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Center for Media and Democracy: Wins reversal of restrictive DOJ public records policy

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Contact: press@prwatch.org

Madison, Wisconsin: In a victory for transparency in Wisconsin, the Wisconsin Department of Justice (DOJ) has agreed to reverse former Attorney General Brad Schimel's restrictive policy automatically denying any open records request that generates more than 500 potentially responsive documents, and has turned over several thousand records to the Center for Media and Democracy (CMD) concerning Schimel's legal war against the Affordable Care Act (ACA).

CMD filed suit against the DOJ on September 24, 2018 after it refused to disclose any public records relating to Wisconsin's leadership role in a high-profile multi-state lawsuit aimed at striking down the ACA and eliminating health coverage for pre-existing conditions. Schimel's DOJ claimed it would be "excessively burdensome" to review and redact the records.

In the course of the litigation, CMD discovered that Schimel had adopted a policy of arbitrarily rejecting freedom of information requests based on a 500-document threshold that is not recognized anywhere in state law. The Wisconsin Open Records Law declares that it is "the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them."

The settlement with CMD states that Schimel's policy "is no longer in place and that references to this policy have been removed from the Department of Justice

website."

"In addition, the DOJ has made it clear that public officials cannot defeat Wisconsin's open records law by using private email or other digital dodges," said CMD Executive Director Arn Pearson.

Former governor Scott Walker has been accused of instructing members of his administration to avoid using official email accounts in order to evade state transparency laws.

Under the CMD-DOJ settlement, "Defendant [DOJ] understands that content determines whether a document is a 'record,' not medium, format, or location; therefore, materials otherwise meeting the definition of 'record' and not subject to any other exception are not exempt from disclosure by virtue of their location on private email accounts, online apps, or file-sharing services."

"This is a victory for the public and journalists, and recognizes that Schimel's policy went too far in denying the public's right to know," said Christa Westerberg, who represented CMD in the lawsuit. Westerberg is a partner at the Madison law firm of Pines Bach LLP.

CMD is a non-profit investigative watchdog group focused on corporate influence and money in politics. Documents obtained by the litigation concerning Schimel's anti-ACA litigation will be analyzed and published on the group's websites, ExposedbyCMD.org and PRWatch.org.

Settlement Agreement and Release
Order Dismissing Claims