

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 14

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

-vs-

CASE NO. 02 CF 1476

BRIAN B. BURKE,

Defendant.

PLEA AGREEMENT

1. The State of Wisconsin, by its attorneys, Brian W. Blanchard, Dane County District Attorney, and Dane County Special Assistant District Attorney Roy R. Korte, and the defendant, Brian B. Burke ("the defendant"), individually and by his attorneys Robert H. Friebert and Jeremy P. Levinson, pursuant to §§ 971.08 and 973.20(a), (b) of the Wisconsin Statutes, enter into the following plea agreement in resolution of the above-identified case.

CHARGES

2. The defendant has been charged with eighteen counts in the Information in this case alleging criminal violations of Misconduct In Public Office As Party To The Crime (Cts. 1-14); Fraudulent Concealment Of A Public Record As Party To The Crime (Ct. 15, 17); Withholding A Subpoenaed Document (Ct. 16); Alteration Of Documents Subject To Subpoena As Party To The Crime (Cts. 18), in violation of §§ 946.12(2); 946.12(3); 946.12(4); 946.72(1); 946.60(1); 939.05, Wis. Stats. This court has dismissed Counts 2 – 6.

3. The defendant has read and fully understands the allegations and charges contained in the Amended Criminal and Forfeiture Complaint ("the Criminal Complaint") and the matching charges in the pending Information, and fully understands the nature and elements of the crimes with which he has been charged. Each charge and each element, and all terms and conditions of this plea agreement, have been fully explained to the defendant by his attorneys.

4. The state agrees as part of this agreement to amend Counts 7 – 14 of the Criminal Information to a single, continuing charge of Intentional Misuse Of Public Office, in violation of §§ 19.45(2), 19.58(1)(a), stats., alleging in each case that, on the respective dates referred to in the Criminal Complaint, in Dane County, Wisconsin, the defendant used his public position to obtain financial gain for the private benefit of himself, namely state funds under the control of the Chief Clerk of the Wisconsin Senate, by submitting the identified vouchers bearing a false claim in each instance that the defendant was in Madison on legislative business when the defendant was not in fact in Madison on legislative business, resulting in the corresponding per diem payments to the defendant, which is an unclassified Misdemeanor punishable by a fine not less than \$100 nor more than \$5,000 or imprisonment for not more than one year in the county jail or both. The defendant admits that he completed and signed each voucher, and that he did so with a highly reckless degree of disregard for the truth as to their accuracy, and further admits that his conscious avoidance of determining the truth of the particular days he spent on legislative business in the Capitol when he completed and signed the vouchers was a misuse of his public office to

obtain financial gain. The defendant agrees to waive any statute of limitations claim or defense that could be available under the law to these amendments, although as part of this agreement these amended charges will be dismissed for "read in" purposes, as stated below in paragraph 6(c).

5. The state agrees as part of this agreement to amend Count 16 of the Criminal Information to a charge of Obstructing An Officer, in violation of sec. 946.41(1), stats., alleging that the defendant on Nov. 14, 2001, at the City of Madison, Dane County, knowingly obstructed a law enforcement officer while the officer was doing an act in an official capacity and with lawful authority, a Class A Misdemeanor, with a maximum penalty of a fine not to exceed \$10,000 and imprisonment not to exceed nine months or both. The defendant agrees to waive any statute of limitations claim or defense that could be available under the law to this amendment.

6. The parties agree that:

(a) The defendant will voluntarily plead guilty to Count One of the Criminal Information, which contains a charge corresponding to Count One in the Criminal Complaint, and which is a Class E Felony carrying a maximum penalty of a fine of not more than \$10,000 and imprisonment not to exceed five (5) years or both.

(b) The defendant will voluntarily plead guilty to amended Count 16 of the Criminal Information, as amended to a charge of Obstructing An Officer, corresponding to Count 16 in the Criminal Complaint, and is based on the same allegations of fact. The state agrees to dismiss Counts 15, 17, and 18.

(c) The state as part of this agreement will amend Counts 7 – 14 of the Criminal Complaint as described above in paragraph 4, based on the same factual allegations that correspond to Counts 7 – 14 of the Criminal Complaint, and the parties agree that the amended Counts 7 – 14 are admitted by the defendant and read in for all “read in” purposes.

7. The defendant acknowledges and agrees that, if this case were to proceed to trial, the state would be able to prove, beyond a reasonable doubt, facts sufficient to establish all elements of the offenses charged in each of the counts and amended counts to which he is pleading guilty or agreeing to have read in, as described above. The defendant acknowledges, understands, and agrees that he is, in fact, guilty of the offenses charged in those counts.

FACTUAL BASES

8. The parties understand and agree that in order to sustain the charges of Misconduct In Office as set forth in Count One, the State must prove each of the following propositions beyond a reasonable doubt as to each element:

(a) *First*, that at the time of the alleged offense, the defendant was a public officer, as defined in § 939.22(3), stats., who occupied the office of Wisconsin State Senator;

(b) *Second*, that the defendant, in his capacity as such officer, exercised a discretionary power of his office, either by doing something or by failing to do something;

(c) *Third*, that the defendant exercised that discretionary power in a manner inconsistent with the duties of his office, which duties included avoiding using the perquisites of office at public expense in order to gain an advantage over the campaigns of other candidates;

(d) *Fourth*, and finally, that the defendant exercised such discretionary power with intent to obtain a dishonest advantage for Friends of Brian Burke, the private campaign committee he was then associated with and relying upon in his campaign to be Attorney General of the State of Wisconsin.

9. The defendant acknowledges and stipulates that the state could prove each of the factual allegations made in the Criminal Complaint in this case, and that the Criminal Complaint forms a sufficient factual basis for the court's acceptance of the first plea of guilty contemplated in this agreement.

10. More specifically, the defendant acknowledges and does not dispute relevant facts that include but are not limited to the following, as described in the Criminal Complaint. In sum, beginning no later than December 2000, after deciding to run a political campaign for Wisconsin Attorney General ("the campaign"), and continuing until at least April 2002, the defendant, then a state senator, intentionally supervised and oversaw extensive work of state employees performing acts to further the campaign using state resources over which the defendant had authority as a state senator. The defendant did this to gain, and he did in fact gain, an advantage during 2001 over other candidates or potential candidates who lacked access to the perquisites of his state senate office. Illustrative examples of the defendant's knowing conduct include the following:

(a) Working closely with Burke senate office employees Raghu Devaguptapu and Tanya Bjork, the defendant invited a series of lobbyists to his senate office during the Spring of 2001, for the primary purpose of requesting campaign contributions during the course of meetings in which the defendant, or

Devaguptapu with the approval of the defendant, also asked what the lobbyists wanted from him as a senator. Devaguptapu would prepare memos in advance of these meetings so that the defendant could decide how much money they should ask the lobbyists to contribute to the defendant's campaign committee during these senate office meetings. (As described in dismissed Counts 2 – 6 of the Criminal Complaint)

(b) With the knowledge of the defendant, senate office employee Robert Allen used a state computer in the senate office to create and edit campaign materials such as fundraising solicitations for the defendant's campaign committee and campaign literature. During the summer of 2001 alone, Allen spent approximately half of his work time in the Burke senate office working on campaign materials, for which Allen was fully compensated by the state through his state paycheck. The defendant would at times consult with Allen on aspects of these materials while in the senate office, assigning him campaign tasks that occurred in the senate office.

(c) Senate office employee Cindy McGinnis maintained a campaign finance database on her state purchased and state supported computer in the senate office for the benefit of the campaign, and the defendant was aware of his senate employee's use of that campaign database in the senate office, and interacted with senate staff in the senate office who were using this database.

(d) With the knowledge of the defendant, senate office employee Raghu Devaguptapu spent the majority of his time while employed by the Burke senate office in 2001 raising money for the campaign, including accompanying

the defendant on regular trips to Milwaukee to engage in “call time” to raise money for the campaign. The defendant regularly worked side by side with Devaguptapu raising money for the defendant’s campaign committee.

(e) The defendant hired Tanya Bjork to be chief of staff of his senate office, and gave her the assignment of managing the campaign, some of which work she executed in the senate office using state equipment, but her compensation for this work was almost exclusively through her state salary.

(f) Katy Venskus (then Heringlake) began her work as a state employee in the Burke senate office by spending two weeks helping to raise money for the campaign in anticipation of a Madison fundraising event for the defendant’s campaign in a campaign office. On her first day as a state employee in the senate office, Venskus met briefly with the defendant at the Capitol. He discussed with her how she was spending her time on her first day of employment in that senate office, namely doing campaign work in the campaign office. Venskus was then assigned to take over the fundraising work of Devaguptapu after he left the Burke senate office. Similarly, Elizabeth Schilling started her first day as a full-time employee in the senate office in 2001 by working on the campaign.

11. The parties understand and agree that in order to sustain the amended charge of Obstruction as set forth in Count 16, the State must prove each of the following propositions beyond a reasonable doubt as to each element:

(a) *First*, that at the time of the alleged offense, the defendant, in giving an incomplete production in response to a John Doe subpoena signed by

Judge Sarah O'Brien that had previously been served on the defendant, the defendant obstructed Dane County District Attorney's Office Investigator Mark Wysocki, who was then an officer, as that term is defined in sec. 946.41(2)(b);

(b) *Second*, that when he received the defendant's production, Inv. Wysocki was then acting within his official capacity, namely acting within the scope of Inv. Wysocki's employment;

(c) *Third*, that Inv. Wysocki was acting with lawful authority when he received the subpoena production;

(d) *Fourth*, and finally, that the defendant knew that Inv. Wysocki was an officer acting in his official capacity and with lawful authority, and that the defendant knew that his conduct would obstruct Inv. Wysocki in a criminal investigation.

12. The defendant acknowledges and stipulates that the state could prove each of the factual allegations made in the Criminal Complaint in this case regarding Count 16, and that the Criminal Complaint forms a sufficient factual basis for the court's acceptance of the plea of guilty contemplated in this agreement.

13. More specifically, the defendant acknowledges that he intentionally refused to provide a document within his knowledge and control to a law enforcement officer that he was legally obligated to produce pursuant to a subpoena, and by so doing the defendant knew this conduct would obstruct a criminal investigation. In sum, the defendant knowingly withheld a description of the alleged work assignments of Devaguptapu from Inv. Wysocki, an investigator with the Dane County District Attorney's Office, despite the fact that all such documents had been demanded by subpoena from the defendant. The subpoena at issue had specifically demanded production of the following documents:

(a) All documents identifying, or describing, the work history of Raghu Devaguptapu as an employee, volunteer, consultant, or fundraiser that refer to work performed during any part of the period January 1, 1998 to present, including but not limited to resumes, biographies, employment histories, or summaries.

(b) All documents, consisting of, referring or relating to, anyone's assessment or characterization of any aspect of the work of Raghu Devaguptapu since January 1, 1998, including but not limited to employment applications, disciplinary notes, performance reviews, evaluations, commendations, memoranda, or correspondence.

14. In addition, the defendant acknowledges that the state could prove the facts alleged in the Criminal Complaint regarding his submission of vouchers for per diem expenses, and that this is not a crime of conviction but instead a "read-in crime," which is to be considered by the court at the time of sentencing of the defendant on the crimes of conviction.

RESTITUTION

15. In addition to the maximum penalties given above, the parties further recognize that a restitution order may be ordered by the court, which will require the defendant to cause payment to the State of Wisconsin for losses suffered by the State as a result of these offenses, and in fact such an order is contemplated and will be recommended by the parties. Restitution that will be due to the State of Wisconsin consists of: the estimated value of the public funds expended by the state in support of Friends of Brian Burke, as described in

Count One, and the per diem amounts paid to the defendant for the dates listed in the Criminal Complaint (totaling \$880.00).

REPAYMENT OF LEGAL FEES TO THE STATE OF WISCONSIN

16. Consistent with the position of the Office of the Chief Clerk of the Wisconsin Senate regarding any persons convicted as a result of the investigation resulting in this case, the defendant agrees as part of this agreement that he shall repay to the State of Wisconsin, separate from and beyond any other fine or restitution ordered or agreed to in this case, all funds expended by the State of Wisconsin in the representation of the defendant in connection with that investigation or this case. Repayment shall commence on a set payment plan with at least one payment made in advance of the date of sentencing, and be completed with full payment no later than one year following the date of sentencing.

SENTENCING

17. The parties acknowledge and understand that prior to sentencing, the court may decide to request but is not required to request the Wisconsin Department of Corrections to conduct its own investigation for purposes of recommending a sentence to the court.

18. Both parties reserve the right to apprise the circuit court and the Department of Corrections, if applicable, of any and all information that might be pertinent to the sentencing process, including but not limited to any and all conduct related to the offenses as well as any and all matters which might constitute aggravating or mitigating sentencing factors.

19. The state agrees that at the time of sentencing the state will recommend a term of probation of two years, one condition of which would be a sentence to the Dane County Jail not to exceed six months. The state would not oppose Huber privileges in the event of a sentence that includes jail time. The state reserves the right to ask for fines, beyond restitution ordered, but in any case the state agrees that it would not ask for total fines exceeding \$2,500. The parties agree and stipulate that, aside from that agreement regarding the state's recommendation regarding potential incarceration time and a recommendation regarding a maximum total in fines, neither party is limited in what it may recommend regarding restitution and/or community service, and the defendant is free to request no incarceration time or any other disposition.

COURT'S DETERMINATION AT SENTENCING

20. The parties acknowledge, understand, and agree that neither the sentencing judge nor the Wisconsin Department of Corrections is a party to or bound by this agreement. The sentencing court will make its own determinations regarding any and all issues relating to the appropriate sentences authorized by law up to the maximum penalties set forth above.

21. The parties acknowledge, understand, and agree that the defendant may not move to withdraw the guilty pleas solely as a result of the sentence imposed by the court.

DEFENDANT'S WAIVER OF RIGHTS

22. In entering this agreement, the defendant acknowledges and understands that he surrenders any claims he may have raised in any pretrial

motion, and expressly waives the right to appeal the conviction, or the manner in which the conviction was had, on any grounds whatsoever, and expressly waives the right to contest the conviction or the manner in which the conviction was imposed in any post-conviction proceeding. The parties also agree that should this waiver of appellate rights be found unenforceable, this provision is severable and does not affect the enforceability of the remainder of the plea agreement terms and shall not be a basis for a withdrawal by the defendant of the defendant's plea or otherwise affect any other provisions of the plea agreement.

23. In entering this agreement, the defendant also acknowledges and understands that he surrenders certain additional rights, which include the following:

(a) If the defendant persisted in a plea of not guilty to the charges against him, he would be entitled to a speedy and public trial by a court or jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, the state and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve citizens selected at random. The defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause anonymously, the jury could return a verdict of guilty. The court would instruct the jury that the defendant is presumed innocent until such time, if ever, as the state establishes guilt by competent evidence to the satisfaction of the jury beyond a reasonable doubt.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all of the evidence, whether or not he was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At such trial, whether by a judge or a jury, the state would be required to present witnesses and other evidence against the

defendant. The defendant would be able to confront witnesses upon whose testimony the state is relying to obtain a conviction and he would have the right to cross-examine those witnesses. In turn the defendant could, but is not obligated to, present witnesses and other evidence on his behalf. The defendant would be entitled to compulsory process to call witnesses.

(e) At such trial, defendant would have a privilege against self-incrimination so that he could decline to testify and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify on his own behalf.

24. The defendant acknowledges and understands that by pleading guilty he is waiving all the rights set forth above. The defendant further acknowledges the fact that his attorney has explained these rights to him and the consequences of his waiver of these rights. The defendant further acknowledges that as a part of the guilty plea hearing, the court may question the defendant under oath, on the record, and in the presence of counsel about the offenses to which the defendant intends to plead guilty. The defendant further understands that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement.

GENERAL MATTERS

25. The parties acknowledge, understand, and agree that this plea agreement will be filed and become part of the public record in this case.

EFFECT OF DEFENDANT'S BREACH OF PLEA AGREEMENT

26. The defendant acknowledges and understands that if he violates any term of this agreement at any time, engages in any further criminal activity prior to sentencing, or fails to appear for sentencing, this agreement shall become null and void at the discretion of the State. In addition, if this plea

agreement is revoked or if any court ultimately overturns the defendant's conviction, the State of Wisconsin retains the right to reinstate any and all dismissed charges and to file any and all charges that were not filed because of this agreement. The defendant hereby knowingly and voluntarily waives any defense based on the applicable statute of limitations for any charges filed against the defendant as a result of his breach of this agreement. The defendant understands, however, that the State may elect to proceed with the guilty plea and sentencing.

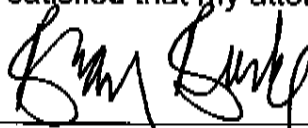
ACKNOWLEDGMENTS

I, Brian B. Burke, enter this plea agreement freely and voluntarily because I am in fact guilty. No threats, promises, representations, or other inducements have been made, nor agreements reached, other than those set forth in this agreement, to induce me to plead guilty. I am not now on or under the influence of any drug, medication, alcohol, or other intoxicant or depressant, whether or not prescribed by a physician, which would impair my ability to understand the terms and conditions of this agreement.

My attorneys have reviewed every part of this agreement with me and have advised me of the implications of the agreement. I know that they have had a full opportunity to review and request any changes to this document before I now make the decision to enter into it. I have discussed all aspects of this case with my attorney and I am satisfied that my attorney has provided effective assistance of counsel.

10-3-05

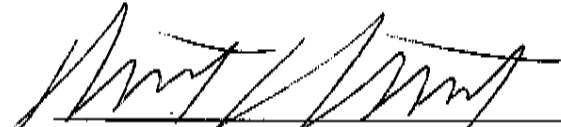
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Brian B. Burke
Defendant

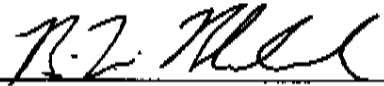
I/we am/are the defendant's attorney(s). I/we carefully have reviewed every part of this agreement with the defendant. To my/our knowledge, our client's decision to enter into this agreement is an informed and voluntary one, and is not the product of improper threats or inducements. I/we have no reason to believe that Brian Burke lacks substantial mental or emotional capacity to assist counsel in evaluating this plea agreement or in defending this case.

10/3/05
Date

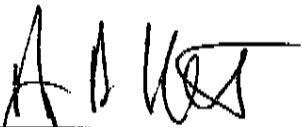

Robert H. Friebert / Jeremy P. Levinson
Counsel For the Defense

For the State of Wisconsin:

10/4/05
Date


Brian W. Blanchard
Dane County District Attorney
State Bar No. 1029962

10/4/05
Date


Roy R. Korte
Special Dane County Assistant District Attorney