

Executive Summary

With his voluntary admission of guilt, Brian Burke has taken full responsibility for his misconduct. Brian acknowledges he failed to meet the most fundamental obligations of an elected official and in doing so, violated the public trust. He regrets and is deeply ashamed of his actions.

Those who believe Brian should serve time in jail fail to realize he already has been severely punished over the past three years and will endure the consequences of his offense conduct for many years. He has experienced multiple, harsh losses including a lengthy period of unemployment and underemployment, financial devastation for his family, the humiliation of losing the privilege to vote, the potential loss of career-related licenses and, perhaps most painful, the loss of his good name and reputation.

It is within the framework of Brian's personal punishment and loss that we propose a sentence for the Court's consideration that includes the following elements:

- Financial restitution to the State of Wisconsin for the use of Brian's staff to benefit his campaign for Attorney General.
- Personal restitution to the community through extensive volunteer service.
- Personal restitution to the community through a financial contribution to Marquette University Law School, to fund educational programming on the subject of ethics in politics.
- Should the Court believe additional punishment is required in addition to that which Brian has already experienced, a period of home confinement with electronic monitoring is recommended.

In support of our recommendation, we ask the Court to consider Brian's exemplary record of service to his constituents and to the State of Wisconsin. He will be held accountable for his misconduct but everyone agrees that on his watch the public interest was always well served. He authored landmark legislation and was a passionate advocate

of good public policy. He also is a loving and involved husband and father, and we ask the Court to consider the need for Brian to continue to support his family, both financially and emotionally. His family has suffered deeply as a consequence of his misconduct. We ask the Court to review the 78 letters of support from friends, former constituents, former staff members, members of the community and family.

Introduction

As this Court contemplates an appropriate sentence for Brian Burke, we respectfully request that full consideration be given to the following sentencing proposal and to the supporting background information provided. The case of *State vs. Brian Burke* has been vigorously and publicly prosecuted and has been a news story for more than three years, generating oceans of ink and hours of talk show discussions. Now, with his voluntary admission of guilt to one felony count of Misconduct in Office and one misdemeanor charge of Obstructing an Officer and with his agreement that one additional misdemeanor charge related to per diem allowances due will be read in for purposes of sentencing, Brian has taken full responsibility for his misconduct and is prepared to accept the consequences.

This has been a complicated case. That it has taken three years, many hours of litigation and a great deal of money to reach resolution should not be held against Brian Burke. Although it was Brian's choice to seek legal counsel, it was his attorneys' obligation to aggressively defend their client.

We ask the Court to sentence Brian Burke on the basis of his admitted misconduct. We ask for consideration of Brian's acceptance of responsibility, his significant level of personal remorse and his readiness to make financial and personal restitution. We ask the Court to take into account his character, his stellar legislative accomplishments and his many contributions to the community he served for 20 years. We ask the Court to review the many letters of support sent on Brian's behalf because they constitute a remarkable and consistent body of favorable opinion from former constituents, public figures, colleagues, neighbors, family and friends. We ask the Court to weigh the gravity of the acknowledged offense conduct with the positive record we present and to impose a sentence that is appropriate and fair.

The American Bar Association sentencing standards calls for sentences which take into account the gravity of the offense and which “should be no more severe than necessary to achieve the societal purposes for which they are authorized.” We affirm the goals of sentencing—to foster respect for the law, to deter criminal conduct, to punish, to provide restitution and to rehabilitate offenders—and we offer a purpose-driven proposal which addresses these element and takes into account the offense conduct for which Brian Burke will be sentenced.

Sentencing Proposal

We respectfully recommend this Court hold Brian Burke accountable for his offense conduct by placing him on probation for the maximum period of two years and ordering the following conditions:

1. Financial restitution to the State of Wisconsin for the use of State employees and/or State equipment for the benefit of Brian’s aborted campaign for Attorney General.

The State of Wisconsin Elections Board has issued an informal legal opinion supporting the use of Brian’s campaign fund to achieve financial restitution. If financial restitution on a timely basis is the goal, the most efficient resolution is to cause repayment to be made from Friends of Brian Burke. Brian currently makes a small salary, has no assets and is stretched thin to make monthly payments to the State of Wisconsin for legal fees spent on his behalf. Never wealthy or even close to it, Brian and his wife and three daughters have been devastated financially by the consequences of his misconduct. Neither he nor his wife has personal funds to make financial restitution for the misuse of his employees in his campaign for Attorney General. As of this writing, attempts to reach agreement on restitution to the State of Wisconsin have not been successful.

Even before sentencing and before being ordered to do so, Brian has begun repaying the \$9,497 expended by the State of Wisconsin through the Office of the Senate Chief Clerk

on his behalf for legal fees. He has repaid \$1600, leaving a balance of \$7897, and will continue to make monthly payments of \$800 until the debt is paid in full in September, 2006. He has repaid the \$880 regarding the single read-in offense in the plea agreement.

2. Personal Restitution through Community Service.

Brian would like to perform volunteer service both as a way to provide visible, measurable restitution to his constituents and his community and because the importance and value of community service is embedded in his character. His friend, former teacher and now President of Marquette University, Robert A. Wild, S.J. has written to say, *"From the time that he was a student to present day, Brian has always valued the Jesuit tradition of services to others. He still has tremendous capacity to contribute to society in a positive way."*

Community service also serves as an effective form of rehabilitation and affords a measure of punishment in that it takes away from the time Brian otherwise would spend in paid employment or with his family. We suggest Brian be ordered to perform 400 hours of community service, and we offer three non-profit agencies for the Court's consideration.

Brian worked closely with many non-profit organizations while he was a legislator; however, he has identified three in particular where he believes he could be an effective volunteer. Each of these agencies—Task Force on Family Violence, Friends of Hank Aaron State Trail and SER, Jobs for Progress—has agreed to Brian's participation, should the court agree. These three agencies are described at the end of this report and letters of agreement from each agency are included.

We acknowledge the Court may order Brian to perform community service at an agency or institution of its own choosing. We offer these three agencies as options because their programs and missions dovetail well with Brian's background and experience.

3. Restitution to the constituents of Brian's former Senate district and to the citizens of the State of Wisconsin through public discourse on the subject of ethics in politics.

Brian has violated no one person in particular and yet every citizen in the state through his wrongdoing. He has made current and future voters more cynical about politics and less likely to believe in the electoral process. He probably has made every civics teacher's job more difficult and certainly every other politician's fundraising efforts more challenging. He has tarnished Wisconsin's image as a politically clean state. We suggest that after financial restitution is made, the entire balance in Brian's campaign fund be turned over to Marquette University Law School and used to underwrite and support educational programming on the subject of ethics in politics with *State of Wisconsin vs. Brian Burke* used as a teachable example of ethical misconduct.

Joseph D. Kearney, Dean and Professor of Law at Marquette University Law School, is receptive to the concept and approach, and his general letter of agreement is attached to this report.

4. Should the Court believe any period of segregation from society is required, we ask the Court to impose a period of home confinement in lieu of jail time.

The ABA standards suggest that judicial consideration of appropriate sentencing begin with the assumption that a lesser rather than a greater level of confinement is preferable "in the absence of affirmative reasons to the contrary." We do not believe there are such reasons. Brian is not a danger to anyone and has already experienced a strong measure of humiliation that is punitive and a sufficient deterrent to further misconduct.

Court-ordered home confinement, as allowed by Wis. Stat. § 973.03(4)(a), is a straightforward and absolute means by which Brian's freedom could be restricted for the period of time the Court believes is appropriate. Home confinement is an especially

meaningful alternative to jail because of the probability that transfer of probation supervision which includes a condition of jail time would not be available due to constraints on capacity in Milwaukee's facilities. Consequently, jail, as opposed to home confinement, would likely confine Mr. Burke far from his family and make it impossible for him to work at his job, thus depriving him of the ability to meet his financial obligations to the State of Wisconsin in the repayment of legal fees and to his family for their basic support. Home confinement, with Brian paying for the associated monitoring costs, tethers him to his home when he is not working and is a constant reminder his freedom has been taken away. Home confinement meets the criteria of incapacitation, seclusion and punishment.

A former constituent made an eloquent plea for Brian, requesting that he be ordered to *"use his talents to help the community...and allow him and his family to slip out of the spotlight of Wisconsin politics forever."* We concur with this request.