

FILED  
09-25-2023  
CIRCUIT COURT  
DANE COUNTY, WI  
2023CV002506  
Honorable Frank D.  
Remington  
Branch 8

STATE OF WISCONSIN      CIRCUIT COURT      DANE COUNTY

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STATE *ex rel.* AMERICAN OVERSIGHT  
1030 15th St. NW, B255  
Washington, DC 20005

*Plaintiff-Relator,*

Case No. \_\_\_\_\_  
30701 Declaratory Judgment  
30704 Other Injunction or Restraining Order

*v.*

SECRET PANEL, a governmental body,  
c/o Wisconsin State Assembly Speaker  
Robin Vos  
Room 217 West  
State Capitol  
PO Box 8953  
Madison, WI 53708,

*Defendant.*

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## SUMMONS

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THE STATE OF WISCONSIN, To each party named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703, and to Pines Bach LLP, 122 W. Washington Avenue, Suite 900, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of Auxiliary Aides or Services because of a disability, call (608) 266-4678 (TDD (608) 266-2138)) and ask for the Court ADA Coordinator.

Respectfully submitted this 25th day of September, 2023.

PINES BACH LLP

*Electronically signed by Christa O. Westerberg*

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*v.*

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Robin Vos  
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*Defendant.*

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## COMPLAINT

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This is a suit seeking to enforce Wisconsin’s Open Meetings Law, Wis. Stat. §§ 19.81–19.98, through a declaratory judgment, a temporary restraining order, and a temporary injunction. Specifically, this action seeks to stop closed-door meetings of a secretive panel of three former Wisconsin Supreme Court justices (“Secret Panel”) created by order of Wisconsin State Assembly Speaker Robin Vos. Public reporting indicates that Speaker Vos directed the Secret Panel to “review and advise [him of] what the criteria are for impeachment” of Wisconsin Supreme Court Justice Janet Protasiewicz if she refuses to recuse herself from lawsuits seeking to overturn voting maps drawn by the Republican legislature.<sup>1</sup>

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<sup>1</sup> The Jay Weber Show, *THIS MORNING: Speaker Robin Vos on the Latest GOP Redistricting Plan*, News/Talk 1130 WISN, audio playback at 7:25–7:40 (Sept. 13, 2023, 7:10 AM),

It is the declared public policy of the State of Wisconsin that “the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of governmental business.” Wis. Stat. § 19.81(1). To that end, “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2). Advance notice must also be given before such meetings are held. Wis. Stat. § 19.83(1).

In furtherance of that policy, and in accordance with Wisconsin law, Plaintiff American Oversight seeks the following remedies: (1) a declaration that Speaker Vos’s Secret Panel is subject to the requirements of Wisconsin’s Open Meetings Law, Wis. Stat. §§ 19.81–19.98; (2) a declaration that the Secret Panel has violated the Open Meetings Law by failing to provide requisite advance notice of the its meetings and by failing to hold such meetings in locations reasonably accessible by the public; (3) a temporary restraining order and temporary injunction against the Secret Panel ordering it to comply with the Open Meetings Law; and (4) recovery of attorney fees, costs, and disbursements provided under the Open Meetings Law. It also asks the Court to exercise its discretion to void the results of any illegal meetings, pursuant to Wis. Stat. § 19.97(3).

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<https://newstalk1130.iheart.com/featured/the-jay-weber-show/content/2023-09-13-this-morning-speaker-robin-vos-on-the-latest-gop-redistricting-plan/> (a true and correct copy of the URL to this audio file is attached as **Exhibit A**); Rich Kremer, *Vos Consulting Former Justices on Potential Protasiewicz Impeachment*, Wis. Pub. Radio (Sept. 13, 2023, 6:10 PM), <https://www.wpr.org/vos-consulting-former-justices-potential-protasiewicz-impeachment> (a true and correct copy of this article is attached as **Exhibit B**); Scott Bauer, *Wisconsin Republican Leader Asks Former State Supreme Court Justices to Review Impeachment*, Associated Press (Sept. 13, 2023, 12:10 PM), <https://apnews.com/article/wisconsin-supreme-court-justice-impeachment-03d6f56ef7d27c6c45913a4310df7953> (a true and correct copy of this article is attached as **Exhibit C**).

American Oversight, by its attorneys Pines Bach LLP, therefore complains against the Secret Panel as follows:

### **PARTIES AND RELEVANT PERSONS**

1. Plaintiff-Relator American Oversight is a nonpartisan, nonprofit organization dedicated to ensuring government transparency at all levels. Through research and requests for public records under the federal Freedom of Information Act and state public records laws, and enforcement of open meeting requirements, American Oversight uses the information it gathers, and its analysis of it, to educate the public about activities and operations of state and federal governments through reports, published analyses, press releases, and other media. American Oversight can accomplish its mission of ensuring government transparency only if public records are preserved and government meetings are open in accordance with applicable law. American Oversight's mailing address is 1030 15th St. NW, B255, Washington, DC 20005.

2. Defendant Secret Panel—named here fictitiously pursuant to Wis. Stat. § 807.12 because its technical name has not been publicly disclosed—is a governmental body created by Wisconsin State Assembly Speaker Robin Vos. The Secret Panel comprises three people, including David T. Prosser, Jr., a former Wisconsin Supreme Court justice and an adult resident of the State of Wisconsin.<sup>2</sup> The Secret Panel meets the statutory definition of a “governmental body” under Wis. Stat. § 19.82(1). Justice Prosser is identified here as a

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<sup>2</sup> Scott Bauer, *A Member of the Secret Panel Studying Wisconsin Supreme Court Justice's Impeachment Backed Her Rival*, Associated Press (Sept. 15, 2023, 12:27 PM), <https://apnews.com/article/wisconsin-supreme-court-impeachment-56516aad2371cb851ce0c8ae816a9c5c> (a true and correct copy of this article is attached as **Exhibit G**).

representative of the Secret Panel, who has confirmed his appointment to the panel.<sup>3</sup> Speaker Vos has refused to disclose the identities of the Secret Panel's other members.<sup>4</sup>

3. Speaker Vos is an adult resident of the State of Wisconsin and an elected member of the Wisconsin State Assembly (the "Assembly"), representing the 63rd Assembly District. He is Speaker of the Assembly. His office is located at Room 217 West, State Capitol, PO Box 8953, Madison, Wisconsin 53708. On information and belief, Speaker Vos ordered the creation of a three-person panel ("Secret Panel") to "review and advise what the criteria are for impeachment" of Wisconsin Supreme Court Justice Janet Protasiewicz if she refuses to recuse herself from lawsuits seeking to overturn voting maps drawn by the Republican legislature.<sup>5</sup> In creating the Secret Panel, Speaker Vos determined its membership, purpose, and timeline for completing its work, such that the Secret Panel is a "governmental body" under Wis. Stat. § 19.82(1).

### JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this dispute pursuant to Wis. Stat. §§ 781.02 and 806.04.

5. Venue is proper under Wis. Stat. §§ 19.97, and 801.50(2) and (3), because, on information and belief, the Open Meetings Law violations complained of occurred in Dane County.

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<sup>3</sup> *Id.*

<sup>4</sup> Bauer, *supra* note 1 (**Exhibit C**).

<sup>5</sup> *See supra* note 1.

## FACTS

6. In an August 11, 2023 interview, Wisconsin State Assembly Speaker Robin Vos was asked whether he would consider impeachment against recently sworn-in Wisconsin Supreme Court Justice Janet Protasiewicz.<sup>6</sup> Speaker Vos responded: “It has to be where they violate the oath of office, right? Justice Protasiewicz who prejudged cases doesn’t recuse herself, right? That could be something we would consider.”<sup>7</sup>

7. On August 31, 2023, the *Associated Press* reported that Speaker Vos was considering whether to proceed with impeachment proceedings against Justice Protasiewicz, based on her alleged refusal to recuse herself from a case challenging Wisconsin’s legislative districts.<sup>8</sup>

8. At that time, Speaker Vos said, according to the article, “I want to do legal research and see if this is unprecedented . . . . I’m not saying it’s definitely happening. But we have to take a look at it.”<sup>9</sup>

9. Approximately two weeks later, during a September 13, 2023 radio interview, Speaker Vos announced that he was “asking a panel of former members of the state supreme

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<sup>6</sup> *The Meg Ellefson Show*, audio playback at 15:30–16:30 (Aug. 11, 2023, 8:38 AM), <https://omny.fm/shows/feedback/guest-speaker-robin-vos-the-meg-ellefson-show-0811> (a true and correct copy of this article is attached as **Exhibit D**); Molly Beck, *Vos Says Lawmakers May Consider Impeachment if Protasiewicz Doesn’t Recuse from Redistricting Cases*, Milwaukee J. Sentinel (Aug. 11, 2023, 6:41 PM), <https://www.jsonline.com/story/news/politics/2023/08/11/protasiewicz-must-recuse-from-redistricting-cases-or-risk-impeachment-vos-says-supreme-court/70578220007/> (a true and correct copy of this article is attached as **Exhibit E**).

<sup>7</sup> *Id.*

<sup>8</sup> Scott Bauer, *Vos Says Republicans Will “Take a Look” at Pursuing Protasiewicz Impeachment*, PBS Wis./Associated Press, Aug. 31, 2023, <https://pbswisconsin.org/news-item/vos-says-republicans-will-take-a-look-at-pursuing-protasiewicz-impeachment/> (a true and correct copy of this article is attached as **Exhibit F**)

<sup>9</sup> *Id.*

court to review and advise . . . what the criteria are for impeachment” of Justice Protasiewicz.<sup>10</sup>

10. During the interview, Speaker Vos said that he wants the Secret Panel to “do the legal research and make sure that they come and let me know what are the inherent powers that the legislature has, how would the process [of impeachment] work, and to move forward.”<sup>11</sup>

11. Vos refused to identify the members of the Secret Panel during his announcement,<sup>12</sup> but, on information and belief, the Secret Panel consists of three former Wisconsin Supreme Court Justices.<sup>13</sup> Former justice David T. Prosser, Jr. confirmed to the media that Speaker Vos asked him to participate.<sup>14</sup>

12. In a statement to the *Associated Press*, former justice Prosser indicated that Vos instructed him to investigate “whether there’s a legitimate reason for impeaching” Justice Protasiewicz.<sup>15</sup>

13. Similarly, Vos told the *Associated Press* that “[h]opefully [the Secret Panel] come[s] back to us with their recommendations so that the Legislature has even more good

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<sup>10</sup> *The Jay Weber Show*, *supra* note 1 (**Exhibit A**), audio playback at 7:25–7:40.

<sup>11</sup> *Id.*, audio playback at 12:35–12:50.

<sup>12</sup> *See generally id.*

<sup>13</sup> Bauer, *supra* note 2 (**Exhibit F**).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

information to act on whether or not it's required for us to proceed with some kind of impeachment proceedings."<sup>16</sup>

14. Vos has told the media that it is his "constitutional duty" to consider impeachment.<sup>17</sup>

15. As of September 13, 2023, Speaker Vos expected the Secret Panel's work to be complete in the "next few weeks."<sup>18</sup>

16. On information and belief, and given the rapid timeline for the Secret Panel's work, the Secret Panel has met to carry out the duties given to it by Speaker Vos.

17. As of the date of this Complaint, the Secret Panel has not notified the public or press of the time, date, place, and subject matter of any meetings it has held, and it has not held such meetings in open sessions reasonably accessible by the public.

18. American Oversight has searched for notices of meetings by the Secret Panel on the Internet and physically at the State Capitol but has not found any meeting notices by the Secret Panel.

19. Pursuant to Wis. Stat. § 19.97(1) and (4), on September 20, 2023, American Oversight filed a verified Open Meetings Law complaint with the Dane County District Attorney regarding the violations of the Open Meetings Law alleged in this Complaint. **(Exhibit H.)**

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<sup>16</sup> *Id.*

<sup>17</sup> Bauer, *supra* note 1 (**Exhibit C**).

<sup>18</sup> *Id.*

20. On September 22, 2023, American Oversight was contacted by an investigator with the Dane County District Attorney's Office and learned that the next steps in the investigation of the verified complaint is outreach to Speaker Vos and former justice Prosser.

21. As of September 22, 2023, no immediate plans were indicated to bring an action against the Secret Panel for its alleged violation of the Open Meetings Law, and an investigation and decision of whether to bring such an action enforcing may not be complete until the end of September, after the Secret Panel has completed its work.

22. American Oversight is harmed by the Secret Panel's failure to comply with the Open Meetings law, as it and the public are deprived of access to the affairs of government as provided in Wis. Stat. § 19.81. American Oversight is further harmed because it cannot inform itself of the Secret Panel's activity and use such information to inform its collection, distribution, and explanation of the records and activities of government agencies to inform and educate the public, consistent with its mission and using its website and other channels by which it shares information.

#### **CAUSE OF ACTION NO. 1: DECLARATORY JUDGMENT**

##### **The Secret Panel is a Governmental Body Subject to the Open Meetings Law**

23. American Oversight restates and re-alleges all preceding paragraphs as if set forth fully herein.

24. The Wisconsin Open Meetings Law provides, in its "Declaration of Policy," that, "[i]n recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of

governmental as is compatible with the conduct of government business.” Wis. Stat. § 19.81(1).

25. Accordingly, the Wisconsin Open Meetings Law requires that governmental bodies provide advance notice of every meeting and hold meetings in open session unless specific exemptions apply. Wis. Stat. § 19.83(1). Meetings must also be held in locations reasonably accessible to members of the public. Wis. Stat. § 19.81(2).

26. The Open Meetings Law directs that it “shall be liberally construed to achieve the purposes set forth in this section.” Wis. Stat. § 19.81(4).

27. “Governmental body” is defined as “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . . .” Wis. Stat. § 19.82(1); *see also State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, ¶¶ 22–26, 376 Wis. 2d 239, 898 N.W.2d 35.

28. The law does not require a formal rule or order to create a governmental body, with those terms being “liberally construed to include any directive, formal or informal, creating a body and assigning it duties.” Wis. Dep’t of Just., Open Meetings Law Compliance Guide at 2 (May 2019) (citing 78 Op. Att’y Gen. 67, 68–69 (1989) (“All that is required to create a governmental body is a directive creating the body and assigning it duties. If a formal order were required, the open meetings law might be evaded by the creation of ‘informal’ bodies.”)).

29. The Office of the Wisconsin Attorney General, which has specific statutory authority to interpret the Open Meetings Law, Wis. Stat. § 19.98, has explained that “[p]urely advisory bodies are . . . subject to the law, even though they do not possess final decision

making power, as long as they are created by constitution, statute, ordinance, rule, or order.” Wis. Dep’t of Just., Open Meetings Law Compliance Guide at 2 (May 2019) (citing *State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979)).

30. A “[m]eeting” is defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter . . . .

Wis. Stat. § 19.82(2).

31. *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987), held that all that is needed to trigger a “meeting” under the Open Meetings Law is the purpose to engage in formal or informal government business, in sufficient number to affect the outcome—even if that number is less than a quorum. 135 Wis. 2d at 102.

32. In *Showers*, the Court recognized that a series of meetings between or among members of a governmental body less than a quorum—a so-called “walking quorum”—could trigger the Open Meetings Law. *Id.* at 92 (explaining that one purpose of the Open Meetings Law was to avoid evasion of the law’s requirements).

33. Similarly, when “one-half or more of the members of a governmental body attend a meeting of another governmental body in order to gather information about a subject over which they have decisionmaking responsibility, such a gathering is a ‘meeting’ . . . unless the gathering is social or chance.” *State ex rel. Badke v. Vill. Bd. of Greendale*, 173 Wis. 2d 553, 577, 494 N.W.2d 408 (1993).

34. Interpreting the “purpose to engage in governmental business” requirement, the Court in *Badke* explained:

[I]nteraction between members of a governmental body is not necessary for a convening of a meeting to have taken place nor is interaction necessary for the body to have exercised its powers, duties or responsibilities. Listening and exposing itself to facts, arguments and statements constitutes a crucial part of a governmental body’s decisionmaking.

*Id.* at 572.

35. Additionally, the Office of the Wisconsin Attorney General has recognized that “[w]ritten communications transmitted by electronic means, such as email, instant messaging, blogging, or other social media, also may constitute a ‘convening of members,’ depending on how the communication medium is used.” Wis. Dep’t of Just., Open Meetings Law Compliance Guide at 11 (May 2019).

36. Based on the publicly available information about the Secret Panel alleged in the preceding paragraphs, the Secret Panel meets the criteria of a “governmental body” under Wis. Stat. § 19.82(1) because it is a numerically definable group of three former Wisconsin Supreme Court justices created by the Wisconsin State Assembly Speaker to exist for the duration of a defined task and given the express authority to advise the Assembly Speaker on the criteria for impeaching a sitting Wisconsin Supreme Court justice.

37. Based on publicly available information about the Secret Panel, gatherings of its members satisfy the criteria of a “meeting” under Wis. Stat. § 19.82(2). Given the rapid timeline for the Secret Panel’s work, more than one member of the Secret Panel has convened for the purposes of researching, analyzing, deliberating, and discussing the legal criteria for

the Wisconsin Assembly's potential impeachment of Justice Protasiewicz, and for purposes of preparing to advise Speaker Vos about such criteria and the results of those meetings.

38. The Court should so declare the Secret Panel is a "governmental body" for purposes of the Open Meetings Law, pursuant to Wis. Stat. § 19.97(2).

### **CAUSE OF ACTION NO. 2: DECLARATORY JUDGMENT**

#### **The Secret Panel Violated the Open Meetings Law by Failing to Give Advance Public Notice of Meetings**

39. American Oversight restates and re-alleges all preceding paragraphs as if set forth fully herein.

40. The Secret Panel has not given advance public notice, as provided in Wis. Stat. § 19.84, of any of its "meetings," as defined under Wis. Stat. § 19.82(2).

41. Each instance where the Secret Panel has failed to give public notice for a meeting constitutes a distinct violation of Wis. Stat. §§ 19.83(1) and 19.84.

42. The Court should so declare, pursuant to Wis. Stat. § 19.97(2).

### **CAUSE OF ACTION NO. 3: DECLARATORY JUDGMENT**

#### **The Secret Panel Violated the Open Meetings Law by Failing to Conduct Meetings in Open Session in Locations Reasonably Accessible to Members of the Public**

43. American Oversight restates and re-alleges all preceding paragraphs as if set forth fully herein.

44. "At any meeting of a governmental body, all discussion shall be held and all action of any kind, formal or informal, shall be initiated, deliberated upon and acted upon only in open session," unless exempted under the Open Meetings Law. Wis. Stat. § 19.83.

45. "'Open session' means a meeting which is held in a place reasonably accessible to members of the public and open to all citizens at all times." Wis. Stat. § 19.82(3).

46. The Secret Panel has not held any of its meetings in “open session,” as defined under Wis. Stat. § 19.82(3).

47. Each instance where the Secret Panel failed to hold a meeting in open session constitutes a distinct violation of Wis. Stat. §§ 19.81 and 19.83.

48. Further, “all meetings of all state and local governmental bodies shall be publicly held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.” Wis. Stat. § 19.81(2).

49. The Secret Panel has not held any of its meetings in places “reasonably accessible to members of the public . . . .” Wis. Stat. § 19.81(2).

50. Each instance where the Secret Panel failed to hold a meeting in a place “reasonably accessible to members of the public” constitutes a distinct violation of Wis. Stat. § 19.81.

51. The Court should so declare, pursuant to Wis. Stat. § 19.97(2).

**CAUSE OF ACTION NO. 4:  
TEMPORARY RESTRAINING ORDER, AND TEMPORARY AND PERMANENT  
INJUNCTION**

52. American Oversight restates and re-alleges all preceding paragraphs as if set forth fully herein.

53. American Oversight incorporates by reference its Motion for Temporary Restraining Order, Motion for Temporary Injunction, and supporting Affidavit and Brief, all of which have been filed concurrently with this Complaint.

54. The Court should award temporary and permanent injunctive relief against meetings of the Secret Panel that do not comply with the Open Meetings Law, pursuant to Wis. Stat. § 19.97(2).

### PRAYER FOR RELIEF

WHEREFORE, Plaintiff American Oversight requests judgment in its favor as follows:

- 1) a declaratory judgment pursuant to Wis. Stat. § 19.97(2) holding that:
  - a. the Secret Panel is a “governmental body” under Wis. Stat. § 19.82(2);
  - b. the Secret Panel violated Wis. Stat. §§ 19.83(1) and 19.84 by its failure to provide advance public notice of its meetings;
  - c. the Secret Panel violated Wis. Stat. §§ 19.82(3) and 19.83(1) by its failure to hold its meetings such that all discussion and action of any kind, formal or informal, be initiated, deliberated upon and acted upon only in open session; and
- 2) that the Court exercise its discretion to void the results of any illegal meetings because “the public interest in the enforcement of this subchapter outweighs any public interest which there may be in sustaining the validity of the action taken,” pursuant to Wis. Stat. § 19.97(3);
- 3) a temporary restraining order and temporary injunction pursuant to Wis. Stat. §§ 813.02 and 19.97(2) ordering the Secret Panel to comply with the Open Meetings Law as a “governmental body” for any and all future meetings, and a permanent injunction against any such future illegal meetings; and
- 4) awarding Plaintiff its costs, attorney fees, disbursements, and other costs of prosecution pursuant to Wis. Stat. § 19.97(4); and
- 5) such other legal or equitable relief as the Court may deem just and necessary.

Respectfully submitted this 25th day of September, 2023.

PINES BACH LLP

*Electronically signed by Christa O. Westerberg*

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*Counsel for Plaintiff-Relator American Oversight*

# EXHIBIT A

**FILED**  
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**Honorable Frank D.**  
**Remington**  
**Branch 8**



**The Jay Weber Show**

**Bio**

# THIS MORNING: Speaker Robin Vos on the latest GOP redistricting plan

Sep 13, 2023



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# EXHIBIT B

**FILED**  
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[WPR \[HTTP://WPR.ORG\]](http://wpr.org)



Wisconsin's Republican Assembly Speaker Robin Vos talks to the media after Gov. Tony Evers' State of the State speech at the state Capitol, Feb. 15, 2022, in Madison, Wis. Wisconsin Republican lawmakers on Tuesday, Sept. 12, 2023, proposed a nonpartisan redistricting plan they want to enact ahead of the 2024 election to preempt the liberal-controlled state Supreme Court from tossing the current GOP-drawn maps. *Andy Manis/AP File Photo*

## Vos consulting former justices on potential Protasiewicz impeachment

GOP Assembly Speaker says he would prefer Democrats support Republican redistricting plan than spend taxpayer money on court battles over recusal, impeachment

By Rich Kremer

Published: Wednesday, September 13, 2023, 6:10pm

Republican Assembly Speaker Robin Vos says former members of the Wisconsin Supreme Court are advising him on the potential impeachment of liberal Justice Janet Protasiewicz.

During a Wednesday morning appearance on [WISN's The Jay Weber Show \[https://newstalk1130.iheart.com/featured/the-jay-weber-show/content/2023-09-13-this-morning-speaker-robin-vos-on-the-latest-gop-redistricting-plan/\]](https://newstalk1130.iheart.com/featured/the-jay-weber-show/content/2023-09-13-this-morning-speaker-robin-vos-on-the-latest-gop-redistricting-plan/), Vos, R-Rochester, said he's formed a panel of former Wisconsin Supreme Court Justices to "review and advise what the criteria are for impeachment" of Justice Protasiewicz if she refuses to recuse herself from lawsuits before the court seeking to overturn GOP drawn voting maps. He said he would not name the justices while their review was underway.

Vos and other Republicans claim Protasiewicz has prejudged the redistricting cases because she called GOP voting maps "rigged" on the campaign trail ahead of defeating conservative former Supreme Court Justice Dan Kelly by 11 points.

His comments came the day after a surprise press conference on Tuesday when Vos announced [a Republican bill \[https://docs.legis.wisconsin.gov/2023/related/proposals/ab415\]](https://docs.legis.wisconsin.gov/2023/related/proposals/ab415) had been introduced to create an "Iowa-style" nonpartisan redistricting process in Wisconsin. Republicans are fast-tracking the bill, which creates a redistricting process similar to one they had previously opposed.

Democrats, including Gov. Tony Evers, quickly voiced opposition to the plan, claiming Vos cannot be trusted. They say legislation could give Republicans a chance to draw their own maps.

Vos told Weber impeachment is the "last thing I want to happen" and would prefer to see Wisconsin's redistricting rules be changed rather than have the state go through potential court battles over recusal and impeachment.

"But if you have a justice that has predetermined cases and is not going to take themselves off the case, I want to know what all of our options are so that we are ready to go if it is required," Vos said.

State Senate Minority Leader Melissa Agard, D-Madison, told Wisconsin Public Radio it's "vitally important" to remember that Vos "created gerrymandered maps" and has been unwilling to consider reforming the state's redistricting process as Democrats and their supporters have called for in the past.

Agard noted Vos and Republicans are set to vote on the redistricting bill Thursday without offering any opportunity for public comment.

Vos accused Democrats of being "hypocrites" for opposing legislation that is [similar to what they introduced in 2021](https://docs.legis.wisconsin.gov/2021/related/proposals/sb389) [<https://docs.legis.wisconsin.gov/2021/related/proposals/sb389>]. Their plan at that time was also based on Iowa's redistricting process.

"If they are so certain that they have a justice in their pocket, because they don't even want to take an idea that has been their own for 20 years, it certainly says to me that the process in the Supreme Court is even more rigged than what they say the maps are," Vos said.

Agard said there's no guarantee Democrats would reintroduce their 2021 redistricting bill, but they're still interested in changing how maps are drawn.

"The Supreme Court would very likely come up with a solution for right now," Agard said. "But as we move forward after future censuses, we could find ourselves in the same spot. So we need to come up with a long term solution that prevents us from fighting up in the same place again."

Without Gov. Evers' support, the GOP redistricting plan appears doomed. It's also unclear whether Republicans in the state Senate would support it. WPR emails sent to State Senate Majority Leader Devin LeMahieu, R-Oostburg, Tuesday afternoon went unanswered.

While the bill outlines a process that is similar to how Iowa draws its voting maps, Senior Staff Attorney Derek Clinger of the University of Wisconsin-Madison Law School's State Democracy Research Initiative told WPR there's one key difference that "could be exploited for partisan gain."

He said the GOP legislation would require Wisconsin's nonpartisan Legislative Reference Bureau to draw maps that would need to be approved by legislators and the governor. If lawmakers reject two of the LRB maps, they would be allowed to draw their own maps on a third attempt.

"And I think that would open the door for the legislature adopting a map that gives one party an advantage to one party or favors incumbents," Clinger said.

Vos has downplayed those concerns, claiming Evers could simply veto maps he feels have a Republican advantage. But Clinger said that only works with split-party government.

"I suppose that counts as a check, as long as there's a Democratic governor," Clinger said. "But thinking long term, who knows who will be in the governor's seat the next time or the time after that and the time after that."

The Wisconsin Assembly is scheduled to vote on the Republican redistricting plan at 1 p.m. Thursday.

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U.S. NEWS

# Wisconsin Republican leader asks former state Supreme Court justices to review impeachment



1 of 2 | FILE - Wisconsin's Republican Assembly Speaker Robin Vos talks to the media after Gov. Tony Evers' State of the State speech at the state Capitol, Feb. 15, 2022, in Madison, Wis. Wisconsin Republican lawmakers

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**BY SCOTT BAUER**

Updated 12:10 PM CDT, September 13, 2023

**MADISON, Wis. (AP) —** Wisconsin's Republican Assembly leader announced Wednesday that he's created a panel to investigate the criteria for impeachment as he mulls taking that unprecedented step against a liberal state Supreme Court justice.

Republicans are targeting Justice Janet Protasiewicz over comments she made during her winning campaign about [redistricting](#) and nearly \$10 million in donations she received from the state Democratic Party.

The impeachment criteria panel being created by Assembly Speaker Robin Vos will consist of three former Wisconsin Supreme Court justices whom Vos told The Associated Press he would not name until after their work is done. Vos said they were not being paid and he expected their work to be complete in the “next few weeks.”

The move to further investigate possible impeachment against Protasiewicz comes the day after Vos and Republicans [introduced a bill](#), modeled after the law in Iowa, where new maps would be drawn by nonpartisan legislative staff and be approved by the GOP-controlled Legislature for 2024.

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But Gov. Tony Evers said he would veto the plan and advocates criticized it because it gives the Legislature the ability to draw maps if those created by the nonpartisan staff are rejected two times. Vos called that argument a “red herring.”

“If somehow you think we’re going to sneak through a Republican map that has some kind of favor and get Tony Evers’ signature on it, I think you’re smoking something,” Vos said Wednesday on WisconsinEye. “It’s not going to happen.”

Vos said that offering the redistricting bill was an “off-ramp” to impeachment, which he called a “last option.”

“They’re making it seem like I’m foaming at the mouth to have an impeachment process,” Vos said on WISN-AM where he announced the formation of the impeachment review panel. “But that is the last thing I want to have happen which is why we have taken what I would say is a pretty radical step to offer a different path.”

Protasiewicz joined the court on Aug. 1, [flipping majority control](#) of the Wisconsin Supreme Court from conservative to liberal for the first time in 15 years.

Republicans have called on Protasiewicz to recuse herself from a pair of Democratic-backed [redistricting lawsuits](#) seeking to overturn GOP-drawn maps. Republicans argue that she [can’t](#)

[fairly hear the cases](#) because she called the current maps “unfair” and “rigged” during the campaign and accepted nearly \$10 million from the Wisconsin Democratic Party.

She has yet to decide on recusal in those cases. But she did recuse from another lawsuit filed this week asking the Wisconsin Supreme Court to block any attempts by the Legislature to impeach Protasiewicz. It is up to each justice to decide whether to recuse from a case.

The state’s judicial code prohibits justices and judicial candidates from making promises or commitments to ruling a certain way on any issue, and Protasiewicz adhered to that during her campaign. Earlier this year, the state commission that investigates complaints against judges [dismissed ones](#) it had received related to her comments on redistricting.

All but one justice on the Supreme Court has [accepted money](#) from political parties and [has been outspoken](#) on hot-button issues before winning an election.

Vos said it was his “constitutional duty” to look into impeachment. He told the AP that former Wisconsin Supreme Court Justice Michael Gableman, who Vos hired to lead an investigation into the 2020 election and then called an “embarrassment” and fired, would not be one of them.

Dan Kelly, a former justice whom Protasiewicz defeated in April, told the AP that he was not on the panel either.

That leaves just seven living former justices from Vos to pick from. Former conservative Justice Patience Roggensack, whose retirement created the vacancy Protasiewicz filled, did not return a message asking if she was on the panel.

Impeachment is permitted under the Wisconsin Constitution only for corrupt conduct in office or for the commission of a crime. It takes a simple majority in the Assembly to impeach and a two-thirds majority in the Senate to convict.

Republicans hold a 64-35 majority in the Assembly and a two-thirds 22-11 majority in the Senate. They built those large majorities on the maps they drew in 2011, viewed as among the [most gerrymandered](#) in the country, which have been upheld by the state Supreme Court

when it was controlled by conservatives.

If the Assembly impeached her, Protasiewicz would be barred from any duties as a justice until the Senate acted. That could effectively stop her from voting on redistricting without removing her from office and creating a vacancy that Democratic Gov. Tony Evers would fill.

If she is convicted by the Senate or resigns, and there is a vacancy before Dec. 1, that would trigger an April election to fill out the remainder of her 10-year term. Protasiewicz [won the election](#) in April by 11 points.

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This story has been corrected to reflect that there are nine living, former Wisconsin Supreme Court justices, not seven.

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# milwaukee journal sentinel

## POLITICS

# Vos says lawmakers may consider impeachment if Protasiewicz doesn't recuse from redistricting cases



**Molly Beck**

Milwaukee Journal Sentinel

Published 6:41 p.m. CT Aug. 11, 2023

MADISON - If Wisconsin Supreme Court Justice Janet Protasiewicz does not recuse from lawsuits challenging the state's legislative boundaries, Republicans who control the state Legislature might consider impeachment proceedings, the Assembly's top Republican said Friday.

Assembly Speaker Robin Vos, a Republican from Rochester, said in an interview on WSAU he does not believe impeachment should be considered lightly by lawmakers. But he said the idea could move forward if Protasiewicz does not recuse herself on cases he said she "prejudged" during her campaign for a seat on the state's highest court.

"If there's any semblance of honor on the state Supreme Court left, you cannot have a person who runs for the court prejudging a case and being open about it, and then acting on the case as if you're an impartial observer," Vos told conservative WSAU host Meg Ellefson when asked whether the Legislature could successfully defend the current boundaries with a liberal-controlled state Supreme Court.

"You cannot have a judge who said, you know, the maps are rigged because she bought into the argument that that's why we're winning elections, not the quality of our candidates, and then she sits on that trial acting like she's gonna listen and hear both sides fairly – that just can't happen."

Protasiewicz did not immediately respond to an interview request.

In January, Protasiewicz called the state's legislative maps "rigged" in a public forum and in March, she told Capital Times reporters in a podcast interview she would "enjoy taking a fresh look at the gerrymandering question."

"They do not reflect people in this state. I don't think you could sell any reasonable person that the maps are fair," Protasiewicz, a former Milwaukee County judge, said in the January forum. "I can't tell you what I would do on a particular case, but I can tell you my values, and the maps are wrong."

Vos suggested if Protasiewicz does not recuse from cases involving the maps, she would violate her oath of office, which might push lawmakers to consider impeaching her.

"I want to look and see, does she recuse herself on cases where she has prejudged? That to me is something that is at the oath of office and what she said she was going to do to uphold the Constitution. That to me is a serious offense."

Vos said court decisions wouldn't trigger impeachment discussions.

"It can't be because they make the decision on a court case that I disagree with, right?" he said. "It has to be where they violate the oath of office, right? Justice Protasiewicz who prejudged cases doesn't recuse herself, right? That could be something we would consider."

## **Protasiewicz has also supported abortion access, opposition of Act 10**

Vos in an interview with the Milwaukee Journal Sentinel also pointed to Protasiewicz's public support for abortion access and describing Act 10, a 2011 law that limited collective bargaining abilities for most public workers, as unconstitutional.

Protasiewicz told the Journal Sentinel in March her opposition to the law, including participating in protests in 2011 and signing a recall petition of then-Republican Gov. Scott Walker, might result in a recusal if she were elected the court.

"I'd have to think about it," Protasiewicz said. "Given the fact that I marched, given the fact that I signed the recall petition, would I recuse myself? Maybe. Maybe. But I don't know for sure."

**More:** Protasiewicz says she will recuse from cases involving the state Democratic Party, Kelly says he will decide case by case

## **Vos says impeachment should be 'rare,' carefully thought out**

Vos also emphasized he does not support launching proceedings without careful thought and said recent action taken by the new liberal majority created by Protasiewicz's election in April do not warrant impeachment discussions.

The four liberal justices in the first week moved to reduce the powers of the conservative Chief Justice Annette Ziegler and fired State Courts Director Randy Koschnick.

"I think what was happening at the Supreme Court is wrong. There is no doubt in my mind as a non-lawyer when I just read the language of the Constitution, some of the actions that they're taking are certainly constitutionally questionable. But the idea that we're going to immediately start an impeachment process is probably too radical," Vos said.

"I think it's wrong that we throw that word around without much comment on how rare it should be. Because you have to have something that really rises to a level that requires the person to be taken out of office because remember, if an impeachment occurs, what you are saying is we are substituting our decision as elected officials for that of the voter."

## **GOP caucus has power to hold impeachment trials under new supermajority**

Earlier this year, Dan Knodl's election to the state Senate gave the house a GOP supermajority, unlocking powers for the caucus including being able to hold impeachment trials if Assembly lawmakers launched proceedings using a simple majority, which Republicans hold.

Knodl said in March if he won, he would "certainly consider" support launching such proceedings against Protasiewicz. But Senate Majority Leader Devin LeMahieu, R-Oostburg, also said after Protasiewicz's win over conservative candidate Dan Kelly that Wisconsinites should not expect Senate Republicans to pursue the move as a political weapon.

"To impeach someone they would need to do something very serious, so no we are not looking to start the impeachment process as a regular occurring event in Wisconsin," LeMahieu told WISN-TV.

The Wisconsin Constitution allows lawmakers to remove state officials "for corrupt conduct in office, or for crimes and misdemeanors."

## **Democratic Assembly member says Protasiewicz wouldn't need to recuse**

Rep. Evan Goyke, a Democrat from Milwaukee who also is an attorney, said Vos' suggestion that impeachment may be possible is "nearly an admission of how tenuous the Republican legislative grasp on power is."

"That type of reaction shows how threatened the Republican majority is by a challenge to their rigged maps. It's really good evidence that the state is gerrymandered, that they'd be willing to go to such an unprecedented maneuver."

Goyke said he believes Protasiewicz's comments during the campaign are not a basis for recusal and expects Protasiewicz and other justices to follow a new recusal standard the liberal majority adopted for court operations.

"I also think that Justice Protasiewicz is a live human being in Wisconsin and understands that we are living in this gerrymander," Goyke said. "I don't think that one comment invalidates her ability to serve."

Goyke also said her 11-percentage point winning margin over Kelly in the April election is "a pretty clear mandate where the people stand."

Vos said Friday he is going to "wait and see how they act."

"But I hope that they will follow what is the established norm for the past 100 years," he said.

*Molly Beck can be reached at [molly.beck@jrn.com](mailto:molly.beck@jrn.com).*

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POLITICS

# Vos says Republicans will 'take a look' at pursuing Protasiewicz impeachment

Republican lawmakers are talking about taking the unprecedented step of impeaching and removing new Wisconsin Supreme Court Justice Janet Protasiewicz from office — and they have the votes to do it.

Associated Press

August 31, 2023





Robin Vos observes lawmakers during a session of the Wisconsin Assembly on June 14, 2023. Republican lawmakers are talking about taking the unprecedented step of impeaching and removing Wisconsin Supreme Court Justice Janet Protasiewicz from office. (Credit: PBS Wisconsin)

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# AP



By Scott Bauer, AP

MADISON, Wis. (AP) — Even before the newly elected justice who gave liberals a one-seat majority on the

Wisconsin Supreme Court has heard a case, Republican lawmakers are talking about taking the unprecedented step of impeaching and removing her from office.

And they have the votes to do it.

Republicans worry that the legislative districts they drew in 2011, which are widely viewed as among the most gerrymandered in the country, will be undone in one of the court's first actions under liberal control. It's a legitimate concern, as Democratic-friendly groups brought two lawsuits in the first week of newly elected Justice Janet Protasiewicz's term [asking the new liberal-controlled court](#) to toss the maps.

They waited to bring the challenges until after Protasiewicz started her 10-year term the the court Aug. 1, [flipping majority control](#) to 4-3 liberals [for the first time in 15 years](#).

The moves came after Protasiewicz said during her [winning campaign](#) that the maps are “rigged,” “unfair” and should be reviewed. Those comments, along with her [receiving nearly \\$10 million in donations](#) from the Wisconsin Democratic Party, provided the lynchpin for Republican arguments that she can’t fairly hear the redistricting lawsuits.

“When you’re saying that one side has rigged maps, you have made a decision that maps in her opinion are biased, which is the point of the whole case,” Republican Assembly Speaker Robin Vos told The Associated Press on Aug. 31. “She shouldn’t have said what she did, but she did. And now she has to own it.”

Vos and fellow Republicans who control the Legislature asked to intervene in the redistricting lawsuits, [arguing](#) that Protasiewicz must recuse herself because she has prejudged the

cases. Those who brought the lawsuits [argue](#) that Republicans are trying to nullify the results of the election, which Protasiewicz won by 11 percentage points.

“Those who unconstitutionally locked themselves into control over the legislature are apoplectic that they cannot gerrymander the court,” attorney Jeffrey Mandell, who is part of a coalition that filed one of the lawsuits, posted on social media on Aug. 31. “They’re trying, again, to undo the will of Wisconsin voters and preserve their illegitimate power at all costs.”

The goal is about having an unbiased judiciary, not overturning an election, Vos said.

Protasiewicz did not make any “pledges or promises” about how she would rule, which would require recusal, attorneys in the other

redistricting lawsuits argued this week in a filing that seeks to keep her from stepping aside.

Even as Vos and other lawmakers talk about impeachment, Vos said Aug. 31 he still hasn't decided whether to proceed.

"I want to do legal research and see if this is unprecedented," he said. "I'm not saying it's definitely happening. But we have to take a look at it."

Republicans have a 64-35 majority in the Assembly and it would only take 50 votes to impeach. They control 22 of the 33 seats in the state Senate, giving them exactly the number they'd then need to convict and remove Protasiewicz from office.

If the Assembly impeached her, Protasiewicz would be barred from taking any actions as a justice until the Senate acted. That could effectively stop her from voting on redistricting

without removing her from office and creating a vacancy that Democratic Gov. Tony Evers would fill.

The day after Protasiewicz was elected, Wisconsin Senate Majority Leader Devin LeMahieu seemed to cast doubt on the Senate moving ahead with impeachment.

“To impeach someone, they would need to do something very serious,” LeMahieu told WISN-TV. “We are not looking to start the impeachment process as a regular occurring event in Wisconsin.”

LeMahieu has kept quiet about the matter of late even as other lawmakers have spoken out about the impeachment possibility. He did not respond Aug. 31 to a request for comment.

The Legislature has voted only once to impeach a state judge. It happened in 1853, just five years after statehood,

and the state Senate did not convict. The Wisconsin Constitution limits the reasons to impeach a sitting officeholder to corrupt conduct in office or the commission or a crime or misdemeanor, according to the Wisconsin Legislative Council, nonpartisan attorneys who advise the Legislature.

Given the lack of precedent, it's "super hard to predict," what might happen in this case, said Chad Oldfather, a Marquette University Law School professor.

"There's so much uncharted territory that's involved in this," he said. "It's unclear what the standards are."

For example, Oldfather said, legal challenges could be brought in state or federal court over what is an impeachable offense and whether whatever action the Legislature takes

is legal. Mixed in are political calculations on whether and how to proceed, he said.

“It’s a mess, is what it is,” Oldfather said.

The fight over redistricting, and possible impeachment, comes amid public and private fighting among the justices. In their first week in power, liberal justices fired the conservative state court director and weakened the powers of conservative Chief Justice Annette Ziegler, which [she said amounted](#) to an unconstitutional “coup.”

The court has yet to hear its first case of the term. Oral arguments in that case, over whether a couple must be married to adopt a child, are set for Sept. 11.

The state Supreme Court has yet to decide whether it will hear the redistricting challenges.

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U.S. NEWS

# A member of the secret panel studying Wisconsin Supreme Court justice's impeachment backed her rival



1 of 3 | FILE - Wisconsin Supreme Court Justice David Prosser posing a question during a hearing at the state Capitol in Madison, Wis., June 6, 2011. Former Justice Prosser, tapped to investigate impeaching newly elected . [Read More](#)

BY SCOTT BAUER

Updated 12:27 PM CDT, September 15, 2023

MADISON, Wis. (AP) — One of the former Wisconsin Supreme Court justices tapped to [investigate impeaching](#) newly elected Justice Janet Protasiewicz for taking Democratic Party money accepted donations from the state Republican Party when he was on the court.

The former justice, Republican David Prosser, gave \$500 to the conservative candidate who lost to Protasiewicz, did not recuse from cases involving a law he helped pass as a lawmaker and was investigated after a physical altercation with a liberal justice.

Prosser is one of three former justices tapped by the Republican Assembly speaker to investigate the criteria for taking the unprecedented step of impeaching a current justice. Speaker Robin Vos has floated impeachment because Protasiewicz accepted nearly \$10 million from the Wisconsin Democratic Party and said during the campaign that [heavily gerrymandered GOP-drawn legislative electoral maps](#) were “unfair” and “rigged.”

The impeachment threat comes after [Protasiewicz’s win this spring](#) handed liberals a majority on the court for the first time in 15 years, which [bolstered Democratic hopes](#) it would throw out the Republican maps, legalize abortion and chip away at Republican laws enacted over the past decade-plus.

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It also comes at the same time that Assembly Republicans passed a [sweeping redistricting reform bill](#) Vos described as an “off ramp” to impeachment and Senate Republicans voted to [fire the state’s nonpartisan elections director](#). Both moves take on heightened importance in Wisconsin, one of a handful of swing states where four of the past six presidential elections have been decided by less than a point.

Vos won’t say who he’s chosen for the secret, three-judge impeachment review panel, but Prosser confirmed to The Associated Press that Vos asked him to participate. None of the other eight living former justices, six of whom are conservatives, have told the AP they have been picked. Justices are officially nonpartisan in Wisconsin, but in recent years the political parties have backed certain candidates. Others, like Prosser, formerly served in partisan positions.

A former liberal justice, Louis Butler, said he was not asked. Four former conservative justices — Jon Wilcox, Dan Kelly, 7th U.S. Circuit Court Chief Judge Diane Sykes and Louis Ceci — told the AP they were not asked.

Ceci, 96, is the oldest living former justice. He served on the court from 1982 to 1993 and served one term as a Republican in the state Assembly in the 1960s.

Ceci, interviewed at his suburban Milwaukee home in a retirement high-rise, said he doesn’t know anything about the impeachment threats Protasiewicz faces beyond what he reads in

newspapers. Vos has not approached him about serving on the panel, he said.

A seventh former justice, Janine Geske, told the Wisconsin State Journal she was not asked. Vos said former Justice Michael Gableman, whom [Vos fired](#) from leading an investigation into the 2020 election, was not on it.

The most recently retired justice, conservative Patience Roggensack, declined to comment to the AP.

"I can't talk to you right now," she said Thursday, adding that she was on her way to a college class before hanging up.

Roggensack and Prosser voted to enact a rule allowing justices to sit on cases involving campaign donors. In 2017, a year after Prosser left the court, Roggensack voted to reject a call from 54 retired justices and judges to enact stricter recusal rules.

Roggensack, in 2020, sided with the conservative minority in a ruling that fell one vote short of overturning President Joe Biden's victory in the state. And she endorsed Dan Kelly, the conservative opponent to Protasiewicz in this year's election. Prosser donated \$500 to Kelly, who replaced Prosser on the court after he retired.

Prosser served on the Supreme Court from 1998 to 2016 and also spent 18 years before that as a Republican member of the Assembly — two years as speaker.

There were numerous times during Prosser's years on the court where he did not recuse himself from cases involving issues he had voted on as a member of the Legislature.

Prosser did recuse himself from cases involving the constitutionality of a cap on medical malpractice damages because he was speaker of the Assembly when the cap was instituted. But in 2004 he changed course and authored the majority opinion upholding the law he helped pass. He dissented from a 2005 Supreme Court ruling overturning the law.

Prosser also refused a request to recuse in 2015 from considering three cases related to an investigation into then-Gov. Scott Walker and conservative groups that supported him. The groups in question had spent \$3.3 million to help elect Prosser in 2011.

He defended hearing the cases, saying that because the money was spent four years earlier, enough time had passed to make them irrelevant.

Prosser then voted with the majority to shut down the investigation.

Prosser was also embroiled in one the court's most contentious periods in 2011, accused by a liberal justice of attempting to choke her. Impeachment was never raised as a possibility, even though police investigated but no charges were filed. The Wisconsin Judicial Commission recommended the court discipline him but nothing happened because the court lacked a quorum when three justices recused.

In 2016, Prosser received \$25,000 of in-kind contributions from the Wisconsin Republican Party. Less than three weeks later he resigned with nearly three years left on his term.

Vos said Prosser's past wouldn't affect his ability to fairly offer advice on how to proceed.

"First of all, all he is doing is giving advice on whether or not someone ought to recuse and the criteria for impeachment," Vos said. "That has nothing to do with what happened before when he was on the Supreme Court."

Prosser said the charge given to him by Vos was investigating "whether there's a legitimate reason for impeaching" Protasiewicz.

When asked whether he thinks the panel should include liberals, Prosser said, "I'm really not going to answer that question."

"I really don't know what the process is going to be, who's going to be doing the writing," Prosser said. "I just really don't know."

No matter who is on the impeachment review panel, [Democrats say](#) the process is a joke.

“The entire concept of having a secret panel deliberating in secret to advise an Assembly speaker on an unconstitutional impeachment on a justice who has yet to rule on a case is a farce,” said Wisconsin Democratic Party Chair Ben Wikler. “This is a charade.”

Vos said impeachment may be warranted if Protasiewicz doesn’t step down from hearing two Democratic-backed [redistricting lawsuits](#) seeking to undo Republican-drawn legislative maps.

Vos argues that Protasiewicz has [prejudged the cases](#). She never said how she would rule on any lawsuit.

Under the Wisconsin Constitution, impeachment is reserved for “corrupt conduct in office or for the commission of a crime or misdemeanor.”

It is up to each justice to decide whether recusal in a case is warranted, and the conservative majority of the court adopted a rule saying that justices don’t have to recuse if they accepted money from parties arguing a case. Other current justices have also [been outspoken](#) on hot-button issues before they joined the court and all but one have [taken money](#) from political parties.

When asked Thursday if the panel would include liberals, Vos dodged the question.

“I’m trying to have people who are respected as smart,” Vos said. “And I think that you will find very quickly that the people that we asked are both of those categories. Hopefully they come back to us with their recommendations so that the Legislature has even more good information to act on whether or not it’s required for us to proceed with some kind of impeachment proceedings.”

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This story has been corrected to show that Sykes is a circuit court judge, not a district court judge.

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Associated Press writer Todd Richmond contributed to this report from Milwaukee.

# EXHIBIT H

**FILED**  
**09-25-2023**  
**CIRCUIT COURT**  
**DANE COUNTY, WI**  
**2023CV002506**  
**Honorable Frank D.**  
**Remington**  
**Branch 8**

## VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the Complainant, American Oversight, as and for a verified complaint pursuant to Wis. Stat. §§ 19.96 and 19.97, alleges and complains as follows:

1. American Oversight is a nonpartisan, nonprofit organization dedicated to ensuring government transparency at all levels. Through research and requests for public records under the federal Freedom of Information Act and state public records laws, and enforcement of open meeting requirements, American Oversight uses the information it gathers, and its analysis of it, to educate the public about activities and operations of state and federal governments through reports, published analyses, press releases, and other media. American Oversight can accomplish its mission of ensuring government transparency only if public records are preserved and government meetings are open in accordance with applicable law. American Oversight's mailing address is 1030 15th St. NW, B255, Washington, DC 20005.

2. Robin Vos is an adult resident of the State of Wisconsin and an elected member of the Wisconsin State Assembly (the "Assembly"), representing the 63rd Assembly District. He also is Speaker of the Assembly. His office is located at Room 217 West, State Capitol, PO Box 8953, Madison, Wisconsin 53708. On information and belief, Speaker Vos ordered the creation of a three-person panel ("Secret Panel") to "review and advise what the criteria are for impeachment" of Wisconsin Supreme Court Justice Janet Protasiewicz if she refuses to recuse herself from lawsuits seeking to overturn voting maps drawn by the Republican legislature.<sup>1</sup> In creating the Secret Panel, Speaker Vos determined its membership, purpose, and timeline for completing its work, such that the Secret Panel is a "governmental body" under Wis. Stat. § 19.82(1).

3. The Secret Panel—named here fictitiously pursuant to Wis. Stat. § 807.12 because its technical name has not been publicly disclosed—is a governmental body created by Speaker Vos. The Secret Panel comprises three people, including David T. Prosser, Jr., a former Wisconsin Supreme Court justice and an adult resident of the State of Wisconsin.<sup>2</sup> The Secret Panel meets the statutory definition of a "governmental body" under Wis. Stat. § 19.82(1). Justice Prosser is identified here as a representative of the Secret Panel, who has

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<sup>1</sup> *The Jay Weber Show*, 1130 WISN (Sept. 13, 2023, 7:10 AM), <https://newstalk1130.iheart.com/featured/the-jay-weber-show/content/2023-09-13-this-morning-speaker-robin-vos-on-the-latest-gop-redistricting-plan/>; Rich Kremer, *Vos Consulting Former Justices on Potential Protasiewicz Impeachment*, Wis. Pub. Radio (Sept. 13, 2023, 6:10 PM), <https://www.wpr.org/vos-consulting-former-justices-potential-protasiewicz-impeachment>; Scott Bauer, *Wisconsin Republican Leader Asks Former State Supreme Court Justices to Review Impeachment*, Associated Press (Sept. 13, 2023, 12:10 PM), <https://apnews.com/article/wisconsin-supreme-court-justice-impeachment-03d6f56ef7d27c6c45913a4310df7953>.

<sup>2</sup> Scott Bauer, *A Member of the Secret Panel Studying Wisconsin Supreme Court Justice's Impeachment Backed Her Rival*, Associated Press (Sept. 15, 2023, 12:27 PM), <https://apnews.com/article/wisconsin-supreme-court-impeachment-56516aad2371cb851ce0c8ae816a9c5c>.

confirmed his appointment to the panel.<sup>3</sup> Speaker Vos has refused to disclose the identities of the Secret Panel's other members.<sup>4</sup>

## LEGAL BACKGROUND

4. The Wisconsin Open Meetings Law provides, in its “Declaration of Policy,” that, “[i]n recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business.” Wis. Stat. § 19.81(1).

5. Accordingly, the Wisconsin Open Meetings Law requires that governmental bodies provide advance notice of every meeting and hold meetings in open session unless specific exemptions apply. Wis. Stat. § 19.83(1). Meetings must also be held in locations reasonably accessible to members of the public. Wis. Stat. § 19.81(2).

6. “Governmental body” is defined as “a state or local agency, board, commission, committee, council, department or public body corporate and politic created by constitution, statute, ordinance, rule or order . . .” Wis. Stat. § 19.82(1); *see also State ex rel. Krueger v. Appleton Area Sch. Dist. Bd. of Educ.*, 2017 WI 70, ¶¶ 22–26, 376 Wis. 2d 239, 898 N.W.2d 35.

7. The law does not require a formal rule or order to create a governmental body, with those terms being “liberally construed to include any directive, formal or informal, creating a body and assigning it duties.” Wis. Dep’t of Just., Open Meetings Law Compliance Guide at 2 (May 2019) (citing 78 Op. Att’y Gen. 67, 68–69 (1989) (“All that is required to create a governmental body is a directive creating the body and assigning it duties. . . . If a formal order were required, the open meetings law might be evaded by the creation of ‘informal’ bodies.”)).

8. The Office of the Wisconsin Attorney General, which has specific statutory authority to interpret the Open Meetings Law, Wis. Stat. § 19.98, has explained that “[p]urely advisory bodies are . . . subject to the law, even though they do not possess final decision making power, as long as they are created by constitution, statute, ordinance, rule, or order.” Wis. Dep’t of Just., Open Meetings Law Compliance Guide at 2 (May 2019) (citing *State v. Swanson*, 92 Wis. 2d 310, 317, 284 N.W.2d 655 (1979)).

9. “Meetings” are defined as:

[T]he convening of members of a governmental body for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. If one-half or more of the members of a governmental body are present, the meeting is

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<sup>3</sup> *Id.*

<sup>4</sup> Bauer, *supra* note 1.

rebuttably presumed to be for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body. The term does not include any social or chance gathering or conference which is not intended to avoid this subchapter . . . .

Wis. Stat. § 19.82(2).

10. *State ex rel. Newspapers, Inc. v. Showers*, 135 Wis. 2d 77, 398 N.W.2d 154 (1987), held that all that is needed to trigger a “meeting” under the Open Meetings Law is the purpose to engage in formal or informal government business, in sufficient number to affect the outcome—even if that number is less than a quorum.

11. In *Showers*, the Court recognized that a series of meetings between or among members of a governmental body less than a quorum—a so-called “walking quorum”—could trigger the Open Meetings Law. 135 Wis. 2d at 92 (explaining that one purpose of the Open Meetings Law was to avoid evasion of the law’s requirements).

12. The Office of the Wisconsin Attorney General has also recognized that “[w]ritten communications transmitted by electronic means, such as email, instant messaging, blogging, or other social media, also may constitute a ‘convening of members,’ depending on how the communication medium is used.” Wis. Dep’t of Just., Open Meetings Law Compliance Guide at 11 (May 2019).

13. The Open Meetings Law directs that it “shall be liberally construed to achieve the purposes set forth in this statute.” Wis. Stat. § 19.81(4).

## FACTS

14. In an August 11, 2023 interview, Wisconsin State Assembly Speaker Robin Vos was asked whether he would consider impeachment against recently sworn-in Wisconsin Supreme Court Justice Janet Protasiewicz.<sup>5</sup> Speaker Vos responded: “It has to be where they violate the oath of office, right? Justice Protasiewicz who prejudged cases doesn’t recuse herself, right? That could be something we consider.”<sup>6</sup>

15. On August 31, 2023, the *Associated Press* reported that Speaker Vos was considering whether to proceed with impeachment proceedings against Justice Protasiewicz,

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<sup>5</sup> *The Meg Ellefson Show*, audio playback at 15:30–16:30 (Aug. 11, 2023, 8:38 AM), <https://omny.fm/shows/feedback/guest-speaker-robin-vos-the-meg-ellefson-show-0811>; Molly Beck, *Vos Says Lawmakers May Consider Impeachment if Protasiewicz Doesn’t Recuse from Redistricting Cases*, Milwaukee J. Sentinel (Aug. 11, 2023, 6:41 PM), <https://www.jsonline.com/story/news/politics/2023/08/11/protasiewicz-must-recuse-from-redistricting-cases-or-risk-impeachment-vos-says-supreme-court/70578220007/>.

<sup>6</sup> *Id.*

based on her alleged refusal to recuse herself from a case challenging Wisconsin's legislative districts.<sup>7</sup>

16. At that time, Speaker Vos was quoted as saying, "I want to do legal research and see if this is unprecedented . . . I'm not saying it's definitely happening. But we have to take a look at it."<sup>8</sup>

17. Approximately two weeks later, during a September 13, 2023 radio interview, Speaker Vos announced that he was "asking a panel of former members of the state supreme court to review and advise . . . what the criteria are for impeachment" of Justice Protasiewicz.<sup>9</sup>

18. During the interview, Speaker Vos said that he wants the Secret Panel to "do the legal research and make sure that they come and let me know what are the inherent powers that the legislature has, how would the process [of impeachment] work, and to move forward."<sup>10</sup>

19. Vos refused to identify the members of the Secret Panel during his announcement,<sup>11</sup> but, on information and belief, the Secret Panel consists of three former Wisconsin Supreme Court Justices.<sup>12</sup> Justice David T. Prosser, Jr., confirmed to the media that Speaker Vos asked him to participate.<sup>13</sup>

20. In a statement to the *Associated Press*, Justice Prosser indicated that Vos instructed him to investigate "whether there's a legitimate reason for impeaching" Justice Protasiewicz.<sup>14</sup>

21. Similarly, Vos told the *Associated Press* that "[h]opefully [the Secret Panel] come[s] back to us with their recommendations so that the Legislature has even more good

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<sup>7</sup> Scott Bauer, *Vos Says Republicans Will "Take a Look" at Pursuing Protasiewicz Impeachment*, PBS Wis./Associated Press, Aug. 31, 2023, <https://pbswisconsin.org/news-item/vos-says-republicans-will-take-a-look-at-pursuing-protasiewicz-impeachment/>.

<sup>8</sup> *Id.*

<sup>9</sup> *The Jay Weber Show*, *supra* note 1, audio playback at 7:25–7:40.

<sup>10</sup> *Id.*, audio playback at 12:35–12:50.

<sup>11</sup> *See generally id.*

<sup>12</sup> Bauer, *supra* note 2.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

information to act on whether or not it's required for us to proceed with some kind of impeachment proceedings.”<sup>15</sup>

22. Vos has told the media that it is his “constitutional duty” to consider impeachment.<sup>16</sup>

23. On information and belief, as of September 13, 2023, Speaker Vos expected the Secret Panel’s work to be complete in the “next few weeks.”<sup>17</sup>

24. Given the rapid timeline for its work, it is likely that the Secret Panel has held a “meeting,” as defined under Wis. Stat. § 19.82(2), though neither Speaker Vos nor Justice Prosser have publicly confirmed this fact.

25. The Secret Panel has not given advance public notice of or held open sessions for any of its “meetings,” as defined under Wis. Stat. § 19.82(2). It is unclear if any of the meetings have been held in locations reasonably accessible to members of the public.

26. Similarly, the Secret Panel has not made publicly available any meeting records created under Wis. Stat. § 19.88(3).

#### ALLEGED VIOLATIONS:

##### A. FAILURE TO PROVIDE ADVANCE PUBLIC NOTICE

27. On information and belief, the Secret Panel has held one or more meetings starting at least as early as September 13, 2023—the date Speaker Vos announced the Secret Panel.

28. On information and belief, the Secret Panel plans or intends to hold one or more meetings in the future to conduct government business as publicly described by Speaker Vos.

29. The Secret Panel and Speaker Vos have failed to provide any advance notice of any meetings prior to the date of this Complaint.

30. Absent an investigation and action under the Open Meetings Law, there exists a substantial likelihood that the Secret Panel and Speaker Vos will fail to provide any advance notice of the Secret Panel’s future meetings.

31. The Secret Panel’s failure to provide notice of previous meetings and the substantial likelihood that it will fail to provide notice of future meetings violate Wis. Stat. §§

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<sup>15</sup> *Id.*

<sup>16</sup> Bauer, *supra* note 1.

<sup>17</sup> *Id.*

19.83 and 19.84 and deprive American Oversight and the public of the ability to observe meetings regarding rapidly developing government business of imminent public significance—namely, the business of a governmental body that will advise Speaker Vos on his and the Wisconsin Assembly’s constitutional duties and abilities as they relate to contemplated impeachment proceedings against Wisconsin Supreme Court Justice Janet Protesiewicz.

32. Given public reporting that Speaker Vos anticipates that the Secret Panel will conclude its work within a matter of weeks, time is of the essence such that, absent a court’s timely intervention, the Secret Panel and Speaker Vos will have the opportunity to irreparably deprive American Oversight and the public of the right to observe government business that may inform Speaker Vos’s and the Wisconsin Assembly’s decision on whether to initiate impeachment proceedings against Justice Protasiewicz.

33. Thus, investigation and enforcement by the District Attorney of the Secret Panel’s violations is appropriate and necessary to preserve the public’s right to know and prevent future violations.

#### B. FAILURE TO CONDUCT MEETINGS IN OPEN SESSION IN LOCATIONS REASONABLY ACCESSIBLE TO MEMBERS OF THE PUBLIC

34. On information and belief, the Secret Panel has held one or more meetings starting at least as early as September 13, 2023—the date Speaker Vos announced the Secret Panel.

35. On information and belief, the Secret Panel plans or intends to hold one or more meetings in the future to review and discuss criteria for impeachment and otherwise conduct government business as publicly described by Speaker Vos.

36. The Secret Panel and Speaker Vos have failed to conduct any meetings in open session prior to the date of this Verified Complaint.

37. Absent an investigation and action under the Open Meetings Law, there exists a substantial likelihood that the Secret Panel and Speaker Vos will fail to conduct the Secret Panel’s meetings in open session, in locations reasonably accessible to members of the public.

38. The Secret Panel’s failure to hold previous meetings in open session and the substantial likelihood that it will fail to hold such future meetings in open session violate Wis. Stat. § 19.83 and deprive American Oversight and the public of the right to observe meetings regarding rapidly developing government business of imminent public significance—namely, the business of a governmental body that will advise Speaker Vos on his and the Wisconsin Assembly’s constitutional duties and abilities as they relate to contemplated impeachment proceedings against Wisconsin Supreme Court Justice Janet Protesiewicz.

39. Given public reporting that Speaker Vos anticipates that Secret Panel will conclude its work within a matter of weeks, time is of the essence such that, absent a court’s

intervention, the Secret Panel and Speaker Vos will have the opportunity to irreparably deprive American Oversight and the public of government business that may inform Speaker Vos's and the Wisconsin Assembly's decision on whether to initiate impeachment proceedings against Justice Protasiewicz.

40. Thus, investigation and enforcement of the Secret Panel's violations by the District Attorney is appropriate and necessary to preserve the public's right to know and prevent future violations.

WHEREFORE, Complainant American Oversight prays that the District Attorney for Dane County, Wisconsin, timely institute an action against the Secret Panel, a governmental body created by Speaker Vos which includes David T. Prosser, Jr., as a member, to seek the following remedies under Wisconsin's Open Meetings Law:

- 1) a declaratory judgment pursuant to Wis. Stat. § 19.97(2) holding that:
  - a. the Secret Panel is a "governmental body" under Wis. Stat. § 19.82(2);
  - b. the Secret Panel violated Wis. Stat. §§ 19.83(1) and 19.84 by its failure to provide advance public notice of its meetings;
  - c. the Secret Panel violated Wis. Stat. §§ 19.82(3) and 19.83(1) by its failure to hold its meetings such that all discussion and action of any kind, formal or informal, be initiated, deliberated upon and acted upon only in open session; and
  - d. any actions taken at any meeting of the Secret Panel that did not comply with the Open Meetings Law's notice and open-session requirements are void pursuant to Wis. Stat. § 19.97(3) because the public interest in the enforcement of the Open Meetings Law outweighs any public interest in sustaining the validity of the actions taken; and
- 2) a temporary restraining order and temporary injunction pursuant to Wis. Stat. § 813.02 ordering the Secret Panel to cease its meetings for the duration of the action and ordering the Secret Panel to comply with the Open Meetings Law as a "governmental body" for any and all future meetings; and
- 3) to recover the forfeiture provided in Wis. Stat. § 19.96, together with reasonable costs and disbursements provided by law.

