INDEMNIFICATION AGREEMENT

THIS MASTER INDEMNIFICATION AGREEMENT (this “Agreement”) is made and entered into as of __________, 2021, by and among THE WISCONSIN STATE ASSEMBLY (the “Assembly”), and CONSULTARE LLC, a Wisconsin limited liability company, by and through its President, Michael J. Gableman in his individual capacity (collectively, “Gableman”, and together with the Assembly, the “Parties” and each a “Party”) and shall constitute a binding contract for indemnification of Gableman by the Assembly with respect to the liabilities of Gableman described herein.

RECITALS

A. Gableman has agreed with the Assembly to act as the Coordinating Attorney or Special Counsel with respect to the Assembly’s inquiry and investigation of potential irregularities and/or illegalities connected to the 2020 November election in Wisconsin (the “Inquiry”), pursuant to that certain Independent Contractor Agreement attached hereto as Exhibit A (the “IC Agreement”).

B. The nature and subject of the Inquiry and Gableman’s position as the Coordinating Attorney or Special Counsel under the IC Agreement may subject Gableman to legal challenges, suits and/or other obligations or liabilities.

C. Gableman requires that the Assembly indemnify and hold Gableman harmless for any such legal challenges, suits and/or other obligations or liabilities in accordance with and upon the terms of this Agreement.

D. The Parties wish and intend by this Agreement to provide for the indemnification of Gableman for all legal challenges, suits and/or other obligations or liabilities arising out of or in any way related to the Inquiry and/or the IC Agreement.

E. The Assembly is aware of Gableman’s reliance on this Agreement and the indemnification provided herein in acting as the Coordinating Attorney or Special Counsel and engaging in the Inquiry.

AGREEMENTS

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The recitals set forth in the section entitled “Recitals” above are hereby incorporated into the Agreement section of this Agreement as if set forth in full herein, and the Parties hereby acknowledge and agree that each such recital is true and correct.

2. Agreement. This Agreement and its terms shall govern, to wit: any and all claims, losses, costs, expenses (including, without limitation, reasonable expenses of investigation and reasonable attorneys’ fees and expenses in connection with any action, suit or proceeding),
liabilities and damages (including, without limitation, special, consequential and other similar damages) ("Costs"), that the Gableman Indemnified Parties (defined below) shall incur, suffer or become subject to, that arise out of, result from, or relate to the IC Agreement and/or the Inquiry, other than Costs resulting from recklessness or willful misconduct of any Gableman Indemnified Party(ies).

3. **Indemnification of Gableman by the Assembly**

(a) **Indemnification.** The Assembly shall indemnify and defend Gableman, and their respective members, directors, employees and investigators (the "Gableman Indemnified Parties" and each a "Gableman Indemnified Party") against, and shall hold each of them harmless from, any and all Costs that any Gableman Indemnified Party may incur, suffer or become subject to, that arise out of, result from, or relate to any of the matters identified herein, including without limitation Gableman’s involvement as Coordinating Attorney or Special Counsel for the Inquiry pursuant to the IC Agreement, unless caused by the willful misconduct of a Gableman Indemnified Party. The Assembly acknowledges and agrees that the indemnification and hold harmless obligations set forth herein shall apply notwithstanding anything in the IC Agreement, or any other agreements between Gableman and the Assembly.

(b) **Procedures for Claims.**

(i) The Gableman Indemnified Parties agree to give prompt notice to the Assembly of the assertion of any claim, or the commencement of any suit, action or proceeding in respect of which indemnity may be sought under Section 3 (each a "Action" and, collectively, the "Actions"). The failure by any Gableman Indemnified Party so to notify the Assembly in accordance with this Section 3(b)(i) shall not relieve the Assembly from any liability that it may have to the Gableman Indemnified Party with respect to any Action pursuant to this Section 3, except to the extent the failure to notify shall actually prejudice the Assembly.

(ii) The Assembly shall allow Gableman to select legal counsel of its choice, that the Assembly shall engage to contest and defend any Action and the Assembly shall conduct the defense of the Action actively and diligently.

4. **Waiver of Breach.** The failure or delay of a Party at any time to require performance by any other Party of any provision of this Agreement, even if known, shall not affect the right of such Party to require performance of that provision or to exercise any right, power, or remedy hereunder, and any waiver by any Party of any breach or any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power, or remedy under this Agreement. No notice to or demand on any Party in any case shall, of itself, entitle such Party to other or further notice or demand in similar or other circumstances.
5. **Termination.** This Agreement shall terminate upon the mutual written agreement of the Parties hereto.

6. **No Assignment.** No Party to this Agreement may assign its rights or delegate obligations under this Agreement without the prior written consent of the other Party hereto.

7. **Invalidity.** If any provision, clause or part of this Agreement or its application under certain circumstances, is held invalid, the remainder of the Agreement, or the applications of each provision, clause or part under other circumstances, shall not be affected.

8. **Amendments.** Amendments to this Agreement must be in writing and signed by each of the Parties hereto.

9. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Wisconsin.

10. **Binding Effect.** Each of the Parties hereto, their successors and assigns, their respective heirs, personal representatives, pledgees or trustees, are bound by this Agreement and shall execute any instruments and perform acts, or refrain from performing the acts that may be necessary or proper to carry out the intent and purpose of this Agreement.

11. **Effective Date and Counterparts.** This Agreement shall take effect upon execution by all Parties. This Agreement may be executed and delivered in counterparts via facsimile, e-mail transmission or original, and each such duly executed counterpart shall be of the same validity, force and effect of the original.

   [signature page follows]
IN WITNESS WHEREOF, the Parties hereby enter into this Agreement as of the date first written above.

THE WISCONSIN STATE ASSEMBLY

By: ____________________________
    Robin J. Vos, Speaker

CONSULTARE LLC

By: ____________________________
    Michael J. Gableman, President

MICHAEL J. GABLEMAN

______________________________
Michael J. Gableman
October 7, 2021

Via electronic mail

Milwaukee Journal Sentinel
Attn: Patrick Marley
P.O. Box 371
Milwaukee, WI 53201

Re: Sept. 28, 2021 Public Records Request – Staff and Messages

Dear Mr. Marley:

The Office of Special Counsel (OSC) received your request dated 9.28.2021. We are in the process of reviewing and evaluating the request.

As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/S/

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

Milwaukee Journal Sentinel
Attn: Patrick Marley
P.O. Box 371
Milwaukee, WI 53201

Re: Sept. 28, 2021 Public Records Request – Contracts

Dear Mr. Marley:

The Office of Special Counsel (OSC) received your request dated 9.28.2021. We are in the process of reviewing and evaluating the request. As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudent speed.

Sincerely,

/ S /

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

Milwaukee Journal Sentinel
Attn: Patrick Marley
P.O. Box 371
Milwaukee, WI 53201

Re: Sept. 21, 2021 Public Records Request

Dear Mr. Marley:

The Office of Special Counsel (OSC) received your request dated 9.21.2021. We are in the process of reviewing and evaluating the request.

As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/S/

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

Milwaukee Journal Sentinel
Attn: Patrick Marley
P.O. Box 371
Milwaukee, WI 53201

Re: Sept. 2, 2021 Public Records Request

Dear Mr. Marley:

The Office of Special Counsel (OSC) received your request dated 9.2.2021. We are in the process of reviewing and evaluating the request.

As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time period.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/ S /

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

Milwaukee Journal Sentinel
Attn: Patrick Marley
P.O. Box 371
Milwaukee, WI 53201

Re: Oct. 5, 2021 Public Records Request — Contracts

Dear Mr. Marley:

The Office of Special Counsel (OSC) received your request dated 10.5.2021. We are in the process of reviewing and evaluating the request.

As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/[Signature]/

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

Milwaukee Journal Sentinel
Attn: Patrick Marley
P.O. Box 371
Milwaukee, WI 53201

Re: Sept. 28, 2021 Public Records Request - Websites

Dear Mr. Marley:

The Office of Special Counsel (OSC) received your request dated 9.28.2021. We are in the process of reviewing and evaluating the request.

As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudent speed.

Sincerely,

/ S /

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

Associated Press
Attn: Scott Bauer
119 Martin Luther King Jr Blvd.
# 4
Madison, WI 53703

Re: Sept. 29, 2021 Public Records Request

Dear Mr. Bauer:

The Office of Special Counsel (OSC) received your request dated 9.29.2021. We are in the process of reviewing and evaluating the request.

As you are aware, the Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/Ś/

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

American Oversight
Attn: Sarah Colombo
1030 15th Street NW
Suite B255
Washington, DC 20005

Re: July 19, 2021 Public Records Request

Dear Ms. Colombo:

The Office of Special Counsel (OSC) received your two requests dated 7.19.2021. We are in the process of reviewing and evaluating the requests.

The Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/ S /

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

American Oversight
Attn: Sarah Colombo
1030 15th Street NW
Suite B255
Washington, DC 20005

Re: July 20, 2021 Public Records Request

Dear Ms. Colombo:

The Office of Special Counsel (OSC) received your request dated 7.20.2021. We are in the process of reviewing and evaluating the request.

The Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

[Signature]

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

American Oversight
Attn: Sarah Colombo
1030 15th Street NW
Suite B255
Washington, DC 20005

Re: August 6, 2021 Public Records Request

Dear Ms. Colombo:

The Office of Special Counsel (OSC) received your request dated 8.6.2021. We are in the process of reviewing and evaluating the request.

The Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/ S /

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
October 7, 2021

Via electronic mail

American Oversight
Attn: Sarah Colombo
1030 15th Street NW
Suite B255
Washington, DC 20005

Re:  August 12, 2021 Public Records Request

Dear Ms. Colombo:

The Office of Special Counsel (OSC) received your four requests dated 8.12.2021. We are in the process of reviewing and evaluating the requests.

The Wisconsin Assembly created the OSC 37 days ago. As a newly created office, a wide and substantial variety of logistical or other issues needed office attention in a very compressed time.

Accordingly, the OSC will respond more substantively to your request in all prudential speed.

Sincerely,

/S/

Mike Gableman
Special Counsel
Wisconsin State Assembly
Committee on Elections and Campaigns
COORDINATING ATTORNEY
INDEPENDENT CONTRACTOR
AGREEMENT

This Independent Contractor Agreement (Agreement) is entered into this 25th day of June 2021 by
and between The Wisconsin Assembly (Assembly) and Consultare LLC, by and through its
President/ Michael J. Gableman, an independent contractor (Contractor), in consideration of the
mutual promises made herein, as follows:

Term of Agreement

This Agreement will become effective on July 1, 2021, and will continue in effect until October 31,
2021, unless altered or extended by mutual agreement of Assembly and the Contractor,

Services to be Rendered by Contractor

Contractor agrees to:

- Coordinate the day to day investigatory work relating to potential irregularities and/or
  illegalities connected to the 2020 November election in Wisconsin.
- Analyze and delegate to the investigators leads/allegations from whatever source derived,
  including- but not limited to- those that have been submitted to the Assembly Committee on
  Campaigns and Elections, raised in the media, provided to members of the Legislature
  before or during the investigation, or generated through the course of this investigation;
- Receive investigative reports from investigators and keep a weekly report of investigative
  findings.
- Routinely consult with investigators to help direct them in the nature and manner of their
  investigatory work.
- Compile all investigator reports and weekly attorney reports into a final report related to
  the election investigation, to be submitted to the Speaker of the Assembly, and; • Keep all
  information/findings related to the services rendered under this agreement confidential,
  except when working with Integrity Investigators and such designee(s) of the Assembly
  whom the Speaker shall from time to time identify in writing to the Consultant for such
  purposes. At present, the Speaker hereby designates Attorney Steve Fawcett as the
  Assembly’s point of contact with the Contractor. The identity of the Assembly point of
  contact with whom the Contractor may share such information may be modified from
time to time in writing by the Speaker. The requirement for confidentiality set forth in this
paragraph extends to any and all employees or agents of the Contractor.

Method of Performing Services
Contractor will determine the method, details, and means of performing the above-described services.

Compensation

In consideration for the services to be performed by Contractor, the Assembly agrees to pay Contractor the sum of Eleven Thousand dollars ($11,000), on a monthly basis, the first such payment due on July 15, 2021, and payment continuing on and through the 15th day of each subsequent month subject to this Agreement (August, September, and October 2021) until the "Term of Agreement" recited herein has ended.

Equipment, Supplies and Related Expenses

Contractor will supply all equipment and supplies required to perform the services under this Agreement. Contractor will also be responsible for all related expenses, including but not limited to mileage or hotel stays, required to perform the services under this Agreement.

Workers Compensation

Contractor agrees to hold harmless and indemnify the Assembly for any and all claims arising out of any injury, disability, or death of the Contractor and Contractor's employees or agents. The Contractor also agrees to provide workers' compensation insurance for Contractor's employees and agents where necessary.

Insurance

Contractor agrees to hold the Assembly free and harmless from any and all claims arising from any negligent act or omission by the Contractor or Contractor's employees or agents during the performance of any duties under this Agreement. The Contractor should consider maintaining a policy of insurance to cover any negligent acts committed by the Contractor or Contractor's employees or agents during the performance of any duties under this Agreement.

Obligations of the Assembly

The Assembly agrees to meet the terms of all reasonable requests of Contractor necessary to the performance of Contract's duties under this Agreement.

Assignment

Neither this Agreement nor any duties or obligations under this Agreement may be assigned by the Assembly or Contractor without the prior written consent of the Assembly and Contractor.

Termination of Agreement

Neither party may terminate this Agreement at any time prior to the "Term of Agreement" recited herein absent good cause, except at the sixty (60) day mark either party may terminate the last two months of the contract, by written notice, should either party desire to terminate the contract. If no such termination occurs by the sixty (60) day mark, the contract shall be fulfilled in full by both parties unless terminated for good cause,
Notices

Any notices to be given hereunder by either party to the other may be made either by personal delivery or by mail. Mailed notices shall be addressed to the parties at the following addresses:

Contractor:

Consultare LLC c/o Michael J.
GAbleman, President . P.O. Box
510145
New Berlin, WI 53151

Assembly:

Speaker Robin
Vos c/o Steve
Fawcett PO BOX
8953
Madison WI 53708

Dispute Resolution

In the event the parties disagree to the terms or execution of the contract, the parties agree to notify the other party as soon as possible to said conflict and work in good faith to find a resolution. In the event that no resolution can be found, the parties agree that any conflict arising out of this contractual agreement is within the sole jurisdiction of the Circuit or Court for Waukesha County, which is the jurisdiction for the home County of residence of the Contractor.

Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the performance of services by Contractor and the Assembly, and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing and signed by the other party.
Partial Invalidity

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

Assembly, by: _______________________________ Date: 6-24-2021

Contractor, ________________ Date: ________________
TO: Members of the Committee on Assembly Organization  
FROM: Speaker Robin Vos, Chair  
DATE: May 28, 2021  
SUBJECT: Ballot 21-03 Authorization to Obtain Legal Counsel and Employ Investigators

[MOTION/ It is moved that the Committee on Assembly Organization authorizes the Speaker of the Assembly to hire legal counsel and employ investigators to assist the Assembly Committee on Campaigns and Elections in investigating the administration of elections in Wisconsin. Speaker Vos, on behalf of the Assembly, shall approve all financial costs and contractual arrangements for hiring legal counsel and investigators.

I am recommending adoption of this motion. Please review and indicate your approval by circling "aye" or "no", signing your name, and inserting the date. Thank you.

[If this ballot is not returned to the Speaker's office by Friday, May 28, 2021 at 3 p.m., you will be designated as not voting.]
In the absence of immunity from prosecution, the Fifth Amendment right against self-incrimination very likely still applies to witnesses subpoenaed to testify before a committee or house of the legislature.

TO: Members of the Committee on Assembly Organization
FROM: Speaker Robin Vos, Chair
DATE: August 27, 2021
SUBJECT: Ballot 21-06 Authorization to designate special counsel

[MOTION] It is moved that the Committee on Assembly Organization authorizes the Speaker of the Assembly to designate the legal counsel hired pursuant to the May 28, 2021, ballot adopted by the Committee on Assembly Organization, as special counsel to oversee an Office of Special Counsel. The special counsel shall direct an elections integrity investigation, assist the Elections and Campaign Committee, and hire investigators and other staff to assist in the investigation.

I am recommending adoption of this motion. Please review and indicate your approval by circling "aye" or "no", signing your name, and inserting the date. Thank you.

[If this ballot is not returned to the Speaker's office by Monday, August 30, 2021 at 10:00 a.m., you will be designated as not voting.]
March 17, 2021 - Introduced by Representatives SANFELIPPO, BRANDTJEN, MURPHY, ROZAR, THIESFELDT and TUSLER. Referred to Committee on Rules.

1 Relating to: directing the Assembly Committee on Campaigns and Elections to investigate the administration of elections in Wisconsin.

3 Whereas, the ability of American citizens to exercise their right to vote is foundational to our representative democracy; and

5 Whereas, the legitimacy of the American form of government depends on the widespread confidence in the fairness of elections and acceptance of election
Whereas, the integrity of our electoral process has been jeopardized by election officials who, either through willful disregard or reckless neglect, have failed to adhere to our election laws by, at various times, ignoring, violating, and encouraging noncompliance with bright-line rules established by the statutes and regulations governing the administration of elections in Wisconsin; and

Whereas, it is the duty of the Wisconsin Legislature to make laws and to exercise its oversight and investigative authority to determine the extent to which elections in Wisconsin have been conducted in compliance with the law; now,

therefore, be it

Resolved by the assembly, That the Wisconsin Assembly hereby directs the Assembly Committee on Campaigns and Elections to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January
1, 2019.
TO: REPRESENTATIVE MARK SPREITZER

FROM: Peggy Hurley, Staff Attorney, and Brian Larson, Senior Staff Attorney

RE: Legislative Subpoena Authority and Special Counsel

DATE: October 6, 2021

You asked this office to review copies of subpoenas issued to elections officials in the Cities of Green Bay and Milwaukee and to determine whether the subpoenas comply with the requirements of s. 13-31, Stats. State law specifically states that a legislative subpoena may compel a person to appear before, or to provide documents to, a legislative committee. However, other statutes and case law support the conclusion that a duly authorized representative of a committee may serve as agent for the committee. Therefore, issuance of the subpoenas appears to be valid, and carrying out and enforcing the subpoenas must protect the due process and First Amendment rights of the individuals subpoenaed.

BACKGROUND

2021 Assembly Resolution 15 was passed by the Assembly earlier this year and directs the Assembly Committee on Campaigns and Elections to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019. Pursuant to this resolution, the Committee on Assembly Organization adopted separate ballots on May 28 and August 27, 2021, to authorize the Speaker of the Assembly to hire legal counsel and to designate that individual as special counsel to oversee an Office of Special Counsel.

The August 27, 2021, ballot provides that the Special Counsel shall direct an elections integrity investigation, assist the Assembly Committee on Campaigns and Elections, and hire investigators and other staff.

On September 28, 2021, the Speaker and the Chief Clerk of the Assembly executed subpoenas, on behalf of the Assembly Committee on Campaigns and Elections, to require certain officials to appear before the Special Council on October 15, 2021. The subpoenas were signed and served in accordance with the statutes.

LEGISLATIVE SUBPOENA AUTHORITY

Sections 13-31 to 13-36, Stats., establish the procedures for compelling a witness to appear before a legislative committee and produce documents and records before the committee. The statutes set forth specific provisions relating to service of process, summary process to take custody of a witness, consequences for refusal to testify, immunity for testimony procured by subpoena, and witness fees for testifying before a legislative committee.
The legislative subpoena statute, s. 13-31, Stats., states:

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. (Emphasis added.)

This statute and case law establish that a witness may be compelled to appear before a legislative committee charged with investigatory authority.

DISCUSSION

Validity of Subpoena

A plain language reading of the phrase "before any committee of the legislature, or of either house thereof, appointed to investigate any subject matter" in s. 13-31, Stats., appears to contemplate that a witness may be compelled to appear and to produce documents before a legislative committee, so long as that committee is appointed to investigate the subject matter to which the subpoena pertains. The Office of Special Counsel is not a legislative committee, although it has been charged with assisting the Assembly Committee on Campaigns and Elections.

Some of the duties of the chair established in ss. 13-32 (1) and 13-34, Stats., also indicate that current statutes anticipate that a witness would appear before a legislative committee. Specifically, the chair of the committee may file with the presiding officer a certificate stating that the summoned person failed to appear or refused to answer questions or provide requested documents. Additionally, s. 13-36, Stats., directs that the chair of the committee before which a witness appeared may document the witness' appearance in order to authorize the payment of witness fees.

If a court considers the statutes directly and specifically relating to legislative subpoenas and applies a plain language analysis, these statutes appear to compel a witness to appear, and produce documents for, a legislative committee and not a separate entity. However, a court may refrain from questioning whether an authorized investigation should be carried out in a specific manner by an independent branch. When considering the Legislature's authority to carry out its duties, the Wisconsin Supreme Court has consistently held that unless an action interferes with a constitutional provision or right, it

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1 See Goldman v. Olson, 286 F. Supp. 35 (W.D. Wis. 1968).
The Wisconsin Supreme Court has held that the Legislature has all "authority ... appropriate to achieve the ends" of its express law-making authority. Wisconsin Carry, Inc. v. City of Madison, 2017 WI 19 II 54 n.38; Johnston v. City of Sheboygan, 30 Wis.2d 179, 186 (1966) (quoting M'Culloch v. Maryland, 17 U.S. (4 Wheat.) 316, 421 (1819) ("Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.").
will not interfere with the Legislature on matters of legislative procedure or purely legislative matters. [Ozanne v. Fitzgerald, 2011 WI 43 (2011); La Follette v. Stitt, 114 Wis. 2d 358 (1983).] In addition, a court may find that it is not entirely clear what it means for a witness to appear "before" a committee for purposes of this provision and that a plain language analysis is insufficient.

There are several facts that indicate an appearance before the Special Counsel might be interpreted as an appearance before the committee. First, a legislative committee may utilize outside experts to perform work on its behalf under appropriate circumstances. In this case, the Assembly has charged a committee with conducting an investigation; and, in connection therewith, the house has directed the Speaker to hire an investigator to perform work on behalf of the committee. This could be viewed as similar to other instances in which the legislative branch utilizes outside experts to perform tasks that may require specialized knowledge or skills, such as actuarial services to oversee the retirement system or legal counsel. In some cases, these outside experts are hired in accordance with specific statutory procedures. In other cases, the house or body authorizes the hiring of the outside expert in a resolution or motion approved by the relevant committee on organization.

Second, the ballot adopted by the Committee on Assembly Organization instructs the Special Counsel to assist the committee. The subpoenas signed by the Speaker and Chief Clerk, and requiring attendance before the Special Counsel, were issued in the name of the committee. This may also support the view that an appearance before the Special Counsel could be considered an appearance before the committee for purposes of s. 13-31, Stats.

There is statutory support, as well, for the proposition that an individual or an entity may be authorized to hear testimony on behalf of a legislative committee. Under ss. 13-32 and 13-34, Stats., the chair of the committee for which a subpoena was issued may initiate contempt proceedings against a person who fails to comply with the terms of the subpoena. However, the legislative subpoena statute indicates that the subpoena must "state when and where, and before whom, the witness is required to appear," and the general legislative contempt statute states that a person may be held in contempt for "[r]efusing 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, or to produce any books, records, documents, papers or keys according to the exigency of any subpoena." [ss. 13-31 and 13.26 (1) (c), Stats.; emphasis added.] This language appears to indicate that someone other than the legislative committee may investigate or take testimony on behalf of the committee.

A court adopting this view would likely determine that an appearance before the Special Counsel should be considered an appearance before the committee. In that case, the subpoenas would be deemed valid because all of the requirements under s. 13-31, Stats., would be met.

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1 The Joint Survey Committee on Retirement Systems (JSCRS) routinely contracts for outside actuarial reports to assist the committee in evaluating proposed changes to the retirement system, as provided under the statutes. [s. 13-50, Stats.] The statutes specifically authorize the Joint Survey Committee on Tax Exemptions (JSCTE) to employ personnel as required for the performance of its duties, in accordance with procedures specified in the statutes. [s. 13-52, Stats.] Also, the Joint Committee on Legislative Organization (JCHO) is specifically authorized to employ an outside staff of professional consultants for the purpose of studying ways to improve legislative staff services and organization. [s. 13-90 (1) (f), Stats.]

2 Most often, this approach has been used to hire outside legal counsel to represent the body, a house, or a subunit or member. For example, on October 12, 2005, JCHO authorized the hiring of an outside law firm to represent the defendants in State of Wisconsin v. David A. Zien and Scott L. Gunderson. On February 14, 1997, JCHO adopted a ballot authorizing the Co-Chairs of JCHO to select and retain legal counsel to represent the Joint Committee on Review of Administrative Rules (JCRAR) in a lawsuit, Wisconsin's Environmental Decade v. Dept. of Commerce, and to direct costs to be paid in equal shares by the Senate and Assembly.
TO: Speaker Robin Vos

FROM: Michael Gallagher, senior coordinating attorney

DATE: July 7, 2021

SUBJECT: Legislative subpoenas

On March 23, 2021, the Wisconsin Assembly directed the Assembly Committee on Campaigns and Elections (Elections Committee) to investigate the administration of recent elections in this state. Then, on May 21, 2021, the Committee on Assembly Organization passed a motion authorizing the speaker to hire legal counsel and employ investigators to assist the Elections Committee in its investigation.

You have asked for a summary of how legislative subpoenas compelling witness testimony or the production of documents may be issued in connection with the Election Committee’s investigation and how immunity from liability is obtained for witnesses compelled to testify or produce documents in the course of the investigation.

Inherent legislative authority to conduct investigations and issue subpoenas

The 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. "Such an 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."

see 2021 Wis. AR 15, as shown by 2021 Wis. ASA 2.

1 Goldman v. Olson, 286 F. Supp. 33, 43 (W.D. Wis. 1968) (quoting State ex rel. Rosenheim v. Frear, 138 Wis. 173, 176-77, 119 N.W. 894, 895 (1909), see also In re Falvey, 7 Wis. 630, 638 (1858) ("I have no doubt of the constitutional power of the legislature to investigate the matters named in the joint resolutions."); Mason’s Manual of Legislative Procedure (Denver, CO: NCSL, 2020), Sec. 795 (i) ("[T]he right of a legislative body to make investigations in order to assist it in the preparation of wise and timely laws must exist as an indispensable incident and auxiliary to the proper exercise of legislative power.") Mason’s Manual is the primary authority on legislative parliamentary procedures in the states. 2 In re Falvey, 7 Wis. at 638.
The legislature's inherent investigative 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.

Rules governing the issuance of legislative subpoenas in Wisconsin

In Wisconsin, the rules governing legislative subpoenas are largely established by statute. Any subpoena issued in connection with a legislative investigation must be signed by the presiding officer and the chief clerk of the house, in this case, the assembly. The "presiding officer" is the representative who opens and presides over the daily sessions of the assembly. The presiding officer in the assembly is almost always the speaker or the speaker pro tempore, but the presiding officer may also be the majority leader or his or her designee, for example, if the speaker and speaker pro tempore are temporarily absent.

A legislative subpoena may be issued to compel the testimony of any witness or the production of documents and other records. Additionally, 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.

The subpoena itself 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. Finally, subpoenaed witnesses appearing before a committee receive as compensation "$2 for each day's attendance and 10 cents per mile, one way, for travel to attend as such witness."

Witness immunity

Wis. Stat. § 13.35 provides use immunity to any person compelled to testify or produce documents before a house or committee of the legislature. Specifically, no testimony the person gives nor document or other record the person produces "shall be competent testimony or be used in any trial or criminal proceeding against such person in any court. Wis. Stat. 13.35 also on its face provides immunity from prosecution "for any fact or act

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1 Mason's Manual, supra note 2, Sec. 795 (5). See also In re Falvey, 7 Wis. at 641—42 (upholding confinement for failure to appear pursuant to a legislative subpoena). With respect to the enforcement of legislative subpoenas, see Wis. Stat. 13.32 to 13.34, as well as Wis. Stat. 13.26 (1) (e) (contempt for refusal to testify or produce documents) and 13.27 (punishment for contempt).
2 See Wis. stat. 13.31 to 13.36.
4 Assembly Rules 3m (1) (a) and 95 (57m).
5 Assembly Rule 4. Assembly Rule 4 provides a complete line of succession in the event of temporary absences of officers and certain members.
6 Wis. Stat. 13.31.
7 Id. See also Wis. Stat. a885.03 ("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.").
8 Wis. Stat. 13.36.
9 Wis. Stat. 13.35.
touching which the person is required to testify, but Wis. Stat. 972.085 limits immunity from liability under

Wis. Stat. 13.35, as well as under numerous other statutes, to "immunity only from the use of the compelled testimony or evidence in subsequent criminal or forfeiture proceedings, as well as immunity from the use of evidence derived from that compelled testimony or evidence."

Nevertheless, a person compelled to testify before a house or committee of the legislature may be prosecuted for committing perjury in giving such testimony and may not refuse to testify or produce subpoenaed documents on the grounds that the testimony or documents "may tend to disgrace the person or otherwise render the person infamous."

Conclusion

The legislature has inherent power to conduct investigations in connection with its lawmaking function and to undertake certain actions in carrying out those investigations, including issuing subpoenas to compel testimony and the production of documents. Additionally, the Wisconsin Statutes establish rules governing legislative subpoenas in Wisconsin and provide use immunity to witnesses who are compelled to testify or produce documents in a legislative investigation, such as the Election Committee's investigation into the conduct of recent elections in this state.

I hope this information is helpful. Please let me know if the LRB can provide any additional assistance.
Action Plan to Comply With Outstanding Public Records Requests in 21CV2440

**Exhibit A** seeks documents from March 23, 2021, through the date the search is conducted, but the court limited the request to end after August 30, 2021.

1. A complete copy (including any attachments) of any contract, sub-contract, amendment, memorandum of understanding, or other written agreement (A) between the Wisconsin Assembly and individuals or entities associated with the legislature’s investigation of the November 2020 election related to the planning, preparation, or execution of the investigation, including but not limited to agreements between named contractors former Milwaukee police Detective Mike Sandvick, former Eau Claire police Detective Steven Page, or former Wisconsin Supreme Court Justice Michael Gableman, and (B) between any of the individuals or entities named above in item 1(A) of this request and any assistants, consultants, counsel, formal or informal advisors, temporary workers, or unpaid volunteers, as well as any external sources of funds.

   **Action:** Steve Fawcett has indicated that these documents, to the extent they exist, have been produced. We should ask Ted Blazel and Justice Gableman to confirm that they have no additional responsive documents.

2. A complete copy (including any attachments) of any resume, bid, project proposal, cost or time estimate, scope of work, application form, or other document submitted to any of the individuals or entities named in item 1 of this request, as well as any records regarding the solicitation and evaluation of any bids or proposals.

   **Action:** Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel and Justice Gableman to confirm that they have no responsive documents.

3. Records identifying or referring to the scope of the investigative authority of the Assembly’s investigators or their agents, including but not limited to authority regarding compelling witnesses, issuing subpoenas, or making referrals to the Wisconsin Department of Justice, the U.S. Department of Justice or its subcomponents, or any other law enforcement agency.

   **Action:** Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel and Justice Gableman to confirm that they have no responsive documents.

4. Any project plans or other documents detailing the steps or procedures to be followed in each aspect of the investigation, including but not limited to: records regarding identifying, prioritizing, and investigating “potential irregularities and/or illegalities,” including a complete copy of any reports of alleged irregularity or wrongdoing; protocols, guidelines, or scripts for contacting and interviewing witnesses; records describing
investigative methodology, equipment, or supplies; or guidelines for ensuring the safe handling and privacy of confidential voter information and ballot equipment.

**Action:** Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel and Justice Gableman to confirm that they have no responsive documents.

5. A complete copy (including any attachments) of any invoice received from or records reflecting any payment made to former Milwaukee police Detective Mike Sandvick, former Eau Claire police Detective Steven Page, the third investigator (not yet publicly named), or former Wisconsin Supreme Court Justice Michael Gableman, in connection with their services to the Wisconsin Assembly.

**Action:** Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel to confirm that he has provided all responsive documents.

6. Any criteria, schedule, or other guidelines for the completion of work product related to the investigation, including, but not limited to, interim updates to the Assembly and the construction and presentation of a final report of findings.

**Action:** Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel and Justice Gableman to confirm that they have no responsive documents.

**Exhibit B** Seeks records from June 1 to August 30, 2021:

1. A complete copy (including any attachments) of any interim reports, analyses, notifications, or other work product produced or collected by individuals or entities under contract to investigate the November 2020 election (including but not limited to named contractors former Milwaukee police Detective Mike Sandvick, former Eau Claire police Detective Steven Page, or former Wisconsin Supreme Court Justice Michael Gableman) in connection with the legislature’s investigation of the November 2020 election.

**Action:** Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel and Justice Gableman to confirm that they have no responsive documents. If they do, we will then need to conduct the balancing test to determine if these documents should not be produced. 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). The Office of Special Counsel may have granted a pledge of confidentiality.
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. 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 the Assembly.

**Exhibit C** seeks records from June 1 to August 30, 2021:

A. All electronic communications (including emails, email attachments, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) between (i) the Wisconsin Assembly’s investigators, including Mike Sandvick, Steven Page, and the third, unnamed investigator, as well as their overseeing attorney Michael Gableman and (ii) any of the individuals or entities below. The search should include those sent or received from personal accounts and devices if they were used to conduct official business, as well those sent from any official email addresses or government-issued devices.

Specified Entities:

1. Speaker of the Wisconsin Assembly Robin Vos, his scheduler Amanda Ledtke, his chief of Staff Jenny Toftness, his legal advisor Steve Fawcett, or his outreach director Joe Handrick
2. Representative Janel Brandtjen, or her aide Melodie Duesterbeck
3. Wisconsin State Representative Joe Sanfelippo, or his aides Dominik Kolodziejczyk or Joshua Hoisington
4. Representative Shae Sortwell, or his aide Sulamita Barbiyenu
5. Anyone communicating from a legis.wisconsin.gov email address
6. Wisconsin Elections Commissioner Bob Spindell (including, but not limited to cd4.chaillman@wisgop.info and rspindell@gottesmanecoiparty.com)
7. Wisconsin Elections Commissioner Dean Knudson (including, but not limited to dkean.knudson@wisconsin.gov, dean.knudson@wi.gov, dknudson@comcast.net, or dean@deanknudson.com)
8. U.S. 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)
9. Anyone communicating from an email address ending in mail.house.gov or senate.gov
10. Andrew Hitt, or anyone communicating from an email address ending in @wisgop.org, or @wisgop.info
11. Scott Grabin, or anyone communicating on behalf of the Dane County Republican Party (including anyone communicating from an email address ending in @danegop.org)
12. David Karst, Rick Baas, Carol Brunner, or anyone communicating on behalf of the Milwaukee County Republican Party (including anyone communicating from an email address ending in @mkegop.org)
13. Erin Decker (including but not limited to crmdccker@wi.rr.com or erin.decker@kenoshacounty.org) or anyone communicating on behalf of the Kenosha County Republican Party (including anyone communicating from an email address ending in @kenoshacountygop.org)
14. Richard Frazier (including, but not limited to joshuag24 and 15b@gmail.com). Ken Brown, or anyone communicating on behalf of the Racine County Republican Party (including racinegop@gmail.com, or anyone communicating from an email address ending in @racinegop.org)
15. James Fitzgerald (including, but not limited to nlfitz57@yahoo.com) Andy Williams, Rich Heidel, or anyone communicating on behalf of the Brown County Republican Party (including anyone communicating from an email address ending in @bcrepublicans.net)
16. Former Brown County Clerk Sandy Juno (including, but not limited to, sandy.juno@brownecountywi.gov, junosandra@yahoo.com) or audejuno@gmail.com
17. Rick Eisenberg, 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)
18. Phill Kline (including, but not limited to {dullklineva@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)
19. Karen Mueller, or anyone communicating on behalf of the Amos Center for Justice and Liberty (including, but not limited to, anyone communicating from an email address ending in @amoscenterforjustice.org)
20. Tarren Bragdon, or anyone communicating on behalf of the Foundation for Government Accountability (including anyone communicating from an email address ending in @thefga.org)
21. Ron Heuer (including, but not limited to ronheuer@gmail.com) or anyone communicating on behalf of the Wisconsin Voters' Alliance
22. Jacqueline Timmer, or anyone communicating on behalf of the American Voter's Alliance (including anyone communicating from an email address ending in @gotfreedom.org)
23. Catherine Engelbrecht, Logan Churchwell, Maureen Riordan, Courtney Kramer, Dan Gelernter, or anyone communicating on behalf of True the Vote (including anyone communicating from an email address ending in @truethevote.org or @truethevote.com)
24. Janet Angus (including, but not limited to angus.janet@gmail.com)
25. Christina Bobb, Chanel Rion, or anyone communicating on behalf of Voices & Votes or One America News Network (including anyone communicating from an email address ending in @oann.com)

Action: Steve Fawcett has indicated that he has searched for these documents as they relate to Speaker Vos' office. We should ask Ted Blazel to confirm that he has no responsive documents. We also need Justice Gableman to search for electronic communications from/to Mike Sandvick, Steven Page, the third investigator, and himself. If any such communications are responsive, we will then need to conduct the balancing test to determine if they need to be produced. We will also need to consider the argument that because the court found that Justice Gableman, Mike Sandvick, Steven Page, and the third investigator were contractors prior to August 30, whether these communications were "produced or collected under a contract entered into by the authority." If they were, they should be produced pursuant to Wis. Stats., § 19.36 (3). If not, they would not be subject to being produced.

B. All electronic communications (including emails, email attachments, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) between (i) the Wisconsin Assembly's investigators, including Mike Sandvick, Steven Page, and the third, unnamed investigator, as well as their overseeing attorney Michael Gableman and (ii) any other contractor or agent of the Wisconsin Assembly charged with investigating the November 2020 election, including but not limited to, investigators or attorneys directly employed by the Wisconsin Assembly, or subcontractors, assistants, consultants, counsel, formal or informal advisors, temporary workers, unpaid volunteers, or external funders.

Action: We will need Justice Gableman to search for electronic communications from/to Mike Sandvick, Steven Page, the third investigator, and himself. If any such communications are responsive, we will then need to conduct the balancing test to determine if they need to be produced. And again, we will also need to consider the argument that because the court found that Justice Gableman, Mike Sandvick, Steven Page, and the third investigator were contractors prior to August 30, whether these
communications were “produced or collected under a contract entered into by the authority.” If they were, they should be produced pursuant to Wis. Stats., § 19.36 (3). If not, they would not be subject to being produced.

C. All calendars or calendar entries regarding the legislature’s investigation of the November 2020 election and maintained by or on behalf of the Wisconsin Assembly’s investigators, including Mike Sandvick, Steven Page, and the third, unnamed investigator, as well as their overseeing attorney Michael Gableman.

Action: We will need Justice Gableman calendars for Mike Sandvick, Steven Page, the third investigator, and himself. If any such communications are responsive, we will then need to conduct the balancing test to determine if they need to be produced.

**Exhibit D** seeks records from July 19, 2021 to August 30, 2021. It is a duplicate of Exhibit A.

**Exhibit E** seeks records from July 19, 2021 to August 30, 2021. It is a duplicate of Exhibit B.

**Exhibit F** records from July 19, 2021 to August 30, 2021. It is a duplicate of Exhibit C with the addition of “Representative Timothy Ramthun, or his aide Tristan Johannes” being added as search parameter for the specified entities.

Action: The search conducted pursuant to Exhibit C will need to include the parameter of adding in “Representative Timothy Ramthun, or his aide Tristan Johannes.”

**Exhibit G** seeks records from July 19, 2021 to August 30, 2021.

A. Any resignation letter for Mike Sandvick or Steven Page

B. Any departure or transition communications or memoranda sent by, or on behalf of, Mike Sandvick or Steven Page

C. Any other records associated with the resignation of Mike Sandvick or Steven Page

In all cases, responsive records include records that were “produced or collected” under any contract entered by Speaker Vos and/or the Wisconsin Assembly.

Action: Steve Fawcett has indicated that he has searched for these documents, and none exist within Speaker Vos’ office. We should ask Ted Blazel and Justice Gableman to confirm whether they have any responsive documents.
Open Records Policy

This document comprises the Open Records Policy ("Policy") for the Office of the Special Counsel ("Office"), and is immediately effective upon signature of the Special Counsel. This document sets forth internal procedures for best record-keeping practices, with two goals in mind. First, to comply with all applicable Wisconsin state law, especially Wisconsin Stat. §§ 19.31-39. Second, to enable the Office to expeditiously complete its mission for the State of Wisconsin.

This document is not intended to have any binding legal force outside the Office. Rather, it is an internal manual for managerial purposes. For specific questions, please contact the Office, or consult the relevant sections of the Wisconsin Code, or the advisory manual published by the Office of the Attorney General, entitled "Wisconsin Public Records Law Compliance Guide" ("Guide"). A copy of this manual will be made available to all staff of the Office, including contractors.

Definitions

For the purposes of this Policy, the definitions laid out in the Guide are incorporated by reference.

Not all information received, collected, or compiled by the Office qualifies as a "record" under Wisconsin law. The Office, and the person of the Special Counsel, is responsible for establishing effective controls on record retention and production. This Office, and the Special Counsel, take seriously this obligation, as open records are the foundation for effective government in the State.

Policy

All Office staff, including Contractors and the Special Counsel, shall comply with Wisconsin Open Records Law. The Special Counsel is the sole custodian of records, and shall implement oral and written policies to ensure compliance with the law. When noncompliance is brought to the attention of the Special Counsel, he shall take corrective action, up to and including termination for cause of any contractor or employee relationship. The Special Counsel shall be responsible for maintaining and releasing records pursuant to Wisconsin Open Records law.

Open records requests made pursuant to Wisconsin law shall be promptly responded to. Records shall be made available to requestors as soon as practicable.

Compliance with this Policy shall be considered a part of all Contractor work-product, and shall be incorporated into all future contracts.

Personal Use of Devices

The Office makes available work-issue emails and equipment as appropriate. As with other entities of the Wisconsin state government, incidental personal use of work-issue equipment is permissible. Conversely, incidental work use of personal devices is unavoidable, especially among contractors. Staff and contractors of the Office have been instructed to promptly forward all records created by such incidental personal use to the Office, including relevant records created prior to the effective date of this
Policy. In consideration for compliance with this provision of the policy all Office Staff, Contractors, and the Special Counsel retain a reasonable expectation of privacy in their personal devices.

Special Note

The investigation conducted by the Office into the election of November 3, 2020 does involve information exempt from Open Records requests for the pendency of the investigation, Wis. Stat. § 19.36. Such information may include confidential business information, trade secrets, personnel records, law enforcement records, and other records otherwise exempt from disclosure.

Upon submission of a “Final Report” to the Assembly, or upon the disestablishment of this Office, this investigation will be considered closed. At that time, all records will be transmitted personally by the Special Counsel to the Assembly. Upon transmission, the Special Counsel will cease to be the designated custodian of record under Wisconsin state law, pursuant to Wis. Stat. § 19.33.

Michael J. Gableman
Wisconsin Special Counsel
Date: October 7, 2021
In 1856, the legislature passed a joint resolution to investigate possible bribery by the railroads of certain legislators during the preceding term. To that end the Sergeant at Arms served upon Falvey a subpoena for documents and to appear before the legislature on February 8th 1856. The subpoena required Falvey to appear on February 9th 1856. When he did not appear, the legislature passed a resolution finding him in contempt and directing the Sergeant at Arms to apprehend and confine fall v as a consequence for contempt of the assembly. This resolution was executed February 10 1856. All the side relief in the Wisconsin Supreme Court challenging the legislature's authority to enact such resolutions.

Writing for the majority, Justice Goes delivered a full-throated endorsement of the legislature's actions. The only big thing to have changed from the time that Justice goes wrote this opinion until the Goldman decision, discussed below, is that since the time of gozas opinion, the United States Supreme Court has held that the United States Constitution and the rights guaranteed their under including the Bill of Rights are made applicable to the states by means of the Fourteenth Amendment. This ruling had been made only in the 1960s and there is no way that Justice goes could have anticipated it and so by determining that courts had no authority to supervise the the conduct of the legislature he was applying well-established law that was later Changed by the court.

Although that is certainly a big difference with a big distinction, the remainder of Justice koz's opinion remains solid law. He started with the inquiry of weather the question of whether bribes were given by railroad companies to legislators in order to divert Federal grant money which had been intended to lay down railroad track was a "proper subject for investigation by the legislature?"

He determined to that it is obvious that it such an issue is a proper subject of Investigation by the legislature and perhaps motivated by the unseemly and as in Historic Society well-known Corruption of the Wisconsin legislature at that time so much so as to be considered if not the most corrupt state government in the
nation within the top three Justice goza was motivated to really assert a robust
power of the legislature to investigate matters within its purview. He wrote that
after determining whether the investigation was a prophet proper subject matter of
the resolution Accord should next turn to the question quote whether the
investigation could be made in the manner contemplated by the resolution."

That's on page 635 of the opinion that did not take him long to answer his own
question for in the very next sentence he writes quote for it would seem to follow
as a necessary consequence, but if the legislature could enter upon the investigation
at all in the manner proposed, in order to make such investigation effectual, there
must be some way of compelling the attendance of witnesses before the committee
and to give evidence. Otherwise the whole investigation might be obstructed, at the
outset, by the neglect or refusal of witnesses to come before the committee and
answer questions pertinent to the matter of inquiry." I'd.

Goes when's on page 636 to note that "although the field of inquiry here opened
up is very Broad and the transactions multifarious, yet it seems to me the
investigation can be justified upon several grounds. Then one of you, suggested by
one of the council for the respondent,(Mr. Orton) the investigation might be
demanded not only as eminently proper, but is absolutely called for to preserve the
good faith and honor of the state." This was so he noted because by taking the
federal money the state legislature had become a quasi Trustee of the funds and
any criminal distribution of those funds or even improper distribution of those
funds would have been a stain on the honor of the state of Wisconsin. I'm paid 637
Justice goes asks rhetorically "was it not a duty which the legislature owed to the
people of the state to inquire whether these companies had squandered any of these
lands,"or head and any other way acted improperly in regard to the legislature.

In any event he notes also on page 637 " an examination into these alleged abuse
has might show the necessity of some further legislation in regard to these grants,
some more stringent regulation... [or] "to prevent further mischief." Page 637 also
articulates the bottom line consideration which is whether the resolution is aimed
at remedying defects in existing laws and in language which simply isn't used
anymore "effectuate the great ends of public justice."
On page 638 the justice articulate the outer limits of such an investigation which the boundaries of which seem to be whether the purpose of the legislative subpoena generated as a result of the resolution authorizing the investigation inquired "into a citizen's private affairs"as opposed to investigating the matters embraced in the joint resolution which he had previously determined were as a matter of obvious observation proper.

When I said earlier that this was a full-throated Vindication for the legislature no language demonstrates this more than that at Mid page 637 " remember we are now only considering the power, the constitutional right of the legislature, to investigate these transactions. The policy, the expediency of exercising the power, and the manner of conducting the investigation, rests, in my judgment, entirely in the sound discretion of the legislature." While he goes on to give some examples of such means or methods including" if the legislature have the power to investigate at all, it has the power of choosing how the investigation Shelby had; whether by a committee of one house, or by Committee of each house, acting separately, or by committees acting jointly "

We will see you later on and Goldman that by 1968 courts have taken it as a matter of fact that counsel for the committee has the authority if authorized by the committee chair to question Witnesses who have been subpoenaed as a consequence of a resolution authorizing an investigation so long as the questions are reasonably related to the subject matter of the investigation while even then Judge James E dial writing for the majority and Goldman noted that a lot of leeway is granted the legislature because such investigations are offer often made on a "step-by-step basis" the Nexus between the question and the subject matter of the investigation is not always readily apparent on its face but can be linked up in relevance Epsom subsequent time. In any event Justice goza proved to be prescient when he noted the startling discretion with which the legislature May conduct these investigations. The boundaries seem to be common sense even up to the 19th and including the 1968 Goldman decision but I am getting ahead of myself.

Midway on page 639 the Justice goes on to note that there is no right to counsel at the time of questioning. You see, one of Falvey's objections ran to the fact that
when he was called before the legislature on February 10th 1856 the legislature did not give him the opportunity to appear or be heard by Council. Justice goes dismisses this objection but concluded "it was a matter resting solely in the discretion of that body bracket that is the legislature bracket. And as of the jurisdiction of the assembly, acting in this matter, was Final, the court having no appellate power over it it is not competent for us to revise the proceedings of the assembly or suspend its judgment because it has made a mistake or abused its discretion in the premises." This I believe is the portion of the opinion which has been rendered null by the fact that the United States Supreme Court in the 1960s did hold that the United States Constitution including the Bill of Rights has been made applicable to the states by means of the Fourteenth Amendment. The larger Point still stands which is the timing of service of the subpoena and the date of requirement to appear because in both this case and in the 1968 Goldman case the required appearance was a matter of a day or two following service of the subpoena to appear upon the witness. No one even raised the issue of the relatively short time. And so I take it that that is one of the means or methods which remains in the sound of scratching of the legislature.

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Sent from Yahoo Mail on Android
Mike Gableman <mngableman@yahoo.com>

To: Mike Gableman

Tue, Jul 13 at 6:41 PM

Falvey:

In 1856, the legislature passed a joint resolution to investigate possible bribery by the railroads of certain legislators during the preceding term. To that end the Sergeant at Arms served upon Falvey a subpoena for documents and to appear before the legislature on February 8th 1856. The subpoena required Falvey to appear on February 9th 1856. When he did not appear, the legislature passed a resolution finding him in contempt and directing the Sergeant at Arms to apprehend and confine him as a consequence for contempt of the assembly. This resolution was executed February 1018 56. All the side relief in the Wisconsin Supreme Court challenging the legislature's authority to enact such resolutions.

Writing for the majority, Justice Goes delivered a full-throated endorsement of the legislature's actions. The only big thing to have changed from the time that Justice goes wrote this opinion until the Goldman decision, discussed below, is that since the time of gozas opinion, the United States Supreme Court has held that the United States Constitution and the rights guaranteed their under including the Bill of Rights are made applicable to the states by means of the Fourteenth Amendment. This ruling had been made only in the 1960s and there is no way that Justice goes could have anticipated it and so by determining that courts had no authority to supervise the the conduct of the legislature he was applying well-established law that was later Changed by the court.

Although that is certainly a big difference with a big distinction, the remainder of Justice koz's opinion remains solid law. He started with the inquiry of weather the question of whether bribes were given by railroad companies to legislators in order to divert Federal grant money which had been intended to lay down railroad track was a "proper subject for investigation by the legislature?"
He determined to that it is obvious that it such an issue is a proper subject of Investigation by the legislature and perhaps motivated by the unseemly and as in Historic Society well-known Corruption of the Wisconsin legislature at that time so much so as to be considered if not the most corrupt state government in the nation within the top three Justice goza was motivated to really assert a robust power of the legislature to investigate matters within its purview. He wrote that after determining whether the investigation was a prophet proper subject matter of the resolution Accord should next turn to the question quote whether the investigation could be made in the manner contemplated by the resolution."

That's on page 635 of the opinion that did not take him long to answer his own question for in the very next sentence he writes quote for it would seem to follow as a necessary consequence, but if the legislature could enter upon the investigation at all in the manner proposed, in order to make such investigation effectual, there must be some way of compelling the attendance of witnesses before the committee and to give evidence. Otherwise the whole investigation might be obstructed, at the outset, by the neglect or refusal of witnesses to come before the committee and answer questions pertinent to the matter of inquiry." I'd.

Goes when's on page 636 to note that "although the field of inquiry here opened up is very Broad and the transactions multifarious, yet it seems to me the investigation can be justified upon several grounds. Then one of you, suggested by one of the council for the respondent,(Mr. Orton) the investigation might be demanded not only as eminently proper, but is absolutely called for to preserve the good faith and honor of the state." This was so he noted because by taking the federal money the state legislature had become a quasi Trustee of the funds and any criminal distribution of those funds or even improper distribution of those funds would have been a stain on the honor of the state of Wisconsin. I'm paid 637 Justice goes asks rhetorically "was it not a duty which the legislature owed to the people of the state to inquire whether these companies had squandered any of these lands,"or head and any other way acted improperly in regard to the legislature.
In any event he notes also on page 637 "an examination into these alleged abuse has might show the necessity of some further legislation in regard to these grants, some more stringent regulation... [or] "to prevent further mischief." Page 637 also articulates the bottom line consideration which is whether the resolution is aimed at remedying defects in existing laws and in language which simply isn't used anymore "effectuate the great ends of public justice."

On page 638 the justice articulate the outer limits of such an investigation which the boundaries of which seem to be whether the purpose of the legislative subpoena generated as a result of the resolution authorizing the investigation inquired "into a citizen's private affairs" as opposed to investigating the matters embraced in the joint resolution which he had previously determined were as a matter of obvious observation proper.

When I said earlier that this was a full-throated Vindication for the legislature no language demonstrates this more than that at Mid page 637 "remember we are now only considering the power, the constitutional right of the legislature, to investigate these transactions. The policy, the expediency of exercising the power, and the manner of conducting the investigation, rests, in my judgment, entirely in the sound discretion of the legislature." While he goes on to give some examples of such means or methods including" if the legislature have the power to investigate at all, it has the power of choosing how the investigation Shelby had; whether by a committee of one house, or by Committee of each house, acting separately, or by committees acting jointly "

We will see you later on and Goldman that by 1968 courts have taken it as a matter of fact that counsel for the committee has the authority if authorized by the committee chair to question Witnesses who have been subpoenaed as a consequence of a resolution authorizing an investigation so long as the questions are reasonably related to the subject matter of the investigation while even then Judge James E dial writing for the majority and Goldman noted that a lot of leeway is granted the legislature because such investigations are offer often made on a "step-by-step basis" the Nexus between the question and the subject matter of the investigation is not always readily apparent on its face but can be linked up in relevance Epsom subsequent time. In any event Justice goza proved to be prescient
when he noted the startling discretion with which the legislature May conduct these investigations. The boundaries seem to be common sense even up to the 19th and including the 1968 Goldman decision but I am getting ahead of myself.

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