STATE OF WISCONSIN
SUPREME COURT

CIRCUIT COURT OF DANE COUNTY,
HONORABLE VALERIE L. BAILEY-RIHN PRESIDING,
Respondent,
AMERICAN OVERSIGHT,
Plaintiff-Respondent,

Appeal No.

v. Circuit Court Case No. 21-CV-2521

ROBIN VOS, in his official capacity
Wisconsin State Assembly Speaker,
Defendant-Petitioner.

PETITION FOR SUPERVISORY WRIT OF PROHIBITION PURSUANT TO WIS. STAT. § 809.71, MOTION FOR EMERGENCY TEMPORARY RELIEF PENDING APPEAL, AND SUPPORTING MEMORANDUM

On Appeal from January 4, 2022 Order, Dane County Circuit Court,
Honorable Valerie L. Bailey-Rihn Presiding

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INTRODUCTION

This action was brought by Plaintiff-Respondent, American Oversight ("American") pursuant to Wis. Stat. § 19.37, seeking a mandamus against Defendant, Petitioner, Robin Vos, in his official capacity as Wisconsin State Assembly Speaker ("Speaker Vos"). American also filed substantially similar companion cases against Speaker Vos, Edward Blazel, and the Wisconsin State Assembly (collectively, "Defendants"), captioned *American Oversight v. Robin Vos, et al.*, 21-CV-2440, and now another captioned *American Oversight v. Robin Vos, et al.*, 21-CV-3007. All three cases are related to various public records requests.

This action seeks two remedies: a purported declaratory judgment claim that the Public Records Law has been violated and a mandamus action commanding Speaker Vos to respond to records requests that American alleges have not been responded to. The only remedies provided for in the Public Records Law's comprehensive statutory remedy, however, are limited to an order compelling the release of the withheld record or compelling the response to the request. *State ex rel. Richards v. Records Custodian*, 179 Wis. 2d 502, 508 N.W.2d 74 (Ct. App. 1993). Thus,

the "declaratory judgment" action brought by American is simply not a recognizable cause of action.

The only recognizable cause of action before the Circuit Court of Dane County, the Honorable Valerie L. Bailey-Rihn Presiding (the "Circuit Court"), is American's mandamus action pursuant to Wis. Stat. § 19.37 seeking an order compelling a response to the various requests. Despite this, American has not brought forward a motion or writ to compel a response to the requests. *See* Docket Report, 21-CV-2521. Rather, American seeks to engage in discovery for what it describes as exploring Speaker Vos's alleged "deficient open records responses or his process for responding to Plaintiff's requests." [21-CV-2521, Doc. 30, p. 1].

American served notices of deposition on December 10, 2021, setting depositions for Vos and his legal counsel for January 12, 2022. Declaration of Ronald Stadler [21-CV-2521, Doc. 27] ("Stadler Dec."), Ex. A. Speaker Vos promptly filed a motion for a protective order in the Circuit Court on December 21, 2021. [21-CV-2521, Doc. 25]. The Circuit Court set a hearing date for that motion for January 19, 2022. 21-CV-2521, Doc. 28]. Subsequently, on December 27, 2021 the Court changed the motion hearing to

January 4, 2022 to allow it to rule in advance of the January 12, 2022 deposition dates. [21-CV-2521, Doc. 29].

On January 4, 2022, the Court heard oral arguments and orally denied the motion for a protective order finding that discovery is allowed in a mandamus action even before the mandamus has been issued. On January 6, 2022, the parties submitted an agreed proposed Order to the Circuit Court reflecting its oral ruling that it would not grant a protective order and would allow depositions to proceed on January 12, 2022. The Court has not yet signed that order.

On January 7, 2022, Speaker Vos sought an emergency order from the Court of Appeals seeking to stay the depositions pending an appeal of the circuit court's order. [21-CV-2521, Doc. 42]. The Court of Appeals denied that request on January 10, 2022. [21-CV-2521, Doc. 46]. The deposition of Speaker Vos and his counsel are set to be held on January 12, 2022.

STATEMENT OF ISSUES PRESENTED

There was a plain duty to prohibit discovery in a public records mandamus action when there has been no mandamus issued. A mandamus action under Wis. Stat. § 19.37 provides for a very limited set of remedies—ordering the release of a record

that has been identified but withheld or compelling the response to a request that has not been complied with. Because of the very limited nature of this type of action, no discovery is necessary or permissible before a writ has been issued or ordered.

No discovery is necessary or permissible before a writ has been issued or ordered because there is no disputed issue of fact that is relevant to a petitioner's claim. "Relevant evidence is evidence that has a 'tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *J.W. v. B.B.*, 2005 WI App 125, ¶ 8, 284 Wis. 2d 493, 700 N.W.2d 277 (citing Wis. Stat. § 804.01). The only "fact that is of consequence" to a mandamus to compel a response to a Public Records request is whether a request has been made and whether it has been responded to. There is no need for discovery on this limited issue.

STATEMENT OF FACTS NECESSARY TO AN UNDERSTANDING OF THE ISSUES

This case concerns a Public Records mandamus action against Speaker Vos seeking to compel him to respond to various records requests. Complaint [21-CV-2521, Doc. 2] ("Compl."), ¶ 5. American's requests pertain to former Justice Gableman's

investigation into potential fraud and misconduct during the 2020 presidential election. *Id.* at ¶¶ 13, 22.

American's Complaint claims that Speaker Vos either failed to comply with the requests or failed to deny requests, but it does not specify which. *Id.* at ¶¶ 58-59. American does not allege that any records were withheld by Speaker Vos.

American also alleges that some of its requests were complied with but alleges that the search was not "sufficient." *Id.* at ¶ 60. American does not identify any facts that would support that conclusion. *Id.* The limited factual allegations consist of unfounded speculation that there "must be" more records than were produced: "The productions do not appear to include any records from Speaker Vos's own files," *id.* at ¶ 46; "the substantive responses are so minimal, particularly when compared to the scope of the investigation and public statements about it, that it is incredible that Speaker Vos's office lacks additional responsive records," *id.* at ¶ 47; "there is no indication that Speaker Vos or his staff have searched for or produced records discussing the investigation that may be kept on private email or messaging accounts, like Gmail or WhatApp." *Id.* at ¶ 48.

Against this background, American seeks to engage in discovery in this action—conducting depositions and seeking the production of documents. Those discovery requests led to Speaker Vos filing a motion for a protective order. [21-CV-2521, Doc. 25].

The motion proceeded before the Circuit Court for a hearing on January 4, 2022. The Circuit Court issued an oral decision denying the motion. An unopposed draft order was submitted to the Court on January 6, 2022 but it has not yet been signed.

On January 7, 2022, Speaker Vos filed a petition to appeal a non-final order and motion for emergency relief with the Court of Appeals, Appeal No. 2022AP000038LV. The Court of Appeals has denied the request for a temporary order staying discovery pending resolution of the petition. Because the Court of Appeals has denied the requested relief, it would be impractical to file a petition for supervisory writ with that court.

RELIEF SOUGHT

Speaker Vos, respectfully requests the following relief from this Court:

1. A supervisory writ of prohibition directing the Circuit Court to order that discovery may not be had at this juncture in a mandamus action.

2. Emergency temporary relief pending final disposition of this petition for supervisory writ, consisting of an order staying discovery in the Circuit Court case, including depositions.

REASONS WHY THE COURT SHOULD TAKE JURISDICTION

I. LEGAL STANDARD.

The decision to grant a petition for supervisory writ is governed by Wis. Stat. §§ 809.71 and 809.51. A party seeking the issuance of a supervisory writ must establish four factors: "(1) a circuit court had a plain duty and either acted or intends to act in violation of that duty; (2) an appeal is an inadequate remedy; (3) grave hardship or irreparable harm will result; and (4) the party requested relief promptly and speedily." *State ex rel. CityDeck Landing LLC v. Circuit Court for Brown Cty.*, 2019 WI 15, ¶30, 385 Wis. 2d 516, 922 N.W.2d 832 (internal citations omitted).

Given the limited scope of a Wis. Stat. § 19.37 mandamus action, there was a plain duty for the Circuit Court to not allow discovery.

II. THE CIRCUIT COURT HAD A PLAIN DUTY TO LIMIT THE DEPOSITIONS BECAUSE THE DISCOVERY SOUGHT IS BEYOND THE SCOPE OF A MANDAMUS PROCEEDING UNDER WIS. STAT. § 19.37.

Speaker Vos filed his motion for protective order seeking to preclude discovery at this juncture in the action. Given the limited scope of a mandamus action pursuant to Wis. Stat. § 19.37, there is simply no legal basis for discovery and discovery cannot be viewed as being useful to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. This is plain.

A. The Scope Of A Mandamus Action Is Extremely Limited.

The scope of a mandamus proceeding is defined within the statute:

> **(1) Mandamus.** If an authority withholds a record or part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).
> **(a)** The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.
> **(b)** The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the

> requester. The district attorney or attorney general may bring such an action.

Wis. Stat. § 19.37(1) (emphasis added).

By its very terms, the scope of a mandamus action involves only compelling the production of a record that has been withheld or compelling a response to a request that has not been fulfilled. The remedy for either is limited to an order directing the release of a withheld record or compelling the response to the request. Those are the only remedies provided for in the Public Records Law's comprehensive statutory remedy. *State ex rel. Richards v. Records Custodian*, 179 Wis. 2d 502, 508 N.W.2d 74 (Ct. App. 1993). These are the exclusive statutory remedies. *Id.*

The limited scope of a Public Records mandamus action has been recognized by our courts:

> The provisions for mandamus . . . outlined in sec. 19.37 are triggered only once 'an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made . . . .' Sec. 19.37, Stats. The open records law is designed to make existing records and documents available to the public unless withholding such documents is specifically authorized by statute.

State ex rel. Zinngrabe v. Sch. Dist., 146 Wis. 2d 629, 632-33, 431 N.W.2d 734, 735-36 (Ct. App. 1988) (citing *Hathaway v. Joint Sch. Dist. No. 1*, 116 Wis. 2d 388, 394, 342 N.W.2d 682, 685 (1984)).

Most recently, the Court of Appeals has re-affirmed the limited scope of a mandamus action:

> The Wisconsin public records law states that a requester may bring an action for mandamus '[i]f an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made.' WIS. STAT. § 19.37(1) (2017-18). These mandamus provisions are not triggered when an authority does not possess the records because '[a]n authority cannot deny or withhold access to that which does not exist.' *State ex rel. Zinngrabe v. School Dist. of Sevastopol*, 146 Wis. 2d 629, 631-32, 633, 431 N.W.2d 734 (Ct. App. 1988) (concluding 'that because no records existed for these meetings, there is no violation under the provisions of [§] 19.37.'); *see also Journal Times v. City of Racine Bd. of Police & Fire Comm'rs*, 2015 WI 56, ¶153, 362 Wis. 2d 577, 866 N.W.2d 563 (Abrahamson, J., concurring) (explaining the futility of a mandamus action seeking to compel the disclosure of nonexistent records); *Schulten, Ward & Turner, LLP v. Fulton-DeKalb Hosp. Auth.*, 272 Ga. 725, 535 S.E.2d 243, 246 (Ga. 2000) ('An agency does not 'deny' access to records which do not exist' and, therefore, mandamus action was improper.). Addressed somewhat differently under federal law, '[i]f no documents exist, nothing can be withheld, and jurisdiction cannot be established.' *Burr v. Huff*, No. 04-C-53-C, 2004 U.S. Dist. LEXIS 1916, 2004 WL 253345, at *2 (W.D. Wis. Feb. 6, 2004) (finding allegations in petition for writ of mandamus under Freedom of Information Act frivolous where there was no evidence that records sought by petitioner existed).

Karcher v. WI Dep't of Health Servs. Div. of Pub. Health, 2021 WI App 20, ¶ 7, 396 Wis. 2d 703, 958 N.W.2d 168.

Clearly, Wis. Stat. § 19.37 contemplates an action to compel the release of a record that has been withheld or to compel a response that has been ignored, nothing more. It does not contemplate mandamus relief beyond an order to produce or respond, nor does it contemplate a declaratory judgment to declare a violation of the Public Records Law.

B. Because Of The Limited Scope Of A § 19.37 Mandamus Action, It Is Plain That One Cannot Engage In Discovery Prior To Obtaining The Writ Or Order To Respond.

Given the limited remedies provided for in the Public Records Law's comprehensive statutory scheme, American's desire to engage in discovery is simply not authorized by law, and there was a plain duty to prohibit it.

1. Production of a document that has been withheld is not at issued in this case

American does not claim that any record was withheld by Speaker Vos. As alleged by American, Speaker Vos responded to some but not all of American's requests before this mandamus action was initiated. While American characterizes Speaker Vos's production of records in the Complaint as "minimal," it offers no factual allegations to support even an inference that there are known responsive records that were not produced. American

phrases its claim as an allegation that Speaker Vos "improperly withheld records responsive to American Oversight's requests" (Compl., ¶ 58), but it fails to identify any records that it claims were actually withheld. Speaker Vos did not withhold any records.

2. Discovery is beyond the scope of a mandamus action to compel a response.

Despite having not yet requested the Circuit Court to issue a writ or order to compel a response, American served notices of depositions seeking to discover a trove of information that is wholly unrelated to the limited remedy available in the mandamus action. American seeks to depose Speaker Vos and his legal counsel, Steve Fawcett, and have demanded access to the following documents:

1. Any documents on which you intend to rely in the above-captioned action;
2. All documents reflecting searches for potentially Responsive Records and/or the time spent searching, including but not limited to the "sheets" referred to at the following bates numbers: 21cv2521 RFP1-000002; 21cv2521 RFP1-000430-431;21cv2521 RFP1-000444-445; 21cv2521 RFP1-000447-448; 21cv2521 RFP1-000455; 21cv2521 RFP1-000464; 21cv2521 RFP1-000470; 21cv2521 RFP1-000476; 21cv2521 RFP1-000489; 21cv2521 RFP1-000495; 21cv2521 RFP1-000501; 21cv2521 RFP1-000506; 21cv2521 RFP1-000522; 21cv2521 RFP1-000527; and 21cv2521 RFP1-000531-532;
3. All files that were not provided in response to any open records requests submitted by American Oversight but

that were deposited into any folders maintained by Your office at any time from May 28, 2021 to the present for purposes of or in relation to responding to American Oversight's requests, including but not limited to the "drag and drop" folders described at the bates numbers listed above;

4. Any contracts, retainers, or other written agreements with any outside legal counsel retained by or on behalf of You or the Assembly in relation to open records requests or records litigation at any time from November 3, 2020 to the present, including but not limited to agreements with Matthew Thome or von Briesen & Roper, S.C., and Ronald Stadler or Kopka Pinkus Dolin;
5. All documents reflecting any training or instructions received by or from any of the individuals named in Your responses to Interrogatories Nos. 5 and 6 of Plaintiff's First Discovery Requests regarding document retention, management, or destruction;
6. All documents reflecting any training or instructions received by or from any of the individuals named in Your responses to Interrogatories Nos. 5 and 6 of Plaintiff's First Discovery Requests regarding how to search for records responsive to open records requests;
7. All documents reflecting any training or instructions received by or from any of the individuals named in Your responses to Interrogatories Nos. 5 and 6 of Plaintiff's First Discovery Requests regarding the time for responding to open records requests or any deadlines related to responding to open records requests;
8. Any requests for training by any of the individuals named in Your responses to Interrogatories Nos. 5 and 6 of Plaintiff's First Discovery Requests regarding responding to Open Records requests; and
9. All copies of the Assembly's Public Records Requests Procedure Policy in effect from November 3, 2020 to the present, or used by You or Your staff in responding to American Oversight's open records requests, as referenced in the Assembly Policy Manual.

Stadler Dec., Ex. A.

In general, there is no purpose to conducting depositions at this point because such discovery exceeds the scope of this mandamus action: American has not yet sought a writ or order compelling a response to a request that has not been complied with. Thus, there is no fact of consequence that is at issue.

Beyond that, the particular areas of inquiry that American has outlined for the depositions are far beyond anything that is at issue in a mandamus action: time spent searching files that were not provided; contracts with outside counsel; documents reflecting any training on document retention, management, or destruction; training regarding how to search for records; documents reflecting any training regarding the time for responding to public records requests; training regarding responding to Open Records requests; and the Assembly's Public Records Requests Procedure Policy are all simply irrelevant to a mandamus action that seeks to compel a respond to a request. Each of these areas is simply irrelevant and not likely to lead to the discovery of relevant evidence.

C. Given The Limited Scope Of A Mandamus Action, There Was A Plain Duty To Prohibit Discovery.

A writ of mandamus is "an extraordinary legal remedy." *Lake Bluff Housing Partners v. City of S. Milwaukee*,

197 Wis. 2d 157, 170, 540 N.W.2d 189 (1995). A writ "may be used to compel public officers to perform duties arising out of their office and presently due to be performed." *Pasko v. City of Milwaukee*, 2002 WI 33, ¶ 24, 252 Wis. 2d 1, 643 N.W.2d 72 (quoted source and internal quotation marks omitted). And, as pointed out above, a mandamus action pursuant to Wis. Stat. § 19.37 is even more extraordinary because it provides a comprehensive, limited statutory remedy. *State ex rel. Richards*, 179 Wis. 2d at 502. The attorney general has long recognized that a mandamus is the exclusive tool to obtain the remedies specified in Wis. Stat. § 19.37.[1]

Given the limited scope of a mandamus action brought pursuant to Wis. Stat. § 19.37, there was a plain duty to preclude discovery at this juncture in this action. Where the discovery sought relates to remedies that are not available by law, it is appropriate to bar that discovery. *C.f. Camp v. Anderson*, 2006 WI App 170, ¶ 23, 295 Wis. 2d 714, 721 N.W.2d 146 (recognizing that

[1] *See* https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf, p. 71 (citing *Stanley v. State*, 2012 WI App 42, ¶¶ 60–64 (cannot be enforced by supervisory writ); *Capital Times Co. v. Doyle,* 2011 WI App 137, ¶¶ 4–6, 337 Wis. 2d 544, 807 N.W.2d 666; *State v. Zien*, 2008 WI App 153, ¶¶ 34–35, 314 Wis. 2d 340, 761 N.W.2d 15)).

it is appropriate to deny discovery for a claim/remedy that is not recognized under the law).

This principle has been recognized in certiorari review actions that are also brought pursuant to Wis. Stat. § 781.01. Because certiorari review is limited to the record presented to the tribunal whose decision is under review, the general rule is that no discovery is permissible. *Klinger v. Oneida County*, 149 Wis. 2d 838, 846, 440 N.W.2d 348 (1989). Here too, because the mandamus action is limited to an order to compel production of a withheld document or to respond to a request that has been ignored, the general rule in a Wis. Stat. § 19.37 action should be that no discovery is permissible.

Speaker Vos responded to the American's Public Records request. He produced the records that were responsive to American's request and did not withhold any records. American's belief that "it is incredible" that there are not more records is pure speculation. While American insists that there "must be" more records that were created before May 2021, it fails to even contemplate that Wisconsin's records retention law does not apply to "Records and correspondence of any member of the legislature." Wis. Stat. § 16.61(2)(b)(1). Hence, the fact that there may be few

records from before May 28, 2021, is not as "incredible" as American claims.

While American "believes" that there "must be" more records than what Speaker Vos has produced records, it provides nothing but speculation to support its "belief" and it has the cart before the horse by seeking discovery before it has sought and obtained an order or writ of mandamus.

It is unclear as to why American intends to engage in discovery. The Public Records Law was never intended to be used a vehicle to explore one's whims. Discovery on issues related to time spent searching files that were not provided is simply irrelevant. One cannot use a mandamus action to require an authority "to inventory the records to determine which records, if any, do not exist." *State ex rel. Zinngrabe*, 146 Wis. 2d at 633.

It is particularly concerning to recognize a practice where a requester can make a records request of a legislator, claim it to be incomplete, and then use that request to seek to depose the legislator. American's records requests and Complaints read like political propaganda, not records requests or pleadings. American has used these proceedings as political fodder at every turn, using its website to publicize its every action in these cases. For

example, see its website publication, "American Oversight Files Motion To Hold Speaker Vos In Contempt For Failure To Comply With Wisconsin Public Records Law." Declaration of Ronald Stadler [21-CV-2440, Doc. 76], ¶ 6. If everyone can obtain access to a sitting legislator simply by filing a mandamus action, then they can do the same by directing records requests to the governor, judges, or anyone else that steps into their political crosshairs.

Section 781.01 Wis. Stat. provides that extraordinary remedies like a mandamus, prohibition, quo warranto, certiorari, or habeas corpus may be filed as actions and not necessarily only as writs, and that it does not alter "the scope of the proceedings, including without limitation the relief available, discovery, the availability of jury trial and the burden of proof." The Circuit Court read this to mean that all discovery is permissible in a writ of mandamus action, but that reading is too broad. As pointed out above, certiorari review is an action pursuant to Wis. Stat. § 781.01, but general "scope" language of that section does create a right to engage in discovery in certiorari actions. So too, Section 781.01 does not create a "right" to discovery in a mandamus action. Rather, it simply provides that by allowing a mandamus to be commenced by an action or proceeding instead of as a writ, it does

not alter (i.e., expand or restrict) "the relief available, discovery, the availability of jury trial and the burden of proof" in a mandamus action.

As outlined above, discovery is inappropriate in a mandamus action before the writ has been sought or issued, and the language of Wis. Stat. § 781.01 does not alter that result. To accept the conclusion that Wis. Stat. § 781.01 requires discovery would be to also conclude that Public Records matters may be tried to a jury. Section 781.01 does not alter whether one is entitled to discovery or a jury trial, but it does not compel either.

Here, there is no discovery that will have a tendency to make the existence of any fact that is of consequence to the determination of this Wis. Stat. § 19.37 mandamus action more probable or less probable than it would be without the evidence. Contracts with outside counsel; documents reflecting any training on document retention, management, or destruction; training regarding how to search for records; documents reflecting any training regarding the time for responding to public records requests; training regarding responding to Open Records requests; and the Assembly's Public Records Requests Procedure Policy are

of no consequence to whether Vos should be compelled to respond to the requests.

American may be tempted to claim that its discovery requests relate to its request for a declaration that the Public Records Law has been violated. Section 19.37 Wis. Stat., however, does not contemplate a declaratory judgment as part of its comprehensive statutory remedy. Thus, facts related to a claim that the Public Records Law was violated are of no consequence to the determination of this action.

III. AN APPEAL IS INADEQUATE REMEDY.

There is no adequate appellate remedy when a plain duty to act is not adhered to because an "appeal comes too late for effective redress." *CityDeck Landing LLC*, 2019 WI 15, ¶ 39 (citing *State ex rel. Dep't of Nat. Res. v. Wis. Court of Appeals*, 2018 WI 25, ¶ 41, 380 Wis. 2d 354, 909 N.W.2d 114). Here, any appeal would be too late if discovery can take place in this mandamus action. This is because the harm is that Speaker Vos being subjected to the discovery itself. An appeal (absent a stay) would not prevent the unauthorized discovery from taking place in the first instance. *See Dep't of Nat. Res.*, 2018 WI 25, ¶ 41 ("Sometimes appellate review

in the normal course of events is inadequate for the simple fact that it comes after the proceeding has already occurred.").

IV. SPEAKER VOS WILL SUSTAIN HARDSHIP AND IRREPARABLE HARM IF A SUPERVISORY WRIT DOES NOT ISSUE.

Granting a supervisory writ will prevent Speaker Vos from the substantial hardship of being forced to engage in discovery that is not permitted in a mandamus action. The potential for extensive discovery is illustrated by American's notices of deposition. Stadler Dec., Ex. A. It would be unduly burdensome and a substantial injury for Vos and his counsel to be subjected to depositions in this matter when discovery cannot be justified in the first instance.

If everyone can obtain access to a sitting legislator simply by filing a mandamus action, then they can do the same by directing records requests to the governor, judges, or anyone else that steps into their political crosshairs. Commencing mandamus actions against legislators to pull them into depositions is bad public policy and seems to implicate concerns under article IV, section 15, of the Wisconsin Constitution which exempts a legislator from civil process. *See State v. Beno*, 116 Wis. 2d 122, 138-39, 341 N.W.2d 668, 676 (1984) ("When a legislator cannot appear the people whom

the legislator represents lose their voice in debate and vote. Cf. *Doty v. Strong*, 1 Pin. 84 (1840) (interpreting article I, section 6, U.S. Constitution); *Anderson v. Roundtree*, 1 Pin. 115 (1841) (interpreting common law and Statutes of the Territory of Wisconsin, 1839, at 157).")

While an appeal can grant moral victory, it can never undo the disruption of permitting depositions in mandamus actions when none are permissible under the limited relief available under Wis. Stat. § 19.37 .

V. SPEAKER VOS REQUESTED RELIEF PROMPTLY AND SPEEDILY.

Speaker Vos filed his petition for supervisory writ promptly with the Court of Appeals. The circuit court orally denied his motion to block the discovery on January 4, 2022 and he filed his petition to appeal with the Court of Appeals on January 7, 2022. This petition was filed on January 11, 2022, and only after the Court of Appeals denied his request. There is no argument that Speaker Vos did not act promptly and speedily.

III. AN IMMEDIATE EX PARTE ORDER TEMPORARILY STAYING DISCOVERY, INCLUDING DEPOSITIONS, PENDING THE DISPOSITION OF THIS PETITION IS APPROPRIATE UNDER THE CIRCUMSTANCES.

Section 809.52 Wis. Stat. states: "A petitioner may request in a petition filed under s. 809.50 or 809.51 that the court grant temporary relief pending disposition of the petition. The court or a judge of the court may grant temporary relief upon the terms and conditions it considers appropriate." Speaker Vos requests temporary relief in the form of an order staying discovery in the Circuit Court case pending resolution of this petition. Such an order will prevent discovery and unauthorized depositions from taking place while this Court considers this position which will do nothing more than maintain the status quo. *See Gaugert v. Duve*, 2001 WI 83, ¶ 13, 244 Wis. 2d 691, 699, 628 N.W.2d 861, 866.

CONCLUSION

For the reasons stated above, Vos respectfully request:

1. A supervisory writ of prohibition directing that discovery may not be had in this mandamus action.
2. Emergency temporary relief pending final disposition of this petition for supervisory writ, consisting of an order

staying discovery in the Circuit Court case, including depositions until further order of this Court.

Dated this 11th day of January, 2022.

KOPKA PINKUS DOLIN PC
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CERTIFICATION OF COMPLIANCE WITH RULE § 809.50

I hereby certify that this petition was produced with a proportional serif font and conforms to the rules contained in Wis. Stat. § 809.50(1) for a petition with a proportional serif font. The length of this petition is 4,943 words.

Dated this 11th day of January, 2022.

KOPKA PINKUS DOLIN PC
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