

## Rights of Persons Subpoenaed

While the court is not likely to prevent an individual or entity from being appointed by the Legislature to assist a legislative committee, any subpoenas issued or procedures followed must protect the constitutional rights of the persons subpoenaed. A person whose presence is commanded by a legislative subpoena must appear before the appropriate committee, produce responsive records, and answer questions posed by members of the committee. A person who refuses to do so may be arrested and held in criminal contempt; a person who complies is protected against the use of his or her testimony in a related criminal proceeding. [ss. 13.26 (1) (c), 13.32, and 13.35, Stats.]

In the *Goldman* case, the court considered a challenge to a legislative subpoena issued pursuant to a legislative resolution authorizing a select Senate committee to investigate disruptions on the University of Wisconsin campus. The court found:

With respect to the present case, there are to be considered two limitations imposed by the Constitution of the United States upon the investigatory powers of state legislatures. The first is a concept of due process under the Fourteenth Amendment: whether the subject matter of the particular legislative investigation is defined with sufficient explicitness and clarity to provide a reasonable basis for judgment by the witness whether a specific question put to him is pertinent to that subject matter. The second is a First Amendment concept, as embodied in the Fourteenth: if the legislative inquiry invades those freedoms of opinion and speech and association protected by the First Amendment, whether there is a substantial relationship between the information sought and some subordinating, overriding, compelling state interest or concern.<sup>5</sup>

Thus, while courts generally afford judicial deference to purely legislative matters, the legislative determination that to "appear before a committee" means to appear before the Office of Special Counsel may still be subject to constitutional considerations depending upon how the subpoenas are carried out and enforced.

Please let us know if we can provide any further assistance.

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<sup>5</sup> *Goldman v. Olson*, 286 F. Supp. 35 (W.D. Wis. 1968); see, also, *Groppi v. Leslie*, 404 U.S. 496, 92 S. Ct. 582, 30 L. Ed. 2d 632 (1972), which found that while the Legislature is entitled to hold an individual in contempt, due process protections require proper notice and an opportunity to respond.