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03-08-2022
CIRCUIT COURT
DANE COUNTY, WI
2021CV003007

BY THE COURT:

DATE SIGNED: March 8, 2022

Electronically signed by Frank D Remington
Circuit Court Judge

STATE OF WISCONSIN DANE COUNTY BRANCH 8 CIRCUIT COURT

AMERICAN OVERSIGHT,

Petitioner,

vs. Case No. 21-CV-3007

ASSEMBLY OFFICE OF SPECIAL COUNSEL, et al.

Respondents.

DECISION AND ORDER

INTRODUCTION

Last week, the Court ordered the Assembly Office of Special Counsel ("OSC") to release records responsive to American Oversight's requests in a five-part decision and order. Decision and Order, March 2, 2022, dkt. 165 ("Order I.") This is the sixth and final part of the Court's ruling, in which the sole issue is OSC's motion for a stay pending appeal.

To demonstrate that it is entitled to this relief, OSC must show that four interrelated considerations weigh in favor of a stay. *Waity v. LeMahieu*, 2022 WI 6, ¶49, 400 Wis. 2d 356, 969 N.W.2d 263. OSC fails to make any of these showings: OSC fails to make a "strong showing of

its likelihood of success on appeal" and does not meaningfully discuss any of the remaining three factors. Considered together, OSC fails to show that these factors weigh in favor of a stay pending appeal and, accordingly, OSC's motion is denied.

VI. STAY PENDING APPEAL

A. Procedural posture.

The entire background of this litigation is not material to OSC's motion for a stay and is set forth in Order I.[1]

On February 17, 2022, OSC filed a motion seeking a stay pending appeal "if the Court determines any documents or portions of documents should be released." OSC Mtn., dkt. 153:7. Specifically,

> [T]he OSC now moves the Court for an Order… Staying release pending appeal for 30 days (or for such other time as the Court of Appeals may order) following the Court's ruling(s) on disclosure of any documents or portions of documents the Court may order to be released.

OSC Mtn., dkt. 153:2. American Oversight has filed a brief opposing the stay. Dkt. 169. OSC has waived its reply. Dkt. 167 (Mr. Dean's letter advising the Court that "we will not submit reply briefing…")

On March 2, 2022, the Court ordered the release of OSC's documents, then stayed that order until the previously scheduled March 8, 2022 oral arguments. Order I, dkt. 165:50-52. On March 8, the parties appeared for oral argument.

B. Legal standard for a stay pending appeal.

"Courts must consider four factors when reviewing a request to stay an order pending

[1] Order I quashed the writ of mandamus with respect to Edward Blazel, but otherwise denied the Respondents' motions. Order I further ordered the assembly, OSC, and Robin Vos to pay damages pursuant to Wis. Stat. §§ 19.37(2)-(4).

appeal." *Waity v. LeMahieu*, 2022 WI 6, ¶49, 400 Wis. 2d 356, 969 N.W.2d 263; *State v. Gudenschwager*, 191 Wis. 2d 431, 440, 529 N.W.2d 225 (1995). These four factors are:

> (1) whether the movant makes a strong showing that it is likely to succeed on the merits of the appeal;
>
> (2) whether the movant shows that, unless a stay is granted, it will suffer irreparable injury;
>
> (3) whether the movant shows that no substantial harm will come to other interested parties; and
>
> (4) whether the movant shows that a stay will do no harm to the public interest.

Id. These four factors "are not prerequisites but rather are interrelated considerations that must be balanced together." *Id.*

C. OSC fails to show that any of the factors weigh in favor of a stay.

The Court proceeds by individually examining each of the four factors to determine the degree to which each weighs in favor of a stay. After doing so, the Court then considers all four factors together as interrelated considerations to decide whether a stay should issue.

1. OSC fails to make a strong showing that it is likely to succeed on the merits of the appeal.

The first factor is "whether the movant makes a strong showing that it is likely to succeed on the merits of the appeal." *Waity*, 2022 WI 6, ¶49. Earlier this year, our supreme court reexamined this factor to make three observations:

> When reviewing a motion for a stay, a circuit court cannot simply input its own judgment on the merits of the case and conclude that a stay is not warranted…
>
> When reviewing the likelihood of success on appeal, circuit courts must consider the standard of review, along with the possibility that appellate courts may reasonably disagree with its legal analysis…

> When reviewing the likelihood of success on appeal, the probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury the plaintiff will suffer absent the stay. Thus, the greater the potential injury, the less a movant must prove in terms of success on appeal. However, the movant is always required to demonstrate more than the mere possibility of success on the merits.

Id. ¶¶52-54 (internal citations and quotations omitted).

Accordingly, the Court sets aside its own judgment about OSC's likelihood of success on appeal. Instead of applying its own judgment, the Court retraces the findings made in Order I, setting forth the standard of review as each issue would come to an appellate court, and then discussing how that court might reasonably apply its judgment.

a. De novo review of the specificity of OSC's reason for denying access to the requester.

The Court's first finding was that the response: "documents that contain strategic information to our investigation will continue to be help (sic)" failed to provide the requester with a specific reason for the denial of access to records. Order I, dkt. 165:13-14. The specificity of a response is reviewed de novo. *Vill. of Butler v. Cohen*, 163 Wis. 2d 819, 824, 472 N.W.2d 579 (Ct. App. 1991).

Even though the standard of review here is de novo, appellate courts could not reasonably agree that OSC provided a specific reason for secrecy because "strategic information" is vague as to be meaningless[2] and fails to meet well-established precedential benchmarks: "To meet the specificity requirement, the custodian must give a public policy reason that the record warrants confidentiality." *Journal/Sentinel, Inc. v. Aagerup*, 145 Wis. 2d 818, 823, 429 N.W.2d 772 (Ct. App. 1988) (citing *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 279 N.W.2d 179 (1979)). In

[2] Strategy means "a careful plan or method." *www.merriam-webster.com/dictionary/strategy*, last visited Feb. 26, 2022

Aagerup, on which most OSC relies, a coroner explained that a specific record (an "autopsy report") was withheld for a specific reason ("crime detection"). *Id.* at 822. Here, OSC did not explain what records ("some records") would be withheld for what reason ("strategic information.") OSC's radical departure from the test for specificity would allow any authority to speak: "strategy" and withhold all of its records.

b. De novo review of OSC's constitutional / contractual argument.

The Court next found that OSC failed to show a "clear statutory exemption" from disclosure arising from a combined constitutional and contractual argument. Order I, dkt. 16-17. In rejecting OSC's argument, the Court made a series of legal findings, which are reviewed de novo. *Waity*, 2022 WI 53. ¶53.

The Court first found 2021 Assembly Resolution 15 was plainly not an attempt by the assembly to suspend the public records law. Appellate courts could not reasonably disagree with this conclusion, rooted in the elementary principle that:

> It is, of course, a solemn obligation of the judiciary to faithfully give effect to the laws enacted by the legislature…
>
> Thus, we have repeatedly held that statutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.

State ex rel. Kalal v. Cir. Ct. for Dane Cnty., 2004 WI 58, ¶¶44-45, 271 Wis. 2d 633, 681 N.W.2d 110 (citations and quotations omitted).

The Court also found that OSC failed to demonstrate the existence of a contract assigning it a constitutional exemption to the public records law. Appellate courts could not reasonably disagree with this finding because they are unlikely to be presented with the issue at all: OSC did not attempt to demonstrate the existence of an enforceable contract (OSC Br., dkt. 99:8-14; OSC

Reply Br., dkt. 150:6-9) except to make the unsupported claim that one might exist (Trans. of oral arguments, dkt. 148:26, 49-50)[3]. Accordingly, the issue is forfeit. *Loren Imhoff Homebuilder, Inc. v. Taylor,* 2022 WI 12, ¶14, __ Wis. 2d __, __ N.W.2d __ ("There is no subjective component to the forfeiture analysis; it occurs by operation of law."); *State v. Huebner,* 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 717 ("It is a fundamental principle of appellate review that issues must be preserved at the circuit court.")

c. De novo review of OSC's statutory arguments.

The Court next rejected two statutory arguments. These are legal findings and are again reviewed de novo. *Waity,* 2022 WI 53. ¶53.

Addressing OSC's first statutory argument, the Court found that Wis. Stat. § 12.13(5) did not provide OSC a "clear statutory exemption" from disclosure for two reasons. The Court found that an ambiguous statute cannot fall under the umbrella of "clear statutory exemptions." Order I, dkt. 165:23. Regardless of its application to OSC, whether or not Wis. Stat. § 12.13(5) could be a "clear statutory exemption" appears to be a novel legal finding. *See Waity,* 2022 WI 6, ¶91 (Dallet, J., dissenting) (characterizing the majority as "always" requiring a stay for novel questions.)[4] Because it is a novel question, the Court liberally construes whether a reasonable appellate court

[3] At oral argument the Respondent announced that apparently there was a new signed contract. After the court's oral ruling, the "second amendment to the agreement" was filed. Although the court stated orally that it would not consider this new untimely surprise amendment, after now reviewing it, a couple of observations are appropriate. First, the signatures to the agreement are undated. There is no indication when the document was signed. Second, undated signatures would normally not be a problem, but the effective date in the agreement is left blank, (unless the parties intended it to be effective sometime in "2022"). A reasonable construction of the absence of this date is to conclude the amendment is not yet effective. And, third, and most notable, the "second" amendment does not appear to incorporate any of the provisions set forth in the "first" amendment, except only a sole reference to the "budget". Does this mean, then, that Mr. Gableman is no longer the custodian of OSC's records? Because these issues were not timely raised they could not be considered by this court before ruling on the pending motion. Accordingly, I will leave that task for some other circuit or appellate court to address in some other case. At any rate, nothing in the "second" amended contract changes this court's stated findings of fact or conclusions of law.

[4] "A dissent is what the law is not." *State v. Perry,* 181 Wis. 2d 43, 49, 510 N.W.2d 722 (Ct. App. 1993).

might disagree. *See id.* ¶68 (Hagedorn, J., concurring)

The Court rejected OSC's first statutory argument for another reason, too. The Court found a Wisconsin Attorney General Opinion to be directly on point, highly persuasive, and contrary to OSC's position. The Court adopted the AG's conclusions. Order I, dkt. 165:22-25. Wisconsin Stat. § 12.13(5) is a dense statute that cross-references other dense statutes. It might be interpreted to have a different meaning by a reasonable jurist, although this is unlikely because our supreme court assigns the Attorney General's opinion "particular importance" when interpreting the public records law. *State v. Beaver Dam Area Dev. Corp.*, 2008 WI 90, ¶37, 312 Wis. 2d 84, 752 N.W.2d 295. The Court therefore considers it possible but improbable that an appellate court would substitute its judgment for that of the attorney general. OSC addressed this finding at oral argument, although OSC only retread the superfluity argument from its brief, which, to repeat, would only make Wis. Stat. § 12.13(5) ambiguous such that it is not a "clear statutory exemption."

Because it is possible that a reasonable jurist could disagree about either of these legal findings, the Court next looks to the harm OSC will suffer absent a stay. *Waity,* 2022 WI 6, ¶54 ("the greater the potential injury, the less a movant must prove in terms of success on appeal.") Courts evaluate harm based on "its substantiality, the likelihood of its occurrence, and the proof provided by the movant." *Gudenschwager,* 191 Wis. 2d at 441-42.

OSC's brief fails to allege any injury, let alone properly support an alleged injury by the required proof and analysis. *Infra.* At oral argument, OSC explained that an injury will be caused by a sort of general undermining of OSC's investigation. The Court evaluates that injury in the proceeding section. In brief, even assuming this to be a grievous and irreparable injury, it is neither a likely injury nor is it supported by any proof. When considered with the low likelihood of success of these arguments on appeal, the Court must conclude that OSC's Wis. Stat. § 12.13(5) argument

weighs only very lightly in favor of a stay.

Addressing OSC's second statutory argument, the Court found that Wis. Stat. § 19.85 did not provide OSC a "clear statutory exemption" from disclosure. The legislature has already explained why appellate courts could not reasonably disagree with this legal conclusion.

Here is what OSC argued:

> Wis. Stat. 19.35(1) "states that the exemptions under which a closed meeting may be held pursuant to sec. 19.85 are indicative of public policy" and may be used to deny public access.

OSC Br., dkt. 99:16. And here is the remainder of Wis. Stat. § 19.35(1)(a), which OSC omitted altogether:

> *...but may be used as grounds for denying public access to a record only if the authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.*

Wis. Stat. § 19.35(1)(a) (emphasis added). OSC did not claim to have made any "specific demonstration …at the time the request … is made." OSC Br., dkt. 99:16-17. The argument is now forfeit. *Loren Imhoff Homebuilder,* 2022 WI 12, ¶14.

d. OSC's remaining common law and public policy arguments would not be reviewed at all.

The Court concludes above that appellate courts could not reasonably find that "strategic information" is a specific reason for denial of access to public records. Accordingly, appellate courts would not consider any of OSC's remaining arguments. *Journal Times v. Police & Fire Com'rs Bd.*, 2015 WI 56, ¶74, 362 Wis. 2d 577, 866 N.W.2d 563; *State ex rel. Blum v. Bd. of Educ.*, 209 Wis. 2d 377, 387-88, 565 N.W.2d 140 (Ct. App. 1997). The Court need not consider, therefore, how an appellate court would consider the common law exemption under *State ex rel. Richards v. Foust,* 165 Wis. 2d 429, 477 N.W.2d 608 (1991), or the public policy balancing test,

because an appellate court would not consider them all. Out of an abundance of caution, however, the Court does so.

The Court's next two findings were that neither the *Foust* exemption nor exceptional public policy reasons required secrecy. Order I, dkt. 165:27-29. Application of these legal tests to the facts is reviewed de novo. *Milwaukee Journal Sentinel v. Wisconsin Dep't of Admin.,* 2009 WI 79, ¶14, 319 Wis.2d 439, 768 N.W.2d 700. However, "[f]act finding and the drawing of inferences are for the trial court." *Milwaukee Journal v. Call,* 153 Wis. 2d 313, 319, 450 N.W.2d 515 (Ct. App. 1989); *See Loren Imhoff Homebuilder,* 2022 WI 12, ¶10 ("we affirm the circuit court's findings of fact unless they are unsupported by the record and are clearly erroneous.") (citations and quotations omitted). Appellate review therefore would proceed in two parts:

> (1) did the trial court make a factual determination supported by the record of whether the documents implicate the public interests in secrecy asserted by the custodians and, if so, (2) do the countervailing interests outweigh the public interest in release.

Id. at 317.

In the first part of the appellate review, a reasonable jurist could not disagree that the Court made a factual determination supported by the record. The Court methodically made factual findings about each document with careful citation to the record. In each instance, the Court found the records were not of the nature contemplated by *Foust,* that no public policy reasons weighed in favor of secrecy, and that no statute exempted the record from disclosure. Order I, dkt. 165:35-45.[5]

[5] The Court acknowledges that reaching the same conclusion about the entire contents of 761 pages of records might give the appearance that the Court had some unfair predisposition or impermissibly generalized its review process. To help dispel that appearance, the Court makes four general observations:

1. Any review must begin with Wisconsin's strong presumption in favor of disclosure. Wis. Stat. § 19.31; *Zellner v. Cedarburg Sch. Dist.,* 2007 WI 53, ¶49, 300 Wis. 2d 290, 731 N.W.2d 240, et al.

Any reasonable appellate court reviewing this kind of factual finding would do so with the caveat that any reasonable circuit court is trapped in a Goldilocks zone of either revealing too much information, violating its seal order, or releasing too little information, neglecting its duty. The impossibility of this position is exemplified by OSC's oral arguments that the Court's review *erred on both ends.* That is, OSC argued that the Court failed to honor its seal order, destroying the investigatory value of those records because, to use OSC's example, the public now knows that OSC is investigating the effects of money on elections. But OSC also argued that the Court failed to make sufficient factual findings about the investigatory value of each record, such that the Court could not fairly judge OSC's invocation of the common law *Foust* exception.

It is true that the Court did not repeatedly include an explicit finding about "factual relation to an investigation" during Part IV of Order I, in which it discussed each set of documents. However, this would have been pointless because the Court had already rejected OSC's argument that this finding was necessary (Order I, dkt. 165:26), and furthermore, the finding *was actually made,* both at oral argument and also by the Court's written order: Order I, dkt. 165:28 ("none of the records are of this nature."); *id.* at 10 fn. 5 ("Nothing in these particular records bespeaks any investigation at all, let alone one demanding strategic secrecy.")

Therefore, because the Court has found that these particular records do not relate to any

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2. About half of the records were private analyses, many of which are available by a simple internet search. Order I, dkt. 165:43-44.

3. Of the half which remain, many defy serious discussion. To name a few, OSC produced forty pages of duplicate records, (dkt. 147:39-79), a fifty-nine page complaint which spurns basic First Amendment principles Dkt. 164:17 (e.g., seeking government action because "Lin-Manuel Miranda said some of the most hateful comments about President Trump"), a complete copy of a chapter of the Wisconsin Statutes (dkt. 147:34-37) and countless other already-public records.

4. This leaves relatively few records worthy of any discussion, the bulk of which are mundane office correspondence.

investigation, and because a reasonable appellate court could not disagree, there is no need to discuss how an appellate court would evaluate the application of the *Foust* exception.[6] The Court proceeds to the second step of the appellate review as it relates to the public policy balancing test only. Appellate courts might reasonably disagree about whether "countervailing interests," that is, a public interest in the secrecy of "strategic information," outweighs the public's interest in release. Therefore, the Court once again looks to the harm OSC will suffer absent a stay. *Waity,* 2022 WI 6, ¶54. Once again, the only harm alleged is the sort of unspecific damage to OSC's investigation which OSC alleged at oral arguments.

This injury is even less likely than as under OSC's Wis. Stat. § 12.13(5) argument. Take, for example, Chapter 811 of the Wisconsin Statutes. OSC withheld this record. Order I, dkt. 165:43; dkt. 147:34-37. But to survive the balancing test (or *Foust* and *Nichols*) OSC would have to show why Chapter 811 of the Wisconsin Statutes, as an individual record, must be kept secret. How can OSC do this? Chapter 811 only sets forth rules for the writ of attachment, a specialized kind of civil procedure for securing property against (1) a debtor who is (2) concealed or residing

[6] Even if an appellate court rejected the circuit court's factual findings as "clearly erroneous," an appellate court could still not reasonably conclude that the *Foust* exemption for a prosecutor's files applies to these particular records. To do so, the appellate court would have to make each of these three findings:

> First, that OSC's response was "specific" enough to invoke a common law exception like the one enjoyed by a prosecutor. *But see Aagerup,* 145 Wis. 2d at 823; *Breier,* 89 Wis. 2d at 427; *Mayfair Chrysler-Plymouth, Inc. v. Baldarotta,* 162 Wis. 2d 142, 160, 469 N.W.2d 638 (1991); *Journal Times v. Police & Fire Com'rs Bd.,* 2015 WI 56, ¶74, 362 Wis. 2d 577, 866 N.W.2d 563; *State ex rel. Blum v. Bd. of Educ.,* 209 Wis. 2d 377, 387-88, 565 N.W.2d 140 (Ct. App. 1997).
>
> Second, that if its response about being an investigator was specific enough, that OSC is, in fact, like a prosecutor. *But see State ex rel. Richards v. Foust,* 165 Wis. 2d 429, 477 N.W.2d 608 (1991); *Nichols v. Bennett,* 199 Wis. 2d 268, 275 n.4, 544 N.W.2d 428 (1996).
>
> Third, that if its response about being an investigator was specific enough, and if OSC was in fact like a prosecutor such that the exception applies, that OSC actually reviewed these records to make individualized determinations about the "nature of the documents" and that every single document was of a nature demanding secrecy. *Nichols,* 199 Wis. 2d at 274.

out of the state. *See* Wis. Stat. §§ 811.03, 811.12. It does not appear that OSC even has the authority to seek a writ of attachment, let alone the prerogative to secure the civil judgment entitling it to seek one in the first instance. No reasonable appellate court could conclude, based on the withholding of this record alone, that OSC actually reviewed the withheld records.[7]

Accordingly, the Court must conclude that OSC's common law and balancing test arguments do not weigh in favor of a stay.

e. OSC does not seek a stay of damages.

The Court's final findings relates to damages. OSC does not seek to stay of an award of damages. However, for practical purposes, if the Court stayed the release of records, it would also stay any award of damages based on the withholding of those records.

2. OSC fails to show that, unless a stay is granted, it will suffer irreparable injury.

The second factor for a stay looks to the harm the movant will suffer if a stay is not granted. *Waity,* 2022 WI 6, ¶49. The Wisconsin Supreme Court instructs that "[t]he harm alleged must be evaluated in terms of its substantiality, the likelihood of its occurrence, and the proof provided by the movant." *Gudenschwager,* 191 Wis. 2d at 441-42. Further, "[i]f the harm cannot be mitigated or remedied upon conclusion of the appeal, that fact must weigh in favor of the movant." *Waity,* 2022 WI 6, ¶57 (citations omitted).

The Court acknowledges that if it unseals OSC's records, an appellate court could not "un-ring the bell." However, OSC's brief does not allege any injury. It merely presumes that a

[7] Although ch. 811 is perhaps the most egregious example, other records would clearly fail any reasonable and individualized review, too. *See* fn. 4, *supra.*

hypothetical injury would be irreparable. OSC Mtn., dkt. 153:9.[8] OSC's other written submissions neither allege any additional facts from which to infer an injury, nor even if it had, does OSC provide any proof by which to evaluate that injury.

At oral argument, OSC explained that an irreparable injury will be caused by a sort of general undermining of OSC's investigation: current informants will be "cancelled" and potential informants will never materialize, fearful that their "names [are] going to be up in lights." The Court has no doubt that this sort of injury would be highly substantial. That is, assuming that OSC is correct, their investigation may suffer. However, OSC fails to address the likelihood of such an injury and offers no proof whatsoever that the hypothetical injury will materialize. Based on the Courts' factual findings that the records do not, generally, relate to any cognizable investigation, it is unlikely that this harm will occur.

Accordingly, OSC fails to show that it will be irreparably injured.

3-4. OSC fails to show that no substantial harm will come to other interested parties or to the public interest.

The third and fourth factors are similar, so the Court joins OSC in analyzing them together. The third factor looks to "whether the movant shows that no substantial harm will come to other

[8] It is perhaps simpler to show what OSC's argument is, rather than explain what it is not. Below, the Court reproduces OSC's entire argument as to the second *Gudenschwager* factor:

> As to "irreparable injury," if this Court were to release documents or portions of a documents in dispute and an appellate court ruled to the contrary, the injury to the OSC would be *de facto* irreparable. There would be no possible way to "un-ring the bell."
>
> For that reason, staying release in open records disputes pending appeal is common and prudent judicial practice.
>
> Accordingly, the prospects of the OSC prevailing on appeal in relation to the injury caused by disclosure of one or more documents or portions of documents is far more than a "mere possibility."

OSC Mtn., dkt. 153:9 (citations omitted).

interested parties," while the fourth factor looks to "whether the movant shows that a stay will do no harm to the public interest." *Waity,* 2022 WI 6, ¶49. In weighing harm under these factors, courts consider "the period of time that the case is on appeal … [and] the extent of harm the non-movant will experience if a stay is entered, but the non-movant is ultimately successful." *Id.* ¶58.

Before turning to OSC's argument, the Court emphasizes the legal standard for these final factors: to weigh in favor of a stay, OSC must show that:

- "no substantial harm will come to other interested parties," and/or,
- "no substantial harm will come to the public interest."

OSC's brief does not meaningfully discuss these factors and their application to this case, nor does it cite any authority in support of what it does discuss.[9] OSC did not discuss these factors at oral argument, either.

Instead, as best the Court can discern, OSC proceeds with the following assertions:

OSC begins by conceding that Wis. Stat. § 19.31 declares the public interest to be presumptively in favor of disclosure. OSC then claims the assembly also presumptively acts in the public interest because it is comprised of persons elected by the public. Assuming that there exists these two co-equal presumptions of public interest, OSC argues, the assembly may ignore the public records law. OSC then puts itself, a subunit of the assembly, on the same footing as the assembly, such that it may also ignore the public records law. OSC Mtn., dkt. 153:9-10.

OSC continues by impliedly defining "the public" to exclude non-residents of Wisconsin, and perhaps some others based on an unspecific test. OSC then claims public records litigation is

[9] OSC cites Wis. Stat. § 19.31, which OSC concedes is contrary to its position. OSC then cites to three cases: The first cite establishes that representatives are elected, which is a matter of constitutional fact. Wis. Const. art. IV, § 4. The second cite offers a definition of "a resolution." The final cite quotes, again, from Wis. Stat. § 19.31.

antithetical to the public interest, or at least this particular litigation is, for some reason having to do with American Oversight's individual purposes. Finally, OSC asserts that a stay advances "the public interest in pursuit of 'reliability, transparency, and public confidence' in Wisconsin elections, and does not harm Petitioner's ideological and partisan interests in any significant way, as routine judicial practice cited above establishes." OSC Mtn., dkt. 153:10-11.

The Court is unimpressed by these novel legal theories, none of which help answer the questions of whether "substantial harm" will come to either "the public interest" or to "other interested parties."

Accordingly, the Court concludes OSC fails to make the third and fourth showings.

D. The four interrelated considerations weigh against a stay.

Having examined each of the factors for a stay, the Court next considers the four factors together, as "interrelated considerations" to determine whether a stay is justified. *Waity*, 2022 WI 6, ¶49. The analysis is not complex: individually, OSC fails to make any of the four showings; collectively, OSC fails to show it is entitled to a stay pending appeal.

ORDER

Based on the foregoing, the Court enters the following orders:

1. OSC's motion for a stay pending appeal is DENIED.

2. Except for the acceptance of the stipulation of the parties relating to document #146 redacting the names, telephone numbers and email addresses of the listed persons, any stay ordered by the March 2, 2022, companion order ("Order I," dkt. 165) is LIFTED.

This is a final order for purposes of appeal. Wis. Stat. § 808.03(1).