724–29, 580 N.W.2d 307 (1998) (per curiam).
[2] *State v. Jendusa*, 2021 WI 24, ¶21, 396 Wis. 2d 34, 955 N.W.2d 777 (cleaned up).
[3] *Id.*, ¶44 (Ziegler, J., dissenting).

II. Introduction.

To briefly set the stage, Troupis's case centers on conduct that many members of this Court will recall. He represented President Trump during Wisconsin's 2020 recount, which this Court ultimately decided 4-3.[4] Now (six years later), Troupis stands charged with forgery and fraudulent inducement—all related to that challenge.[5]

Based on many constitutional grounds, his defense team filed nine separate motions to dismiss.[6] Those motions were assigned to Judge Hyland.[7] Troupis didn't substitute, assuming he'd get a fair shake. Yet that's not what happened.

Judge Hyland denied the motions in an August 22, 2025, order, but the order bore the markings of a different judge's writings—one who had long since retired from the bench.[8] The initial suspicion was given credence when the retired Judge's son, a Dane County law clerk, appeared in the order's metadata.[9] That spurred a closer look at the retired Judge's writings in other cases—writings that contain distinct phrases echoed in the order.[10] And that prompted the defense to retain a forensic linguist, a reputable professor at Georgetown.[11] After a full review, her report confirmed that the retired Judge had written large parts of the August 22 order.[12]

Troupis's defense counsel shared this information with the State and then asked for an in-chamber meeting with the prosecutors and Judge Hyland.[13] The defense took this peculiar step because it didn't want to cause any undue embarrassment with a public filing. The defense hoped that the meeting would dispel, rather than confirm, the defense's fears.

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[4] *See generally Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568.
[5] App. 116–20.
[6] App. 74.
[7] App. 74.
[8] App. 62, 74.
[9] App. 69.
[10] App. 62–63, 70.
[11] App. 29, 64.
[12] App. 56–57.
[13] App. 71–72.

Yet the meeting only amplified the defense's concerns. After defense counsel orally outlined the investigative steps and the expert's findings, Judge Hyland candidly admitted that he got a full draft of the August 22 order *before* he'd even finished reading the briefs.[14] At the conclusion of the meeting, the defense gave Judge Hyland the report and a cover letter setting out the evidence it believed supported the conclusion that the retired Judge (the clerk's father) had written much of the order.[15]

Following the in-chamber meeting, the parties awaited guidance from Judge Hyland, but it never arrived. With a preliminary hearing fast approaching, the defense moved for an evidentiary hearing before a different judge, ultimately seeking, if the defense were right, to vacate the August 22 order.[16]

The legal basis for the motion was simple. Law clerks occupy a singular place within the judicial process: "Clerks are privy to the judge's thoughts in a way that neither [the] parties to the lawsuit nor [the judge's] most intimate family members may be."[17] Given that unique relationship, clerks are held to the same ethical standards as judges: "the clerk is forbidden to do all that is prohibited to the judge."[18] Even if a judge isn't directly responsible for a clerk's misconduct, a clerk's actions are imputed to the judge.[19] And, if the defense is right, vacatur of the August 22 order is required: no subsequent trial or appeal can remove the stain of the initial misconduct.[20]

To be clear, the legal basis isn't that Judge Hyland did anything intentionally wrong. It's that unbeknownst to him, his decision-making process was corrupted. For that reason, this appeal isn't about "bias" in the traditional sense: the defense isn't arguing "Judge Hyland hates Troupis." Rather, the claim is: Judge Hyland thought he was getting advice from a

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[14] App. 72.
[15] App. 28–67.
[16] App. 6–10.
[17] *Vaska v. State*, 955 P.2d 943, 945 (Alaska Ct. App. 1998) (quoted source omitted) (cleaned up).
[18] *Hall v. SBA*, 695 F.2d 175, 179 (5th Cir. 1983).
[19] *E.g.*, *Vaska*, 955 P.2d at 945–46.
[20] *Ward v. Vill. of Monroeville*, 409 U.S. 57, 61–62 (1972).

neutral law clerk, but that clerk was passing off a third party's (an outsider's) work as his own. This element of *unknown* bias is especially troubling. Judges often try to account for their own *known* bias, but they can't do that when they aren't even aware of those influences. That's why this Court has developed all sorts of rules aimed at ensuring judges know who's influencing them—and, of course, by extension, that the parties and the public know too. These procedural safeguards include rules prohibiting ex parte communications (including with third parties like the media), regulating amicus briefs, and requiring pro se litigants to disclose if an attorney ghostwrote a filing for them.[21] Here's the bottom line: bias in the *process* matters just as much (maybe more) than bias in the *person*.

In denying the defense's motion for an evidentiary hearing, Judge Hyland didn't reject the *legal* basis for the motion.[22] Instead, he indicated that he'd investigated the facts (he didn't explain how), and, based on that investigation, he didn't think the defense's allegations were true.[23] Judge Hyland indicated that the defense lacked evidence to support its theory but didn't acknowledge (in any way) the expert's report.[24]

Failing to hold an evidentiary hearing sent an unmistakable message: the normal rules don't apply to Troupis's case. To quote one court: "Without an evidentiary hearing … , we are unable to determine the extent of the … judicial misconduct and, in turn, determine the extent to which the misconduct prejudiced [the criminal defendant]."[25] That same concern applies to Troupis's case: a hearing is necessary to determine the extent of the misconduct and how it impacted his case.

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[21] *See, e.g.*, *Tesmer*, 219 Wis. 2d at 727; Wis. Stat. § (Rule) 809.19(7); Joe Forward, *Supreme Court Restores Attorney Ghostwriting Rule for Pro Se Litigants*, InsideTrack (May 6, 2020), https://tinyurl.com/2eupsvrf.

[22] App. 2–4.

[23] App. 3.

[24] App. 3.

[25] *Salazar v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 137 Nev. 959, 2021 WL 1688017, at *2 (Apr. 28, 2021); *see also Vaska*, 955 P.2d at 946–47 ("[T]here is a significant possibility that an evidentiary hearing will be required.").

By granting this petition and remanding for an evidentiary hearing (which is *all* Troupis is asking for), the Court will ensure that, as this case proceeds to trial, the defendant and the public understand that no matter the case, the Constitution's promises of due process and equal justice are never compromised. Hearing this petition will "clarify further proceedings in the litigation"; it will "[p]rotect the petitioner from substantial or irreparable injury"; and it will offer this Court the opportunity to clarify the showing needed to get an evidentiary hearing on allegations of misconduct.[26] Those are the criteria for granting an interlocutory appeal.

For the same reasons, the issues presented meet this Court's criteria for review.[27] They raise legal questions of statewide importance that require no factfinding—again, the defense is not asking this Court to decide if the allegations are true. In resolving the questions presented (especially the first one), this Court would produce an opinion that many, *many* judges and judicial staff would read.[28] It'd probably even be taught at judicial colleges and conferences. Why? Because judges need to know (1) who's allowed to influence their decision-making process; and (2) whether they need to take steps to ensure they aren't unknowingly influenced by an outsider. For all these reasons, this Court should grant the petition.

III. Statement of the Case.

To fully grasp this petition, it's important to read the appendix, which sets out all the details of the defense's investigation—everything that transpired and how deliberately and delicately the defense has tried to approach this issue.[29] What follows simply summarizes those filings.

[26] Wis. Stat. § 808.03(2)(a)–(c).
[27] *See* Wis. Stat. § (Rule) 809.62(1r).
[28] *See generally* Parker B. Potter, Jr., *Law Clerks Gone Wild*, 34 Seattle U. L. Rev. 173 (2010).
[29] App. 68–73.

A. Judge Hyland denied the defense's motions to dismiss, unknowingly relying on a ghostwritten draft order from a private attorney.

For context, Troupis previously served as a Judge on the Dane County bench, and during that time, he was not everyone's cup of tea.[30] Many of his colleagues, including the retired Judge, had a less-than-lofty opinion of Troupis's views. And before that Judge retired, he presided over highly contentious civil matters related to the 2020 election. Troupis was a defendant in one of those *very* hard-fought cases.[31] And in deciding how to approach his criminal case, Troupis and his lawyers were prepared to do everything necessary to avoid the retired Judge's involvement—including using Troupis's right to substitution.

When the August 22 order came down, it bore the hallmarks of the retired Judge.[32] At first, that suspicion seemed ludicrous: that Judge was retired.[33] There *should* be no way he had a hand in this case.[34] But the order's metadata showed it was worked on by the retired Judge's son.[35] That seemed like it could be a big deal. But because that his son works as a law clerk for the Dane County Circuit Court, it didn't prove much.

Given the importance of the Court's August 22 order and how it would resound throughout the rest of the case, the issue demanded further investigation.[36] Scrutinizing some of the retired Judge's prior orders, it was clear the order had the same markings as the August 22 order: they were written in the first person, they bore the same word choice, and often had the same sardonic tone.[37] In addition, certain peculiar phrases were replete in those writings—the retired Judge had his own distinct style. That style was parroted throughout the August 22 order. This table sets out some of those instances; the citations are all set out in the appendix.[38]

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[30] *See* App. 68.
[31] *Penebaker v. Hitt*, Dane Cnty. Cir. Ct. No. 22CV1178, https://tinyurl.com/4ntzeypt.
[32] App. 62–65, 69.
[33] App. 62, 69.
[34] App. 66, 69.
[35] App. 69.
[36] App. 70–71.
[37] App. 28–29, 56–57, 63–64.
[38] App. 63–64.

8/22/2025 Order	Retired Judge's Orders
"As best I can tell, Troupis believes the Certificate is inexorably connected to a petition for a writ of certiorari he filed seeking Supreme Court review of *Trump*, 2020 WI 91."	"As best I can tell, Troupis believes relief from judgment is necessary because he has asked the court of appeals for some kind of declaration about the circuit court's jurisdiction."
"I do not understand why he thinks any of the historical stories he tells matter to this criminal case."	"I do not understand why Hitt thinks this case will involve 'the entirety of the Republican Party' or why that would present a political question."
"For brevity, this decision generally refers to the Amended Criminal Complaint, dkt. 16, as 'the complaint.,' and to Troupis, Roman, and Chesebro, together, as 'Troupis.'"	"For brevity, I refer to the named defendants, together, as Vos."
"the complaint plainly alleges"	"the complaint plainly alleges"
"library of briefs"	"library of past filings"
"I pause to examine" "I pause to note" "I first pause to clarify"	"I pause in my examination" "I pause to note" "I pause to raise"
"I proceed only for the sake of thoroughness"	"I continue for the sake of thoroughness"
"Troupis focuses only on the third kind of preemption: a conflict between federal and state law."	"Troupis focuses only on two aspects of Wis. Stat. § 802.06(6): 'immaterial' and 'impertinent.'"
"misleading citation" "unlawful citations"	"misleading citations" "unlawful, and misleading citation" "unlawful citation"

As an aside, a quick review of Westlaw reveals that apart from the retired Judge, *no one* in Wisconsin uses the phrase "unlawful citation." And in all federal courts, that phrase appears only in relation to *actual* criminal citations, not Blue Book errors.[39]

[39] *E.g.*, *Price v. City of Red Lodge*, No. CV14-58-BLG-SPW, 2014 WL 4199631, at *3 (D. Mont. Aug. 22, 2014) (quoted source omitted).

This all *seemed* suspicious, so the defense sought expert advice which would dispel this layman's reading of these similarities.[40] The defense chose a professor from Georgetown who is a leader in this field.[41] Given the position of the law clerk (and the possibility that he had written many of the retired Judge's orders) the linguist had to look at orders before that law clerk was hired.[42] Looking *only* at orders written *before* 2021 (when the clerk joined the Court), she concluded that the retired Judge's distinctive style resonates throughout the August 22 order.[43]

The full report was submitted to the Circuit Court and is attached in the appendix (it's 34-pages long), but these are the highlights:

- The August 22 order and the retired Judge's orders "are both written in a highly distinctive style characterized by use of linguistic features such as personalized language (e.g. first-person pronouns 'I', 'we', and 'our'; direct address to the reader, as in 'Say, for example... '); elevated, lofty, and 'flowery' diction (word choice), coupled with casual vocabulary and phrasing; figures of speech such as metaphor and personification; hypotheticals; unusual, possibly idiosyncratic adverbs; hyphenated adverbs and adjectives; and heavy use of METADISCOURSE feature—linguistic indictors of the writer's attitudes, beliefs, and understandings and of textual organization."[44]

- The August 22 order and the retired Judge's orders "share certain types of errors (e.g. lack of subject-verb agreement), as well as nuanced patterns of punctuation and function word usage."[45]

- The August 22 order and the retired Judge's orders "share a writing style that is distinctively personal and flowery within the genre of legal documents, and they share features ranging from overall style, organization, and argument structure to choices of individual words and other very small details of language use."[46]

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[40] App. 64.
[41] App. 29–31.
[42] App. 31–32.
[43] App. 31–34.
[44] App. 32–33.
[45] App. 33.
[46] App. 33.

The full report spells out the many other ways that the retired Judge's known writings are reflected in the August 22 order and why no one could have simply mimicked the retired Judge's style: "It is also extremely unlikely that a member of Judge Hyland's staff would share [the retired Judge's] highly distinctive style. This holds even for the [retired Judge's] son."[47] The report continues: "Not even close family members will share the entire constellation of features that comprises a highly distinctive style like [the retired Judge's], *even if one family member is trained by the other. Nor will family members be able to produce accurate, detailed imitations of such styles*."[48] That is, the expert accounted for *both* the fact that the law clerk is the retired Judge's son and that he had worked with the retired Judge, but that did not change her conclusion. The retired Judge alone could be responsible for the August 22 order's "highly distinctive" style.[49]

The expert's report took time to finalize, but once everything was together, the defense shared it with the State and then in camera with Judge Hyland.[50] As already mentioned, the defense felt that an in-camera meeting was appropriate given the sensitive nature of the allegations. If there was a simple explanation for everything, the defense wanted to know rather than file anything publicly that could cause undue embarrassment.

At that meeting, Judge Hyland was attentive, gracious, and (most importantly) candid.[51] He listened, asked questions, and admitted that before he had finished reading the briefs, the law clerk had come to him with a completed draft.[52] Judge Hyland and the law clerk then went back and forth with the edits before the judge finally adopted the order.[53] After orally talking through the issues, including those related to a second expert's initial report, which couldn't be finalized before March, counsel (for both sides) expressed the need to create a record.[54] Defense counsel then

[47] App. 34 n.1.
[48] App. 34 n.1 (emphasis added).
[49] App. 59–61.
[50] App. 64–67, 72.
[51] App. 72–73.
[52] App. 72.
[53] App. 72.
[54] App. 72.

handed over the expert's report and a cover letter—these were all made part of the record in subsequent filings.[55] Additionally, the record includes an affidavit that accurately reflects what happened at the in-camera meeting.[56]

B. Judge Hyland denied the motion to vacate the ghostwritten order without holding an evidentiary hearing.

The lawyers left with the expectation that there would be some guidance on how to proceed the next week, but they didn't get any.[57] With no guidance, the defense sought (among other relief) an evidentiary hearing.[58] The defense filed a brief and supporting materials under seal—hoping to not embarrass anyone if counsel was wrong.[59] Those filings have since been unsealed.[60]

Despite the expert's report and everything that had been laid out in the filings, Judge Hyland denied the motions without ordering a response or holding a hearing.[61] Absent from the order was any acknowledgement of the expert's report.[62] Additionally, while the order suggests that Judge Hyland himself undertook some kind of investigation, it doesn't detail those steps or explain, for example, how or why he got a full draft of the order before he'd even finished reading the briefs.[63]

C. The Court of Appeals denied the defense's permissive appeal without explanation.

The defense then filed a timely petition for permissive appeal, which the Court of Appeals denied.[64] It didn't explain, in any way, shape, or form why the criteria for interlocutory appeal weren't satisfied. Instead, it merely cited the relevant statute and stated its conclusion: "We determine that the petition does not meet the criteria under WIS. STAT. § 808.03(2)."[65]

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[55] App. 28–67.
[56] App. 68–73.
[57] App. 73.
[58] App. 6, 7, 9.
[59] App. 11, 28.
[60] App. 5.
[61] App. 1.
[62] App. 1–2.
[63] App. 2–3.
[64] App. 1.
[65] App. 1.

IV. Reasons to Grant Review.

This Court should take this case, vacate the order denying an evidentiary hearing, and remand for further proceedings. If an expert report from a forensic linguist identifying that a private citizen wrote a judicial order isn't enough to get a hearing about a misconduct allegation of this nature, it's unclear how any defendant could ever get one.[66] Yet case law is clear: the law clerk's actions are imputed to the judge.[67] And in cases of this sort, the proper course of action is to have an evidentiary hearing.[68] That's all the defense is seeking: an evidentiary hearing before a different judge.[69] The question of what comes *next* flows from the hearing.

A. Troupis is likely to succeed on the merits.

1. Faced with a credible misconduct allegation, a court must hold a hearing.

Like all defendants, the Constitution assures Troupis that he'll receive due process of law.[70] At a minimum, "[a] fair trial in a fair tribunal is a basic requirement of due process."[71] The test is objective.[72] That's critical. Courts consider what an "average person on the street" would think.[73] For example, "disqualification should follow if the reasonable man, were he to know all the circumstances, would harbor doubts ...."[74] Again, those rules apply equally to the judge as well as his staff: "the clerk is forbidden to do all that is prohibited to the judge."[75] Put differently: "It is the duty of the … clerk as much as that of the … judge to avoid any contacts outside the record that might affect the outcome of the litigation."[76]

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[66] *See Hall*, 695 F.2d at 179.
[67] *E.g., Vaska*, 955 P.2d at 945–47; *see also Miller Indus., Inc. v. Caterpillar Tractor Co.*, 516 F. Supp. 84, 89 (S.D. Ala. 1980).
[68] *See Hall*, 695 F.2d at 179; *Vaska*, 955 P.2d at 946–47.
[69] *Hall*, 695 F.2d at 179; *Vaska*, 955 P.2d at 946–47.
[70] *See* U.S. Const. amends. V, XIV; Wis. Const. art. I, § 8(1).
[71] *In re Murchison*, 349 U.S. 133, 136 (1955).
[72] *State v. Goodson*, 2009 WI App 107, ¶9, 320 Wis. 2d 166, 771 N.W.2d 385.
[73] *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980).
[74] *Id.*
[75] *Hall*, 695 F.2d at 179.
[76] *Id.* (quoted source omitted).

These constitutional standards are reflected in the Wisconsin Statutes and the Supreme Court Rules. One statute, for example, provides that a judge is disqualified "[w]hen a judge determines that, for any reason, he or she cannot, or it appears he or she cannot, act in an impartial manner."[77] One Supreme Court Rule explicitly requires that "a judge … avoid impropriety and the appearance of impropriety," including the appearance that the judge was influenced by "family, social, political or other relationships."[78] And yet another rule declares "a judge may not initiate, permit, engage in or consider ex parte communications."[79] A comment to that rule expressly says it applies to law clerks.[80]

As both judges and law clerks are bound by the same demands, neither a law clerk nor a judge can have extrajudicial communications, including communication with others beyond the direct parties.[81] Sometimes cases refer to those as ex parte communications.[82] Meaning: everything from leaking stories to the media to talking about the case outside of chambers is prohibited.[83]

Relevant here, the prohibition extends to consulting with or having another person (outside the judicial staff) draft the judge's order.[84] That point is fully illustrated by *In re Tesmer*.[85] There, a judge had her friend (a law professor) write her opinions.[86] Even though she adopted the opinions—she signed them and made them her own—that was deemed improper: "Judge Tesmer's … use of his assistance to draft opinions in those matters violated the prohibition of private communications designed to influence a judge's decision."[87]

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[77] Wis. Stat. § 757.19(2)(g).
[78] SCR 60.03(2).
[79] SCR 60.04(1)(g).
[80] *See* SCR 60.04 cmt.
[81] *See Tesmer*, 219 Wis. 2d at 717–19; *see also In re Fine*, 13 P.3d 400, 414 (Nev. 2000) (per curiam); *United States v. Microsoft Corp.*, 253 F.3d 34, 107–17 (D.C. Cir. 2001) (per curiam); *In re Benge*, 24 So. 3d 822, 832–36 (La. 2009).
[82] *See Microsoft Corp.*, 253 F.3d at 46.
[83] *Id.*; *Fine*, 13 P.3d at 414.
[84] *Tesmer*, 219 Wis. 2d at 716–17.
[85] *Id.* at 710–11.
[86] *Id.*
[87] *Id.* at 711.

That's really the first step in the analysis: Is the August 22 order the product of an improper attempt to "influence a judge's decision"?[88] Yes. That's certain and clear from *Tesmer*. There's no other way to read that decision. If anything, this situation is worse than *Tesmer* because Judge Hyland didn't even know that the retired Judge had written the order. Again, courts have all sorts of rules designed to prevent unknown influences.

To address a strawman, the defense isn't saying that *every* violation of the Judicial Code necessarily violates due process and necessitates an evidentiary hearing. But the reasoning in *Tesmer* matters: the relevant rules exist to prevent an improper influence on the judicial decision-making process. And that's what the defense has credibly alleged.

The next questions are what a litigant must show to get an evidentiary hearing and whether Judge Hyland erred in denying one. These issues don't come up often, so there's only a small universe of cases dealing with them; yet their consistent holdings inform the analysis.[89]

Sometimes, when a court is confronted with an allegation of law-clerk misconduct, the judge is in a *very* good position to figure it out. The questions are often cut-and-dry: Did the law clerk accept a job with a firm that has a case before the judge? If so, the decision must be vacated.[90] Employment-related conflicts are the most frequent instances of law-clerk misconduct.[91]

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[88] *Id.*

[89] *E.g., Vaska*, 955 P.2d at 945–46; *see, e.g., Salazar*, 2021 WL 1688017, at *2; *Haeg v. State*, 2016 WL 7422687 (Alaska Ct. App. Dec. 21, 2016); *Hunt v. Am. Bank & Trust Co. of Baton Rogue*, 783 F.2d 1011, 1015–16 (11th Cir. 1986).

[90] *See First Interstate Bank of Ariz., N.A. v. Murphy, Weir & Butler*, 210 F.3d 983, 985–86 (9th Cir. 2000); *United States v. Persico*, No. 04-CR-911, 2006 WL 8449558, at *1–2 (E.D.N.Y. May 18, 2006).

[91] *See First Interstate Bank of Ariz*, 210 F.3d at 987–88; *see also Hunt*, 783 F.2d at 1015–16; *Persico*, 2006 WL 8449558, at *2.

But there are other instances where the decision isn't so simple. In those cases, courts are clear. The proper course is to have an evidentiary hearing: "Judge Curda refused Vaska's request for an evidentiary hearing, and thus many of the critical facts remain clouded …. At present, all we can say is that there is reason to suspect that Rowland may have done significant work on Vaska's case."[92] When there is "reason to suspect" an impropriety, the proper course is: remand "for an investigation of these issues."[93]

While no Wisconsin court has addressed what's necessary to get an evidentiary hearing on misconduct of this nature, they've previously addressed a similar question on a related topic: *juror* misconduct.[94] In that situation, they're clear: "due process is of such paramount importance that when it is conceded that a juror was sleeping, *summarily foreclosing further inquiry is an erroneous exercise of trial court discretion*."[95] They've similarly ordered evidentiary hearings when a party moves for a new trial based on an affidavit that a juror had access to information not in the record.[96] Those same concerns (and standards) should apply here and illustrate the need for an evidentiary hearing.[97]

Here, given the need for an evidentiary hearing, this Court should also explain what that hearing should look like. Among other potential issues, Judge Hyland shouldn't preside. That's for two reasons. First, judges can't impartially weigh the credibility of their own staff.[98] And here, Judge Hyland has (apparently) already done *some* investigation and weighed the law clerk's credibility.[99] That's improper: "A judge must not independently investigate facts … and must consider only the evidence presented."[100]

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[92] *Vaska,* 955 P.2d at 946.
[93] *Id.*; *see, e.g.*, *Salazar*, 2021 WL 1688017, at *2; *Haeg*, 2016 WL 7422687 at *6.
[94] *State v. Hampton*, 201 Wis. 2d 662, 673, 549 N.W.2d 756 (Ct. App. 1996).
[95] *Id.* (emphasis added).
[96] *Manke v. Physicians Ins. Co. of Wis.*, 2006 WI App 50, ¶¶41–42, 289 Wis. 2d 750, 712 N.W.2d 40; *see also After Hour Welding, Inc. v. Laneil Mgmt. Co.*, 108 Wis. 2d 734, 741–42, 324 N.W.2d 686 (1982).
[97] *See United States v. Brande*, 329 F.3d 1173, 1176–77 (9th Cir. 2003).
[98] *See LaSalle Nat. Bank v. First Connecticut Holding Grp., LLC.*, 287 F.3d 279, 292 (3d Cir. 2002).
[99] App. 2–4.
[100] SCR 60.04(g) cmt.

Second, Judge Hyland is himself a witness, and he (of course) cannot assess himself as a witness.[101] The Wisconsin Statutes make that clear: "When a judge is … a material witness," he "shall disqualify himself."[102] Yet, by denying the request for an evidentiary hearing, Judge Hyland did just the opposite.

The defense has the right to develop all the necessary facts to pursue this motion. That will include *how* the law clerk brought Judge Hyland a completed draft of the order *before* Judge Hyland had finished the briefs.[103] It will include *what* direction the law clerk was given. And it will likely also include *what* the initial draft contained, including the metadata. All of that must be tested and assessed at a hearing where counsel is free to ask questions and examine the evidence.

Without that opportunity, the defense is left to simply accept that the law clerk says that didn't happen.[104] Maybe that's true, but the evidence suggests otherwise. Indeed, it's impossible to frame (as Judge Hyland did) an expert's report of this nature as presenting *no* evidence.[105] Maybe a judge at an evidentiary hearing will say it's outweighed by other evidence, but it certainly can't be looked at as *no* evidence. That report—plus everything else contained in the record—called for an open airing of the facts.[106] By elevating the law clerk's denial above the evidence and denying the evidentiary hearing, Judge Hyland didn't dispel the suspicions of misconduct—he amplified them.

To be clear, an allegation of this sort was not made lightly, but *very* reluctantly.[107] The record makes that pellucid.[108] In the face of those steps, the allegations, and the nature of this very case, the best—and only—course of action was for Judge Hyland to order an evidentiary hearing.

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[101] Wis. Stat. § 906.05.
[102] Wis. Stat. § 757.19(2)(b).
[103] App. 72.
[104] App. 1–3.
[105] App. 2.
[106] *See, e.g.*, *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 882–83 (2009); *Goodson*, 320 Wis. 2d 166, ¶¶7–9.
[107] App. 19–20, 66–67.
[108] App. 24, 66–67.

The State really only has two counterarguments. First, it claims nothing alleged amounts to a due process problem—at all. Second, it claims that misconduct allegations must be litigated exclusively by the Judicial Commission. Neither holds water.

Consider this hypothetical: Let's say the law clerk in this case took a bribe to pass off the August 22 order as his own. It wasn't animus or politics, but pure mercenary reasons influencing the decision to pass off the order. The law clerk performs all the same steps as before, and Judge Hyland (unaware) does too, relying on the already prepared draft that he'd been handed *before* he'd finished reading the briefs. Would anyone seriously contend that there's no due process problem? No.

By the same token, no one would seriously contend that it's all just one big matter for the Judicial Commission. While, of course, the Judicial Commission can investigate (and probably should), that's got nothing to do with whether Troupis's due process rights have been violated. That's a question that can be addressed in the criminal proceeding. A judge who, for example, says a racial epithet at sentencing violates a professional rule and should be disciplined.[109] But that judge *also* violates that specific defendant's constitutional rights.[110] It's not an either/or situation; rather, it's a both/and situation.

Lastly, it's worth noting what the State hasn't argued. It's done nothing to contest the underlying allegations. It hasn't retained its own expert. It hasn't argued that the defense's expert is not, in fact, an expert. It hasn't contested that Judge Hyland admitted he got a full draft before he'd finished reading the briefs. Again, prosecutors were present when he said it. In short, it's done absolutely nothing to defeat the prima facie case of misconduct that the defense has put forth. Given that *all* the record evidence points in one direction, there must to be an evidentiary hearing.

[109] *See, e.g.*, SCR 60.04(1)(d).
[110] *See, e.g.*, *Ex Parte Halprin*, 708 S.W.3d 1, 2 (Tex. Ct. Crim. App. 2024).

2. This Court should require the Court of Appeals to provide some reasoning when it makes a discretionary decision.

Turning to the *Jendusa* issue, a pause is helpful to frame how it relates to the first question presented. In *Jendusa*, a majority of this Court reached the merits even though it also concluded that the Court of Appeals properly exercised its discretion in denying a permissive appeal with no explanation.[111] Undoubtedly, if this Court believes a merits issue is worthy of its review, it can reach the issue regardless of what a lower court did.[112] After all, this Court is the State's supreme tribunal: that's been settled for a long, *long* time.[113] Here, like *Jendusa*, there's no reason not to reach the merits of the first question presented.

Jendusa, though, is bad law, and this Court should take the chance to fix it. In nearly every other context, as explained below, the lack of explanation alone would be the error sufficient to warrant reversal.

To understand why, this Court should first consider the history and structure of the Wisconsin Court System. As already stated, the Wisconsin Constitution makes this Court, not the Court of Appeals, the *supreme* tribunal.[114] It's this Court, not the Court of Appeals, that's responsible for answering tough questions of state law.

The Court of Appeals was created in the late 1970s by constitutional amendment so that *this Court* could focus on its law-developing function.[115] Here's how a report to the Governor described the problem:

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[111] *Jendusa*, 396 Wis. 2d 34, ¶2 (majority opinion).
[112] *Cf., e.g.*, *State ex rel. La Crosse Tribune v. Cir. Ct. for La Crosse Cnty.*, 115 Wis. 2d 220, 228–30, 340 N.W.2d 460 (1983).
[113] *See Petition of Heil*, 230 Wis. 428, 436, 284 N.W. 42 (1938) (per curiam).
[114] *See Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57, ¶68, 403 Wis. 2d 1, 976 N.W.2d 263 (Rebecca Grassl Bradley, J., concurring).
[115] Matthew E. Garbys, Comment, *A Shift in the Bottleneck: The Appellate Caseload Problem Twenty Years After the Creation of the Wisconsin Court of Appeals*, 1998 Wis. L. Rev. 1547, 1548–49.

> Increasing appellate backlogs necessarily produce a dilution in craftsmanship. ... The Supreme Court is cast in the role of a "case-deciding court"—one which merely reacts to individual cases and thus slights its law-stating function.
>
> ....
>
> Cases involving major questions of substantive law may be decided on the basis of superficial issues.[116]

Simply put, the entire point of having a Court of Appeals is to better position this Court to decide high-profile, important matters. The tiered review system is set up so that this Court can take a look at the reasoning of the Court of Appeals and decide what to do. As this Court's repeatedly said, it "benefits from the analyses of … the Court of Appeals."[117]

This Court recognized as much in *Scott*.[118] In that case, about a discretionary stay pending appeal, the holding was crystal clear: "We … conclude that the Court of Appeals' failure to explain its exercise of discretion … is an erroneous exercise of discretion."[119] The decision was, notably, unanimous—this wasn't controversial, and there weren't any caveats. As all of the justices reasoned: "The Court of Appeals should explain its discretionary decision-making to ensure the soundness of that decision-making and to facilitate judicial review."[120] Simply put, this Court—the *Supreme* Court—can't determine whether a lower court's reasoning is wrong when it doesn't know what that reasoning is. For example, if a sentencing court doesn't explain why it imposed a particular sentence, it gets reversed.[121] That's the simple reasoning that underlies *Scott*: discretionary power isn't "unfettered decision-making."[122]

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[116] Citizens Study Comm. on Jud. Org., *Report to Governor Patrick J. Lucey* 78 (1973) (on file at the State Law Library).
[117] *E.g.*, *State v. Quintana*, 2008 WI 33, ¶¶11–12, 308 Wis. 2d 615, 748 N.W.2d 447 (quoted source omitted).
[118] *State v. Scott*, 2018 WI 74, 382 Wis. 2d 476, 914 N.W.2d 141.
[119] *Id.*, ¶41 (cleaned up).
[120] *Id.*, ¶40 (cleaned up).
[121] *See generally State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197; *McCleary v. State*, 49 Wis. 2d 263, 182 N.W.2d 512 (1971).
[122] *Hartung v. Hartung*, 102 Wis. 2d 58, 66, 306 N.W.2d 16 (1981).

Just three years later, by one vote, *Jendusa* muddied up the clear rule in *Scott*. A simple majority created a narrow exception to the *Scott* rule for denials of permissive appeals.[123] But it didn't have the benefit of the constitutional and historical arguments discussed above. Instead, it relied on a policy argument: the majority appears to have reasoned that because this Court denies the vast, *vast* majority of permissive appeals, it doesn't really benefit from having any analysis from the Court of Appeals.[124] And lest the defense be accused of building a strawman, here are the two key sentences: "[W]e reaffirm that this Court will generally not review the Court of Appeals' denial of a petition for interlocutory appeal. *That conclusion* also leads us to reject the parties' request to extend … *Scott*."[125]

The *Jendusa* majority's reasoning is unsound. Its main premise is undoubtedly true (this Court doesn't take permissive appeals lightly), but the conclusion doesn't follow. Consider this point: this Court denies virtually *all* petitions for review even from final judgment. At most, it takes a few dozen each year. Yet, this Court wouldn't say that because it doesn't take many petitions for review, what the Court of Appeals says doesn't matter. If anything, making the Court of Appeals the de facto "final" authority over virtually all permissive appeals makes it even more paramount that the Court show its work.

This Court should take this chance to overrule—or at least clarify—*Jendusa*. It was wrongly decided, and, indeed, this Court went on in *Jendusa* to address the merits notwithstanding the conclusion that the Court of Appeals didn't err. It didn't explain why it reached the merits, creating internal tension and leaving future litigants guessing: when will this Court reach the merits of a permissive appeal? The decision also conflicts with *Scott* and how this Court handles discretion in virtually every other context.

[123] *See Jendusa*, 396 Wis. 2d 34, ¶21.
[124] *See id.*, ¶¶20–21.
[125] *Id.* (cleaned up) (emphasis added).

B. This petition meets all the criteria for interlocutory appeal and for review.

There are three statutory factors for granting an interlocutory appeal. The Court of Appeals may grant such an appeal if it determines an appeal will:

- "Clarify an issue of general importance in the administration of justice."
- "Protect the petitioner from substantial or irreparable injury;" or
- "Materially advance the termination of the litigation or clarify further proceedings in the litigation."[126]

This Court's criteria for review are similar. Among them, it grants petitions that present important questions of law with statewide impact.[127]

Here, the criteria for both interlocutory appeal and review are satisfied. First, this petition presents a chance to answer important questions that will guide future litigation. While this Court has explicitly held that materially identical activity is judicial misconduct, the exact issues here aren't addressed in any Wisconsin appellate court opinion (published or unpublished).[128] No Wisconsin court has addressed what evidence a party must present to get an evidentiary hearing or whether a judge involved in the alleged misconduct can rule in the first instance. These are issues of statewide importance that go to the very heart of the judicial decision-making process: how the sausage gets made. Courts can't ignore the allegations when a party presents credible evidence, e.g., an expert's report. And again, the question, at this stage, isn't whether anyone engaged in misconduct; it's only whether the defense is entitled to a hearing on that issue. For that reason, there's no factfinding necessary.[129]

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[126] Wis. Stat. § 808.03(2)(a).
[127] Wis. Stat. § (Rule) 809.62(1r)(c)2.
[128] *See Tesmer*, 219 Wis. 2d 708.
[129] Wis. Stat. § (Rule) 809.62(1r)(c)3.

Second, an evidentiary hearing is necessary to protect Troupis from substantial or irreparable harm.[130] It's easy to say (as Judge Hyland did) that this couldn't have happened. But what if the allegations are true? To put it mildly, that would mean the defense hasn't been getting a fair shake. No one wants an allegation of impropriety polluting a criminal trial. Society wants fair, impartial, and independent judges and judicial staff—it's one of the reasons that (nearly all) exercises of discretion must be explained on the record.[131] Everyone wants transparency. And even if the expert's report is wrong, an evidentiary hearing will remove any hint of a stain from these proceedings. To quote the great Justice Brandeis, "sunlight is said to be the best of disinfectants."[132]

Lastly, regardless of whether the August 22 order reached the same outcome that would've been reached but for the misconduct, its specific language matters. The order sets forth what the rules will be going forward, from motions in limine to jury instructions. And while that's important in any case, it's especially important here. This trial will be very long and expensive. It's an exceedingly complex case—an alleged conspiracy to overturn a Presidential election. To spare Troupis (and the taxpayers) costly litigation, the decisions need to be right the first time. And, of course, there's a serious possibility that another judge, without the improper influence, could reach a different outcome—potentially ending the litigation altogether. To quote the Fifth Circuit: "The judge's assertion that he had made up his mind immediately after hearing the case, without the law clerk's assistance, is immaterial. Every judge has suffered a change of heart after reaching a tentative decision."[133] Here, Judge Hyland got a draft before he'd even finished considering the arguments—having a lengthy and completed draft would have an anchoring effect on anyone.[134]

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[130] *See* Wis. Stat. § 808.03(2)(b).
[131] *E.g.*, *Scott*, 382 Wis. 2d 476, ¶¶35–41.
[132] Louis Brandeis, *Other People's Money* 92 (Frederick A. Stokes Co., 1914).
[133] *Hall*, 695 F.2d at 180.
[134] *See* App. 72.

V. Conclusion.

To end where this petition started, Troupis simply wants this to be treated like a normal criminal case. It's difficult to believe that allegations as serious as those made below—in any other case—could be swept aside. Here, the evidence suggests that the retired Judge wrote this opinion, and that evidence is given credence by the forensic linguist's 34-page opinion on *why* no one but the retired Judge could have written the order. No one can credibly say that the defense has *no* evidence to support its claims. And thus, the defense respectfully asks this Court to grant the petition and ultimately remand for an evidentiary hearing.

Respectfully submitted, February 20th, 2026.

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Form & Length Certification

I hereby certify that this petition conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition produced with a proportional serif font. The length of this petition is 6,983 words.

Dated: February 20th, 2026.

Electronically Signed by Skylar R. Croy
Skylar R. Croy

Appendix Certification

I hereby certify that filed with this petition, either as a separate document or as a part of this petition, is an appendix that complies with Wis. Stat. § (Rule) 809.62(2)(f) and that contains, at a minimum:(1) a table of contents; (2) the decision and opinion of the Court of Appeals; (3) the findings or opinion of the Circuit Court necessary for an understanding of the petition; and (4) a copy of any unpublished opinion cited in the petition.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: February 20th, 2026.

Electronically Signed by Skylar R. Croy
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