

# Karofsky rips Trump lawsuit to throw out votes, conservatives raise questions about some absentee ballots

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Liberal Supreme Court Justice Jill Karofsky on Saturday ripped Donald Trump's lawsuit seeking to throw out 221,000 votes in heavily Dem Dane and Milwaukee counties, accusing the president of trying to disenfranchise voters in Wisconsin's most diverse communities.

Meanwhile, conservative Chief Justice Pat Roggensack raised concerns about the absentee ballots collected in Madison parks more than a month before the Nov. 3 election. She likened the practice — dubbed “Democracy in the Park” — to early voting, which wasn't allowed when the events were run.

The court met for rare Saturday oral arguments in what looks like the president's last shot to overturn Joe Biden's win in Wisconsin before the Electoral College meets on Monday. During the nearly 90 minutes of oral arguments, a federal judge in Milwaukee rejected one of the president's suits. On Friday, the U.S. Supreme Court refused to hear a suit Texas filed seeking to throw out the results in Wisconsin and three other states.

Karofsky, who was elected to the bench this spring, had several tense exchanges with Jim Troupis, the attorney representing Trump. Her first question focused on why the lawsuit only involved Dane and Milwaukee counties, charging the suit was about not just “seeding, but watering and nurturing doubt about a legitimate election.”

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“This lawsuit, Mr. Troupis, smacks of racism,” Karofsky said. “I do not know how you can come before this court and possibly ask us for a remedy that is unheard of in American history.”

Troupis countered the absentee votes being challenged didn’t follow proper procedures under state law, which mandates they can’t be counted if they were improperly cast.

“I did not make that decision. Donald Trump did not make that decision. The Legislature made that decision,” Troupis said.

The two had another testy exchange toward the end of oral arguments.

“What is America? It is self-governance. It is not governance from a king and what you want is for us to overturn this election for your king to stay in power and that is so unamerican,” Karofsky said.

Troupis countered, “I believe this country was founded on the rule of law.”

The suit challenges ballots in the two counties on four grounds:

\*170,140 ballots that were cast early, in-person. State law requires a written request for an absentee ballot. Both counties, like others in Wisconsin, have the envelope in which early, in-person votes are placed double as the written request. Liberal Justice Rebecca Dallet questioned why Trump didn’t previously challenge the envelope, which has been used by Wisconsin counties for a decade, including in the president’s 2016 Wisconsin win. Troupis countered the envelope doesn’t comply with the statute, and the issue didn’t impact Trump’s 2016 win of Wisconsin by 22,748 votes.

\*5,517 ballots where clerks filled in missing information on the absentee ballot envelope. The suit alleges the guidance from the Wisconsin Election Commission that clerks can fill in things like the ZIP code or the state of residence for a witness doesn’t follow the law and those ballots should be disqualified. The advice has been in place since October 2016, and conservative Justice Annette Ziegler asked what authority clerks had to fill in that information.

“Is it too much to ask that witnesses put down their address so they could be found if necessary?” Ziegler asked Assistant Attorney General Colin Roth, representing the Elections Commission.

Roth answered the provision in the law is only there so that witnesses can be found if they need to attest to anything in how the ballot was cast. It's permissible for clerks to fill in that information after receiving the ballots to make it easier to find witnesses if the need arises.

\*28,395 ballots cast by those who claimed indefinitely confined status after March 25, when Dane and Milwaukee county clerks suggested on social media that voters could check that status in light of Gov. Tony Evers' stay-at-home order during the initial stages of the COVID-19 pandemic. The indefinitely confined don't have to provide a copy of their photo ID to vote absentee, and the Trump campaign alleges those votes were cast inappropriately.

Conservative Justice Rebecca Bradley raised concerns the Trump campaign was seeking to throw out all of the votes from those who checked that status after March 25 even though there were likely voters who complied with the law and "I don't see anything in the record that would enable us to discern" those who fraudulently claimed the status.

Troupis argued clerks had a duty to act as "sentries" to guard against the improper use of the status and all of the votes should be thrown out because of that.

Guidance published in March by the Elections Commission indicated local clerks could contact a voter if they did not believe that voter understood the restrictions on the status when they claimed it. But according to that guidance, "they should do so using appropriate discretion as voters are still entitled to privacy concerning their medical and disability status."

"Any request for confirmation of indefinitely confined status should not be accusatory in nature," the guidance says.

The lawsuit cites less than a dozen Facebook posts showing voters who claimed the status in public since this spring, and Dallet mocked the idea of relying on social media posts to disqualify votes.

"If they could go to a rally, they could probably get to the polls," Troupis argued.

\*17,271 ballots collected by poll workers for the Madison Clerk's office at so-called Democracy in the Park events Sept. 26 and Oct. 3. The city stationed poll workers at city parks to collect ballots to give voters an avenue to return them without putting

them in the mail. The suit alleged the sites weren't legally established as absentee ballot collection points.

Roggensack noted state law requires absentee ballots to be returned via the mail or in person to clerks, saying "That, frankly, troubles me."

Roth countered state law allows voters to return their ballots to an agent of the clerk, noting "how government operates" with other employees in the clerk's office receiving absentee ballots.

He also argued the collection sites didn't involve handing out ballots. That means it's not an alternative voting site, which would be illegal.

But Roggensack was concerned that some poll workers at the parks also served as witnesses and questioned if that amounted to early voting, which is only allowed in the two weeks before an election.

"I understand that they didn't provide ballots, but the people still voted there with a witness and the ballots were gone," Roggensack said.

Bradley questioned John Devaney, who represented Biden, how the court could ignore state law mandating the disqualification of absentee ballots that weren't cast in accordance with Wisconsin statutes.

Devaney argued the commission advice complied with the law. What's more, he argued there is a long precedence of counting votes cast by those who were following the advice of government officials even if that guidance turned out to be incorrect.

"If this remedy is accepted, it'd outright disenfranchisement," Devaney said.