

WISCONSIN ELECTIONS COMMISSION

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December 21, 2017

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The Honorable Janet Bewley
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Dear Senators:

I am writing with regard to today's paper vote of the Senate Committee on Senate Organization to authorize the Attorney General to initiate a comprehensive investigation into the activities of the Government Accountability Board (G.A.B.) while it conducted certain investigations, including those related to John Doe proceedings. As Chair of the Wisconsin Elections Commission (WEC), which oversees most of the former staff of the G.A.B., I have no problem with a fair and thorough review of the G.A.B.'s investigations, but I believe that the Attorney General should not be involved in that review to ensure complete impartiality and fairness to the process. This correspondence represents my personal opinion.

As a preliminary matter, it is not clear that the proposed investigation by the Attorney General is contemplated by the language of Wis. Stat. §165.25. Unlike the previous authorization pertaining to a leak of confidential information related to a John Doe proceeding, it does not appear that a new investigation which generally reviews the actions of the G.A.B. is properly part of any current court proceeding. That is a function the Legislative Audit Bureau has already completed in Audit 15-13, which found no significant issues with G.A.B. investigations. I respectfully recommend that the Committee obtain the opinion of the Legislature's legal counsel to ensure that its contemplated action complies with the statutory provisions.

My concern about the ability of the Attorney General to conduct an objective and complete investigation is based on the one-sided and incomplete nature of his reports so far. Based on media reports we know

that DOJ investigators failed to interview key individuals and omitted information from the report which could have cleared up the Attorney General's questions.

The Attorney General's original report and subsequent statements repeatedly raise questions and claim that important facts or actions are unclear or unknown, and yet do not attempt to include information that was apparently readily available through either interviews or documents. Instead the Attorney General relies on incorrect assumptions and flawed logic to paint G.A.B. investigative activities in the worst possible light.

This self-serving and partisan report gives me little confidence that any additional investigation by the Attorney General will be useful to the public or lawmakers who want to know the truth. His efforts so far have only misled elected officials and others into making uninformed and, frankly, absurd claims about the G.A.B.'s activities. In addition, the Attorney General has refused to provide legal counsel to the WEC related to these matters, which is a disservice to the former G.A.B. staff who have continued to respect the confidentiality statutes and court orders prohibiting them from explaining the full facts, and who are therefore unable to fully defend their actions in public.

Instead, I would support a credible and unbiased approach to reviewing the conduct of the G.A.B. leadership and staff. If the complicated legal history of these G.A.B. investigations must be exhumed and examined once again, I encourage lawmakers to approve an independent review by an impartial factfinder or by a bipartisan factfinding body. Let their report tell the public exactly why John Doe Judges decided there was sufficient reason to initiate preliminary investigations to determine whether criminal actions were occurring, or at least provide an independent opinion as to whether those judicial decisions were legally warranted. Let the public know exactly why the G.A.B. authorized its investigations, or at least provide an independent opinion as to whether those decisions were based on credible evidence in light of then-applicable law.

Absent such a review, it is simply wrong and morally repugnant for elected officials to attack the motives and reputations of hard-working public servants. The character assassinations and slander must stop. It is time for us to get back to focusing on the important work of running fair elections which the Elections Commission Interim Administrator and staff have already proven they do exceptionally well.

Thank you for your consideration of this input and request. Please feel free to contact the WEC at (608) 266-8005 which can connect me if you have any questions or would like to speak further regarding this matter.

Sincerely,



Mark Thomsen
Chair
Wisconsin Elections Commission

cc: Members, Wisconsin Elections Commission