



ROBIN J. VOS

SPEAKER OF THE WISCONSIN STATE ASSEMBLY

RE: Wi-Rep 21-1138

To American Oversight:

Please accept this as Respondent Vos's response to the Records requests at issue in this request. As you know, the substance of the requests in this request are largely duplicative or subsumed within the requests American Oversight made in Case 21CV2440. The requests in this request are largely duplicative or subsumed within the requests within Exhibit C in 21CV2440

As you also know, Respondent Vos provided a substantive response to the requests in in 21CV2440 on November 19, 2021. That response did not include any documents within the possession of the Office of Special counsel after August 30, 2021 as the Court in 21CV2440 determined that after August 30, 2021 the Office of Special Counsel was the custodian of those records. Speaker Vos has asserted this same position in this request.

Your request is somewhat confusing as it purports to incorporate previous requests but also asks that it not be duplicated. To the extent a document has been provided in a previous request that has been incorporated into this request, it will not be produced again. We are therefore not producing records that have already been produced to you in the November 19, 2021 production or in the production made by Mr. Blazel or Mr. Gableman/Office of Special Counsel. We are producing some additional documents that have been located in a subsequent search. Those are attached hereto with Bates "2021.08.13 Comm. 0001-0096."

As you also know, in 21 CV3007 the Office of Special Counsel made a production for *in camera* review of records within its possession that may or may not be responsive to your requests. To the extent that any of those documents are responsive to your requests, they will be released to you by order of the Court in 21 CV 3007.

While Speaker Vos has not withheld any records or claimed that a balancing test supports withholding the records he has produced, he has not had access to the records being produced to the Court for its *in camera* review. If Respondent Vos were to be viewed as the authority of any documents that are within the possession of the Office of Special Counsel, he would argue that some of these requested documents may not be "records" within the meaning of the Public Records Law. One's personal emails are not subject to disclosure under Public Records Law. *Schill v. Wisconsin Rapids School District*, 2010 WI 86, 327 Wis. 2d 572, 786 N.W.2d 177, 08-0967. Thus, some of these documents may not be released because they are not "records." The Office of Special Counsel is not a policy making body, and therefore we do not see the holding in *The John K. MacIver Institute for Public Policy, Inc. v. Erpenbach*, 2014 WI App 49, 354 Wis. 2d 61, 848 N.W.2d 862, 13-1187, as changing this conclusion.

Additionally, if Speaker Vos was the proper recipient, he would argue that some records might be denied pursuant to the principals of substantive common law. See, § 19.35(1) Wis. Stats. Additionally, “[t]he exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, 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.” *Id.* Speaker Vos is not involved in the day-to-day activities of the Office of Special Counsel, nor is he privy to how or why any particular action is being taken, the particular focus of the investigation or what has transpired in the investigation. It would be impossible for him to make “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.” The “authority,” the Office of Special Counsel, however, can make that determination.

The Office of Special Counsel’s investigation is designed to investigate the integrity of Wisconsin’s elections. An investigation into whether there was compliance with state election laws could lead to criminal actions. See, “Racine County sheriff seeks charges for 5 Wisconsin elections commissioners.” <https://www.jsonline.com/story/news/politics/elections/2021/11/03/racine-sheriff-seeks-charges-wisconsin-elections-commissioners/6272910001/>. Thus, parts of the Office of Special Counsel’s investigation may entail investigations and/or prosecutions of violations of state election law, violations that could be criminal.

Wisconsin courts have concluded that “where criminal or noncriminal law enforcement interests are at stake, the interest in preserving the confidentiality of an informant who was given a pledge of confidentiality by a government agency may, on balance, outweigh the public interest in having access to the portions of the records that could identify the informant, and that it did so in that case.” *State ex rel. Bergmann v. Faust*, 226 Wis. 2d 273, 283, 595 N.W.2d 75, 80 (Ct. App. 1999). Speaker Vos cannot know if, or who, the Office of Special Counsel has granted a pledge of confidentiality to, but the Office of Special Counsel may cite this a public policy reason for denial of some of the above requests.

Likewise, there are many other instances where public records access to a prosecutor’s files have been rejected:

In several cases defendants have been denied access to prosecutors’ files. In *State v. Herman*, 219 Wis. 2d 267, 274-75, 262 N.W. 718 (1935), a prosecutor who denied access to a transcript of testimony in a John Doe proceeding was deemed to have acted properly. The court in *In re Wis. Family Counseling Services v. State*, 95 Wis. 2d 670, 673, 291 N.W.2d 631 (Ct. App. 1980) held that the accused had no right to inspect evidence relied upon by the prosecution. In addition, it has been held that an accused does not have a general right to access a prosecutor’s files either before or after trial. See *Matter of State ex rel. Lynch v. County Ct.*, 82 Wis. 2d 454, 464, 262 N.W.2d 773 (1978), concluding that the constitutional right to a fair trial does not include allowing a defendant to inspect a prosecutor’s entire file and that generalized inspection by the defense at an early stage of a criminal prosecution is harmful to the orderly administration of justice; see also *Britton v. State*, 44 Wis. 2d 109, 117-18, 170 N.W.2d 785 (1969), holding that there is no general right to inspect a prosecutor’s files after trial.

State ex rel. Richards v. Foust, 165 Wis. 2d 429, 477 N.W.2d 608, 610 (1991). The Office of Special Counsel may not be a prosecutor, per se, but the analogies are close enough that it may wish to assert these or similar bases for withholding files at this time. That balancing test and those arguments must be developed by the Office of Special Counsel, not Speaker Vos. “It is the nature of the documents and not their location which determines their status under §§ 19.31 to 19.37. To conclude otherwise would elevate form over substance.” *Nichols v. Bennett*, 199 Wis. 2d 268, 274-75, 544 N.W.2d 428 (1996). It has been specifically recognized that records created and maintained by investigatory arms of the government are subject to a balancing test. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 42, 254 Wis. 2d 306, 646 N.W.2d 811.

Communications between Mr. Gableman and others may also be privileged and not subject to disclosure. *State v. Doe*, 120 Wis. 2d 670, 353 N.W.2d 842 (Ct. App. 1984) (“The supreme court has emphasized that work product usually is privileged and not subject to discovery.”). The Public Records law cannot be used to circumvent established principles that shield attorney work product. *Seifert v. School District of Sheboygan Falls*, 2007 WI App 207, 305 Wis. 2d 582, 740 N.W.2d 177, 06-2071. Once again, this factor may be cited by the Office of Special Counsel, but Speaker Vos is without knowledge as to what exists or what may be privileged. The appropriate “Authority” to make this response is the Office of Special Counsel.

Sincerely,

A handwritten signature in black ink, appearing to read 'SF', written in a cursive style.

Steve Fawcett

From: "Fawcett, Steve" <Steve.Fawcett@legis.wisconsin.gov>
Sent: Wednesday, October 20, 2021, 3:53 PM
To: "Toftness, Jenny" <Jenny.Toftness@legis.wisconsin.gov>; "Wolf, Jake" <Jake.Wolf@legis.wisconsin.gov>
Subject: FW: Gableman Subpoena Testimony

Who is this guy? Name sounds familiar.

From: Joseph Santeler <joesanteler@gmail.com>
Sent: Wednesday, October 6, 2021 9:35 AM
To: Fawcett, Steve <Steve.Fawcett@legis.wisconsin.gov>
Subject: Gableman Subpoena Testimony

Mr. Fawcett:

As you are the designated point of contact with Michael Gableman and Consultare LLC in the June 26, 2021 Agreement concerning election investigations, I write to ask whether you expect the October 15th testimony sought in Mr. Gableman's recent subpoenas to election officials to be open and accessible to members of the public. If you are deferring to anyone else on this question, including but not limited to Mr. Gableman or any of his agents, I would appreciate their contact information to the extent it is available to you or your office.

Thank you,
Joe Santeler

From: Steve.Fawcett@legis.wisconsin.gov
Sent: Monday, October 18, 2021, 3:04 PM
To: "Champagne, Rick" <Rick.Champagne@legis.wisconsin.gov>
Subject: RE: Office of Special Counsel

Thanks!

From: Champagne, Rick <Rick.Champagne@legis.wisconsin.gov>
Sent: Monday, October 18, 2021 3:04 PM
To: Fawcett, Steve <Steve.Fawcett@legis.wisconsin.gov>
Subject: FW: Office of Special Counsel

From: Champagne, Rick
Sent: Thursday, August 19, 2021 1:43 PM
To: Fawcett, Steve <Steve.Fawcett@legis.wisconsin.gov>
Subject: Office of Special Counsel

Steve,

Under Wis. Stat. § 19.35 (1) (a) and (b), any public records requester has a right to inspect and receive copies of records maintained by an "authority." The definition of "authority" under Wis. Stat. § 19.32 (1) includes a "state or local office." If Justice Gableman's appointment could be structured so that it is an appointment to a "state office" then that office would be an "authority" for purposes of the public records law and public records requests relating to the conduct of the investigation would need to be sent to that office.

One possible way to do this would be to amend or restructure the contract to clarify that the contract is for appointment of Justice Gableman to an "Office of Special Counsel" in which he has authority to direct an elections integrity investigation, assist the Elections and Campaign Committee, and hire investigators and other staff to assist in the investigation.

There is no case law directly on point as to whether such an "Office of Special Counsel," established pursuant to a Committee on Assembly Organization action, is a "state office" for purposes of the public records law. However, common dictionary definitions of an "office," such as Black's, define "office" as "a position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose." These attributes would cover much of the duties of justice Gableman's appointment.

Rick

Toftness, Jenny

From: Champagne, Rick
Sent: Thursday, August 05, 2021 3:00 PM
To: Toftness, Jenny; Fawcett, Steve
Subject: Committee Investigation Process
Attachments: Legislative committee investigation process_final.pdf; title3ch21.pdf

Jenny/Steve:

Please find attached the requested memo on committee investigation process and role of special counsel. I've also included a Maine statutory scheme that regulates legislative committee investigations to show the kinds of issues in conducting these investigations. Please call or email with any questions.

Rick



Richard A. Champagne

Chief, Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
608.504.5805



MEMORANDUM

TO: Speaker Robin Vos

FROM: Rick Champagne, chief
Michael Gallagher, senior coordinating attorney
Sarah Walkenhorst Barber, senior legislative attorney

DATE: August 5, 2021

SUBJECT: Legislative committee investigation process

On March 23, 2021, the Wisconsin State Assembly directed the Assembly Committee on Campaigns and Elections (Elections Committee) to “investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.”¹ On May 21, 2021, the Committee on Assembly Organization adopted a motion authorizing the assembly speaker, on behalf of the assembly, to hire legal counsel and employ investigators to assist the Elections Committee in its investigation. Speaker Robin Vos retained former Supreme Court Justice Michael Gableman to assist the Elections Committee in its investigation, eventually assigning him the role of special counsel.

You have asked us to discuss the process for conducting a legislative committee investigation. It has been more than half a century since the state legislature last employed a full-fledged committee investigation of this kind.² Neither the Wisconsin Statutes nor the assembly rules provide a comprehensive process for conducting a legislative investigation—there is no road map. To be sure, there are constraints on committee investigations that we will discuss in this memorandum. These constraints relate to the issuance and enforcement of subpoenas, the application of Wisconsin’s open meetings law to legislative committee hearings, and the privileges and constitutional rights of witnesses.

However, it is equally important to note that the legislature’s power to conduct investigations is coextensive with its power to legislate, which is plenary. Committee investigations are essential for the lawmaking process and for the legislature to carry out its oversight duties. The power to conduct investigations includes the power to determine the scope and manner of investigations.

¹ 2021 Wis. AR 15, as shown by ASA 2.

² See *Goldman v. Olson*, 286 F. Supp. 35 (W.D. Wis. 1968).

So long as the legislature acts within the boundaries of the legal constraints on the conduct of investigations, the legislature may establish whatever process it considers most efficacious to achieve its legislative goals.

Broad legislative power to conduct investigations

The Wisconsin State Legislature's legislative power is plenary, limited only by the Wisconsin Constitution, the United States Constitution, and, under the supremacy clause, federal law.³ That plenary power includes broad authority to conduct investigations as the legislature sees fit in the furtherance of its legislative functions. Investigations allow the legislature to determine the necessity for new or amended laws, as well as provide for checks and balances over the actions of other branches of state government.

It is well established that the state legislature has inherent and “broad discretionary power to investigate any subject respecting which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or perform any other act delegated to it by the fundamental law, state or national.”⁴ Without the ability to investigate or conduct hearings on proposed legislation, the legislature may not have the information necessary to carry out its constitutional obligations. Legislative investigations of one sort or another are the precursor for informed legislation. For that reason, the state legislature has “a constitutional right” to conduct investigations.⁵

Additionally, “the manner of conducting [a legislative] investigation, rests . . . entirely in the sound discretion of the legislature.”⁶ As the Wisconsin Supreme Court reasoned in its early years, in 1858: “For if the legislature have the power to investigate at all, it has the power of choosing how the investigation shall be had.”⁷ Once the legislature has decided on the necessity of an investigation, it is within its core constitutional powers for the legislature to determine how the investigation would be conducted. As the Wisconsin Supreme Court further noted, a legislative investigation may be carried out “by a joint committee, or by a committee of either or both houses acting independently, or . . . *in any other manner which to [the legislature] might seem most convenient and proper.*”⁸ Finally, the Wisconsin Supreme Court has repeatedly stated—most recently in 2019—that it “will not, under separation of powers concepts and affording the comity and respect due a co-equal branch of state government, interfere with the

³ See *State ex rel. McCormack v. Foley*, 18 Wis. 2d 274, 277 (1962) (“The framers of the Wisconsin Constitution vested the legislative power of the state in a senate and assembly. The exercise of such power is subject only to the limitation and restraints imposed by the Wisconsin Constitution and the Constitution and laws of the United States.”); *Libertarian Party v. State*, 199 Wis. 2d 790, 801 (1996) (“Our legislature has plenary power except where forbidden to act by the Wisconsin Constitution.”); *Town of Beloit v. County of Rock*, 2003 WI 8, ¶ 23 (“The Legislature has plenary power to act except where forbidden by the Wisconsin Constitution.”).

⁴ *Goldman*, 286 F. Supp. at 43 (quoting *State ex rel. Rosenheim v. Frear*, 138 Wis. 173, 176–77 (1909)).

⁵ *In re Falvey*, 7 Wis. 630, 638 (1858).

⁶ *In re Falvey*, 7 Wis. at 638.

⁷ *Id.*

⁸ *Id.* (emphasis added).

conduct of legislative affairs.”⁹ Investigations are essential legislative affairs. For this reason, the court’s noninterference doctrine applies to the manner in which the legislature chooses to conduct its investigations. The legislature determines the process for conducting its investigations.

General process governing legislative committee investigations

2021 Assembly Resolution 15 directs the Elections Committee to investigate the administration of Wisconsin elections, focusing in particular on elections held after January 1, 2019. The resolution does not establish a process or set constraints for the Elections Committee to conduct its investigation. Assembly rules also do not specify how committee investigations are to be conducted, other than that the speaker must issue subpoenas with the countersignature of the assembly chief clerk.¹⁰ Moreover, the Wisconsin Statutes do not lay out a process for committee investigations, except with respect primarily to the issuance and enforcement of subpoenas, as discussed further below.¹¹ For these reasons, the Elections Committee determines the ground rules for the conduct of committee proceedings, including investigations, subject only to applicable law and legislative rules.

The Wisconsin Legislature has a committee system characterized by strong committee chairpersons. Committees typically meet at the call of their chairpersons and conduct committee proceedings as directed by the committee chairperson, who may set committee procedures by directive or may allow the committee by majority vote to set its procedures. If the Elections Committee chairperson establishes the procedures for conducting the committee investigation by directive, the chairperson may decide when the committee will convene, how committee members may participate in the proceedings, and who will be required or invited to testify before the committee.

The Elections Committee chairperson may also direct special counsel retained by the speaker to assist the committee to take all actions necessary for the committee to conduct its investigation, including taking depositions or questioning witnesses before the full committee. This is the chairperson’s decision. With respect to depositions, it should be noted that it is contempt for a person to refuse “to attend or be examined as a witness, either before the house or a committee, or before any person authorized to take testimony in legislative proceedings.”¹² Importantly, the special counsel is retained by the speaker on behalf of the assembly but is charged with assisting the Elections Committee in its investigation. Because the speaker is authorized to approve all contractual arrangements with the special counsel, the manner in which the special counsel assists the committee is determined both by the speaker and the committee chairperson. In other

⁹ League of Women Voters of Wis. v. Evers, 2019 WI 75, ¶ 36 (quoting State ex rel. La Follette v. Stitt, 114 Wis. 2d 358, 368 (1983)).

¹⁰ Assembly Rule 3 (1) (o).

¹¹ This is in contrast to some states, such as Maine, whose statutes establish rules and procedures governing a legislative committee’s investigative process and questioning of witnesses. See Me. Rev. Stat. tit. 3, ch. 21.

¹² Wis. Stat. § 13.26 (1) (c) (emphasis added).

words, there is a dual line of authority for special counsel services. The speaker determines the types of services the special counsel will provide the committee in its investigation, as well as the powers the special counsel possesses to conduct the investigation, while the committee chairperson determines the role of special counsel in assisting the investigation at committee.

Compelling the testimony of witnesses and production of documents

According to *Mason's Manual of Legislative Procedure*, a legislature's investigation power "carries with it the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process."¹³ Without the right to require the participation of witnesses and the production of documents, a legislature would be unable to conduct a proper and complete investigation. In Wisconsin, the process for issuing and enforcing legislative subpoenas is established by statute.¹⁴ A subpoena issued in connection with a legislative investigation must be signed by the presiding officer—in the assembly, the speaker—and countersigned by the chief clerk of the house.¹⁵

A legislative subpoena may be issued to compel the testimony of any witness or the production of documents and other records.¹⁶ A legislative subpoena "may require such attendance forthwith or on a future day," may be served by any person, and must be returned to the chief clerk in the same manner as subpoenas from the circuit court are served and returned.¹⁷ There is no standard form for legislative subpoenas. However, at the very least, a legislative subpoena must state "when and where, and before whom, the witness is required to appear" and may designate the "books, records, documents and papers" that must be produced.¹⁸ In this respect, the subpoena must inform the recipient of the subject of the investigation.

Legislative subpoenas may be enforced in several ways. First, "summary process" may be issued for witnesses refusing to testify or produce documents.¹⁹ The summary process must be signed by the presiding officer and the chief clerk of the house issuing the subpoena and directed to the sergeant at arms, "commanding the sergeant at arms 'in the name of the state of Wisconsin' to take the body of the person so failing to attend, naming that person, and bring the person forthwith before the house whose subpoena the person disobeyed."²⁰ The person may be held in custody until he or she complies with the subpoena.²¹

¹³ *Mason's Manual of Legislative Procedure* (Denver: NCSL, 2020), Sec. 795 (5). See also *In re Falvey*, 7 Wis. at 641–42 (upholding confinement for failure to appear pursuant to a legislative subpoena).

¹⁴ See Wis. Stat. §§ 13.31 to 13.36.

¹⁵ Wis. Stat. § 13.31. Also, see Assembly Rule 3 (1) (o).

¹⁶ *Id.*

¹⁷ *Id.* See also Wis. Stat. § 885.03 ("Any subpoena may be served by any person by exhibiting and reading it to the witness, or by giving the witness a copy thereof, or by leaving such copy at the witness's abode.").

¹⁸ Wis. Stat. § 13.31. Additionally, subpoenaed witnesses receive as compensation "\$2 for each day's attendance and 10 cents per mile, one way, for travel to attend as such witness." Wis. Stat. § 13.36.

¹⁹ Wis. Stat. § 13.32 (1).

²⁰ Wis. Stat. § 13.32 (2). See also Wis. Stat. § 13.33 with respect to enforcing the summary process.

²¹ Wis. Stat. § 13.32 (2).

A person who refuses to testify or produce documents may also be held in contempt. In that case, the committee chairperson certifies the witness's refusal to the house.²² Upon certification, the person refusing to testify or produce documents may be taken by the sergeant at arms or his or her assistant before the house "to be dealt with according to law."²³

Alternatively, and the most likely course of action for enforcing a legislative subpoena, a legislative subpoena may be enforced in state court pursuant to Wis. Stat. § 885.12, which provides:

If any person, without reasonable excuse, fails to attend as a witness, or to testify as lawfully required before any . . . committee, or other officer or person authorized to take testimony, or to produce a book or paper which the person was lawfully directed to bring, or to subscribe the person's deposition when correctly reduced to writing, any judge of a court of record or a circuit court commissioner in the county where the person was obliged to attend may, upon sworn proof of the facts, issue an attachment for the person, and unless the person shall purge the contempt and go and testify or do such other act as required by law, may commit the person to close confinement in the county jail until the person shall so testify or do such act, or be discharged according to law. The sheriff of the county shall execute the commitment.²⁴

It should also be noted that in lieu of or before resorting to the issuance of a legislative subpoena to a person or for the production of documents, special counsel could seek to conduct informal interviews of witnesses or make informal requests for documents. These would be fact finding activities in which special counsel seeks to determine if witness testimony is important for the committee investigation or if documents in possession of witnesses would assist the committee. These interviews need not be conducted under oath. Additionally, Wisconsin's public records law provides another avenue for requesting the production of records pertinent to the Elections Committee's investigation.²⁵

Open meetings

Wisconsin's open meetings law generally applies to meetings of legislative committees, including meetings at which witnesses testify in the course of a committee's investigation. Such meetings must be preceded by public notice and, unless otherwise provided in assembly or joint rules or one of the exemptions in Wis. Stat. § 19.85 (1) applies, must be held in open session.²⁶ The requirements governing the content, timing, and publication of a public meeting notice are

²² Wis. Stat. § 13.34.

²³ *Id.* See also Wis. Stat. §§ 13.26 (1) (c) (contempt for refusal to testify or produce documents) and 13.27 (punishment for contempt).

²⁴ See also 20 Wis. Op Att'y. Gen. 765, a 1931 attorney general opinion in which the attorney general states that Wis. Stat. § 885.12 (then Wis. Stat. § 325.12) provides a means of enforcing a legislative subpoena.

²⁵ See Wis. Stat. §§ 19.31 to 19.39.

²⁶ Wis. Stat. § 19.83 (1). Also, see Wis. Stat. § 19.87 (2).

provided under Wis. Stat. § 19.84. Conducting a meeting in open session means the meeting is “held in a place reasonably accessible to members of the public and open to all citizens at all times.”²⁷ Importantly, the open meetings law would not apply to depositions taken by the special counsel on behalf of the Elections Committee, provided that at least half of the members of the committee are not also present at the deposition.²⁸

Due process and other witness rights

When the legislature conducts an investigation, including subpoenaing witnesses to provide mandatory testimony, those witnesses have been found to be entitled to certain due process and other rights. The United States Supreme Court has recognized the duty of citizens to cooperate with Congress and state legislatures in investigations but noted that, with that obligation, there is an assumption “that the constitutional rights of witnesses will be respected” by the investigating body “as they are in a court of justice.”²⁹

A witness in the context of a legislative investigation is not entitled to all rights due to a criminal defendant. For example, the witness does not have any right to compel attendance of or cross-examine witnesses. However, witnesses do retain individual constitutional rights in the context of legislative investigations³⁰ and courts have expressly upheld certain rights of witnesses in that context: “Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.”³¹

There is relatively little reported case law on Wisconsin legislative investigations and the rights of witnesses who appear before committees. Federal courts have opined more frequently on this issue, usually involving actions of congressional committees. The principles established in these cases with respect to witness rights in congressional committee investigations are applicable to committee investigations in Wisconsin.

Due Process

Under the Fourteenth Amendment to the United States Constitution, the state may not “deprive any person of life, liberty, or property, without due process of law.” While the legislative investigative authority is broad and includes the authority to hold a party in contempt for failure to comply with a subpoena, there are limitations to the investigative authority and power to compel a witness based on due process. It has been held, for example, that punishing a witness

²⁷ Wis. Stat. § 19.82 (3).

²⁸ Wis. Stat. § 19.82 (2). See also State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77, 102 (1987) (holding that open meetings requirements apply whenever members of a governmental body gather with the purpose to engage in governmental business and the number of members present is sufficient to determine the governmental body’s course of action).

²⁹ Watkins v. United States, 354 U.S. 178, 187–88 (1957).

³⁰ Trump v. Mazars USA, 140 S. Ct. 2019, 2032 (2020) (“[R]ecipients of legislative subpoenas retain their constitutional rights throughout the course of an investigation”); Quinn v. United States, 349 U.S. 155, 161 (1955) (“[F]urther limitations on the power to investigate are found in the specific individual guarantees of the *Bill of Rights*.”).

³¹ Watkins at 188.

for contempt if the witness declines to cooperate with a request for information that is beyond the scope of the authorized investigation would violate due process.³² In examining a Wisconsin legislative investigation, the United States District Court for the Western District of Wisconsin held that although the Wisconsin Statutes do not contain any express provision “that punishment for contempt may be visited upon a witness only if the question which he refuses to answer is pertinent to the question under inquiry,” such a requirement “must be implied to save the contempt statutes from unconstitutionality” and would otherwise violate due process.³³

Parties seeking information through a legislative investigation must provide some clarity and fair warning to a witness about what is expected or risk that the witness may have a claim for violation of due process.³⁴ Further, while it is clear that a legislature may exercise the power to punish contemptuous conduct, if the legislature seeks to punish a person for contempt, that person must be afforded notice and an opportunity to respond before such punishment is imposed.³⁵

First Amendment

First Amendment freedoms also have been found applicable in the legislative investigation context. In order to invade these freedoms, there must be a substantial connection or “nexus” between the information sought and a subject of “subordinating, overriding, and compelling state interest.”³⁶ Clearly, the administration of state elections would be such an interest. In one United States Supreme Court case, for example, the court found that the applicable committee did not lay an adequate foundation for demanding records of a legitimate organization’s membership and that, as a result, its demands infringed upon the witnesses’ First and Fourteenth Amendments freedoms of association under the Constitution.³⁷ When a governmental entity is compelling disclosure of information, the Supreme Court has imposed “exacting scrutiny” and required that “[t]o withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.”³⁸

Fourth Amendment

³² *Goldman*, 286 F. Supp. at 44.

³³ *Id.*

³⁴ *Raley v. Ohio*, 360 U.S. 423, 438 (1959) (“A State may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them.”).

³⁵ *Gröppi v. Leslie*, 404 U.S. 496, 499–500, 507 (1972).

³⁶ *Goldman*, 286 F. Supp. at 46. See also *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 538, 543–44, 545, 546, 551, 555 (1963) (“[I]t is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest.”); see also *Kalkstein v. DiNapoli*, 228 A.D.2d 28, 30–31, 653 N.Y.S.2d 710, 712 (App. Div. 1997) (“When such [a First Amendment] right is implicated, the government’s quest for information is precluded unless it shows ‘that there are governmental interests sufficiently important to outweigh the possibility of infringement [of First Amendment rights].’”)

³⁷ *Gibson*, 372 U.S. at 557–58.

³⁸ *Ams. for Prosperity Found. v. Bonta*, 210 L. Ed. 2d 716, 727, 141 S. Ct. 2373 (2021) (quoting *Doe v. Reed*, 561 U. S. 186, 196 (2010)).

A legislative investigation could affect a witness's Fourth Amendment right against an unreasonable search and seizure if a subpoena is too general or unreasonably broad. The scope of the information sought in a legislative investigation is subject to a balancing of the interests of the legislature versus the interest of the witness in maintaining privacy. For example, in one case examining the compelled disclosure of a United States senator's personal diaries in the context of an ethics investigation, a federal district court found that the court "must . . . balance Senator Packwood's expectation of privacy in his personal diaries against the Ethics Committee's interest in examining them for evidence of misconduct, and the nature of the scrutiny it proposes to give them."³⁹ The court found that the procedural protections offered by the committee were sufficient to alleviate any Fourth Amendment concerns.⁴⁰

For this reason, if a committee issues an overbroad or general subpoena, the Fourth Amendment could be available as a defense if the witness refuses to produce the subpoenaed material.⁴¹ If the subpoena clearly relates to the subject of the committee investigation, Fourth Amendment concerns are less likely to present an obstacle to the investigation.

Fifth Amendment

The Fifth Amendment guarantees a person's right against self-incrimination: "[N]or shall any person . . . be compelled in any criminal case to be a witness against himself."⁴² The invocation of the privilege against self-incrimination has been upheld in the legislative investigation context but is available only to natural persons, not to corporations or unincorporated organizations.⁴³ A witness is not excused from testifying before the committee on the grounds that doing so would incriminate the person. The witness must affirmatively assert the privilege, although there is not "ritualistic formula" necessary for invoking the privilege.⁴⁴ A witness may waive the privilege, including by disclosure of facts or a statement that an admission would not subject the person to criminal prosecution.⁴⁵ A witness may not be held in contempt merely because that witness invokes the privilege against self-incrimination.⁴⁶ In order to compel testimony from a witness pleading Fifth Amendment privileges, the legislative body must provide the witness with immunity.⁴⁷ Wis. Stats. s. 13.35 provides for this immunity.

³⁹ *Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 22 (D.D.C.1994).

⁴⁰ *Id.* at 22. Indeed, comparing the required disclosure to disclosures previously required from former President Nixon, the court stated: "It would be presumptuous for this Court to find the Ethics Committee's procedure to represent an 'unreasonable' search when the Supreme Court and its own Circuit Court of Appeals have sustained a more extensive and intrusive examination of similar private papers and recordings of a former president in the vindication of a governmental interest in the 'historical' legacy of the nation, surely no more compelling than that of preserving the probity of the United States Senate in the public's perception and in fact." *Id.*

⁴¹ *The Rights of a Witness Before a Congressional Committee*, 29 Fordham L. Rev. 357, 360 (61 (1960) ("[I]f a committee employs a dragnet seizure of private papers, with the hope that something might turn up, or issues a subpoena duces tecum which lacks particularity, or subpoenas papers without legislative authority, the [Fourth] amendment will be available as a defense.").

⁴² U.S. Const. amend. V.

⁴³ *Rogers v. United States*, 340 U.S. 367, 371-72 (1951); *United States v. Murdock*, 284 U.S. 141, 148 (1931).

⁴⁴ *Quinn*, 349 U.S. at 170.

⁴⁵ *The Rights of a Witness Before a Congressional Committee*, 29 Fordham L. Rev. 357, 364-65 (1960).

⁴⁶ Roberto Iraola, *Self-Incrimination and Congressional Hearings*, 54 Mercer L. Rev. 939, 95556 (2003)

⁴⁷ *Id.*

Privileges and the right to counsel

Finally, witnesses may also retain certain privileges. The United States Supreme Court, for instance, has recently stated that in the context of legislative investigations, “recipients have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege.”⁴⁸ In legislative investigations, witnesses may be able to withhold certain communications.

It is important to note that the Sixth Amendment to the United States Constitution provides the right to have the assistance of counsel for defense in all criminal prosecutions.⁴⁹ Because legislative investigations are not criminal prosecutions, that right to counsel does not apply. That said, in practice, witnesses are often allowed to have counsel attend to advise, and some states do provide by statute for a right to counsel in the investigation context.⁵⁰ Wisconsin does not have such a statute.

Conclusion

Committee investigations are an integral part of the legislative process. Legislative committees may conduct investigations at their own initiative or as directed by the full house.⁵¹ The full assembly, through adoption of 2021 Assembly Resolution 15, directed the Elections Committee to investigate the administration of state elections, pursuant to the legislature’s constitutional duty “to make laws and to exercise its oversight and investigative authority.” The Committee on Assembly Organization subsequently authorized the retention of special counsel to assist the Elections Committee in this investigation.

The special counsel’s authority is established and circumscribed by the speaker, acting on behalf of the assembly. The day-to-day role of the special counsel in assisting the Elections Committee is determined by the committee chairperson, including the role of special counsel at committee proceedings. The special counsel may investigate any matter covered by 2021 Assembly Resolution 15 and may do so through informal interviews and requests for documents and through the issuance of legislative subpoenas signed by the speaker and the assembly chief clerk. In assisting the Elections Committee in conducting the investigation, the special counsel must provide competent and timely legal services and seek to gather evidence for determining whether state elections, in particular since January 1, 2019, have been conducted in compliance with Wisconsin law.

The Wisconsin Statutes and legislative rules do not prescribe a committee investigative process. How the Elections Committee will proceed and conduct the investigation is a matter within the authority of the committee chairperson. The chairperson will determine when the committee

⁴⁸ *Trump*, 140 S. Ct. at 2032.

⁴⁹ U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”).

⁵⁰ See, e.g., Haw. Rev. Stat. § 21-11.

⁵¹ Joint Rule 84 (s) and Wis. Stat. § 13.31.

meets, how committee members will participate in the proceedings, which witnesses will be required or invited to appear before the committee, and the role of special counsel at committee. Throughout the investigation process, the chairperson must ensure that the investigation is conducted according to law and that the due process and other constitutional rights of witnesses are protected.

We hope this information is helpful. Please let us know if the LRB can provide any additional assistance.

Toftness, Jenny

From: Hurley, Peggy
Sent: Tuesday, August 10, 2021 2:47 PM
To: Rep.Vos
Cc: Toftness, Jenny
Subject: Legislative Subpoena Authority
Attachments: 10vos_ph (2) subpoena authority.pdf

Good afternoon,

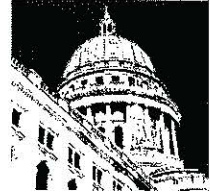
Attached please find the memorandum you requested relating to legislative subpoena authority. Please let me know if you have additional questions or if I can otherwise be of assistance to you.



Peggy J. Hurley

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One East Main Street, Suite 401, Madison, WI 53703

Wisconsin Legislative Council



Anne Sappenfield
Director

TO: SPEAKER ROBIN VOS

FROM: Peggy Hurley, Staff Attorney

RE: Legislative Subpoena Authority

DATE: August 10, 2021

You asked for an analysis of ss. 13.31 and 885.01 (4), Stats., relating to issuing subpoenas, and a determination of whether s. 13.31, Stats., establishes the exclusive means by which a witness may be compelled to appear before a legislative committee. Although s. 885.01 (4), Stats., provides that a committee member may issue a subpoena, it appears that s. 13.31, Stats., is the sole means for issuing a subpoena to appear before a duly authorized legislative committee.

LEGISLATIVE SUBPOENAS

Sections 13.31 to 13.36, Stats., establish the procedures for compelling a witness to appear before a legislative committee or either house of the Legislature and produce documents and records before the committee.¹ The statutes set forth specific provisions relating to service of process, summary process to take custody of a witness, consequences for refusal to testify, use immunity for testimony procured by subpoena, and witness fees for testifying before a legislative committee or house of the Legislature.

Under these statutes, the authority to issue a subpoena to appear before a legislative committee or house is limited to the presiding officer and the chief clerk of the house he or she serves; however, any member of a legislative committee may administer an oath to a person appearing before the committee. [s. 13.45 (6), Stats.]

¹ Under s. 13.31, Stats. “The attendance of witnesses before any committee of the legislature, or of either house thereof, appointed to investigate any subject matter, may be procured by subpoenas signed by the presiding officer and chief clerk of the senate or assembly. Such subpoenas shall state when and where, and before whom, the witness is required to appear, and may require such attendance forthwith or on a future day named and the production of books, records, documents and papers therein to be designated, and may also require any officer of any corporation or limited liability company, or other person having the custody of the keys, books, records, documents or papers of any such business entity, to produce the same before such committee. Such subpoenas may be served by any person and shall be returned to the chief clerk of the house which issued the same as subpoenas from the circuit court are served and returned.”

GENERAL SUBPOENA AUTHORITY UNDER S. 885.01, STATS.

Section 885.01, Stats., sets forth broadly who may issue a subpoena:

...any arbitrator, coroner, medical examiner, board, commission, commissioner, examiner, committee or other person authorized to take testimony, or ... **any member of a board, commission, authority or committee which is authorized to take testimony**, within their jurisdictions, to require the attendance of witnesses, and their production of documentary evidence before them, respectively, in any matter, proceeding or examination authorized by law; and likewise by the secretary of revenue and by any agent of the department of agriculture, trade and consumer protection. [Emphasis added.]

In some cases, this broad authority is further defined by other statutory sections. For example, while s. 885.01 (4), Stats., confers subpoena authority to any member of a committee that is authorized to take testimony, s. 885.01 (3), Stats., limits that authority as it relates to municipal and county boards to the “chairperson of any committee of any county board, town board, common council or village board to investigate the affairs of the county, town, city or village, or the official conduct or affairs of any officer thereof.” In addition, although s. 895.01 (4), Stats., provides that any agent of the Department of Agriculture, Trade and Consumer Protection may issue a subpoena, s. 93.14, Stats., limits that authority to “authorized agents...in relation to any matter within the department's power.”

ANALYSIS

Principles of statutory construction and relevant case law demonstrate that when ss. 885.01 and 13.31, Stats., are read together, s. 13.31 provides the sole means for issuing a subpoena to appear before a legislative committee or house. First, a longstanding principle of statutory construction holds that when a more general statute (s. 885.01 (4)) and a specific statute (s. 13.31) address the same topic, the more specific statute controls in the event of a conflict. [*Lornson v. Siddiqui*, 2007 WI 92, ¶ 65, 302 Wis.2d 519, 735 N.W.2d 55.] Second, statutes are to be read, whenever possible, to avoid making any statute superfluous. [*Hutson v. State pers. Comm'n*, 2003 WI 97, ¶ 49, 263 Wis.2d 612, 665 N.W.2d 212.] If s. 885.01 (4), Stats., governs issuance of subpoenas by legislative committee members, a specific statute relating to legislative committees' authority to issue subpoenas is arguably superfluous.

General Versus Specific Provisions

Section 885.01 (4), Stats., confers general subpoena authority to any member of any committee that is authorized to take testimony; s. 13.31, Stats., confers specific subpoena authority for summoning a witness to appear before a legislative committee or house. Moreover, ss. 13.32 to 13.36, Stats., establish procedures, rights, and requirements that are specific and unique to witnesses who are subpoenaed to appear before a legislative committee or house.

A legislative subpoena, unlike a subpoena issued under the more general authority of s. 885.01, may procure the attendance of witnesses only if the committee is authorized and “appointed to investigate” the particular subject matter. [s. 13.31, Stats.]

In *Goldman v. Olson*, a federal district court considered a challenge to a legislative subpoena issued by a Wisconsin Senate resolution to anti-war demonstrators in the 1960s. The court held that a resolution authorizing an investigation must satisfy the following requirements to be constitutionally valid:

- Define the subject matter of an investigation with sufficient explicitness and clarity to afford the witness a reasonable basis for judgment as to whether a particular question is pertinent to the subject matter under investigation.
- If the investigation impinges First Amendment freedoms, establish the state's interest in making such an investigation by showing a substantial relationship between the information sought and a comprehensive, compelling state interest or concern.

[*Goldman*, 286 F. Supp. at 43.]

The more general subpoena power requires only that a committee be “authorized to take testimony” and that the proceedings be “authorized by law.” Additionally, subpoenas issued pursuant to general authority under ch. 885, Stats., are subject to different witness fees and different liabilities for refusal to appear. [ss. 13.36, 13.35, 885.05, and 885.11, Stats.]

In *Hipp v. Circuit Court for Milwaukee County*, 2008 WI 67, 310 Wis. 2d 342, 750 N.W.2d 873, 07-0230, the Wisconsin Supreme Court considered whether the general provisions of s. 885.01 allowed a party to a John Doe case to ask a clerk of court to issue a subpoena to procure the attendance of witnesses on his behalf, where a separate statute conferred subpoena authority to a judge in a John Doe case. The Court concluded that the more specific statute granting judges subpoena authority in a John Doe case precluded the application of the more general subpoena authority statute and that the more specific statute gave the judge “the exclusive authority to subpoena witnesses for a John Doe hearing.” [*Hipp*, ¶2.]

In the *Hipp* case, a party to a John Doe case acknowledged that s. 968.26, Stats. (2005-06),² authorized a judge in a John Doe proceeding to subpoena a witness but argued that statute did not provide exclusive authority to do so. Section 968.26, Stats., provided, in relevant part:

If a person complains to a judge that he or she has reason to believe that a crime has been committed within his or her jurisdiction, the judge shall examine the complainant under oath and any witnesses produced by him or her and may, and at the request of the district attorney shall, subpoena and examine other witnesses to ascertain whether a crime has been committed and by whom committed....

Section 885.01 (1), Stats., on the other hand, provided that a clerk of court could issue a subpoena in any action, matter or proceeding pending or to be examined into before any court.

The Court found that, although s. 968.26, Stats., did not specifically notwithstanding s. 885.01 (1), it was intended to confer subpoena authority exclusively to judges in John Doe proceedings. The *Hipp* Court noted that “applying the § 885.01 subpoena provisions to the proceedings here would require applying a more general statute regarding subpoenas where there is a more specific statute controlling subpoenas within the context of John Doe proceedings. This would be contrary to the principle of statutory construction that where two statutes applying to the same subject conflict, the more specific statute is controlling.” [*Hipp* at ¶41, citing *Lornson*.]

² All references to s. 968.26, Stats., refer to the 2005-06 version.

In the case of issuance of subpoenas by a legislative committee, the statutes in ch. 13, Stats., impose specific requirements. These specific requirements include the purpose for which a legislative subpoena may be issued, the manner in which it must be served, and the authority for signing the subpoena, which is vested solely in the presiding officer and chief clerk of each house of the Legislature. It would contradict the rule of statutory interpretation to apply a more general statute where a specific statute exists.

Avoidance of Making a Statute Superfluous

In *Hipp*, the Court also noted that a broad reading of s. 885.01, Stats., would render the specific subpoena authority relating to John Doe cases superfluous:

Section 968.26 provides John Doe judges shall examine witnesses produced by the complainant and “may, and at the request of the district attorney shall, subpoena and examine other witnesses.” Section 885.01 (1) provides judges and clerks of court with the authority to issue subpoenas, and § 885.01 (2) provides district attorneys with subpoena power. However, if clerks of court and district attorneys have the power under § 885.01 to subpoena witnesses in John Doe proceedings, then the language in § 968.26 regarding subpoenas is superfluous. Construction of statutes should avoid whenever possible interpretations that render language superfluous. [*Hipp*, at ¶38, citing *Hutson*.]

The same argument holds if any member of a legislative committee is authorized to issue a subpoena pursuant to s. 885.01 (4), Stats. Such a finding would render the procedures and authority established in ss. 13.31 to 13.36, Stats., superfluous.

History and Intended Use of Legislative Subpoena Authority

In the *Hipp* case, the Court also considered the history and intended use of the John Doe statute vesting the judge with subpoena powers and concluded that “John Doe proceedings are conducted through the authority of the presiding judge” and that allowing another party to issue a subpoena because of the general authority to do so would “in essence dilute the John Doe judge’s power.” [*Hipp* at ¶35]

For legislative committees, the legislative rules anticipate that legislative subpoenas will be issued pursuant to s. 13.31, Stats. Assembly Rule 3 (1) (o) states that the Speaker of the Assembly shall “[i]ssue subpoenas, with the countersignature of the chief clerk, for the attendance of witnesses before any assembly committee, and issue summary process for the arrest of any witness disobeying the mandate of the subpoena.” Assembly Rule 5 (1) (j) assigns the Chief Clerk of the Assembly the duty to “[c]ountersign with the speaker documents that, by law or rule, require the personal signature of the chief clerk.” Senate Rule 44 states that “[t]he original of all enrolled acts and joint resolutions, all engrossed resolutions, and all writs, warrants, and subpoenas issued by order of the senate shall be signed by the president, and attested by the chief clerk.”

The statutory and administrative rule language reinforce the intent and current practice of vesting in the presiding legislative officer the exclusive duty and authority to issue subpoenas to appear before a legislative committee. Statutory language allows any committee member to administer an oath to a person appearing before the committee, but reserves the authority to issue a subpoena for each house’s presiding officer.

In *Hipp*, the court noted: “Although district attorneys, clerks of court, and judges have subpoena powers under s. 885.01, s. 968.26 precludes district attorneys and clerks from issuing subpoenas in

John Doe proceedings. Instead, the statute allows that only judges retain their subpoena power.” [*Hipp*, ¶ 40.] Similarly, while s. 885.01 (4), Stats., confers subpoena powers on any member of any committee authorized to hear testimony, s. 13.31, Stats., precludes the application of the general authority in the specific context of subpoenaing a witness to appear before a legislative committee.

Please let me know if I can provide any further assistance.

PH:ksm



MEMORANDUM

TO: Speaker Robin Vos

FROM: Rick Champagne, chief
Michael Gallagher, senior coordinating attorney
Sarah Walkenhorst Barber, senior legislative attorney

DATE: August 5, 2021

SUBJECT: Legislative committee investigation process

On March 23, 2021, the Wisconsin State Assembly directed the Assembly Committee on Campaigns and Elections (Elections Committee) to “investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.”¹ On May 21, 2021, the Committee on Assembly Organization adopted a motion authorizing the assembly speaker, on behalf of the assembly, to hire legal counsel and employ investigators to assist the Elections Committee in its investigation. Speaker Robin Vos retained former Supreme Court Justice Michael Gableman to assist the Elections Committee in its investigation, eventually assigning him the role of special counsel.

You have asked us to discuss the process for conducting a legislative committee investigation. It has been more than half a century since the state legislature last employed a full-fledged committee investigation of this kind.² Neither the Wisconsin Statutes nor the assembly rules provide a comprehensive process for conducting a legislative investigation—there is no road map. To be sure, there are constraints on committee investigations that we will discuss in this memorandum. These constraints relate to the issuance and enforcement of subpoenas, the application of Wisconsin’s open meetings law to legislative committee hearings, and the privileges and constitutional rights of witnesses.

However, it is equally important to note that the legislature’s power to conduct investigations is coextensive with its power to legislate, which is plenary. Committee investigations are essential for the lawmaking process and for the legislature to carry out its oversight duties. The power to conduct investigations includes the power to determine the scope and manner of investigations. So long as the legislature acts within the boundaries of the legal constraints on the conduct of

¹ 2021 Wis. AR 15, as shown by ASA 2.

² See Goldman v. Olson, 286 F. Supp. 35 (W.D. Wis. 1968).

investigations, the legislature may establish whatever process it considers most efficacious to achieve its legislative goals.

Broad legislative power to conduct investigations

The Wisconsin State Legislature’s legislative power is plenary, limited only by the Wisconsin Constitution, the United States Constitution, and, under the supremacy clause, federal law.³ That plenary power includes broad authority to conduct investigations as the legislature sees fit in the furtherance of its legislative functions. Investigations allow the legislature to determine the necessity for new or amended laws, as well as provide for checks and balances over the actions of other branches of state government.

It is well established that the state legislature has inherent and “broad discretionary power to investigate any subject respecting which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or perform any other act delegated to it by the fundamental law, state or national.”⁴ Without the ability to investigate or conduct hearings on proposed legislation, the legislature may not have the information necessary to carry out its constitutional obligations. Legislative investigations of one sort or another are the precursor for informed legislation. For that reason, the state legislature has “a constitutional right” to conduct investigations.⁵

Additionally, “the manner of conducting [a legislative] investigation, rests . . . entirely in the sound discretion of the legislature.”⁶ As the Wisconsin Supreme Court reasoned in its early years, in 1858: “For if the legislature have the power to investigate at all, it has the power of choosing how the investigation shall be had.”⁷ Once the legislature has decided on the necessity of an investigation, it is within its core constitutional powers for the legislature to determine how the investigation would be conducted. As the Wisconsin Supreme Court further noted, a legislative investigation may be carried out “by a joint committee, or by a committee of either or both houses acting independently, or . . . *in any other manner which to [the legislature] might seem most convenient and proper.*”⁸ Finally, the Wisconsin Supreme Court has repeatedly stated—most recently in 2019—that it “will not, under separation of powers concepts and affording the comity and respect due a co-equal branch of state government, interfere with the

³ See *State ex rel. McCormack v. Foley*, 18 Wis. 2d 274, 277 (1962) (“The framers of the Wisconsin Constitution vested the legislative power of the state in a senate and assembly. The exercise of such power is subject only to the limitation and restraints imposed by the Wisconsin Constitution and the Constitution and laws of the United States.”); *Libertarian Party v. State*, 199 Wis. 2d 790, 801 (1996) (“Our legislature has plenary power except where forbidden to act by the Wisconsin Constitution.”); *Town of Beloit v. County of Rock*, 2003 WI 8, ¶ 23 (“The Legislature has plenary power to act except where forbidden by the Wisconsin Constitution.”).

⁴ *Goldman*, 286 F. Supp. at 43 (quoting *State ex rel. Rosenheim v. Frear*, 138 Wis. 173, 176–77 (1909)).

⁵ *In re Falvey*, 7 Wis. 630, 638 (1858).

⁶ *In re Falvey*, 7 Wis. at 638.

⁷ *Id.*

⁸ *Id.* (emphasis added).

conduct of legislative affairs.”⁹ Investigations are essential legislative affairs. For this reason, the court’s noninterference doctrine applies to the manner in which the legislature chooses to conduct its investigations. The legislature determines the process for conducting its investigations.

General process governing legislative committee investigations

2021 Assembly Resolution 15 directs the Elections Committee to investigate the administration of Wisconsin elections, focusing in particular on elections held after January 1, 2019. The resolution does not establish a process or set constraints for the Elections Committee to conduct its investigation. Assembly rules also do not specify how committee investigations are to be conducted, other than that the speaker must issue subpoenas with the countersignature of the assembly chief clerk.¹⁰ Moreover, the Wisconsin Statutes do not lay out a process for committee investigations, except with respect primarily to the issuance and enforcement of subpoenas, as discussed further below.¹¹ For these reasons, the Elections Committee determines the ground rules for the conduct of committee proceedings, including investigations, subject only to applicable law and legislative rules.

The Wisconsin Legislature has a committee system characterized by strong committee chairpersons. Committees typically meet at the call of their chairpersons and conduct committee proceedings as directed by the committee chairperson, who may set committee procedures by directive or may allow the committee by majority vote to set its procedures. If the Elections Committee chairperson establishes the procedures for conducting the committee investigation by directive, the chairperson may decide when the committee will convene, how committee members may participate in the proceedings, and who will be required or invited to testify before the committee.

The Elections Committee chairperson may request special counsel to take actions all necessary for the committee to conduct its investigation, including taking depositions or questioning witnesses before the full committee when it meets. With respect to depositions, it should be noted that it is contempt for a person to refuse “to attend or be examined as a witness, either before the house or a committee, *or before any person authorized to take testimony in legislative proceedings.*”¹² Pursuant to Committee on Assembly Organization action, the special counsel is retained by the speaker on behalf of the entire assembly. Because the speaker must approve all contractual arrangements with the special counsel, which includes issues relating to the scope of representation, the manner in which the special counsel assists the committee is determined entirely by the speaker. The speaker determines the types of legal and investigatory services the

⁹ *League of Women Voters of Wis. v. Evers*, 2019 WI 75, ¶ 36 (quoting *State ex rel. La Follette v. Stitt*, 114 Wis. 2d 358, 368 (1983)).

¹⁰ Assembly Rule 3 (1) (o).

¹¹ This is in contrast to some states, such as Maine, whose statutes establish rules and procedures governing a legislative committee’s investigative process and questioning of witnesses. See *Me. Rev. Stat. tit. 3, ch. 21*.

¹² *Wis. Stat. § 13.26 (1) (c)* (emphasis added).

special counsel will provide the committee, as well as the powers the special counsel possesses to conduct the investigation. The committee chairperson may determine the role of special counsel at committee proceedings.

Compelling the testimony of witnesses and production of documents

According to *Mason's Manual of Legislative Procedure*, a legislature's investigation power "carries with it the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process."¹³ Without the right to require the participation of witnesses and the production of documents, a legislature would be unable to conduct a proper and complete investigation. In Wisconsin, the process for issuing and enforcing legislative subpoenas is established by statute.¹⁴ A subpoena issued in connection with a legislative investigation must be signed by the presiding officer—in the assembly, the speaker—and countersigned by the chief clerk of the house.¹⁵

A legislative subpoena may be issued to compel the testimony of any witness or the production of documents and other records.¹⁶ A legislative subpoena "may require such attendance forthwith or on a future day," may be served by any person, and must be returned to the chief clerk in the same manner as subpoenas from the circuit court are served and returned.¹⁷ There is no standard form for legislative subpoenas. However, at the very least, a legislative subpoena must state "when and where, and before whom, the witness is required to appear" and may designate the "books, records, documents and papers" that must be produced.¹⁸ In this respect, the subpoena must inform the recipient of the subject of the investigation.

Legislative subpoenas may be enforced in several ways. First, "summary process" may be issued for witnesses refusing to testify or produce documents.¹⁹ The summary process must be signed by the presiding officer and the chief clerk of the house issuing the subpoena and directed to the sergeant at arms, "commanding the sergeant at arms 'in the name of the state of Wisconsin' to take the body of the person so failing to attend, naming that person, and bring the person forthwith before the house whose subpoena the person disobeyed."²⁰ The person may be held in custody until he or she complies with the subpoena.²¹

¹³ *Mason's Manual of Legislative Procedure* (Denver: NCSL, 2020), Sec. 795 (5). See also *In re Falvey*, 7 Wis. at 641–42 (upholding confinement for failure to appear pursuant to a legislative subpoena).

¹⁴ See Wis. Stat. §§ 13.31 to 13.36.

¹⁵ Wis. Stat. § 13.31. Also, see Assembly Rule 3 (1) (o).

¹⁶ *Id.*

¹⁷ *Id.* See also Wis. Stat. § 885.03 ("Any subpoena may be served by any person by exhibiting and reading it to the witness, or by giving the witness a copy thereof, or by leaving such copy at the witness's abode.").

¹⁸ Wis. Stat. § 13.31. Additionally, subpoenaed witnesses receive as compensation "\$2 for each day's attendance and 10 cents per mile, one way, for travel to attend as such witness." Wis. Stat. § 13.36.

¹⁹ Wis. Stat. § 13.32 (1).

²⁰ Wis. Stat. § 13.32 (2). See also Wis. Stat. § 13.33 with respect to enforcing the summary process.

²¹ Wis. Stat. § 13.32 (2).

A person who refuses to testify or produce documents may also be held in contempt. In that case, the committee chairperson certifies the witness's refusal to the house.²² Upon certification, the person refusing to testify or produce documents may be taken by the sergeant at arms or his or her assistant before the house "to be dealt with according to law."²³

Alternatively, and the most likely course of action for enforcing a legislative subpoena, a legislative subpoena may be enforced in state court pursuant to Wis. Stat. § 885.12, which provides:

If any person, without reasonable excuse, fails to attend as a witness, or to testify as lawfully required before any . . . committee, or other officer or person authorized to take testimony, or to produce a book or paper which the person was lawfully directed to bring, or to subscribe the person's deposition when correctly reduced to writing, any judge of a court of record or a circuit court commissioner in the county where the person was obliged to attend may, upon sworn proof of the facts, issue an attachment for the person, and unless the person shall purge the contempt and go and testify or do such other act as required by law, may commit the person to close confinement in the county jail until the person shall so testify or do such act, or be discharged according to law. The sheriff of the county shall execute the commitment.²⁴

It should also be noted that in lieu of or before resorting to the issuance of a legislative subpoena to a person or for the production of documents, special counsel could seek to conduct informal interviews of witnesses or make informal requests for documents. These would be fact finding activities in which special counsel seeks to determine if witness testimony is important for the committee investigation or if documents in possession of witnesses would assist the committee. These interviews need not be conducted under oath. Additionally, Wisconsin's public records law provides another avenue for requesting the production of records pertinent to the Elections Committee's investigation.²⁵

Open meetings

Wisconsin's open meetings law generally applies to meetings of legislative committees, including meetings at which witnesses testify in the course of a committee's investigation. Such meetings must be preceded by public notice and, unless otherwise provided in assembly or joint rules or one of the exemptions in Wis. Stat. § 19.85 (1) applies, must be held in open session.²⁶ The requirements governing the content, timing, and publication of a public meeting notice are

²² Wis. Stat. § 13.34.

²³ *Id.* See also Wis. Stat. §§ 13.26 (1) (c) (contempt for refusal to testify or produce documents) and 13.27 (punishment for contempt).

²⁴ See also 20 Wis. Op Att'y. Gen. 765, a 1931 attorney general opinion in which the attorney general states that Wis. Stat. § 885.12 (then Wis. Stat. § 325.12) provides a means of enforcing a legislative subpoena.

²⁵ See Wis. Stat. §§ 19.31 to 19.39.

²⁶ Wis. Stat. § 19.83 (1). Also, see Wis. Stat. § 19.87 (2).

provided under Wis. Stat. § 19.84. Conducting a meeting in open session means the meeting is “held in a place reasonably accessible to members of the public and open to all citizens at all times.”²⁷ Importantly, the open meetings law would not apply to depositions taken by the special counsel on behalf of the Elections Committee, provided that at least half of the members of the committee are not also present at the deposition.²⁸

Due process and other witness rights

When the legislature conducts an investigation, including subpoenaing witnesses to provide mandatory testimony, those witnesses have been found to be entitled to certain due process and other rights. The United States Supreme Court has recognized the duty of citizens to cooperate with Congress and state legislatures in investigations but noted that, with that obligation, there is an assumption “that the constitutional rights of witnesses will be respected” by the investigating body “as they are in a court of justice.”²⁹

A witness in the context of a legislative investigation is not entitled to all rights due to a criminal defendant. For example, the witness does not have any right to compel attendance of or cross-examine witnesses. However, witnesses do retain individual constitutional rights in the context of legislative investigations³⁰ and courts have expressly upheld certain rights of witnesses in that context: “Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.”³¹

There is relatively little reported case law on Wisconsin legislative investigations and the rights of witnesses who appear before committees. Federal courts have opined more frequently on this issue, usually involving actions of congressional committees. The principles established in these cases with respect to witness rights in congressional committee investigations are applicable to committee investigations in Wisconsin.

Due Process

Under the Fourteenth Amendment to the United States Constitution, the state may not “deprive any person of life, liberty, or property, without due process of law.” While the legislative investigative authority is broad and includes the authority to hold a party in contempt for failure to comply with a subpoena, there are limitations to the investigative authority and power to compel a witness based on due process. It has been held, for example, that punishing a witness

²⁷ Wis. Stat. § 19.82 (3).

²⁸ Wis. Stat. § 19.82 (2). See also State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77, 102 (1987) (holding that open meetings requirements apply whenever members of a governmental body gather with the purpose to engage in governmental business and the number of members present is sufficient to determine the governmental body’s course of action).

²⁹ Watkins v. United States, 354 U.S. 178, 187–88 (1957).

³⁰ Trump v. Mazars USA, 140 S. Ct. 2019, 2032 (2020) (“[R]ecipients of legislative subpoenas retain their constitutional rights throughout the course of an investigation”); Quinn v. United States, 349 U.S. 155, 161 (1955) (“[F]urther limitations on the power to investigate are found in the specific individual guarantees of the *Bill of Rights*.”).

³¹ Watkins at 188.

for contempt if the witness declines to cooperate with a request for information that is beyond the scope of the authorized investigation would violate due process.³² In examining a Wisconsin legislative investigation, the United States District Court for the Western District of Wisconsin held that although the Wisconsin Statutes do not contain any express provision “that punishment for contempt may be visited upon a witness only if the question which he refuses to answer is pertinent to the question under inquiry,” such a requirement “must be implied to save the contempt statutes from unconstitutionality” and would otherwise violate due process.³³

Parties seeking information through a legislative investigation must provide some clarity and fair warning to a witness about what is expected or risk that the witness may have a claim for violation of due process.³⁴ Further, while it is clear that a legislature may exercise the power to punish contemptuous conduct, if the legislature seeks to punish a person for contempt, that person must be afforded notice and an opportunity to respond before such punishment is imposed.³⁵

First Amendment

First Amendment freedoms also have been found applicable in the legislative investigation context. In order to invade these freedoms, there must be a substantial connection or “nexus” between the information sought and a subject of “subordinating, overriding, and compelling state interest.”³⁶ Clearly, the administration of state elections would be such an interest. In one United States Supreme Court case, for example, the court found that the applicable committee did not lay an adequate foundation for demanding records of a legitimate organization’s membership and that, as a result, its demands infringed upon the witnesses’ First and Fourteenth Amendments freedoms of association under the Constitution.³⁷ When a governmental entity is compelling disclosure of information, the Supreme Court has imposed “exacting scrutiny” and required that “[t]o withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.”³⁸

Fourth Amendment

³² *Goldman*, 286 F. Supp. at 44.

³³ *Id.*

³⁴ *Raley v. Ohio*, 360 U.S. 423, 438 (1959) (“A State may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them.”).

³⁵ *Groppi v. Leslie*, 404 U.S. 496, 499–500, 507 (1972).

³⁶ *Goldman*, 286 F. Supp. at 46. See also *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 538, 543–44, 545, 546, 551, 555 (1963) (“[I]t is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest.”); see also *Kalkstein v. DiNapoli*, 228 A.D.2d 28, 30–31, 653 N.Y.S.2d 710, 712 (App. Div. 1997) (“When such [a First Amendment] right is implicated, the government’s quest for information is precluded unless it shows ‘that there are governmental interests sufficiently important to outweigh the possibility of infringement [of First Amendment rights].’”)

³⁷ *Gibson*, 372 U.S. at 557–58.

³⁸ *Ams. for Prosperity Found. v. Bonta*, 210 L. Ed. 2d 716, 727, 141 S. Ct. 2373 (2021) (quoting *Doe v. Reed*, 561 U. S. 186, 196 (2010)).

A legislative investigation could affect a witness's Fourth Amendment right against an unreasonable search and seizure if a subpoena is too general or unreasonably broad. The scope of the information sought in a legislative investigation is subject to a balancing of the interests of the legislature versus the interest of the witness in maintaining privacy. For example, in one case examining the compelled disclosure of a United States senator's personal diaries in the context of an ethics investigation, a federal district court found that the court "must . . . balance Senator Packwood's expectation of privacy in his personal diaries against the Ethics Committee's interest in examining them for evidence of misconduct, and the nature of the scrutiny it proposes to give them."³⁹ The court found that the procedural protections offered by the committee were sufficient to alleviate any Fourth Amendment concerns.⁴⁰

For this reason, if a committee issues an overbroad or general subpoena, the Fourth Amendment could be available as a defense if the witness refuses to produce the subpoenaed material.⁴¹ If the subpoena clearly relates to the subject of the committee investigation, Fourth Amendment concerns are less likely to present an obstacle to the investigation.

Fifth Amendment

The Fifth Amendment guarantees a person's right against self-incrimination: "[N]or shall any person . . . be compelled in any criminal case to be a witness against himself."⁴² The invocation of the privilege against self-incrimination has been upheld in the legislative investigation context but is available only to natural persons, not to corporations or unincorporated organizations.⁴³ A witness is not excused from testifying before the committee on the grounds that doing so would incriminate the person. The witness must affirmatively assert the privilege, although there is not "ritualistic formula" necessary for invoking the privilege.⁴⁴ A witness may waive the privilege, including by disclosure of facts or a statement that an admission would not subject the person to criminal prosecution.⁴⁵ A witness may not be held in contempt merely because that witness invokes the privilege against self-incrimination.⁴⁶ In order to compel testimony from a witness pleading Fifth Amendment privileges, the legislative body must provide the witness with immunity.⁴⁷ Wis. Stats. s. 13.35 provides for this immunity.

³⁹ *Senate Select Comm. on Ethics v. Packwood*, 845 F. Supp. 17, 22 (D.D.C.1994).

⁴⁰ *Id.* at 22. Indeed, comparing the required disclosure to disclosures previously required from former President Nixon, the court stated: "It would be presumptuous for this Court to find the Ethics Committee's procedure to represent an 'unreasonable' search when the Supreme Court and its own Circuit Court of Appeals have sustained a more extensive and intrusive examination of similar private papers and recordings of a former president in the vindication of a governmental interest in the 'historical' legacy of the nation, surely no more compelling than that of preserving the probity of the United States Senate in the public's perception and in fact." *Id.*

⁴¹ *The Rights of a Witness Before a Congressional Committee*, 29 Fordham L. Rev. 357, 360 (61 (1960) ("[I]f a committee employs a dragnet seizure of private papers, with the hope that something might turn up, or issues a subpoena duces tecum which lacks particularity, or subpoenas papers without legislative authority, the [Fourth] amendment will be available as a defense.").

⁴² U.S. Const. amend. V.

⁴³ *Rogers v. United States*, 340 U.S. 367, 371-72 (1951); *United States v. Murdock*, 284 U.S. 141, 148 (1931).

⁴⁴ *Quinn*, 349 U.S. at 170.

⁴⁵ *The Rights of a Witness Before a Congressional Committee*, 29 Fordham L. Rev. 357, 364-65 (1960).

⁴⁶ Roberto Iraola, *Self-Incrimination and Congressional Hearings*, 54 Mercer L. Rev. 939, 95556 (2003)

⁴⁷ *Id.*

Privileges and the right to counsel

Finally, witnesses may also retain certain privileges. The United States Supreme Court, for instance, has recently stated that in the context of legislative investigations, “recipients have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege.”⁴⁸ In legislative investigations, witnesses may be able to withhold certain communications.

It is important to note that the Sixth Amendment to the United States Constitution provides the right to have the assistance of counsel for defense in all criminal prosecutions.⁴⁹ Because legislative investigations are not criminal prosecutions, that right to counsel does not apply. That said, in practice, witnesses are often allowed to have counsel attend to advise, and some states do provide by statute for a right to counsel in the investigation context.⁵⁰ Wisconsin does not have such a statute.

Conclusion

Committee investigations are an integral part of the legislative process. Legislative committees may conduct investigations at their own initiative or as directed by the full house.⁵¹ The full assembly, through adoption of 2021 Assembly Resolution 15, directed the Elections Committee to investigate the administration of state elections, pursuant to the legislature’s constitutional duty “to make laws and to exercise its oversight and investigative authority.” The Committee on Assembly Organization subsequently authorized the retention of special counsel to assist the Elections Committee in this investigation.

The special counsel’s authority is established and circumscribed by the speaker, acting on behalf of the assembly. The special counsel may investigate any matter covered by 2021 Assembly Resolution 15 and may do so through informal interviews and requests for documents and through the issuance of legislative subpoenas signed by the speaker and the assembly chief clerk. In assisting the Elections Committee in conducting the investigation, the special counsel must provide competent and timely legal services and seek to gather evidence for determining whether state elections, in particular since January 1, 2019, have been conducted in compliance with Wisconsin law.

The Wisconsin Statutes and legislative rules do not prescribe a committee investigative process. How the Elections Committee will proceed and conduct the investigation is a matter within the authority of the committee chairperson. The chairperson will determine when the committee meets, how committee members will participate in the proceedings, and which witnesses will be required or invited to appear before the committee. Throughout the investigation process, the

⁴⁸ *Trump*, 140 S. Ct. at 2032.

⁴⁹ U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”).

⁵⁰ See, e.g., Haw. Rev. Stat. § 21-11.

⁵¹ Joint Rule 84 (s) and Wis. Stat. § 13.31.

chairperson must ensure that the investigation is conducted according to law and that the due process and other constitutional rights of witnesses are protected.

We hope this information is helpful. Please let us know if the LRB can provide any additional assistance.

Toftness, Jenny

From: Toftness, Jenny
Sent: Friday, August 13, 2021 11:29 AM
To: Vos, Robin; Steineke, Jim; August, Tyler; Kerkman, Samantha; James, Jesse; Duchow, Cindi; Vorpapel, Tyler; Petersen, Kevin; Born, Mark; Loudenbeck, Amy; Zimmerman, Shannon; Katsma, Terry; Kurtz, Tony; Rodriguez, Jessie
Cc: Fawcett, Steve; Joyce, Angela
Subject: Document1.docx
Attachments: Document1.docx

Per our leadership meeting, here is the letter we are asking you to sign on to.

We'd like to do a conference call on Sunday evening at 5pm. Details to follow.

Jenny

From: Mike Gableman <mgableman@yahoo.com>

Sent: Monday, August 9, 2021, 10:25 AM

To: "amanda.ledtke@legis.wisconsin.gov" <amanda.ledtke@legis.wisconsin.gov>

Subject: Fw: Budget

Attachments: Wisc_Spec_Counsel_Budgetx.docx

[Sent from Yahoo Mail on Android](#)

----- Forwarded Message -----

From: "Carol Matheis" <matheislaw@live.com>

To: "Mike Gableman" <mgableman@yahoo.com>, "Andrew Kloster" <arkloster@gmail.com>

Sent: Sun, Aug 8, 2021 at 3:20 PM

Subject: Budget with Changes Made

Here is a copy of the budget with the two requested changes.

Carol

From: Mike Gableman <mgableman@yahoo.com>

Sent: Monday, August 9, 2021, 10:25 AM

To: "amanda.ledtke@legis.wisconsin.gov" <amanda.ledtke@legis.wisconsin.gov>

Subject: Fw: Budget

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Carol

Wisconsin 2020 Election Special
Counsel Budget

	WEC	Private Admin of Elections	Voting Machines	Total *
Personnel +				
Special Counsel	18,334.00	18,334.00	18,334.00	55,000.00
Administrative Assistant	5,333.00	5,333.00	5,333.00	16,000.00
Investigator #1	8,334.00	8,334.00	8,334.00	25,000.00
Investigator #2	8,334.00	8,334.00	8,334.00	25,000.00
Investigator #3	25,000.00			25,000.00
Investigator #4		25,000.00		25,000.00
Investigator #5	8,334.00	8,334.00	8,334.00	25,000.00
Overhead				
Rent				10,000.00
Office Equipment				2,000.00
Outside Services				
Communications				15,000.00
Data Analysis Contractor			325,000.00	325,000.00
Outside Legal Counsel				50,000.00
Other Expenses				
Travel (reimb. @ federal rate)				25,000.00
Court Reporting				50,000.00
Service of Process/Filing				3,000.00
TOTAL				676,000.00

*5 months (08/01/21-12/31/21)
+Investigators paid per month, plus reasonable expenses including reimbursement for mileage, lodging and food

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ROBIN J. VOS

SPEAKER OF THE WISCONSIN STATE ASSEMBLY

FOR IMMEDIATE RELEASE

July 30, 2021

For Further Information Contact:
Robin Vos (608) 266-9171

Announcement Regarding Election Investigation

Madison...Speaker Robin Vos (R-Rochester) released the following statement regarding the independent election investigation led by former Justice Gableman.

“Many questions have been raised about the November election that expose weaknesses and faults in our current election system.

“It has become clear that a top-to-bottom investigation will take longer than initially anticipated and will require more manpower to complete.

“To restore full integrity and trust in elections, we have decided to change direction, giving more authority and independence to Justice Gableman. I am declaring him Special Counsel and am giving him the authority to hire more full-time investigators who will work at his direction. After talking with our original investigative team, we realize that the part-time nature of these contracts is less time than is needed to complete the investigation.

“We hope to complete a thorough investigation in the fall and review the findings at the same time we receive findings from the nonpartisan Legislative Audit Bureau, who are currently conducting a statewide, multi-faceted forensic audit.”

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###

Fawcett, Steve

From: investigativesolutions2016@gmail.com
Sent: Tuesday, July 27, 2021 8:30 PM
To: Fawcett, Steve
Cc: mgableman@yahoo.com
Subject: Integrity Investigator Status

Steve,

Below is a copy of the letter of resignation I will be sending in the US Mail tomorrow. Unfortunately, things have not worked out for me. I wish you all the best in the investigation.

Mike – It was an honor speaking with you regarding the elections investigation. I am sorry to have to step away.

Steve

Speaker Robin Voss
c/o Steve Fawcett
PO BOX 8953
Madison WI 5370

July 27, 2021

Dear Mr. Speaker:

Please accept this letter as notification that I am terminating my contract as Integrity Investigator effective immediately. I feel compelled to take this action as this investigation is becoming much more involved than I anticipated at the beginning. Also, over the past five days my caseload with regard to prior existing contracts has become so burdensome that I will no longer have the time and energy necessary to continue on in this endeavor.

In addition to this, I have had some personal health issues that have prevented me from carrying out some of the tasks mandated by the position in a timely manner. I am concerned that to continue on would only lead to a further delay of the investigation on my part which would not produce the information requested in the timeframe required.

Not wishing to leave you short another investigator I can strongly recommend Travis Quella. He is someone who would be passionate about this particular investigation. Mr. Quella is a retired sergeant from the Eau Claire Police Department and although he is just starting his own private investigation business, he has extensive experience conducting investigations and I believe he would be a significant asset to the investigation as you move forward. His contact information is as follows:

Travis Quella
Phone: 715-225-3343

I appreciate the opportunity to participate in this important investigation. It was a privilege to have been selected and I still believe in the importance of this work. It is imperative that the voters of Wisconsin are able to trust our election officials to carry out their duties in a legal and impartial manner. I wish you well.

Respectfully,

Steve Page

cc Steven Fawcett
Michael Gableman

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cc Steven Fawcett
Michael Gableman

From: "Joyce, Angela" <Angela.Joyce@legis.wisconsin.gov>
Sent: Monday, August 2, 2021, 4:20 PM
To: "Toftness, Jenny" <Jenny.Toftness@legis.wisconsin.gov>; "Vos, Robin" <Robin.Vos@legis.wisconsin.gov>; "robinvos63@gmail.com" <robinvos63@gmail.com>
Subject: FW: Questions for Speaker regarding Rep. Ramthun's videos on election audit

From: Marley, Patrick <patrick.marley@jrn.com>
Sent: Monday, August 2, 2021 3:56 PM
To: Joyce, Angela <Angela.Joyce@legis.wisconsin.gov>
Subject: Questions for Speaker regarding Rep. Ramthun's videos on election audit

Hi Angela:

Hope you are well.

Rep. Ramthun has posted some videos calling for a broader election audit. I am reaching out to him, but wanted to get the Speaker's take on the issue as well.

In one video, Ramthun says he wants private funding for an audit. Does the Speaker support this? If so, why does he support private funding for an audit but not private funding for election administration (such as what CTCL provided)?

Ramthun also says in one video that he won't argue with a Wisconsin woman who questioned the legitimacy of the election of Jill Karofsky, who won by more than 10 points. Does the Speaker believe this election result is in doubt?

Ramthun titled one of his videos "The Calm Before the Storm," which is a reference to QAnon. Does the Speaker believe in QAnon? In particular, does he believe the QAnon claim that Trump will be reinstated as president soon? If he does not believe this, is he concerned that one of his members is hinting at this idea? Does he believe this hurts the credibility of the election investigation he has launched?

Lastly, there will be a rally at the Capitol on Friday with former Sheriff David Clarke. Does the Speaker plan to attend?

Thanks.

The video is here: <https://rumble.com/vk8oby-ramthun-report-episode-23-the-calm-before-the-storm.html>

Patrick Marley

State Capitol reporter

journal sentinel

Mobile: 608.235.7686

Office: 608.258.2262

patrick.marley@jn.com

[@patrickdmarley](https://twitter.com/patrickdmarley)

www.jsonline.com

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To: "mgableman@yahoo.com" <mgableman@yahoo.com>
Cc: "Toftness, Jenny" <Jenny.Toftness@legis.wisconsin.gov>; "Vos, Robin"
<Robin.Vos@legis.wisconsin.gov>
Subject: Press Release
Attachments: 2021-7-30 Speaker Vos Election Investigation.docx

Hello Justice Gableman,

Attached is our proposed statement, the Speaker will be calling you between 7:30-8:30 tonight to discuss this.

Also, it is my understanding you are going to be in studio for tomorrow's interview. If you need any further assistance, please let me know.

Thank you,
Angela

Angela Joyce

Communications Director
Office of Speaker Robin Vos
Wisconsin State Assembly
211 West, State Capitol
608-266-7191
608-237-9206 (direct line)

From: "Joyce, Angela" <Angela.Joyce@legis.wisconsin.gov>
Sent: Thursday, July 29, 2021, 4:57 PM
To: "mgableman@yahoo.com" <mgableman@yahoo.com>
Cc: "Toftness, Jenny" <Jenny.Toftness@legis.wisconsin.gov>; "Vos, Robin"
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Angela Joyce

Communications Director
Office of Speaker Robin Vos
Wisconsin State Assembly
211 West, State Capitol
608-266-7191
608-237-9206 (direct line)

< 12

MG

Mike >

Text Message
Wed, Jul 21, 5:52 AM

Hi Jake,

Not sure what you want to talk about but my tech guy has a mock up of the web presence which includes a portal for citizen complaints to come directly to me. He needs to platform and test it and after I review the final version, it will go live either today or tomorrow.

I will check in with you later today.

Wed, Jul 21, 9:23 AM

Hi Mike - thanks for the update. Let's plan to connect later today. I'm available most of the



Text Message



< 12

MG N

2 People >

Call is at 6PM

Mike Gableman

Ok.

MG

And Robin will be on the call?

Yes

Mike Gableman

MG

Got it. Thank you.

Or Mike, feel free to forward the call info if you have nick's email.

Mike Gableman

nboerke@gmail.com

I sent it to Nick, but here is his email

MG

Thanks again for your help

Text Message



< 12

MG N

2 People >

N

I sent my contact info to Steve, if you can send me your email I can also send it to you

Mike Gableman

MG

Is this the same Jake who was in the meeting with Steve, Nick, and me?

MG

Oh, again, I'm sorry Jake.

Jake.wolf@legis.wisconsin.gov

Nick, could you send me your email too

Call is at 6PM

Mike Gableman

MG

Ok.

And Robin will be on the call?



Text Message



< 12

MG N

2 People >

Please verify that Robin will be on the call

And

The time of the call.

MG Thanks

Nick

N I did not get call-in information, please forward

Is this nick?

Mike Gableman

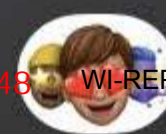
MG Jake, you just met with him this morning.

Nick

Yes, sorry. My cell phone is [414-721-1377](tel:414-721-1377)



Text Message





MG

N

2 People >

Text Message
Mon, Aug 9, 4:57 PM

Mike Gableman

Jake, I did receive an email with the conference call information.

However, I did not see Robin's name on the distribution list. From this, I might infer that Robin does not plan on attending. So....

Will Robin be on the call?

Jake, I beg your pardon.

I see that Robin sent the thing.

But there is no time listed on my copy

Please verify that Robin will be on the call



Text Message





Mike >

which includes a portal for citizen complaints to come directly to me. He needs to platform and test it and after I review the final version, it will go live either today or tomorrow.

I will check in with you later today.

Wed, Jul 21, 9:23 AM

Hi Mike - thanks for the update. Let's plan to connect later today. I'm available most of the afternoon.

Mon, Aug 9, 4:30 PM

Hi Mike - checking to make sure you received the conference call information for tomorrow evening.



Text Message



From: "Champagne, Rick" <Rick.Champagne@legis.wisconsin.gov>
Sent: Thursday, August 5, 2021, 3:00 PM
To: "Toftness, Jenny" <Jenny.Toftness@legis.wisconsin.gov>; "Fawcett, Steve" <Steve.Fawcett@legis.wisconsin.gov>
Subject: Committee Investigation Process
Attachments: Legislative committee investigation process_final.pdf; title3ch21.pdf

Jenny/Steve:

Please find attached the requested memo on committee investigation process and role of special counsel. I've also included a Maine statutory scheme that regulates legislative committee investigations to show the kinds of issues in conducting these investigations. Please call or email with any questions.

Rick



Richard A. Champagne

Chief, Wisconsin Legislative Reference Bureau
1 East Main Street, Suite 200
Madison, WI 53703
608.504.5805



ROBIN J. VOS

SPEAKER OF THE WISCONSIN STATE ASSEMBLY

Election Investigation Update



Many questions have been raised about the November election that expose weaknesses and faults in our current election system. I previously announced a top-to-bottom investigation, but it appears it will take longer than initially anticipated and will require more manpower to complete.

To restore full integrity and trust in elections, we have decided to change direction. On Friday, I named Justice Gableman as Special Counsel and gave him additional authority and independence to hire more full-time investigators who will work at his direction.

After talking with our original investigative team, we realized that the part-time nature of these contracts would not allow for the amount of time needed to complete the investigation. Justice Gableman will have the resources and ability to determine the need for any future adjustments.

Through this investigation, we aim to ensure there is confidence that every vote will be counted and laws concerning future elections will be faithfully and uniformly followed.

We hope to complete this thorough investigation in the fall and review the findings at the same time we receive results from the nonpartisan Legislative Audit Bureau, which is currently conducting a statewide, multi-faceted forensic audit.

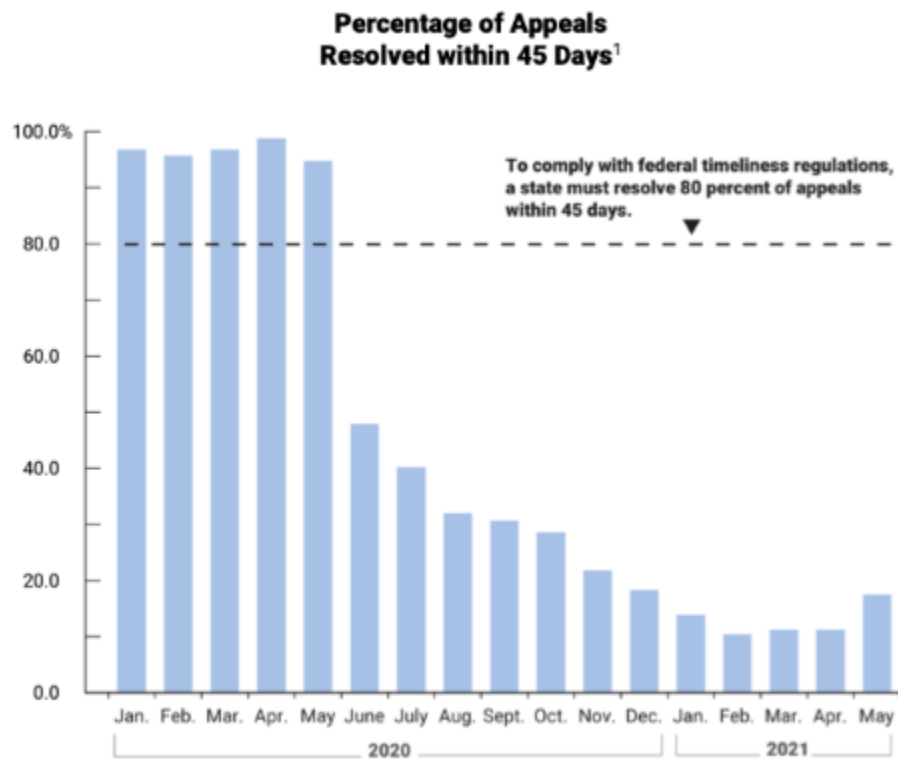
Unemployment Insurance Program

The governor's handling of Wisconsin's Unemployment Insurance program continues to be a disaster. The nonpartisan [Legislative Audit Bureau](#) (LAB) released a [report](#) showing the Wisconsin Department of Workforce Development (DWD) is still mismanaging the program. The LAB found the department "did not comply with federal regulations to issue appeal decisions in a timely manner from June 2020 through May 2021."

The federal government requires at least 80% of a state's unemployment appeal decisions be made within 45 days of receiving the appeal. LAB found that only 17.5% of DWD's decisions made in May 2021 were made within 45 days of receiving the requests. The usual excuse from the administration is to blame the outdated computer system for discrepancies, but the failure to be in compliance with these deadlines has nothing to do with the software. Here is a nice summary of the report: [Another Audit Finds Evers' Handling of UI a Disaster](#)

In addition to the LAB audit, Republican members of the state's congressional delegation asked Governor Evers and his administration for an accounting of how federal dollars were being used for the Unemployment Insurance program. The request was sent back in May, but they have yet to receive a response. Last week, they issued a new [request](#) for the administration to provide details on how the unprecedented amount of federal funding being sent to Wisconsin is helping the

state's unemployed.



Source: U.S. Department of Labor

¹ Includes data related only to regular unemployment insurance claims for which appeal hearing determinations had been made in the reporting period, with time lapse measured from the date the appeal was filed to the date a determination on the appeal was made.

Racine County Fair



I hope everyone had the opportunity to attend this year's Racine County Fair. It's always such a great time and I absolutely love getting to spend time with the amazing people in our community.

I had the honor of being a pie judge this year...it was a tough job, but somebody had to do it! Congratulations to the winners of the contest and to all 32 entries. I'm already looking forward to next year!

Wisconsin State Fair



The Wisconsin State Fair has begun and runs through Sunday, August 15th. Visit www.wistatefair.com/fair for all the details!

Calendar of Events

[5th Annual Bumper to Bumper Car Show](#). ChocolateFest Grounds. Sunday, August 8, 8:30 a.m. – 2 p.m.

[Wisconsin State Fair](#), August 5 – August 15

[Burlington Farmer's Market](#). Wehmhoff Square Park. Thursdays 3p.m. – 7 p.m., May 13th through October.

[Farmer's Market - Waterford](#). Creative Spaces Studios, 318 E. Main St, Waterford. Saturdays 9 a.m. – 1 p.m., June through October.

[The Art of the Cup: RAM's Collection](#). Racine Art Museum. Recurring weekly on Wednesday, Thursday, Friday, Saturday until August 7, 12p.m. – 4p.m.

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MEMORANDUM

TO: Speaker Robin Vos

FROM: Rick Champagne, chief
Michael Gallagher, senior coordinating attorney
Sarah Walkenhorst Barber, senior legislative attorney

DATE: August 5, 2021

SUBJECT: Legislative committee investigation process

On March 23, 2021, the Wisconsin State Assembly directed the Assembly Committee on Campaigns and Elections (Elections Committee) to “investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.”¹ On May 21, 2021, the Committee on Assembly Organization adopted a motion authorizing the assembly speaker, on behalf of the assembly, to hire legal counsel and employ investigators to assist the Elections Committee in its investigation. Speaker Robin Vos retained former Supreme Court Justice Michael Gableman to assist the Elections Committee in its investigation, eventually assigning him the role of special counsel.

You have asked us to discuss the process for conducting a legislative committee investigation. It has been more than half a century since the state legislature last employed a full-fledged committee investigation of this kind.² Neither the Wisconsin Statutes nor the assembly rules provide a comprehensive process for conducting a legislative investigation—there is no road map. To be sure, there are constraints on committee investigations that we will discuss in this memorandum. These constraints relate to the issuance and enforcement of subpoenas, the application of Wisconsin’s open meetings law to legislative committee hearings, and the privileges and constitutional rights of witnesses.

However, it is equally important to note that the legislature’s power to conduct investigations is coextensive with its power to legislate, which is plenary. Committee investigations are essential for the lawmaking process and for the legislature to carry out its oversight duties. The power to conduct investigations includes the power to determine the scope and manner of investigations.

¹ [2021 Wis. AR 15](#), as shown by [ASA 2](#).

² See [Goldman v. Olson](#), 286 F. Supp. 35 (W.D. Wis. 1968).

So long as the legislature acts within the boundaries of the legal constraints on the conduct of investigations, the legislature may establish whatever process it considers most efficacious to achieve its legislative goals.

Broad legislative power to conduct investigations

The Wisconsin State Legislature’s legislative power is plenary, limited only by the Wisconsin Constitution, the United States Constitution, and, under the supremacy clause, federal law.³ That plenary power includes broad authority to conduct investigations as the legislature sees fit in the furtherance of its legislative functions. Investigations allow the legislature to determine the necessity for new or amended laws, as well as provide for checks and balances over the actions of other branches of state government.

It is well established that the state legislature has inherent and “broad discretionary power to investigate any subject respecting which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or perform any other act delegated to it by the fundamental law, state or national.”⁴ Without the ability to investigate or conduct hearings on proposed legislation, the legislature may not have the information necessary to carry out its constitutional obligations. Legislative investigations of one sort or another are the precursor for informed legislation. For that reason, the state legislature has “a constitutional right” to conduct investigations.⁵

Additionally, “the manner of conducting [a legislative] investigation, rests . . . entirely in the sound discretion of the legislature.”⁶ As the Wisconsin Supreme Court reasoned in its early years, in 1858: “For if the legislature have the power to investigate at all, it has the power of choosing how the investigation shall be had.”⁷ Once the legislature has decided on the necessity of an investigation, it is within its core constitutional powers for the legislature to determine how the investigation would be conducted. As the Wisconsin Supreme Court further noted, a legislative investigation may be carried out “by a joint committee, or by a committee of either or both houses acting independently, or . . . *in any other manner which to [the legislature] might seem most convenient and proper.*”⁸ Finally, the Wisconsin Supreme Court has repeatedly stated—most recently in 2019—that it “will not, under separation of powers concepts and affording the comity and respect due a co-equal branch of state government, interfere with the

³ See [State ex rel. McCormack v. Foley, 18 Wis. 2d 274, 277 \(1962\)](#) (“The framers of the Wisconsin Constitution vested the legislative power of the state in a senate and assembly. The exercise of such power is subject only to the limitation and restraints imposed by the Wisconsin Constitution and the Constitution and laws of the United States.”); [Libertarian Party v. State, 199 Wis. 2d 790, 801 \(1996\)](#) (“Our legislature has plenary power except where forbidden to act by the Wisconsin Constitution.”); [Town of Beloit v. County of Rock, 2003 WI 8, ¶ 23](#) (“The Legislature has plenary power to act except where forbidden by the Wisconsin Constitution.”).

⁴ [Goldman](#), 286 F. Supp. at 43 (quoting [State ex rel. Rosenhein v. Frear, 138 Wis. 173, 176–77 \(1909\)](#)).

⁵ [In re Falvey, 7 Wis. 630, 638 \(1858\)](#).

⁶ [In re Falvey, 7 Wis. at 638](#).

⁷ *Id.*

⁸ *Id.* (emphasis added).

conduct of legislative affairs.”⁹ Investigations are essential legislative affairs. For this reason, the court’s noninterference doctrine applies to the manner in which the legislature chooses to conduct its investigations. The legislature determines the process for conducting its investigations.

General process governing legislative committee investigations

2021 Assembly Resolution 15 directs the Elections Committee to investigate the administration of Wisconsin elections, focusing in particular on elections held after January 1, 2019. The resolution does not establish a process or set constraints for the Elections Committee to conduct its investigation. Assembly rules also do not specify how committee investigations are to be conducted, other than that the speaker must issue subpoenas with the countersignature of the assembly chief clerk.¹⁰ Moreover, the Wisconsin Statutes do not lay out a process for committee investigations, except with respect primarily to the issuance and enforcement of subpoenas, as discussed further below.¹¹ For these reasons, the Elections Committee determines the ground rules for the conduct of committee proceedings, including investigations, subject only to applicable law and legislative rules.

The Wisconsin Legislature has a committee system characterized by strong committee chairpersons. Committees typically meet at the call of their chairpersons and conduct committee proceedings as directed by the committee chairperson, who may set committee procedures by directive or may allow the committee by majority vote to set its procedures. If the Elections Committee chairperson establishes the procedures for conducting the committee investigation by directive, the chairperson may decide when the committee will convene, how committee members may participate in the proceedings, and who will be required or invited to testify before the committee.

The Elections Committee chairperson may also direct special counsel retained by the speaker to assist the committee to take all actions necessary for the committee to conduct its investigation, including taking depositions or questioning witnesses before the full committee. This is the chairperson’s decision. With respect to depositions, it should be noted that it is contempt for a person to refuse “to attend or be examined as a witness, either before the house or a committee, or before any person authorized to take testimony in legislative proceedings.”¹² Importantly, the special counsel is retained by the speaker on behalf of the assembly but is charged with assisting the Elections Committee in its investigation. Because the speaker is authorized to approve all contractual arrangements with the special counsel, the manner in which the special counsel assists the committee is determined both by the speaker and the committee chairperson. In other

⁹ [League of Women Voters of Wis. v. Evers, 2019 WI 75](#), ¶ 36 (quoting [State ex rel. La Follette v. Stitt, 114 Wis. 2d 358](#), 368 (1983)).

¹⁰ Assembly Rule 3 (1) (o).

¹¹ This is in contrast to some states, such as Maine, whose statutes establish rules and procedures governing a legislative committee’s investigative process and questioning of witnesses. See [Me. Rev. Stat. tit. 3, ch. 21](#).

¹² [Wis. Stat. § 13.26 \(1\) \(c\)](#) (emphasis added).

words, there is a dual line of authority for special counsel services. The speaker determines the types of services the special counsel will provide the committee in its investigation, as well as the powers the special counsel possesses to conduct the investigation, while the committee chairperson determines the role of special counsel in assisting the investigation at committee.

Compelling the testimony of witnesses and production of documents

According to *Mason's Manual of Legislative Procedure*, a legislature's investigation power "carries with it the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process."¹³ Without the right to require the participation of witnesses and the production of documents, a legislature would be unable to conduct a proper and complete investigation. In Wisconsin, the process for issuing and enforcing legislative subpoenas is established by statute.¹⁴ A subpoena issued in connection with a legislative investigation must be signed by the presiding officer—in the assembly, the speaker—and countersigned by the chief clerk of the house.¹⁵

A legislative subpoena may be issued to compel the testimony of any witness or the production of documents and other records.¹⁶ A legislative subpoena "may require such attendance forthwith or on a future day," may be served by any person, and must be returned to the chief clerk in the same manner as subpoenas from the circuit court are served and returned.¹⁷ There is no standard form for legislative subpoenas. However, at the very least, a legislative subpoena must state "when and where, and before whom, the witness is required to appear" and may designate the "books, records, documents and papers" that must be produced.¹⁸ In this respect, the subpoena must inform the recipient of the subject of the investigation.

Legislative subpoenas may be enforced in several ways. First, "summary process" may be issued for witnesses refusing to testify or produce documents.¹⁹ The summary process must be signed by the presiding officer and the chief clerk of the house issuing the subpoena and directed to the sergeant at arms, "commanding the sergeant at arms 'in the name of the state of Wisconsin' to take the body of the person so failing to attend, naming that person, and bring the person forthwith before the house whose subpoena the person disobeyed."²⁰ The person may be held in custody until he or she complies with the subpoena.²¹

¹³ *Mason's Manual of Legislative Procedure* (Denver: NCSL, 2020), Sec. 795 (5). See also *In re Falvey*, 7 Wis. at 641–42 (upholding confinement for failure to appear pursuant to a legislative subpoena).

¹⁴ See [Wis. Stat. §§ 13.31](#) to [13.36](#).

¹⁵ Wis. Stat. § 13.31. Also, see Assembly Rule 3 (1) (o).

¹⁶ *Id.*

¹⁷ *Id.* See also [Wis. Stat. § 885.03](#) ("Any subpoena may be served by any person by exhibiting and reading it to the witness, or by giving the witness a copy thereof, or by leaving such copy at the witness's abode.").

¹⁸ Wis. Stat. § 13.31. Additionally, subpoenaed witnesses receive as compensation "\$2 for each day's attendance and 10 cents per mile, one way, for travel to attend as such witness." Wis. Stat. § 13.36.

¹⁹ [Wis. Stat. § 13.32 \(1\)](#).

²⁰ [Wis. Stat. § 13.32 \(2\)](#). See also [Wis. Stat. § 13.33](#) with respect to enforcing the summary process.

²¹ Wis. Stat. § 13.32 (2).

A person who refuses to testify or produce documents may also be held in contempt. In that case, the committee chairperson certifies the witness's refusal to the house.²² Upon certification, the person refusing to testify or produce documents may be taken by the sergeant at arms or his or her assistant before the house "to be dealt with according to law."²³

Alternatively, and the most likely course of action for enforcing a legislative subpoena, a legislative subpoena may be enforced in state court pursuant to [Wis. Stat. § 885.12](#), which provides:

If any person, without reasonable excuse, fails to attend as a witness, or to testify as lawfully required before any . . . committee, or other officer or person authorized to take testimony, or to produce a book or paper which the person was lawfully directed to bring, or to subscribe the person's deposition when correctly reduced to writing, any judge of a court of record or a circuit court commissioner in the county where the person was obliged to attend may, upon sworn proof of the facts, issue an attachment for the person, and unless the person shall purge the contempt and go and testify or do such other act as required by law, may commit the person to close confinement in the county jail until the person shall so testify or do such act, or be discharged according to law. The sheriff of the county shall execute the commitment.²⁴

It should also be noted that in lieu of or before resorting to the issuance of a legislative subpoena to a person or for the production of documents, special counsel could seek to conduct informal interviews of witnesses or make informal requests for documents. These would be fact finding activities in which special counsel seeks to determine if witness testimony is important for the committee investigation or if documents in possession of witnesses would assist the committee. These interviews need not be conducted under oath. Additionally, Wisconsin's public records law provides another avenue for requesting the production of records pertinent to the Elections Committee's investigation.²⁵

Open meetings

Wisconsin's open meetings law generally applies to meetings of legislative committees, including meetings at which witnesses testify in the course of a committee's investigation. Such meetings must be preceded by public notice and, unless otherwise provided in assembly or joint rules or one of the exemptions in [Wis. Stat. § 19.85 \(1\)](#) applies, must be held in open session.²⁶ The requirements governing the content, timing, and publication of a public meeting notice are

²² [Wis. Stat. § 13.34](#).

²³ *Id.* See also [Wis. Stat. §§ 13.26 \(1\) \(c\)](#) (contempt for refusal to testify or produce documents) and [13.27](#) (punishment for contempt).

²⁴ See also [20 Wis. Op Att'y. Gen. 765](#), a 1931 attorney general opinion in which the attorney general states that Wis. Stat. § 885.12 (then Wis. Stat. § 325.12) provides a means of enforcing a legislative subpoena.

²⁵ See [Wis. Stat. §§ 19.31](#) to [19.39](#).

²⁶ [Wis. Stat. § 19.83 \(1\)](#). Also, see [Wis. Stat. § 19.87 \(2\)](#).

provided under [Wis. Stat. § 19.84](#). Conducting a meeting in open session means the meeting is “held in a place reasonably accessible to members of the public and open to all citizens at all times.”²⁷ Importantly, the open meetings law would not apply to depositions taken by the special counsel on behalf of the Elections Committee, provided that at least half of the members of the committee are not also present at the deposition.²⁸

Due process and other witness rights

When the legislature conducts an investigation, including subpoenaing witnesses to provide mandatory testimony, those witnesses have been found to be entitled to certain due process and other rights. The United States Supreme Court has recognized the duty of citizens to cooperate with Congress and state legislatures in investigations but noted that, with that obligation, there is an assumption “that the constitutional rights of witnesses will be respected” by the investigating body “as they are in a court of justice.”²⁹

A witness in the context of a legislative investigation is not entitled to all rights due to a criminal defendant. For example, the witness does not have any right to compel attendance of or cross-examine witnesses. However, witnesses do retain individual constitutional rights in the context of legislative investigations³⁰ and courts have expressly upheld certain rights of witnesses in that context: “Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.”³¹

There is relatively little reported case law on Wisconsin legislative investigations and the rights of witnesses who appear before committees. Federal courts have opined more frequently on this issue, usually involving actions of congressional committees. The principles established in these cases with respect to witness rights in congressional committee investigations are applicable to committee investigations in Wisconsin.

Due Process

Under the Fourteenth Amendment to the United States Constitution, the state may not “deprive any person of life, liberty, or property, without due process of law.” While the legislative investigative authority is broad and includes the authority to hold a party in contempt for failure to comply with a subpoena, there are limitations to the investigative authority and power to compel a witness based on due process. It has been held, for example, that punishing a witness

²⁷ [Wis. Stat. § 19.82 \(3\)](#).

²⁸ [Wis. Stat. § 19.82 \(2\)](#). See also [State ex rel. Newspapers, Inc. v. Showers, 135 Wis. 2d 77, 102 \(1987\)](#) (holding that open meetings requirements apply whenever members of a governmental body gather with the purpose to engage in governmental business and the number of members present is sufficient to determine the governmental body’s course of action).

²⁹ [Watkins v. United States, 354 U.S. 178, 187–88 \(1957\)](#).

³⁰ [Trump v. Mazars USA, 140 S. Ct. 2019, 2032 \(2020\)](#) (“[R]ecipients of legislative subpoenas retain their constitutional rights throughout the course of an investigation”); [Quinn v. United States, 349 U.S. 155, 161 \(1955\)](#) (“[F]urther limitations on the power to investigate are found in the specific individual guarantees of the *Bill of Rights*.”).

³¹ *Watkins* at 188.

for contempt if the witness declines to cooperate with a request for information that is beyond the scope of the authorized investigation would violate due process.³² In examining a Wisconsin legislative investigation, the United States District Court for the Western District of Wisconsin held that although the Wisconsin Statutes do not contain any express provision “that punishment for contempt may be visited upon a witness only if the question which he refuses to answer is pertinent to the question under inquiry,” such a requirement “must be implied to save the contempt statutes from unconstitutionality” and would otherwise violate due process.³³

Parties seeking information through a legislative investigation must provide some clarity and fair warning to a witness about what is expected or risk that the witness may have a claim for violation of due process.³⁴ Further, while it is clear that a legislature may exercise the power to punish contemptuous conduct, if the legislature seeks to punish a person for contempt, that person must be afforded notice and an opportunity to respond before such punishment is imposed.³⁵

First Amendment

First Amendment freedoms also have been found applicable in the legislative investigation context. In order to invade these freedoms, there must be a substantial connection or “nexus” between the information sought and a subject of “subordinating, overriding, and compelling state interest.”³⁶ Clearly, the administration of state elections would be such an interest. In one United States Supreme Court case, for example, the court found that the applicable committee did not lay an adequate foundation for demanding records of a legitimate organization’s membership and that, as a result, its demands infringed upon the witnesses’ First and Fourteenth Amendments freedoms of association under the Constitution.³⁷ When a governmental entity is compelling disclosure of information, the Supreme Court has imposed “exacting scrutiny” and required that “[t]o withstand this scrutiny, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.”³⁸

Fourth Amendment

³² *Goldman*, 286 F. Supp. at 44.

³³ *Id.*

³⁴ [Raley v. Ohio, 360 U.S. 423, 438 \(1959\)](#) (“A State may not issue commands to its citizens, under criminal sanctions, in language so vague and undefined as to afford no fair warning of what conduct might transgress them.”).

³⁵ [Groppi v. Leslie, 404 U.S. 496, 499–500, 507 \(1972\)](#).

³⁶ *Goldman*, 286 F. Supp. at 46. See also [Gibson v. Florida Legislative Investigation Committee, 372 U.S. 538, 543–44, 545, 546, 551, 555 \(1963\)](#) (“[I]t is an essential prerequisite to the validity of an investigation which intrudes into the area of constitutionally protected rights of speech, press, association and petition that the State convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest.”); see also [Kalkstein v. DiNapoli, 228 A.D.2d 28, 30–31, 653 N.Y.S.2d 710, 712 \(App. Div. 1997\)](#) (“When such [a First Amendment] right is implicated, the government’s quest for information is precluded unless it shows ‘that there are governmental interests sufficiently important to outweigh the possibility of infringement [of First Amendment rights].’”)

³⁷ *Gibson*, 372 U.S. at 557–58.

³⁸ [Ams. for Prosperity Found. v. Bonta, 210 L. Ed. 2d 716, 727, 141 S. Ct. 2373 \(2021\)](#) (quoting *Doe v. Reed*, 561 U. S. 186, 196 (2010)).

A legislative investigation could affect a witness's Fourth Amendment right against an unreasonable search and seizure if a subpoena is too general or unreasonably broad. The scope of the information sought in a legislative investigation is subject to a balancing of the interests of the legislature versus the interest of the witness in maintaining privacy. For example, in one case examining the compelled disclosure of a United States senator's personal diaries in the context of an ethics investigation, a federal district court found that the court "must . . . balance Senator Packwood's expectation of privacy in his personal diaries against the Ethics Committee's interest in examining them for evidence of misconduct, and the nature of the scrutiny it proposes to give them."³⁹ The court found that the procedural protections offered by the committee were sufficient to alleviate any Fourth Amendment concerns.⁴⁰

For this reason, if a committee issues an overbroad or general subpoena, the Fourth Amendment could be available as a defense if the witness refuses to produce the subpoenaed material.⁴¹ If the subpoena clearly relates to the subject of the committee investigation, Fourth Amendment concerns are less likely to present an obstacle to the investigation.

Fifth Amendment

The Fifth Amendment guarantees a person's right against self-incrimination: "[N]or shall any person . . . be compelled in any criminal case to be a witness against himself."⁴² The invocation of the privilege against self-incrimination has been upheld in the legislative investigation context but is available only to natural persons, not to corporations or unincorporated organizations.⁴³ A witness is not excused from testifying before the committee on the grounds that doing so would incriminate the person. The witness must affirmatively assert the privilege, although there is not "ritualistic formula" necessary for invoking the privilege.⁴⁴ A witness may waive the privilege, including by disclosure of facts or a statement that an admission would not subject the person to criminal prosecution.⁴⁵ A witness may not be held in contempt merely because that witness invokes the privilege against self-incrimination.⁴⁶ In order to compel testimony from a witness pleading Fifth Amendment privileges, the legislative body must provide the witness with immunity.⁴⁷ Wis. Stats. s. 13.35 provides for this immunity.

³⁹ [Senate Select Comm. on Ethics v. Packwood, 845 F. Supp. 17, 22 \(D.D.C.1994\)](#).

⁴⁰ *Id.* at 22. Indeed, comparing the required disclosure to disclosures previously required from former President Nixon, the court stated: "It would be presumptuous for this Court to find the Ethics Committee's procedure to represent an 'unreasonable' search when the Supreme Court and its own Circuit Court of Appeals have sustained a more extensive and intrusive examination of similar private papers and recordings of a former president in the vindication of a governmental interest in the 'historical' legacy of the nation, surely no more compelling than that of preserving the probity of the United States Senate in the public's perception and in fact." *Id.*

⁴¹ [The Rights of a Witness Before a Congressional Committee](#), 29 Fordham L. Rev. 357, 360 (1960) ("[I]f a committee employs a dragnet seizure of private papers, with the hope that something might turn up, or issues a subpoena duces tecum which lacks particularity, or subpoenas papers without legislative authority, the [Fourth] amendment will be available as a defense.").

⁴² U.S. Const. amend. V.

⁴³ [Rogers v. United States, 340 U.S. 367, 371–72 \(1951\)](#); [United States v. Murdock, 284 U.S. 141, 148 \(1931\)](#).

⁴⁴ [Quinn](#), 349 U.S. at 170.

⁴⁵ [The Rights of a Witness Before a Congressional Committee](#), 29 Fordham L. Rev. 357, 364–65 (1960).

⁴⁶ Roberto Iraola, *Self-Incrimination and Congressional Hearings*, 54 Mercer L. Rev. 939, 95556 (2003)

⁴⁷ *Id.*

Privileges and the right to counsel

Finally, witnesses may also retain certain privileges. The United States Supreme Court, for instance, has recently stated that in the context of legislative investigations, “recipients have long been understood to retain common law and constitutional privileges with respect to certain materials, such as attorney-client communications and governmental communications protected by executive privilege.”⁴⁸ In legislative investigations, witnesses may be able to withhold certain communications.

It is important to note that the Sixth Amendment to the United States Constitution provides the right to have the assistance of counsel for defense in all criminal prosecutions.⁴⁹ Because legislative investigations are not criminal prosecutions, that right to counsel does not apply. That said, in practice, witnesses are often allowed to have counsel attend to advise, and some states do provide by statute for a right to counsel in the investigation context.⁵⁰ Wisconsin does not have such a statute.

Conclusion

Committee investigations are an integral part of the legislative process. Legislative committees may conduct investigations at their own initiative or as directed by the full house.⁵¹ The full assembly, through adoption of 2021 Assembly Resolution 15, directed the Elections Committee to investigate the administration of state elections, pursuant to the legislature’s constitutional duty “to make laws and to exercise its oversight and investigative authority.” The Committee on Assembly Organization subsequently authorized the retention of special counsel to assist the Elections Committee in this investigation.

The special counsel’s authority is established and circumscribed by the speaker, acting on behalf of the assembly. The day-to-day role of the special counsel in assisting the Elections Committee is determined by the committee chairperson, including the role of special counsel at committee proceedings. The special counsel may investigate any matter covered by 2021 Assembly Resolution 15 and may do so through informal interviews and requests for documents and through the issuance of legislative subpoenas signed by the speaker and the assembly chief clerk. In assisting the Elections Committee in conducting the investigation, the special counsel must provide competent and timely legal services and seek to gather evidence for determining whether state elections, in particular since January 1, 2019, have been conducted in compliance with Wisconsin law.

The Wisconsin Statutes and legislative rules do not prescribe a committee investigative process. How the Elections Committee will proceed and conduct the investigation is a matter within the authority of the committee chairperson. The chairperson will determine when the committee

⁴⁸ *Trump*, 140 S. Ct. at 2032.

⁴⁹ U.S. Const. amend. VI (“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.”).

⁵⁰ See, e.g., Haw. Rev. Stat. § 21-11.

⁵¹ Joint Rule 84 (s) and [Wis. Stat. § 13.31](#).

meets, how committee members will participate in the proceedings, which witnesses will be required or invited to appear before the committee, and the role of special counsel at committee. Throughout the investigation process, the chairperson must ensure that the investigation is conducted according to law and that the due process and other constitutional rights of witnesses are protected.

We hope this information is helpful. Please let us know if the LRB can provide any additional assistance.

From: "Duesterbeck, Melodie" <Melodie.Duesterbeck@legis.wisconsin.gov>
Sent: Tuesday, July 20, 2021, 8:16 AM
To: "Blazel, Ted" <Ted.Blazel@legis.wisconsin.gov>; "Fawcett, Steve"
<Steve.Fawcett@legis.wisconsin.gov>
Subject: ORR from American Oversight
Attachments: WI-REP-21-0928.pdf; WI-REP-21-0925.pdf; WI-REP-21-0923.pdf

FYI

Melodie Duesterbeck
Office of Representative Janel Brandtjen
22nd Assembly District
(608) 267-2367
Sign up for [e-updates!](#)

From: Steve.Fawcett@legis.wisconsin.gov
Sent: Wednesday, July 28, 2021, 8:44 AM
To: "'investigativesolutions2016@gmail.com'" <investigativesolutions2016@gmail.com>
Subject: RE: Integrity Investigator Status

Mr. Page,

Thank you for the email. I will pass this along to Speaker Vos.

Best,
Steve

From: investigativesolutions2016@gmail.com <investigativesolutions2016@gmail.com>
Sent: Tuesday, July 27, 2021 8:30 PM
To: Fawcett, Steve <Steve.Fawcett@legis.wisconsin.gov>
Cc: mgableman@yahoo.com
Subject: Integrity Investigator Status

Steve,

Below is a copy of the letter of resignation I will be sending in the US Mail tomorrow. Unfortunately, things have not worked out for me. I wish you all the best in the investigation.

Mike – It was an honor speaking with you regarding the elections investigation. I am sorry to have to step away.

Steve

Speaker Robin Voss
c/o Steve Fawcett
PO BOX 8953
Madison WI 5370

July 27, 2021

Dear Mr. Speaker:

Please accept this letter as notification that I am terminating my contract as Integrity Investigator effective immediately. I feel compelled to take this action as this investigation is becoming much more involved than I anticipated at the beginning. Also, over the past five days my caseload with regard to prior existing contracts has become so burdensome that I will no longer have the time and energy necessary to continue on in this endeavor.

In addition to this, I have had some personal health issues that have prevented me from carrying out some of the tasks mandated by the position in a timely manner. I am concerned that to continue on would only lead to a further delay of the investigation on my part which would not produce the information requested in the timeframe required.

Not wishing to leave you short another investigator I can strongly recommend Travis Quella. He is someone who would be passionate about this particular investigation. Mr. Quella is a retired sergeant from the Eau Claire Police Department and although he is just starting his own private investigation business, he has extensive experience conducting investigations and I believe he would be a significant asset to the investigation as you move forward. His contact information is as follows:

Travis Quella
Phone: 715-225-3343

I appreciate the opportunity to participate in this important investigation. It was a privilege to have been selected and I still believe in the importance of this work. It is imperative that the voters of Wisconsin are able to trust our election officials to carry out their duties in a legal and impartial manner. I wish you well.

Respectfully,

Steve Page

cc Steven Fawcett
Michael Gableman

Steve Page
Investigative Solutions
5472 Woodcrest Highlands
Eau Claire, WI 5701
715-579-4121
investigativesolutions2016@gmail.com

From: Steve.Fawcett@legis.wisconsin.gov
Sent: Wednesday, July 28, 2021, 8:44 AM
To: "'investigativesolutions2016@gmail.com'" <investigativesolutions2016@gmail.com>
Subject: RE: Integrity Investigator Status

Mr. Page,

Thank you for the email. I will pass this along to Speaker Vos.

Best,
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Sent: Tuesday, July 27, 2021 8:30 PM
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Respectfully,

Steve Page

cc Steven Fawcett
Michael Gableman

Steve Page
Investigative Solutions
5472 Woodcrest Highlands
Eau Claire, WI 5701
715-579-4121
investigativesolutions2016@gmail.com

CHAPTER 21

LEGISLATIVE INVESTIGATING COMMITTEES

SUBCHAPTER 1

GENERAL PROVISIONS

§401. Short title

This Act may be called "Rules for Legislative Investigations." [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§402. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [PL 1975, c. 593, §3 (NEW).]

1. Chair. The "chair" is the presiding officer of the investigating committee. The chair may be the permanent chair or another member designated as temporary chair in the absence of the chair. [PL 2019, c. 475, §26 (AMD).]

2. Executive session. An "executive session" is a session at which only members of the investigating committee, staff of the committee, counsel to the committee, the witness and counsel may be present. [PL 2019, c. 475, §26 (AMD).]

3. Interested party. An "interested party" is any person who learns that that person has been specifically identified in testimony taken before an investigating committee and who reasonably believes that that person has been adversely affected by such testimony. [PL 2019, c. 475, §26 (AMD).]

4. Investigating committee. An "investigating committee" is any committee of the Legislature which has been granted by the Legislature the power to administer oaths, issue subpoenas and take depositions, as authorized by section 165, subsection 7. "Investigating committee" shall include the Legislative Council when it exercises the authority granted under section 162, subsection 4, but shall not include the Commission on Governmental Ethics and Election Practices when it exercises the authority granted under Title 1, chapter 25. [PL 1977, c. 78, §2 (AMD).]

5. Investigating committee action. An "investigating committee action" is any decision arrived at formally by an investigating committee. [PL 1975, c. 593, §3 (NEW).]

6. Members. The "members" of an investigating committee are the legislators appointed by the Legislature to serve on the committee. [PL 1975, c. 593, §3 (NEW).]

7. Quorum. A "quorum" is a majority of the members of a legislative investigating committee. [PL 1975, c. 593, §3 (NEW).]

8. Testimony. "Testimony" is any form of evidence received by an investigating committee. [PL 1975, c. 593, §3 (NEW).]

9. Witness. A "witness" is any person who testifies before an investigating committee or who gives a deposition. "Witness" shall include an interested party who requests permission to testify. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 1977, c. 78, §2 (AMD). PL 2019, c. 475, §26 (AMD).

SUBCHAPTER 2

LEGISLATIVE INVESTIGATING COMMITTEES

§411. Creation

Whenever the Legislature delegates to a committee the power to administer oaths, issue subpoenas and take depositions in connection with any study or investigation, such committee shall automatically become an investigating committee for the purpose of such study or investigation and shall be subject to the provisions of this chapter, whether or not such power is utilized by the committee in the course of such study or investigation. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§412. Scope of study or investigation

The authorization creating an investigating committee shall clearly state, and thereby limit, the subject matter and scope of the study or investigation. No investigating committee shall exceed the limits set forth in such authorization. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§413. Number of members

No investigating committee shall consist of fewer than 3 members. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§414. Oversight of expenditures

The Legislative Council shall provide oversight of expenditures for legislative investigating committees in the same manner as it provides oversight of joint select committees pursuant to chapter 7. [PL 1985, c. 377, §2 (NEW).]

SECTION HISTORY

PL 1985, c. 377, §2 (NEW).

SUBCHAPTER 3

RULES OF PROCEDURE FOR LEGISLATIVE INVESTIGATING COMMITTEES

§421. Investigating committee action

Any investigating committee action shall require the affirmative votes of a majority of the committee members. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§422. Order of procedure

The decision as to the order of procedure in making a study or an investigation shall be an investigating committee action. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§423. Issuance of a subpoena

The decision to issue a subpoena shall be an investigating committee action. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§424. Notice to witnesses

A reasonable time before they are to testify, all prospective witnesses shall be notified of the subject matter of the investigation and shall be provided with a copy of this chapter. When a subpoena is served, the information required by this section shall be presented at the time of service. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§425. Notice to members

Notice of the date and time of any meeting of the committee and of any hearing to be held by the committee shall be given to all members of the investigating committee at least 3 days in advance. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§426. Oaths

All testimony of subpoenaed witnesses shall be under oath. A voluntary witness may be required to testify under oath by legislative committee action. Oaths shall be administered by the chairman. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§427. Testimony

Taking of testimony must be by the investigating committee's counsel, or other staff personnel or the members of the committee. A quorum must be present. Unless otherwise decided by investigating committee action, all testimony must be taken in open session. However, if any witness so requests, that witness's testimony must be taken in executive session, unless otherwise decided by investigating committee action. [RR 2009, c. 2, §1 (COR).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). RR 2009, c. 2, §1 (COR).

§428. Records

A complete record shall be kept of all investigating committee action, including a transcript of all testimony taken. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§429. Release of testimony

1. Release. The decision to release testimony and the decision as to the form and manner in which testimony may be released is an investigating committee action. However, no testimony may be released without first affording the witness who gave such testimony, or the witness's counsel, an opportunity to object to the proposed release.

A. The witness or the witness's counsel may, by such objection, require that testimony given in open session, if it is released at all, be released in the form of a full, consecutive transcript. [PL 2019, c. 475, §27 (AMD).]

B. The witness or the witness's counsel may, by such objection, require that testimony given in executive session not be released in any form or manner whatsoever. [PL 2019, c. 475, §27 (AMD).]

[PL 2019, c. 475, §27 (AMD).]

2. Transcript. The witness or the witness's counsel, upon payment of the cost of preparation, must be given a transcript of any testimony taken. However, the witness or the witness's counsel is not entitled to obtain a transcript of the executive session testimony of other witnesses. The release of a transcript under this subsection is not the release of testimony within the meaning of subsection 1.

[PL 2019, c. 475, §27 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §27 (AMD).

§430. Request for court to compel obedience

The decision to apply to the Superior Court to compel obedience to a subpoena issued by the committee shall be by investigating committee action. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

SUBCHAPTER 4

RULES GOVERNING WITNESSES

§451. Counsel

The witness may have counsel present to advise the witness at all times. The witness or the witness's counsel may, during the time the witness is giving testimony, object to any investigating committee action detrimental to the witness's interests and is entitled to have a ruling by the chair on any such objection. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§452. Questioning of adverse witnesses

The witness or the witness's counsel may question adverse witnesses whose testimony is being taken in open session. However, the chair of the investigating committee may reasonably limit the right

to so question. The chair's ruling is final, unless otherwise decided by investigating committee action. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§453. Pertinency of requested testimony

The witness or the witness's counsel may challenge any request for the witness's testimony as not pertinent to the subject matter and scope of the investigation, in which case the relation believed to exist between the request and the subject matter and scope of the investigation must be explained. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§454. Who can compel testimony

The committee chair may direct compliance with any request for testimony to which objection has been made. However, the chair's direction may be overruled by investigating committee action. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§455. Television, films, radio

Any decision to televise, film or broadcast testimony is investigating committee action. If the witness or the witness's counsel objects to a decision to televise, film or broadcast the witness's testimony, the witness's testimony may not be televised, filmed or broadcast. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§456. Statements and form of answers

The witness or the witness's counsel may insert in the record sworn, written statements of reasonable length relevant to the subject matter and scope of the investigation. In giving testimony, the witness may explain the witness's answers briefly. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§457. Privileges

The witness must be given the benefit of any privilege which the witness could have claimed in court as a party to a civil action, provided that the committee chair may direct compliance with any request for testimony to which claim of privilege has been made. However, the chair's direction may be overruled by investigating committee action. [PL 2019, c. 475, §28 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §28 (AMD).

§458. Rights of interested parties

Any interested party may request an opportunity to appear before the investigating committee. The decision on this request shall be investigating committee action. If such request is granted, the interested party shall appear before the committee as a witness. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

SUBCHAPTER 5

SANCTIONS FOR ENFORCEMENT OF RULES

§471. Legislative responsibility

The Legislature has primary responsibility for insuring adherence to these rules. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§472. Erroneously compelled testimony

Testimony compelled to be given over a proper claim of privilege, or testimony released in violation of section 429, or any evidence obtained as a result of such improper procedure is not admissible in any subsequent criminal proceeding. [PL 1975, c. 593, §3 (NEW).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW).

§473. Contempt

A witness may not be punished for contempt of an investigating committee unless the court finds: [PL 2019, c. 475, §29 (AMD).]

1. Conduct. That the conduct of the witness amounted to contempt; [PL 1975, c. 593, §3 (NEW).]

2. Certain requirements. That the requirements of sections 424, 430, 453 and 454 have been complied with; and [PL 1975, c. 593, §3 (NEW).]

3. Citations. That in the case of:

A. A citation for failure to comply with a subpoena, the requirements of section 423 have been complied with; [PL 1975, c. 593, §3 (NEW).]

B. A citation for failure to testify in response to a request for the witness's testimony challenged as not pertinent to the subject matter and scope of the investigation, the requirements of sections 412 and 453 have been complied with and the request was pertinent as explained; [PL 2019, c. 475, §30 (AMD).]

C. A citation for failure to testify in response to a request for the witness's testimony on grounds of privilege, the requirements of section 457 have been complied with. [PL 2019, c. 475, §30 (AMD).]

[PL 2019, c. 475, §30 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2019, c. 475, §29, 30 (AMD).

§474. Saving clause

A decision by a witness to make use of any protection or remedy afforded by any provision of these rules does not constitute a waiver by the witness of the right to make use of any other protection or remedy. [PL 2013, c. 424, Pt. A, §1 (AMD).]

SECTION HISTORY

PL 1975, c. 593, §3 (NEW). PL 2013, c. 424, Pt. A, §1 (AMD).

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PLEASE NOTE: The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.



July 15, 2021

VIA EMAIL

Representative Janel Brandtjen
Wisconsin State Capitol
Room 12 West
Madison, WI 53708
rep.brandtjen@legis.wi.gov

Re: Public Records Law Request

Dear Representative Brandtjen:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

On May 26, 2021, Wisconsin State Assembly Speaker Robin Vos indicated that the legislature would hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.¹ Since the time of this announcement, the names of several of the contracted individuals have been made public, including former Milwaukee Police Detective Mike Sandvick and former Wisconsin Supreme Court Justice Michael Gableman, whose past actions have raised concerns over the partiality of the investigation.² In June, several Wisconsin state legislators, including Assembly Campaigns and Elections Committee chair Janel Brandtjen, visited the site of the Arizona State Senate's partisan "audit."³ Former President Trump, among others, has

¹ Patrick Marley, *Top Wisconsin Republican Robin Vos Hires Former Cops to Investigate November Election*, Milwaukee J. Sentinel (updated May 26, 2021, 5:16 PM), <https://www.jsonline.com/story/news/politics/elections/2021/05/26/wisconsin-republican-robin-vos-hires-ex-cops-investigate-election/7455034002/>.

² Patrick Marley & Molly Beck, *The Election Investigator Hired by Vos Wrote a Police Report that Spawned Partisan Fight over Voting Rules in 2008*, Milwaukee J. Sentinel (updated May 28, 2021, 3:07 PM), <https://www.jsonline.com/story/news/politics/2021/05/28/wisconsin-election-investigator-vos-hired-has-partisan-past/7477548002/>; Molly Beck, *A Former Wisconsin Supreme Court Justice Will Oversee the Latest Election Review Sought by the State's GOP Leaders*, Milwaukee J. Sentinel (updated June 26, 2021, 2:45 PM), <https://www.jsonline.com/story/news/politics/elections/2021/06/26/former-wisconsin-supreme-court-justice-michael-gableman-will-oversee-robin-vos-2020-election-review/5357319001/>

³ Patrick Marley, *Wisconsin Republicans, and a Disgraced Ex-Missouri Governor, Tour Site of Controversial Arizona Ballot Audit*, Milwaukee J. Sentinel (updated June 13, 2021, 9:35

criticized the Wisconsin Legislature for failing to pursue a “full forensic investigation” of the election.⁴

American Oversight seeks records with the potential to shed light on the legislature’s investigation of the November 2020 election, including records regarding similar partisan reviews in other states and calls for Wisconsin to expand its investigation.

Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:⁵

All electronic communications (including emails, email attachments, text messages, messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) sent or received by Representative Janel Brandtjen or anyone communicating on their behalf, such as a scheduler or assistant, or by their chief of staff, regarding the legislature’s investigation of the 2020 election.

This request should be interpreted to include, but not be limited to: direct communications with the three retired law enforcement officers (including, but not limited to, Mike Sandvick and Steve Page) and former justice Michael Gableman;⁶ communications regarding the Assembly’s resolution authorizing the investigation;⁷ communications regarding the scope and conduct of the investigation, including the use of subpoena power and referrals to prosecutors; communications regarding the selection and evaluation of contractors; or communications regarding the underlying premise of the investigation. In the case of emails and texts, the search should include those sent or received from the specified officials’ individual accounts if they were used to conduct official business, as well those sent from their official email addresses or official phones.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this

AM), <https://www.jsonline.com/story/news/politics/2021/06/12/wisconsin-republicans-review-arizona-ballots-alongside-missouri-governor-who-stepped-down-amid-scand/7671283002/>.

⁴ Molly Beck, *Wisconsin GOP Leaders Say Trump Is ‘Misinformed’ After the Former President Claimed They Are Hiding Election Corruption*, Milwaukee J. Sentinel (updated June 26, 2021, 7:29 PM),

<https://www.jsonline.com/story/news/politics/2021/06/26/vos-says-trump-misinformed-after-former-president-claimed-wisconsin-gop-leaders-hiding-election-corr/5356805001/>.

⁵ Wis. Stat. § 19.35(4)(a).

⁶ See Beck, *supra* note 2.

⁷ Scott Bauer, *Wisconsin Assembly OKs Election Investigation*, Associated Press, Mar. 23, 2021, <https://apnews.com/article/joe-biden-donald-trump-wisconsin-elections-subpoenas-bb7a79e35b86a34d02e8a4b1330e21c2>.

request. In other words, for example, if Rep. Brandtjen received a mass-distribution news clip email referencing the relevant statement by the president, that initial email would not be responsive to this request. However, if Rep. Brandtjen forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from May 28, 2021, through the date the search is conducted.⁸

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the “public interest” because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government action by the general public.

American Oversight’s work is aimed solely at serving the public interest. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight’s financial interest. Rather, American Oversight’s mission is to serve the public by promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media.⁹ American Oversight also makes materials it gathers available on its public website¹⁰ and promotes their availability on social media platforms, such as Facebook and Twitter.¹¹

The public has a significant interest in the Wisconsin state legislature’s investigation of the November 2020 election results, including any expansion of the current

⁸ This request seeks records in addition to, and not duplicative of, the records sought by the request submitted on May 28, 2021, identified with American Oversight’s internal tracking number WI-REP-21-0747.

⁹ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; *State Investigations*, American Oversight, <https://www.americanoversight.org/states>; see, e.g., *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>.

¹⁰ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

¹¹ American Oversight currently has approximately 15,640 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 6, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 6, 2021).

investigation.¹² Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether or to what extent partisan motivations or external actors guided the decision to open an investigation or expand the scope of the current investigation. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

American Oversight asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all locations and systems likely to have responsive records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting government business sent or received on the personal account of the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.¹³

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records.¹⁴ If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are

¹² See *supra*, notes 1-4.

¹³ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

¹⁴ Wis. Stat. § 19.36(6).

subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Sarah Colombo at records@americanoversight.org or (202) 869-5244. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Sarah Colombo
Sarah Colombo
on behalf of
American Oversight



July 15, 2021

VIA EMAIL

Representative Janel Brandtjen
Wisconsin State Capitol
Room 12 West
Madison, WI 53708
rep.brandtjen@legis.wi.gov

Re: Public Records Law Request

Dear Representative Brandtjen:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

On May 26, 2021, Wisconsin State Assembly Speaker Robin Vos indicated that the legislature would hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.¹ Since the time of this announcement, the names of several of the contracted individuals have been made public, including former Milwaukee Police Detective Mike Sandvick and former Wisconsin Supreme Court Justice Michael Gableman, whose past actions have raised concerns over the partiality of the investigation.² In June, several Wisconsin state legislators, including Assembly Campaigns and Elections Committee chair Janel Brandtjen, visited the site of the Arizona State Senate's partisan "audit."³ Former President Trump, among others, has

¹ Patrick Marley, *Top Wisconsin Republican Robin Vos Hires Former Cops to Investigate November Election*, Milwaukee J. Sentinel (updated May 26, 2021, 5:16 PM), <https://www.jsonline.com/story/news/politics/elections/2021/05/26/wisconsin-republican-robin-vos-hires-ex-cops-investigate-election/7455034002/>.

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³ Patrick Marley, *Wisconsin Republicans, and a Disgraced Ex-Missouri Governor, Tour Site of Controversial Arizona Ballot Audit*, Milwaukee J. Sentinel (updated June 13, 2021, 9:35

criticized the Wisconsin Legislature for failing to pursue a “full forensic investigation” of the election.⁴

American Oversight seeks records with the potential to shed light on the legislature’s investigation of the November 2020 election, including records regarding similar partisan reviews in other states and calls for Wisconsin to expand its investigation.

Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:⁵

- A. All electronic communications (including emails, email attachments, text messages, messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) sent or received by (A) Representative Janel Brandtjen or anyone communicating on their behalf, such as a scheduler or assistant, or by their chief of staff, and (B) any of the individuals or entities listed below. This search should include communications sent or received from the listed officials’ personal accounts or devices if they were used to conduct official business, as well those sent from their official email addresses or government-issued devices.

Specified Entities:

1. US Senator Ron Johnson, his chief of staff Sean Riley, his former chief of staff Tony Blando, or his deputy chief of staff Julie Leschke (including, but not limited to jleschke@protonmail.com), or anyone communicating from an email address ending in @ronjohnson.senate.gov
2. Steven Biskupic, or anyone communicating on behalf of Biskupic Jacobs, S.C. (including anyone communicating from an email address ending in @biskupicjacobs.com)
3. James Fitzgerald (including, but not limited to mrfitzo57@yahoo.com) or anyone communicating on behalf of the Brown County GOP (including anyone communicating from an email address ending in @bcRepublicans.net)
4. Former Brown County Clerk Sandy Juno (including, but not limited to, sandy.juno@browncountywi.gov, junosandra@yahoo.com, or audejuno@gmail.com)

AM), <https://www.jsonline.com/story/news/politics/2021/06/12/wisconsin-republicans-review-arizona-ballots-alongside-missouri-governor-who-stepped-down-amid-scand/7671283002/>.

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⁵ Wis. Stat. § 19.35(4)(a).

5. Jacqueline Timmer, or anyone communicating on behalf of the American Voter's Alliance (including anyone communicating from an email address ending in @got-freedom.org)
6. Sandra Duckett (sandra.duckett@gmail.com)
7. Janet Angus (including, but not limited to angus.janet@gmail.com)
8. Ron Heuer (including, but not limited to ronheuer@gmail.com) or anyone communicating on behalf of the Wisconsin Voters' Alliance
9. Phill Kline (including, but not limited to phillklineva@gmail.com), or anyone communicating on behalf of the Amistad Project or the Thomas More Society (including anyone communicating from an email address ending in @thomasmoresociety.org)
10. Peter Bernegger
11. Rick Esenberg, Brian McGrath, Luke Berg, Katherine Spitz, or anyone communicating on behalf of the Wisconsin Institute for Law & Liberty (including anyone communicating from an email address ending in @will-law.org)

For Part A of this request, please provide all responsive records from November 3, 2020, through the date the search is conducted.

- B. All email communications (including complete email chains, email attachments, calendar invitations, and attachments thereto) between (A) any governmental email addresses associated with Rep. Brandtjen and (B) any non-governmental accounts attributed to Rep. Brandtjen.

For Part B of this request, please provide all responsive records from March 1, 2021, through the date the search is conducted.

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the "public interest" because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government action by the general public.

American Oversight's work is aimed solely at serving the public interest. As a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. Rather, American Oversight's mission is to serve the public by promoting transparency in government, educating the public about government activities, and ensuring the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media.⁶ American Oversight also makes materials it gathers available on its public

⁶ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; *State Investigations*, American Oversight, <https://www.americanoversight.org/states>; see,

website⁷ and promotes their availability on social media platforms, such as Facebook and Twitter.⁸

The public has a significant interest in the Wisconsin state legislature's investigation of the November 2020 election results, including any expansion of the current investigation.⁹ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether or to what extent partisan motivations or external actors guided the decision to open an investigation or expand the scope of the current investigation. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

American Oversight asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages and transcripts, notes, or minutes of any meetings, telephone conversations or discussions. Our request includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all locations and systems likely to have responsive records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting

e.g., State Government Contacts with Voting-Restriction Activists, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>.

⁷ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

⁸ American Oversight currently has approximately 15,640 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 6, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 6, 2021).

⁹ *See supra*, notes 1-4.

government business sent or received on the personal account of the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.¹⁰

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records.¹¹ If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that it is not reasonable to segregate portions of the record for release.

Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur search or duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where possible, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

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¹⁰ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

¹¹ Wis. Stat. § 19.36(6).

request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Sarah Colombo

Sarah Colombo
on behalf of
American Oversight



July 15, 2021

VIA EMAIL

Representative Janel Brandtjen
Wisconsin State Capitol
Room 12 West
Madison, WI 53708
rep.brandtjen@legis.wi.gov

Re: Public Records Law Request

Dear Representative Brandtjen:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

On May 26, 2021, Wisconsin State Assembly Speaker Robin Vos indicated that the legislature would hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.¹ Since the time of this announcement, the names of several of the contracted individuals have been made public, including former Milwaukee Police Detective Mike Sandvick and former Wisconsin Supreme Court Justice Michael Gableman, whose past actions have raised concerns over the partiality of the investigation.² In June, several Wisconsin state legislators, including Assembly Campaigns and Elections Committee chair Janel Brandtjen, visited the site of the Arizona State Senate's partisan "audit."³ Former President Trump, among others, has

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criticized the Wisconsin Legislature for failing to pursue a “full forensic investigation” of the election.⁴

American Oversight seeks records with the potential to shed light on the legislature’s investigation of the November 2020 election, including records regarding similar partisan reviews in other states and calls for Wisconsin to expand its investigation.

Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:⁵

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent or received by Representative Janel Brandtjen or anyone communicating on their behalf, such as a scheduler or assistant, or by their chief of staff, regarding the Arizona State Senate’s investigation of Maricopa County’s elections or discussion of a similar investigation in Wisconsin.⁶

This request should be interpreted to include, but not be limited to records reflecting:

1. Communications with members or agents of the Arizona state government, the Arizona Republican Party, or Christina Bobb, Chanel Rion, or anyone communicating on behalf of Voices and Votes or One America News Network

AM), <https://www.jsonline.com/story/news/politics/2021/06/12/wisconsin-republicans-review-arizona-ballots-alongside-missouri-governor-who-stepped-down-amid-scand/7671283002/>.

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2. Communications with or regarding the delegation of Wisconsin state legislators who visited the “audit” site in Phoenix, AZ⁷
3. Communications regarding the statement issued by former President Trump accusing Speaker Vos and other Wisconsin officials of concealing “election corruption” and the subsequent call for Speaker Vos’s resignation⁸
4. Communications between members or agents of the Wisconsin Legislature and former President Trump
5. Communications regarding the planning, preparation, or execution of a large-scale investigation or review of elections in Wisconsin
6. Communications regarding the Assembly’s decision not to pursue a large-scale investigation or review of elections in Wisconsin

Please provide all responsive records from April 1, 2021, through the date the search is conducted.

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Rep. Brandtjen received a mass-distribution news clip email from the Wisconsin Republican Party, that initial email would not be responsive to this request. However, if Rep. Brandtjen forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the “public interest” because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government action by the general public.

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⁸ See Beck, *supra* note 2.

other media.⁹ American Oversight also makes materials it gathers available on its public website¹⁰ and promotes their availability on social media platforms, such as Facebook and Twitter.¹¹

The public has a significant interest in the Wisconsin state legislature's investigation of the November 2020 election results, including any expansion of the current investigation.¹² Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether or to what extent partisan motivations or external actors guided the decision to open an investigation or expand the scope of the current investigation. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

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¹⁰ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

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¹² See *supra*, notes 1-4.

government business sent or received on the personal account of the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.¹³

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¹³ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

¹⁴ Wis. Stat. § 19.36(6).

request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Sarah Colombo

Sarah Colombo
on behalf of
American Oversight