

Appendix I: Litigation Summary

As noted throughout, this Report regarding the administration of the 2020 election in Wisconsin is incomplete because the Office of the Special Counsel has received little to no cooperation in its investigation from the government officials and others that were responsible for conducting the election. As part of its investigation, the OSC has sent out ninety subpoenas for witness testimony. While we have conducted numerous interviews with voluntary witnesses, including governmental witnesses, due to public pressure from the Governor and out-of-state actors, word has gone out that the government does not need to respond to the elected Assembly. Instead, the OSC has been embroiled in litigation relative to those subpoenas since late 2020.

1. Dane County Case Number 2021CV002552, *Wisconsin Elections Commission et al. vs. Wisconsin State Assembly et al.*

On October 21, 2020 WEC and its Administrator—Meagan Wolfe—sued the OSC and the Wisconsin Assembly in Dane County Circuit Court seeking an order that OSC subpoenas with which they had been served were invalid as impinging upon her personal rights. In doing so, WEC aims at the authorized mission of the OSC to investigate whether officials “have failed to adhere to our election laws by, at various times, ignoring, violating, and encouraging noncompliance with bright-line rules established by the statutes and regulations governing the administration of elections in Wisconsin.”

Notably, WEC took the unprecedented step of employing the Wisconsin Department of Justice as its attorneys in the lawsuit against the OSC and the Assembly.

Until this lawsuit, never before in the history of the State had one arm of the executive branch of Wisconsin's state government (WEC) used another arm of the executive branch (the DOJ) to seek a ruling from a separate branch (the judiciary) that an action by a third branch of state government was invalid and unenforceable (the subpoenas issued by OSC via the Assembly). In short, taxpayer money is being used by the Attorney General to block routine oversight by the duly-elected legislative body in the State, leading to a great waste of taxpayer money.

On October 25, 2021, the Attorney General lost, as Dane County Circuit Court Judge Rhonda Lanford ruled that WEC was not entitled to an emergency injunction invalidating the subpoenas or preventing OSC from seeking to enforce them. After further litigation, on January 10 2022, Judge Lanford ruled that while WEC did have the authority to bring the lawsuit and it would not be dismissed outright, WEC had not established that it was entitled to a temporary or permanent injunction against enforcement of the subpoenas. The matter was held open for further proceedings to address the WEC's overall complaint that the subpoenas are an invalid exercise of legislative authority.

Since that time, WEC has filed an Amended Complaint setting forth additional facts in support of its claims that the subpoenas are invalid, and other parties have sought to intervene and participate in the matter. A hearing is scheduled for March 17, 2022 on the proposed intervention of these other parties, but there is no other scheduled court activity.

In the meantime, neither WEC or Ms. Wolfe have voluntarily agreed to present their testimony to the OSC. It is likely that unless and until the matter is resolved by the Dane

County Circuit Court (and then all potential appeals are exhausted) the subpoenas for WEC and Ms. Wolfe will remain unsatisfied.

2. Waukesha County Case Number 2021CV001710, *Michael J. Gableman vs. Eric Genrich et al.*

Among the parties that have been subpoenaed for their testimony are the Mayor of Green Bay—Eric Genrich—and the Mayor of Madison—Satya Rhodes-Conway. In response to subpoenas with which they were served, the mayors did provide some documents that were requested, but at the same time neither agreed to appear to testify as required by the subpoenas. As a result, the OSC was put in a position of having to seek judicial assistance to direct that the mayors provide that testimony.

To do so, the OSC filed petitions for “writs of assistance” from the Waukesha County Circuit Court to require the mayors to appear and give the required testimony. A judicial writ of assistance is provided for by Wisconsin’s statutes. When a judge issues one, a witness must appear for testimony required by a subpoena. If the witness does not, the judge may order that the recalcitrant witness be subjected to punitive action, up to and including incarceration. However, before that can happen, the witness has the opportunity to appear before the court and argue that he or she is excused from appearing because the subpoena is invalid or for any number of other reasons.

The OSC filed for writs of assistance in Waukesha County Circuit Court as the statute setting forth the procedure for obtaining such writs commands that the writ be

sought “in the county where the person was obliged to attend.” Wis. Stat. § 885.12. As the mayors’ testimony was compelled by the subpoenas to occur in Waukesha County, the OSC was mandated to seek writs of assistance from the Waukesha County Circuit Court.

Before there was any substantive court appearance or action of any kind, Mayor Genrich appeared in the action represented by two law firms—Stafford Rosenbaum. LLP and Law Forward, Inc. Stafford Rosenbaum is a Madison-based law firm with over 50 attorneys, and Law Forward is an “impact litigation firm committed to protecting and advancing democracy and to restoring Wisconsin’s pragmatic progressive tradition.” Law Forward has a “Legal Advisory Council” that is comprised of, among others, prominent Democrat politicians, including former United States Senator Russ Feingold, and former Lt. Governor Barbara Lawton. There are no current or former elected officials on Law Forward’s advisory council that identified as Republican over the course of their respective careers. There are also several attorneys on the Council that have written about, and advocated for, progressive political causes, but none that appear to have ever advocated for conservative ones.

Mayor Genrich is now additionally represented by two more attorneys—Aaron Scherzer and Christine P. Sun. Mr. Scherzer and Ms. Sun are associated with the “States United Democracy Center,” an organization whose professed mission is “advancing free, fair, and secure elections,” focusing on “connecting State officials, law enforcement leaders, and pro-democracy partners across America with the tools and expertise they need to safeguard our democracy.”

Mayor Rhodes-Conway appeared by two lawyers for the City of Madison.

At the very outset, the mayors' attorneys portrayed the actions of the OSC as—

3. “lacking in legal merit;”
4. a “gross distortion of the relevant facts” and “a gross mischaracterization of the facts;”
5. “departing so greatly from legal standards” so that the Special Counsel should be sanctioned by the Court;
6. “an abuse of process;” and
7. “a bad-faith effort to publicly harass local officials with no legal basis.”

None of these statements are remotely true, of course, but the OSC has been forced to respond to these scurrilous accusations both in the press and in court.

Shortly afterward, the representatives of WEC and the mayors began “cross-pollinating” the Dane County matter with the Waukesha County matter by filing letters with the respective courts smearing the OSC and improperly attempting to influence the respective judges. The Wisconsin Department of Justice filed a letter in the Waukesha County matter, arguing that the subpoenas were invalid and that the validity of the subpoenas addressed to the mayors would be addressed in large part by the court in the Dane County matter discussed above. In addition, mayor Genrich’s representatives attempted to influence the outcome of the Dane County matter by filing a letter with that court arguing that the OSC had made “misrepresentations” to the Waukesha County court and that the subpoenas were “unauthorized, quasi-depositions of mayors and elections officials throughout Wisconsin.”

As of this writing, written briefs are being submitted to the Court regarding the following inquiries submitted by the Court:

1. The Court's authority to issue the writs;
2. The correct procedure to follow; and
3. The factual basis of the writs.

A hearing is scheduled on those issues on April 22, 2022. While the Court has asked that these issues be addressed, it is only a preliminary inquiry. The Court has additionally stated that it will not be addressing the actual issuance of the writs or whether the mayors have a reasonable excuse for their failure to comply with the subpoenas. Those issues will be addressed subsequently.

As with the Dane County matter, the Waukesha County matter is nowhere near resolution. First, all issues will need to be addressed by the Circuit Court judge, and then it is likely that any decision will be appealed up to the Wisconsin Supreme Court (and potentially the United States Supreme Court). In the meantime, as with WEC and Ms. Wolfe, neither mayor has voluntarily agreed to give testimony, and it is likely their subpoenas will remain unsatisfied until the conclusion of all litigation.

1. Dane County Case Number 2021CV003007, *American Oversight vs. Assembly Office of Special Counsel et al.*

In addition to the above, the OSC has been forced into litigation over issues surrounding the voluminous requests for documents it has received pursuant to Wisconsin's Open Records law. While these requests and the attendant litigation have not

directly affected the OSC's ability to obtain necessary information—as the lack of cooperation and litigation over the subpoenas has done—at the same time, it has strained the OSC's resources and indirectly affected the OSC's work in a very significant way.

In Dane County Case Number 2021CV003007, a group called American Oversight has sued the OSC, along with the Wisconsin State Assembly, Speaker of the Assembly Robin Vos, and Wisconsin State Senate Sergeant-at-Arms Edward Blazel over purportedly insufficient responses to requests made to the OSC and the other defendants under Wisconsin's Open Records law.

Before the work of the OSC has finished, or even begun in large part, American Oversight has referred to the OSC's efforts on behalf of the Assembly as “baseless,” that the OSC is “perpetuating Trump's big lie that the election was somehow stolen,” and that the real purpose of the OSC's work is to “create a pretext for enacting new restrictions on voting rights.”

Pursuant to their efforts to establish their narrative prior to the work of the OSC coming to fruition, American Oversight has served numerous open records requests upon the OSC, including the following—

2. A September 15, 2021, demand for all “organizing materials,” of the OSC, including contracts, agreements, scopes of work, and other documents related to the “scope of investigative authority” of the OSC;
3. A September 15, 2021, demand for all “work product” materials, including “interim reports, analyses, notifications, or other work product produced or collected by individuals or entities under contract to investigate” the November 2020 election, or any other;

4. A September 15, 2021, demand for all “communications” between “former justice Michael Gableman, or anyone communicating on his behalf, such as an administrative assistant, or any individual designated or engaged as an investigator, including, but not limited to Steven Page, and (ii) any other contractor or agent of the Wisconsin Assembly charged with investigating the November 2020 election,” as well as all “calendar entries” maintained by any investigators;
5. An October 15, 2021 demand for “external communications” between the OSC and a list of 30 individuals and/or entities;
6. An October 26, 2021, demand for “organizing materials” similar to the one served in September of 2021;
7. An October 26, 2021, demand for “work product” similar to the one served in September of 2021; and
8. An October 26, 2021, demand for “communications” similar to the one served in September of 2021.

All of the above open records requests are currently part of the litigation pending in Dane County.

In addition, American Oversight has served four additional open records requests, dated January 18, 2022, and February 1, 2022, that are still being processed by the OSC, and are not part of any litigation as of yet.

Beyond those served by American Oversight, the *Milwaukee Journal Sentinel*, via reporter Patrick Marley, served an open records request dated February 7, 2022, in which the following records were demanded:

- The call log showing all calls to and from all cell phones used by Gableman;
- The call log showing all calls to and from all cell phones used by any of Gableman’s staff (including direct employees, contractors and subcontractors);
- All paper and electronic calendars for Gableman;

- All emails and/or text messages between Gableman and Rudy Giuliani;
- All emails and/or text messages between Gableman and John Eastman;
- All emails and/or text messages between Gableman and Phill Kline;
- All emails and/or text messages between Gableman and Erick Kaardal;
- All emails and/or text messages between Gableman and Phil Waldron;
- All emails and/or text messages between Gableman and James Troupis;
- All emails and/or text messages between Gableman and Kenneth Chesebro;
- All emails and/or text messages between Gableman and David Clarke;
- All emails and/or text messages between Gableman and Rep. Janel Brandtjen;
- All emails and/or text messages between Gableman and Rep. Timothy Ramthun;

In addition, I am requesting the following documents since Sept. 28, 2021:

- All emails and/or text messages between Gableman and Robin Vos;
- All emails and/or text messages between Gableman and Reince Priebus;
- All emails and/or text messages between Gableman and Nick Boerke;
- All emails and/or text messages between Gableman and Andrew Kloster;
- All emails and/or text messages between Gableman and Harry Wait;
- All emails and/or text messages between Gableman and Gary Wait;
- All emails and/or text messages between Gableman and Peter Bernegger;
- All emails and/or text messages between Gableman and Jefferson Davis;
- All emails and/or text messages between Gableman and Mike Lindell;
- All emails and/or text messages between Gableman and Steve Bannon;
- All emails and/or text messages between Gableman and Seth Keshel;
- All emails and/or text messages between Gableman and Shiva Ayyadurai;

- All emails and/or text messages between Gableman and Ron Heuer;
- The computer security protocols for the Office of Special Counsel;
- Transcripts of witness interviews;
- Audio and/or video recordings of witness interviews;
- All submissions to wifraud.com.

The Special Counsel believes in governmental transparency and is making every effort to comply with the above demands.

However, including the Special Counsel himself, the OSC has a full-time staff of two persons. It also has five part-time staff members consisting of four attorneys and an investigator. Simply responding to these voluminous open records requests is a task that has taken up a tremendous amount of staff time. In addition, the Assembly has engaged outside counsel to defend the American Oversight lawsuit and will likely have to hire counsel to defend further lawsuits if the responses provided to the outstanding demands do not satisfy American Oversight or the *Milwaukee Journal Sentinel*.

While the OSC will continue to see that its duties under Wisconsin's open records law are fulfilled, doing so has, and will continue to materially hamper the ability of the OSC staff to address the substantive issues with which it was charged with investigating and reporting upon to the Wisconsin State Assembly.