

From: [Annette Ziegler](#)
To: [Supreme Court Justices](#)
Cc: [Audrey Skwierawski](#)
Subject: Response and Update
Date: Monday, August 28, 2023 9:10:15 AM
Attachments: [Letter from Speaker Vos and Leader LeMahieu.pdf](#)
[Unauthorized signature email.pdf](#)
Importance: High

Thank you for your communication, but I am again disappointed with its contents. For transparency and inclusivity, I have included all of our colleagues in this communication.

In that communication you're asking me to schedule weekly Zoom meetings with your invented committee and the unlawfully appointed interim director, Judge Skwierawski. This I cannot do. I am not willing to violate my oath or the constitution. You know that this invented "committee" is in violation of your oath, the constitution and longstanding court practice. It is illegitimate and unenforceable. In addition, you have purportedly hired Judge Skwierawski in violation of the constitution, law, and longstanding court practices. Director Koschnick's firing and Judge Skwierawski's hiring were apparently determined at other secret hidden meetings. You are a walking quorum, conducting meetings in secret, hidden from the public eye, despite your colleagues' inability to attend, and without their knowledge or approval. This is not how a court of seven conducts court business.

As noted recently by one of our colleagues, the invention of the "committee" in your proposed IOP changes and SCR changes occasions a massive change in the operation of the Wisconsin Court system. In particular, the proposed modification to SCR 70.01 makes the director of state courts subject to the "direction of the supreme court administrative committee" rather than the chief justice. This is a significant, substantive change in the way this court carries out its constitutional oversight responsibilities. In addition, pursuant to our IOPs (and, notably, retained in the proposed revisions) we hold a public hearing for all SCR changes "except, in the court's discretion, when the petition concerns ministerial or otherwise non-substantive matters or when exigent circumstances exist." The proposed revisions to the IOPs conveniently include a new exception: "when necessary to bring the Supreme Court Rules and Internal Operating Procedures into conformance." This new exception creates a new mechanism by which major substantive rule changes can be made without a public hearing. The court can amend the IOPs however it wants, then skip the public hearing mandated by the IOPs, and then amend the SCRs to "conform" the two. As Justice Hagedorn stated, this gives you "a get-out-of-public-scrutiny-free card" you can deploy at will. Finally, the proposed IOP changes promise that "[t]he court holds open conference on other administrative matters" beyond pleading, practice, and procedure, and seem to make clear that open conference is held for "[a]ll matters within the court's rule-making jurisdiction," unless the court votes to act in closed conference, but only "[u]pon vote of the majority in open court" (emphasis added). Only then can the court act on a petition closed to the public. That has not happened here. The proposed revisions to the IOPs actually allow the court to keep far more out of the public eye than ever before. So much for inclusivity and transparency.

The four of you secretly and unilaterally hired Judge Skwierawski, without the input or knowledge of any of your remaining colleagues. That has never been how the court conducts its business and her

hiring is unauthorized. Judge Skwierawski's purported appointment by the four justices was not only in violation of our own court rules and practices, but it is also in violation of the constitution and well-established law on positions of public trust. See Wagner v. Milwaukee Cnty. Election Comm'n, 2003 WI 103, ¶12, 263 Wis. 2d 709, 666 N.W.2d 816 (holding that the Wisconsin Constitution prohibits "a judge or justice from holding a nonjudicial position of public trust during the entire term for which he or she was originally elected"); Wis. Const. art. VII, § 10 ("No . . . judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected."); Wis. Stat. § 757.02(2) ("The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he or she was elected or appointed."). Did you even think about that? Moreover, you were advised of the law in my public statement on 8/2/23 (see <https://www.wispolitics.com/2023/chief-justice-annette-kingsland-zielger-statement/>) and also by the August 3, 2023, letter from the Wisconsin Legislature (hand-delivered to all justices and attached for your reference). I will not condone such rogue lawlessness.

Judge Skwierawski's purported appointment is also in violation of longstanding court practices. As you know, judges are not allowed a "leave of absence". See, e.g., <https://archive.jsonline.com/news/milwaukee/milwaukee-county-judge-flanagan-stepping-down-for-stint-in-bosnia-b99645698z1-364167041.html>. As a practical matter Judge Skwierawski was elected by the citizens of Milwaukee County to serve as a trial court judge. There is no authority for her to leave that post to take a higher salary and be paid the same salary as a court of appeals' judge. That in and of itself creates its own host of problems, because, as the constitution says, "When any increase . . . in the compensation of . . . judges of any court of record becomes effective as to any such . . . judge, it shall be effective from such date as to every such . . . judge." Wis. Const. art. 4, § 26.2.a. Now do all judges get a pay raise under the constitution? Did you even think about that? Judge Skwierawski has not stopped being a circuit court judge and there is absolutely no provision that allows her to take a leave (not resign) and be paid more money for a different position. She cannot serve two positions at once. Her purported appointment as interim director of state courts raises serious concerns about this being a public trust violation.

Furthermore, the citizens of Milwaukee County and the State of Wisconsin, for that matter, cannot afford to have circuit court judges not working at peak capacity. Losing a judge in the state's busiest and most backlogged jurisdiction, Milwaukee County, as well as a jurisdiction that has a significant violent felony caseload, is nothing short of irresponsible. How can you shirk your responsibility, and how can Judge Skwierawski shirk her duty to serve as a circuit court judge, disrespecting the needs of the citizens in Milwaukee County and their right to have their elected judges work on that bench? We know that Milwaukee County decisions affect more than Milwaukee County citizens. See State v. Darrell E. Brooks, Waukesha County Case No. 2021CF184; see also <https://www.jsonline.com/story/opinion/2021/12/01/waukesha-parade-chisholm-must-explain-low-bail-darrell-brooks-jr/8810785002/>. You are failing the State with your rogue decision-making regarding firing Director Koschnick and hiring a sitting judge. There was absolutely no need for the problems you have created.

Additionally, the Director of State Courts and the Chief Justice must have a close and trusting working relationship. There needs to be trusted open communication on a regular basis. There is

none of that. I cannot agree that Judge Skwierawski is a duly appointed Director. Her appointment was and is not lawful. As Ann Bradley would know that a Director was previously replaced in no small measure due to the wishes of then-Chief Justice Abrahamson and the unanimous agreement of the court that the Chief needs to have confidence in the serving Director.

Judge Skwieraski is beholden to the walking quorum of four and serves the new liberal majority of the court, none of whom seemingly understand the need for the Director and the Chief Justice to be able to conduct the business of the court. Your recent coup stripped and undermined the constitutional role of the Chief Justice. Much of the non-partisan, important work that I was able to prioritize for the judiciary, given the significant contributions of Director Koschnick, is now also jeopardized. My Mental Health initiatives are suffering from your rash decision making. I have no confidence in the recent hostile takeover and the chaotic effect it has had on the court, staff, and the overall stable functioning of the courts.

Also be aware that Judge Skwierawski has engaged in other practices as an interim Director that are unlawful, unauthorized, and have been hidden from me as Chief Justice. See attached. These pose significant and unnecessary negative consequences that would not have occurred had Director Koschnick not been fired. This is on your shoulders as well as hers. You are making a mess of the judiciary, the court and the institution for years to come. This must stop.

The current "Director" is not duly appointed and cannot serve. The "committee" that you have invented is unconstitutional. At a minimum, it renders the constitutional provision regarding the Chief Justice as administrator meaningless and is in contravention of that understanding which is acknowledged by our practice for nearly 40 years and five Chief Justices at the Wisconsin Supreme Court. Again, I will not condone such lawless destruction of the constitution, the judiciary, or the court.

The Chief Justice is the constitutional administrator of the court and always has been. Your usurpation of the constitution by inventing a "committee" to replace the words "Chief Justice" is shameful and damaging. This is nothing short of an unprecedented coup. For 40 years, the role of the Chief Justice has been understood and respected. Your short term goals will cause long term, irreparable damage to the judiciary. What a historical disgrace.

I cannot participate in your illegal experiment. As you are aware, for the first time in 26 years our court released all of its opinions by June 30. We have no backlog. The drastic measures you continue to propose are completely unnecessary and unworkable. Your actions undermine the functioning, consistency and stability that comes from the Chief Justice, not your committee, fulfilling the constitutional responsibility as administrator. You are obstructing the proper functioning of the courts. We need a Director of State Courts, and I will have that position posted for a nationwide search, as we did last time. I have checked with the previous Director and the job description is accurate. I will add this to an upcoming agenda for further discussion.

Chief Justice Ziegler



WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

August 3, 2023

Wisconsin Supreme Court
<<Hand Delivered>>

Dear Justices:

It has come to our attention that, on August 3, 2023, the Court purported to appoint Judge Audrey Skwierawski of the Milwaukee County Circuit Court to serve as the interim Director of State Courts, a statutory office. We write to bring to your attention that Judge Skwierawski is prohibited from holding that position by Article VII, Section 10 of the Wisconsin Constitution and Wis. Stat. § 757.02(2).

The Wisconsin Constitution provides: “No . . . judge of any court of record shall hold any other office of public trust, except a judicial office, during the term for which elected.” Wis. Const. art. VII, §10(1). This same prohibition appears in Wis. Stat. § 757.02(2), which states: “The judge of any court of record in this state shall be ineligible to hold any office of public trust, except a judicial office, during the term for which he or she was elected or appointed.” Simply, a judge or justice of this state cannot hold another office of public trust unless it is a judicial office during their term.

The term “office of public trust” and the phrase “during the term for which elected” are well defined in Wisconsin law. An “office of public trust” is any “public office.” *See In re Appointment of Revisor*, 141 Wis. 592, 124 N.W. 670, 675-76 (1910) (comparing an office of public trust to a public office). This connection has also been suggested in several Attorney General opinions, including one issued in 2008. *See e.g. Op. Att’y Gen. 04-08 (2008)*. A “public office” is one where “a portion of the sovereignty, legislative, executive or judicial, attaches, to be exercised for the public benefit.” *Martin v. Smith*, 239 Wis. 314, 330, 1 N.W. 163 (1941). Holders of public offices must take the oath of office required under the constitution, unless otherwise exempted. *Id.* at 331; Wis. Const. art. IV, § 28.

Article VII, Section 10 of the Wisconsin Constitution defines “during the term for which elected.” This Court held that the Wisconsin Constitution prohibits “a judge or justice from holding a nonjudicial position of public trust during the entire term for which he or she was originally elected.” *Wagner v. Milwaukee Cnty. Election Comm’n*, 2003 WI 103, ¶2, 263 Wis. 2d. 709, 666 N.W.2d 816. Importantly, this bar is “not effectively terminated by resignation.” *Id.*, ¶55; *see also Op. Att’y Gen. 04-08 (2008)* (“Wisconsin law does not allow a person who has resigned from the office of judge to serve [in an office of public trust] for the duration of the term to which the person was elected as a judge.”).

Under this Court’s binding interpretation of Article VII, Section 10, Judge Skwierawski cannot lawfully occupy the office of Director of State Courts. The Director of State Courts is an office of public trust, *i.e.*, a public office, because it is an office created by legislative act and is delegated authority that is exercised independently for public benefit. *See, e.g. Wis. Stat. § 758.19; see also S.C.R. § 70.01*. It is not a “judicial office” exempted by Wis. Const. art. VII, §10(1). The Supreme Court Rules state, “The director of state courts shall be the chief *nonjudicial* officer of the court system in the state.” S.C.R. § 70.01(1) (emphasis added). Therefore, Judge Skwierawski cannot hold the office

of Director of State Courts during her term as a judge in the Milwaukee County Circuit Court. That term does not expire until July 31, 2025.

Judge Skwierawski cannot serve as the Director of State Courts until the expiration of her term in the Milwaukee County Circuit Court. Her appointment, effective August 3, 2023, was unlawful and should be rescinded. The constitution demands no less.

Sincerely,



Senator Devin LeMahieu
Senate Majority Leader



Representative Robin Vos
Speaker

From: [Annette Ziegler](#)
To: [Audrey Skwierawski](#)
Subject: Unauthorized signature
Date: Monday, August 28, 2023 8:51:41 AM

It has come to my attention that you have been signing my reserve judge orders without my knowledge or approval. You never asked me for permission. You do not have my permission. Stop. These orders are in my name. You have no lawful authority to sign them.

If you have signed anything else under my name, please advise immediately.

Any response to this should be done in writing.