



February 12, 2008

Thomas Basting, Chair
Wisconsin Judicial Campaign Integrity Committee
c/o State Bar of Wisconsin
P.O. Box 7158
Madison WI 53707-7158

Dear Mr. Basting and Members of the Wisconsin Judicial Campaign Integrity Committee:

The Wisconsin Judicial Campaign Integrity Committee has been charged with reviewing judicial campaign materials to determine if the materials: impugn the integrity of the judicial system or a candidate for the Supreme Court or erode public trust and confidence in the independence and impartiality of the judiciary by verbally or visually attempting to lead voters to believe that a candidate will decide issues or cases in a predetermined manner.

I want to bring to your attention a campaign fundraising letter dated February 1, 2008, that I received from former Republican Lt. Governor Margaret Farrow in support of Judge Michael Gableman. I believe the letter is full of misleading rhetoric, impugns the reputation of a Supreme Court candidate and questions the impartiality and independence of a candidate for the Wisconsin Supreme Court.

Throughout the letter, the terms "activist" and "strict constitutionalist" are used. These terms are never explained, but appear to imply that "activist" is bad and "strict constitutionalist" is good.

The letter implies that if courts find legislation unconstitutional that is "activist." The letter states, "...the Judicial Branch of our government is co-equal to the Legislative Branch – NOT an agenda-driven veto authority over the people's elected representatives." This is very loaded language and goes to the very heart of what courts do. Courts are a separate and co-equal branch of government and it is their duty to determine if the Legislature crafted a statute consistent with the freedoms and rights embodied in the Constitution. As Supreme Court Chief Justice John Roberts stated, "It is not 'judicial activism' when the courts carry out their constitutionally-assigned function and overturn a decision of the Executive or Legislature in the course of adjudicating a case or controversy properly before the courts." Is Ms. Farrow insinuating that a "strict constitutionalist" would always find legislation constitutional?

Numerous phrases are used by Ms. Farrow, which impugn Justice Butler's impartiality or independence. The letter states Justice Butler's decisions "threaten the safety and prosperity of Wisconsin." "Threaten" implies "danger" or "evil." How can courts that decide cases properly before them, "threaten" safety or prosperity? Is she giving her opinion or is there empirical evidence to support this claim? In 2007 the Corporation for Enterprise Development (CFED) ranked Wisconsin as one of its top states for economic development. The study found, "Over the 20 years of the *Development Report Card for the States* (DRC), Wisconsin has distinguished itself as a great place to live, consistently earning high marks for Performance Wisconsin can now proudly say that it is a great place to both live and work, with bright prospects for its future economic performance and standard of living."

<http://www.cfed.org/focus.m?parentid=34&siteid=2346&id=1600&year=2007&stateid=49>

The letter then claims, "Louis Butler has put growing businesses and job creators in limbo; if you do business in Wisconsin, there is a good chance you will be sued, one way or another." What does this mean? A review of 2006 Wisconsin civil court filings shows divorce (21,072); foreclosures of mortgages (16,489); money judgments (14,245); and paternity cases (13,865) were the leaders. According to the actual numbers, actions for money judgments were two times higher than personal injury actions. And contract disputes were 17 times more common than a product liability case. This would indicate that businesses sue people or other businesses just as often as businesses are sued.

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The letter continues with "Louis Butler's decisions have been a windfall for trial lawyers while harming our state economy and health care system." Are they implying that Justice Butler is not independent or impartial in a case when a trial lawyer represents a person? These are serious allegations. Again the word "harm" implies "injury" or "hurt." Where is the proof? In 2006, Wisconsin ranked among the nation's top seven states for its economic development climate according to the Development Report Card for the States.

Ms. Farrow claims the *Ferdon v. Wisconsin Patients Compensation Fund* case "can lead to higher health care costs for Wisconsin patients." Medical malpractice expenses, as it relates to health care costs, is a minute amount. In 2006 medical malpractice expenses in Wisconsin — paid losses, costs of defending claims, insurance company overhead and profits — amounted to only 35 cents for every \$100 dollars spent on health care. This percentage has been declining for over 20 years. (See attachment) Have any of us experienced lower health care costs since caps were instituted?

The letter impugns the integrity of Justice Butler by stating he is pursuing some "personal agenda" in reviewing cases. There has never been any allegation that Justice Butler has personally benefited from any case he has reviewed. There has never been any allegation the he has deviated from the Supreme Court's primary function: to ensure independent, open, fair and efficient resolution of disputes in accordance with the federal and state constitutions and laws. To imply otherwise, does Justice Butler a great disservice.

Finally, the letter states that, "his decisions have caused untold damage." "Damage" is a very strong word and implies something bad. In 2006-07, Justice Butler was in the majority 85 percent of the time, just behind Justice Crooks. Is Ms. Farrow implying that the majority of the Wisconsin Supreme Court cases are "damaging?" One can disagree with a decision of the Supreme Court, and often many of us do, but to say this rises to the level of "damage" impugns Justice Butler and the judicial system.

While these are examples, I urge you to review the entire letter for additional questionable language.

As you know this election is being watched very closely. Your website states that the "tradition of judicial independence, which goes back to America's founding fathers, is threatened nationwide as special interests spend millions to influence outcomes, the cost of judicial campaigns skyrockets and attacks on judges' decisions and candidates' positions threaten to bring politics into the courtroom. To the extent that these developments impugn the neutrality of our courts and erode public confidence in them, this trend must be resisted." On this we could not agree more.

I urge this Committee to take action in asking Judge Gableman to withdraw this non-compliant judicial campaign material or to publicly ask him to disavow it.

Thank you for your consideration of this important matter, I look forward to your timely response.

Sincerely,



Christine Bremer Muggli
President

**Yearend Civil Disposition Summary
Statewide Report**

**Begin Date: 01-01-2006
End Date: 12-31-2006**

Statewide

CATEGORIES	Total		Total Disposed	July Trial	Court		Settlement	Uncontested Judgment		Dismissed Before Trial	Other	Median Age at Disposition
	Opened	Disposed			Trial	Trial		Settlement	Uncontested Judgment			
Products Liability	109	111	8	1	14	5	61	22	394			
Personal Injury, Auto	4560	4855	189	33	1010	442	3062	119	363			
Medical Malpractice	204	199	30	1	31	5	118	14	460			
Wrongful Death	94	88	6	1	20	7	50	4	417			
Intentional Tort	295	298	6	19	36	38	175	24	296			
Other Personal Injury	1296	1300	65	22	236	76	835	66	392			
Asbestos	18	12	1	0	3	0	7	1	611			
Property Damage	486	515	14	14	56	199	218	14	224			
Total P/IPD	7062	7378	319	91	1406	772	4526	264	362			
Minor Settlement	589	537	0	3	20	450	23	41	43			
Money Judgment	14245	13999	25	219	605	8863	3980	87	307			
Other Contracts	1845	1815	34	50	203	515	917	96	159			
Other Debtor Actions	385	462	0	4	12	181	220	45	88			
Condemnation Review	100	119	6	4	12	5	89	3	392			
Foreclosure of Mortgage	16489	15429	2	84	235	9066	5851	191	73			
Other Real Estate	982	1087	12	94	105	214	592	70	214			
Total Contracts/Real Estate	34635	33448	79	458	1192	19294	11672	753	83			
Appeal Muni. Court Judgment	159	170	16	33	19	4	49	49	161			
Administrative Agency Review	373	410	1	9	10	55	200	135	204			
Declaratory Judgment	470	450	2	41	44	74	214	75	196			
Incarcerated Person	369	700	0	0	0	459	221	20	796			
Unclassified	2441	2424	9	57	133	1062	654	509	82			
Other TRO	225	252	3	13	22	32	154	28	144			
Writ of Habeas Corpus	0	1	0	0	0	0	1	0	531			
Other Extraordinary Writ	0	61	1	2	1	0	34	23	384			
Name Change	1790	1721	0	14	1	1424	81	201	43			
Domestic Abuse TRO	6863	7108	0	51	2	2863	4163	29	14			
Child Abuse TRO	651	636	0	5	0	234	384	13	9			
Harassment TRO	5719	5675	0	51	5	2616	2983	20	10			
Combined Action TRO	10	12	0	0	0	2	6	4	17			
Vulnerable Adult TRO	17	15	0	0	0	6	9	0	8			
Total Other Civil	19087	19635	32	276	237	8831	9153	1106	15			
TOTAL CIVIL	60784	60461	430	825	2835	28897	25351	2123	71			
Divorce	21072	20884	0	3451	1734	11844	3496	359	199			
Annul/Legal Separation	647	554	0	79	43	236	185	11	226			
UI/FA-Incoming	1159	1200	0	25	35	138	180	822	1			
Support & Maint. Actions	9810	9679	1	749	1576	1965	1263	4125	37			
UI/FA-Outgoing	509	499	0	1	21	3	114	360	1			
Paternity	13865	14113	1	1166	1055	8930	2682	279	127			
Action Mod./Enf. Judgment	161	175	0	13	5	16	43	98	41			
Unclassified	546	459	0	103	43	67	107	139	37			
TOTAL FAMILY	47769	47563	2	5587	4512	23199	8070	6193	142			
Claim Under Dollar Limit	10795	10193	9	3661	377	2034	3824	288	83			
Replevin	1064	1045	0	369	62	325	253	36	51			
Eviction	2287	2222	11	901	101	656	495	58	44			
Other Small Claims	68	92	1	63	1	5	22	0	173			
TOTAL CONTESTED SMALL CLAIMS	14214	13552	21	4994	541	3020	4594	382	76			

Medical Malpractice Costs Have Decreased as a Percentage of Health Care Costs in Wisconsin

Year	Medical Malpractice Direct Premiums Earned (000s omitted)			Total Health Care Expenditures in Wisconsin (000s omitted)**	Medical Malpractice as a Percentage of Health Care Costs
	Private Insurers (OCI)*	Pat. Comp. Fund*	Insurers & Fund		
2006	\$104,079	\$18,931	\$123,010	\$35,217,000	.349%
2005	\$103,060	\$26,545	\$129,605	\$32,975,000	.393%
2004	\$103,145	\$32,068	\$135,213	\$30,847,000	.438%
2003	\$83,085	\$29,464	\$112,549	\$29,105,000	.386%
2002	\$78,324	\$29,544	\$107,868	\$27,378,000	.393%
2001	\$66,841	\$36,807	\$103,648	\$25,027,000	.414%
2000	\$58,824	\$47,879	\$106,703	\$22,661,000	.470%
1999	\$60,291	\$50,622	\$110,913	\$20,898,000	.530%
1998	\$61,346	\$49,885	\$111,231	\$19,123,000	.581%
1997	\$63,596	\$58,271	\$121,867	\$18,336,000	.664%
1996	\$65,102	\$51,049	\$116,151	\$17,738,000	.654%
1995	\$70,344	\$55,506	\$125,850	\$16,273,000	.773%
1994	\$71,439	\$51,213	\$122,652	\$15,185,000	.807%
1993	\$75,001	\$51,213	\$126,214	\$14,385,000	.877%
1992	\$73,298	\$45,606	\$118,904	\$13,481,000	.877%
1991	\$73,177	\$42,350	\$115,527	\$12,437,000	.928%
1990	\$74,159	\$43,937	\$118,096	\$11,207,000	1.05%
1989	\$74,900	\$43,161	\$118,061	\$10,114,000	1.17%
1988	\$65,275	\$37,970	\$103,245	\$8,991,000	1.14%
1987	\$49,138	\$33,643	\$82,781	\$8,339,000	.992%

*From the Wisconsin Insurance Report, Office of the Commissioner of Insurance, years 1987-2006.

**From <http://www.cms.hhs.gov/NationalHealthExpendData/downloads/nhestatesummary2004.pdf>.

Year 2005 is estimated based on a 6.9% increase in national per capita expenditures, and Year 2006 is based on a projected rate of growth of 6.8%.

<http://www.cms.hhs.gov/NationalHealthExpendData/downloads/proj2006.pdf>.

Medical malpractice costs as a percentage of health care expenditures has decreased in Wisconsin from a high of 1.14 percent in 1989 compared to .349 percent of health care expenditures in 2006. So, for 2006, malpractice expenses — payments to families, lawyers, defense costs and insurance profits — amounted to 35 cents for every 100 dollars spent on health care.