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DANE COUNTY, WI
2021CV002440

BY THE COURT:

DATE SIGNED: March 30, 2022

Electronically signed by Judge Valerie Bailey-Rihn
Circuit Court Judge

STATE OF WISCONSIN DANE COUNTY CIRCUIT COURT
BRANCH 3

AMERICAN OVERSIGHT,

Petitioner,

vs. Case No. 21-CV-2440

ROBIN VOS, et al.

Respondents.

DECISION AND ORDER

INTRODUCTION

Beginning in June 2021, the Wisconsin State Assembly hired independent contractors to investigate Wisconsin's November 3, 2020 election. While hired by the assembly, the contractors reported directly to assembly Speaker Robin Vos and were tasked with duties like "[c]ollect data and evidence" and "keep a weekly report of investigative findings."

This is a public records case in which American Oversight has requested the data, reports, and other records those contractors created. Our government must provide access to its contractors' records "to the same extent as if the record[s] were maintained by the" government itself. Wis. Stat. § 19.36(3). This rule "is designed to prevent a government entity from evading its

responsibilities under the Public Records Law by shifting a record's creation or custody to an agent." *Juneau Cnty. Star-Times v. Juneau Cnty.*, 2013 WI 4, ¶27, 345 Wis. 2d 122, 824 N.W.2d 457. But evading responsibilities is exactly what the Respondents have done so far. Last November, the Court ordered each Respondent to produce contractors' records—the assembly as a party to the contracts and Robin Vos because an employee in his office was the "point of contact" for the contractors—and yet there still appears to have never been a meaningful search of contractors' records, except for copies which also existed in the Respondents' own custody.

After the Respondents' alleged failure to search for contractors' records was confirmed by documentary proof, on January 11, 2022, the Court ordered further testimony on what actions had been taken to comply with these records requests. That testimony revealed a collective and abject disregard for the Court's order: Robin Vos had delegated the search for contractors' records to an employee who did nothing more than send one vague email to one contractor. Putting aside for the moment the impropriety of making a contractor responsible for a records request, *Juneau Cnty. Star-Times*, 2013 WI 4, ¶27, Robin Vos did not tell that contractor which records to produce, did not ask any of the other contractors to produce records, and did not even review the records ultimately received. Still worse, the assembly did nothing at all.

Accordingly, the Court concludes that Robin Vos and the assembly, after hearing and notice, have chosen to willfully violate a court order and are held in contempt. Purge conditions shall be simple: they must prove that they have complied with their duties under the public records law to search for responsive records created by their contractors.

I. BACKGROUND

A. American Oversight's records requests.

On July 20, 2021, and again on August 12, 2021, American Oversight submitted seven

different requests for records addressed to both Robin Vos ("Vos") and Edward Blazel ("Blazel"), who is the assembly's chief clerk and custodian of records. Trans. of January 24, 2022, Evidentiary Hr'g, dkt. 99:88 ("I respond to requests… that cover the whole assembly.");[1] Colombo Aff., Exhs. A-G, dkt. 14. Each of American Oversight's requests sought records from the Respondents' contractors related to the assembly's investigation into the 2020 election, in what has now been formally organized as the Assembly Office of Special Counsel ("OSC"). To summarize, these requests sought:

- Complete copies of any contracts and related documents between the assembly and "individuals or entities associated with the legislature's investigation of the November 2020 election…" including records relating to the investigator's authority, any procedures to be followed, any invoices submitted, and any criteria or other guideline for the completion of the investigation. Colombo Aff., Exh. A, dkt. 7:2-3 (July 20, 2021 requests); Colombo Aff., Exh. D, dkt. 23 (A similar request, updated through August 12, 2021).

- Copies of investigators' work product. Colombo Aff., Exh. B, dkt. 22:2 (July 20, 2021 requests); Colombo Aff. Exh. E, dkt. 9 (A similar request, updated through August 12, 2021).

- Copies of "[a]ll electronic communications," including those sent to and from personal accounts, between the investigators and twenty-five named entities, as well as any calendar entries related to the investigation. Colombo Aff., Exh. C, dkt. 8:2-5 (July 20, 2021 requests); Colombo Aff. Exh. F, dkt. 24 (A similar request, updated through August 12, 2021).

Vos produced some records in response to five of these requests, but ignored the remaining two. Colombo Aff., Exhs. O-S, dkt. 14. The assembly, through Blazel, responded to each of the seven requests. Colombo Aff., Exhs. H-N. Both the assembly and Vos would later argue that they did not need to produce records in the custody of their contractors because by the time this litigation commenced, some of those contractors had been formally constituted into a subunit of

[1] In addition to being the custodian in charge of the assembly's records, the Chief Clerk of the assembly is an "office" and therefore an authority in its own right. Wis. Stat. §§ 19.32(1) and 19.42(13)(e). However, to be clear, American Oversight does not seek records from the office of the Chief Clerk. *See e.g.* Colombo Aff., Exh. A, dkt. 7 ("American Oversight requests that Speaker Vos and the Wisconsin Assembly produce the following…")

the assembly.

B. The alternative writ of mandamus.

On October 8, 2021, American Oversight petitioned for a writ of mandamus commanding Vos, Blazel, and the assembly to produce records responsive to its requests. Dkt. 4. Later that day, the Court issued an alternative writ of mandamus commanding the Respondents to "release the records responsive to Petitioner's request, or in the alternative to show cause to the contrary…" Dkt. 38.

On the morning of November 5, 2021, the Respondents filed a responsive pleading in which they asserted the newly-constituted OSC was itself an authority such that "[r]ecords relating to the function and activities of Justice Gableman and his investigators are not 'contractor's records' within the meaning of Wis. Stat. § 19.36(3)…" Resp. First Answer, dkt. 56:5-6.[2] That afternoon, the parties appeared for a show cause hearing on why the Respondents could not release responsive records. *See* Tr. of 11/5/21 Hr'g, dkt. 58. Following the hearing, on November 18, 2021, the Respondents filed a second responsive pleading. Dkt. 64.

On November 22, 2021, the Court ordered the Respondents to "produce contractors' records that existed through August 30, 2021 and that are responsive to the requests cited in the Petition, to the Petitioner within 10 business days…" Mandamus Order, dkt. 65:1. The Court further ordered that the Respondents were barred from raising new reasons for non-disclosure which were not originally raised. *Id.* (citing *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 427, 279

[2] The Respondents initially cited American Oversight's petition for mandamus, dkt. 4, ¶¶ 16 and 21, to explain that OSC was a formally constituted subunit of the assembly. Respondents Answer, dkt. 56:5. The petition vaguely discusses some kind of vote to create OSC on August 27, 2021.

Following the show cause hearing, American Oversight submitted a letter in which it asserts that "the office was not actually designated until August 30, 2021." Dkt. 59. The Respondents filed a response letter in which they did not object to the August 30, 2021 date. Dkt. 61.

N.W.2d 179 (1979), et al.)

C. Respondents' failure to demonstrate a search for contractor records and the sanctions motion.

On December 3, 2021, asserting that it still had not received contractors' records responsive to its requests, American Oversight filed a motion for contempt. Dkt. 67-73. The Respondents opposed the motion. Dkt. 75. On December 30, 2021, the parties appeared for oral arguments on the contempt motion Tr. of 12/30/21 Hr'g, dkt. 98. Following those arguments, on January 11, 2022, the Court ordered Respondents to "produce a records custodian or custodians to testify regarding actions taken to comply with the Petitioner's open records requests and the Court's mandamus order…" Dkt. 83. The Respondents did so at a January 24, 2022, evidentiary hearing at which two witnesses testified. Tr. of 1/24/22 Hr'g, dkt. 99.

1. Steven Fawcett testified to have done almost nothing at all in response to the Court's order.

The first witness at the January 24, 2022 evidentiary hearing was Steven Fawcett ("Fawcett"). Tr. of 1/24/22 Hr'g, dkt. 99:10-85. Fawcett testified that he was "[l]egal counsel in Speaker Vos's office in the assembly," and that "[p]art of [his] duties is to sort of help facilitate open records." *Id.* dkt. 99:11. Broadly speaking, Fawcett's cross examination demonstrated three points: (1) he took no reasonable steps to procure records from any contractors, (2) he took no steps at all to review the records he did procure, (3) he took no steps at all to prevent the loss or destruction of the contractors' records.

The first part of Fawcett's cross-examination demonstrated that he could not explain any reasonable attempts to procure records from contractors. Fawcett sent one email to contractor Michael Gableman ("Gableman"), but did not ask contractors Michael Sandvick, Steven Page, Joe Handrick, an unnamed woman described as having a background in law enforcement, and

unknown others:

- Fawcett had "no knowledge" about records produced by contractor Joe Handrick, who "left his files when he left… on… our office drive." *Id.* dkt. 99:27-28.

- Fawcett did not know whether another contractor, an unnamed former police officer "had any records or how any of that went down." *Id.* dkt. 99:28-29.

- Fawcett did not ask contractors Michael Sandvick or Steven Page for any records. *Id.* dkt. 99:31-32.

- Fawcett "simply asked Mr. Gableman to turn over all the records in his charge that he had responsive of these requests…" *Id.* dkt. 99:29-30.

- Fawcett could not remember providing American Oversight's records requests to any contractors. *Id.* dkt. 99:31. Fawcett provided no instructions, search terms, date ranges, or any parameters to the contractors by which they could have structured their records production. *Id.* dkt. 99:33-34.

- Fawcett did not know who among the contractors would have searched for records, or how they would have searched, or how much time was spent searching, or whose records were searched, or whether and which email accounts and text messages were also searched. *Id.* dkt. 99:35-36, 38.

- Fawcett had never visited, and did not know the location of, the contractors' offices. *Id.* dkt. 99:34.

- Fawcett sent one email to Gableman and received one email in reply. *Id.* dkt. 99:40.

The second part of Fawcett's cross-examination turned on the substance of the records which had been produced to American Oversight and filed with the Court. Westerberg Aff., Exh. B, dkt. 70-71 (a copy of the records production). Fawcett did not review these records and could not give any reasonable explanation for their substance, or lack thereof:

- Fawcett did not know why an email from a reporter to Fawcett would have been in the custody of any contractors. Tr. of 1/24/22 Hr'g, dkt. 99:44.

- Fawcett had not reviewed the records. *Id.* dkt. 99:45. Fawcett did nothing else to confirm that responsive records were produced. *Id.* dkt. 99:46, 48.

- Instead, Fawcett "assum[ed] these are the documents that were found responsive and, you

know, to those searches," but "ha[d] no idea what they kept or did not keep." *Id.* dkt. 99:46-47.

- When shown the contracts between the assembly and the contractors, which required contractors to "keep a weekly report of investigative findings" and "consult with investigators," Fawcett said he had never sought these kinds of records. *Id.* dkt. 99:50-52. Fawcett "ha[d] no idea" whether they even existed. *Id.* dkt. 99:53.

- Fawcett acknowledged that he himself had communicated by email or text with contractors during a time which would have been responsive to these requests. *Id.* dkt. 99:54. Fawcett had no explanation why records of his own communications were absent from the contractors' records production. *Id.* dkt. 99:60.

The third part of Fawcett's cross-examination turned to the retention of records. Fawcett could not explain any steps to ensure records would not be destroyed. When asked whether he had discussed record retention with contractors, Fawcett answered:

> Yeah. I believe that – you know, I think I spoke with Mr. Gableman initially about obviously they'll be part of the legislature. It's just, sort of, office comes on, and that's subject to open records. So, you know, we had to sort of do some sort of lay work to figure out how that sort of operates.

Id. dkt. 99:65. Later, when asked whether he did "anything to ensure that [contractors] would retain records of their investigation?" Fawcett responded only: "That was sort of their purview as an independent entity." *Id.* dkt. 99:67.

2. Edward Blazel testified to having done nothing at all in response to the Court's order.

The second witness at the January 24, 2022 evidentiary hearing was Blazel, who testified that he responds to records requests "that cover the whole assembly." *Id.* dkt. 99:88. Before taking the stand, his attorney conceded that Blazel had done nothing in response to the Court's order to produce contractors' records. *Id.* dkt. 99:86. Blazel then testified consistent with a failure to search contractors' records as ordered:

> Q [Ms. Westerberg]: Just to clarify, you only searched the records that you had, correct?

> A [Blazel]: Correct.
>
> Q: And after the Court's mandamus order, same thing. When you rechecked your records, you only checked the ones in your possession, correct?
> A: Correct.
>
> …
>
> Q: Did you do anything to ensure that the records that were ultimately produced were complete?
> A: I did, yeah. I checked through all my records.
>
> Q: Just as far as your own records went.
> A: As far as what I had in my possession, yes.

Id. dkt. 99:90, 94.

II. STANDARD OF REVIEW

Wisconsin Stat. § 785.01 defines contempt of court. Contempt includes the intentional: "[d]isobedience, resistance or obstruction of the authority, process or order of a court," and also the "[r]efusal to produce a record, document or other object." Wis. Stat. §§ 785.01(b) and (d); *Christensen v. Sullivan*, 2009 WI 87, ¶48, 320 Wis. 2d 76, 768 N.W.2d 798. A court may impose a remedial sanction for contempt of court, which "means a sanction imposed for the purpose of terminating a continuing contempt of court." Wis. Stat. § 785.02. [3]

The first step in the award of remedial sanctions is for a complainant "to seek imposition of a remedial sanction for the contempt by filing a motion…" Wis. Stat. § 785.03(1)(a). A court must find a "prima facie showing by complainant of a violation of an order…" *Noack v. Noack*, 149 Wis. 2d 567, 575, 439 N.W.2d 600 (Ct. App. 1989) (citations omitted); *See Joint Sch. Dist. v. Wisconsin Rapids Educ. Ass'n.,* 70 Wis. 2d 292, 321, 234 N.W.2d 289 (1975). If the complainant

[3] Courts may also impose a punitive sanction for contempt, although motions for punitive sanctions may "be brought exclusively" by prosecutors. *Christensen v. Sullivan*, 2009 WI 87, ¶53, 320 Wis. 2d 76, 768 N.W.2d 798 (internal citations and quotations omitted); Wis. Stat. § 785.03(1)(b).

makes this prima facie showing, then the "alleged contemnors bear the burden of showing that their conduct was not contemptuous." *Id.* If the contemnor fails to show their conduct was not contemptuous, then "[t]he court, after notice and hearing, may impose a remedial sanction authorized by [Wis. Stat. ch. 785.]" Wis. Stat. § 785.03(1)(a).

Five categories of sanctions are authorized by Wis. Stat. ch. 785:

> (a) Payment of a sum of money sufficient to compensate a party for a loss or injury suffered by the party as the result of a contempt of court.
>
> (b) Imprisonment if the contempt of court is of a type included in s. 785.01 (1) (b), (bm), (c) or (d). The imprisonment may extend only so long as the person is committing the contempt of court or 6 months, whichever is the shorter period.
>
> (c) A forfeiture not to exceed $2,000 for each day the contempt of court continues.
>
> (d) An order designed to ensure compliance with a prior order of the court.
>
> (e) A sanction other than the sanctions specified in pars. (a) to (d) if it expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

Wis. Stat. § 785.04(1). "[T]he stated and principal objective of a remedial sanction is to force the contemnor into compliance with a court order for the benefit of a private party—the litigant." *Christensen,* 2009 WI 87, ¶55.

III. DISCUSSION

A. American Oversight makes a prima facie showing of contempt.

The Court's analysis begins with whether American Oversight has made a prima facie showing of contempt. *Noack,* 149 Wis. 2d at 575; *Joint Sch. Dist.,* 70 Wis. 2d at 321. The Court has already made this finding based on the Respondents' concessions that they failed to produce responsive documents. Tr. of 1/24/22 Hr'g, dkt. 99:8; *See* Westerberg Aff., Exh. 1, dkt. 78:4.

Despite having already made this finding months ago, the Respondents now advance two arguments for why American Oversight has failed to make its prima facie case.

1. The Court's November 22, 2021, order is not "void."

The Respondents' first argument is that American Oversight fails to make a prima facie case against Vos and Blazel because the Court's mandamus order is either "void" or not "valid." Resp. Br., dkt. 100:3-4. In support of this argument, Respondents cite *Midwest Neurosciences Associates, LLC v. Great Lakes Neurological Associates, LLC,* 2018 WI 112, ¶55, 384 Wis. 2d 669, 920 N.W.2d 767 for the proposition that "a signature on a contract obligates the party, not the individual signing the contract." Resp. Br., dkt. 100:4. Thus, the Respondents conclude, the Court's order "is void and any motion for contempt against them fails." *Id.*

The Court rejects this argument for two reasons. First, it is legal fiction. Even assuming the Court's previous order was erroneous, "a voidable judgment has the same force and effect as though no error had been committed." *Slabosheske v. Chikowske,* 273 Wis. 144, 150, 77 N.W.2d 497 (1956); *See State v. Campbell,* 2006 WI 99, ¶¶42-43, 294 Wis. 2d 100, 718 N.W.2d 649. This rule accords with the consensus that rule of law is not compatible with the liberty to disobey a court order:

> It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished…
>
> [T]hose who are subject to the commands of an injunctive order must obey those commands, notwithstanding eminently reasonable and proper objections to the order, until it is modified or reversed.

Pasadena City Bd. of Edu. v. Spangler, 427 U.S. 424, 439-440 (1976) (quoting *Howat v. Kansas,* 258 U.S. 181, 190 (1922)). If Vos or Blazel had a meritorious objection to the production of these

records, the public records law required it to have been raised "as soon as practicable" and directly to the requester. Wis. Stat. § 19.35(4)(a); *Newspapers, Inc. v. Breier*, 89 Wis. 2d 417, 427, 279 N.W.2d 179 (1979). The Respondents failed to do so. Afterwards, they could have sought reconsideration, an appeal, or they could have obeyed the Court's order.[4] But they may not disregard that order as "void."

2. American Oversight has made a prima facie case.

The Respondents' second argument for why American Oversight fails to make a prima facie case is that the case is "simply unfounded… [American Oversight] fails to identify a single document that exists and was not produced." Resp. Br., dkt. 100:5. This argument is confusing because in a later section of their brief, Respondents concede that American Oversight has, in fact, identified documents that were not produced. Resp. Br., dkt. 100:9 ("Petitioner was only able to identify one document that was produced [in a different records case] and not [in this records case]…"); *See* Westerberg Aff., dkt. 78 (American oversight identifies a missing document).

Accordingly, the Court concludes that American Oversight has made a prima facie case that the Respondents have intentionally violated the Court's order.

B. Respondents fail to meet their burden to show their conduct was not contemptuous.

The second step in the contempt procedure is for the alleged contemnor to show its conduct was not contemptuous. *Noack*, 149 Wis. 2d at 575; *Joint Sch. Dist.*, 70 Wis. 2d at 321. The Court turns to the Respondents' arguments to determine whether they have met their burden to show they

[4] Reconsideration requires a "movant must either present newly discovered evidence or establish a manifest error of law or fact." *Bauer v. Wisconsin Energy Corp.*, 2022 WI 11, ¶13, 400 Wis. 2d 592, 970 N.W.2d 243 (citations and quotations omitted). To the extent the Court construes their argument to be such a motion, the Respondents do not meet this standard.

have not intentionally violated a court order.[5]

1. Respondents fail to show they did anything more than send a vague email to a single contractor.

The Respondents' first argument is that they have complied with the Court's orders because Fawcett emailed contractor Gableman, asking him to turn over responsive records. Resp. Br., dkt. 100:7. The Respondents then assign, absent any citation, some heightened records responsibility to a contractor who has formerly served as a judge. *Id.* Thus, Respondents argue, because "Gableman did not identify any documents were being withheld," the Respondents conclude that they could not have intentionally violated the Court's order.[6] *Id.* At bottom, the Respondents' argument is that the Court's order commanding production of contractors' records could properly be obeyed by these two actions:

- Transmission of an email from Fawcett to Gableman, even though that email did not contain any substance whatsoever about the kinds of records to produce.
- Fawcett's subsequent forwarding of Gableman's reply email, which did not require any kind of review because Gableman was previously employed as a judge.

The Court does not agree than an order commanding Vos, Blazel, and the assembly to

[5] The Respondents' argument repeatedly refers to the "Legislature," which is not a party in this action, as a replacement for some or all of the three individual Respondents. The Court is forced to guess who the Respondents are actually discussing. For example, the Respondents assert that:

> The Legislature requested Mr. Gableman to produce all responsive records for production on November 19, 2021 as ordered by this Court. Mr. Gableman returned those records to the Legislature and it produced them…

Resp. Br., dkt. 100:8. Here, the Court presumes that "Legislature" refers to Fawcett, who testified that he was the one who emailed Gableman. *See* Tr. of 1/24/22 Hr'g, dkt. 99:40. But on other occasions, the Court presumes the same term refers to the other Respondents. *See e.g.* Resp. Br., dkt. 100:11 (discussing the "Legislature" and its initial search, presumably referring to Blazel, the person who would have conducted the assembly's search); *id.* at 12 (discussing the "Legislature" as distinct from Vos and Blazel, presumably referring to the "assembly.")

[6] This is, at least, the initial argument. The Respondents almost immediately abandon the theory of Gableman's "failure to identify withheld documents" and instead shift to claiming that Gableman actually did produce all responsive records. Resp. Br., dkt. 100:8. Later, their argument shifts again, now acknowledging that Gableman failed to produce all responsive records, but that failure was "human error." *Id.* at 9.

search for the contractors' records can be satisfied by a single Respondents' single employee's single email to a single contractor. Whether the Respondents intended this woeful inaction to be contemptuous does not matter. *Currie v. Schwalbach*, 132 Wis. 2d 29, 38-39, 390 N.W.2d 575 (Ct. App. 1986) ("the contempt statute… requires only that the misconduct be intentional—not that a disruptive result be intended or even foreseen.") Accordingly, the Court concludes that the Respondents do not meet their burden to show their conduct was not contemptuous.

2. The Respondents' remaining arguments are immaterial to whether their conduct was contemptuous.

The Respondents' remaining arguments do not support the position that their continued failure to search for contractors' records is not contemptuous. At best, these arguments resume a challenge to American Oversight's prima facie case, first by asserting an alternative reason for why responsive documents were not produced: "potential human error." Resp. Br., dkt. 100:8. There is no evidence of any sort of clerical error to explain the Respondents failure to produce responsive documents. Further, assuming there was such evidence, Respondents do not explain why a *contractor's* "human error" is relevant to the *authority's* duty to produce records under the public records law. Wis. Stat. § 19.36(3); *See e.g. WIREdata, Inc. v. Vill. of Sussex*, 2008 WI 69, ¶89, 310 Wis. 2d 397, 751 N.W.2d 736. The Respondents should not have delegated the custody of these records to a contractor in the first instance. *Juneau Cnty. Star-Times*, 2013 WI 4, ¶27.

The Respondents then repeat a hearsay objection to one exhibit from the show cause hearing (Exh. 5, dkt. 95)[7] and label the sanctions motion "propaganda." Resp. Br., dkt. 100:9-12. Neither argument is persuasive. The Respondents cite no authority for why a movant's motive is

[7] Exhibit 5 contains screenshots of a website purportedly created by the contractors. It was introduced not for its content, but to impeach Fawcett's testimony about his efforts to search for responsive records. Fawcett could not explain why the records he received from contractors did not contain records necessary to the creation of the website. Tr. of 1/24/22 Hr'g, dkt. 99:74-75.

relevant to a contempt analysis under Wis. Stat. § 785.03, and even if the Court entirely suppressed the objected-to Exhibit 5, the testimony and remaining documentary evidence in this record overwhelmingly shows that the Respondents have willfully failed to comply with the Court's order.

C. Remedial sanctions are necessary to force Vos and the assembly into compliance with the Court's order, but not Blazel.

The final step in the contempt analysis is to determine whether sanctions would serve a remedial purpose. *Christensen*, 2009 WI 87, ¶55. A remedial purpose is clear—fulfillment of the Respondents' obligation under the public records law to search the records of the contractors they hired and supervised. However, sanctions against Blazel would be duplicative of sanctions against the assembly, which remains primarily responsible for these records. *See* Wis. Stat. § 19.33(7) ("The designation of a legal custodian does not affect the powers and duties of an authority…") Accordingly, the Court finds Robin Vos and the assembly in contempt, but not Edward Blazel.

ORDER

For the reasons stated, the Court enters the following orders, each of which are designed to ensure compliance with a prior order of the Court. Wis. Stat. § 785.04(1)(d).

(1) Robin Vos and the assembly, after hearing and notice, continue to willfully violate a court order, and are therefore in contempt of court.

(2) Robin Vos and the assembly shall pay American Oversight's costs and fees incurred in bringing this contempt motion. Wis. Stat. § 785.04(1)(a); *Town of Seymour v. City of Eau Claire,* 112 Wis. 2d 313, 332 N.W.2d 821 (Ct. App. 1983). American Oversight shall submit a bill of costs within thirty days.

(3) Robin Vos and the assembly shall have fourteen days to purge the contempt. Thereafter, each Respondent which has not purged the contempt shall pay a forfeiture of $1,000 per day.

(4) Purge conditions shall be as follows:

a. Each Respondent shall submit evidentiary proof to a reasonable degree of certainty that they have complied with their duties under the public records law to search for responsive records created by their current and/or former contractors.

b. Because of the uncontroverted evidence that the Respondents failed to instruct contractors to preserve records, each Respondent shall submit evidentiary proof of reasonable efforts to search for deleted, lost, missing, or otherwise unavailable records, or provide an explanation of why such a search would not be reasonable.

c. If the Respondents find responsive records, they shall not withhold those records for any reason not specifically raised in their initial responses to American Oversight.

d. Evidentiary proof should take the form of a sworn affidavit describing the steps taken to comply with each of these purge conditions. The Respondents may delegate this task to a custodian but shall not delegate any material responsibilities for this search to any of the contractors whose records they are searching.

This is NOT a final order for purposes of appeal. Wis. Stat. § 808.03(1).