

FILED
12-02-2024
CIRCUIT COURT
DANE COUNTY, WI
2024CF001295

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 24 CF 1295

JAMES TROUPIS,

Defendant.

**BRIEF IN SUPPORT OF THIRD MOTION TO DISMISS:
LACK OF COMPETENCY**

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I. Introduction

Politics is a ruthless game. There's always a winner and always a loser; and at times, the contest breeds animosity and recriminations that fester long after Election Day. Acrimony can even bleed into the courts, with lawfare waged against political opponents – often the last election's loser. But just as politics is ruthless, it's cyclical. The loser of the last election (the would-be target) often prevails in the next. Conscious that their opponent's fate may be their own, the Wisconsin Legislature has forged robust procedural shields against political prosecutions. Those protections cannot be pushed aside or artfully dodged. Instead, they stand as absolute and inviolable guarantees, ensuring that when it comes to election-related conduct, losing an election doesn't also come with the threat of prison.

Here, the Attorney General alleges that the lack of a proviso on the alternate electors' ballot means it was a forgery in violation of Wis. Stat. § 943.38(2). As a charge, it's a stretch: a missing asterisk doesn't make a document into a forgery – that's all covered in the brief in support of the First and Second Motion to Dismiss. It's also a curious charge, especially since we're dealing with an allegation of a forged ballot and there's a specific section in Wis. Stat. § 12.13(3)(k) that provides: "*No person may...forge or falsely make the official endorsement on a ballot.*" Chapter 12, after all, covers all election-related crimes, including Wis. Stat. 12.13(3)(e), which also criminalizes "caus[ing] to be prepared an official ballot with intent to change the result of the election as to any candidate or referendum." But charging Troupis with a property crime (under Chapter 943) as opposed to Chapter 12 has serious potential implications.

The Legislature has expressly commanded that election-related charges cannot be brought until there's been a probable cause finding and a referral from the bipartisan Commission to the local District Attorney. Here, the Commission did receive a complaint, and it found no wrongdoing and dismissed the complaint. No referral. And without a referral there can be no charges.

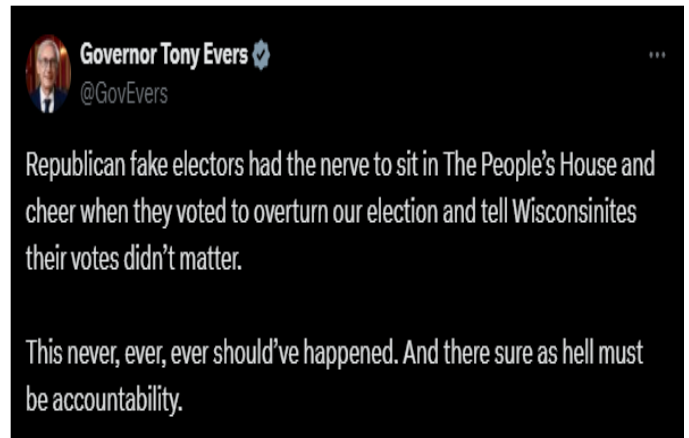
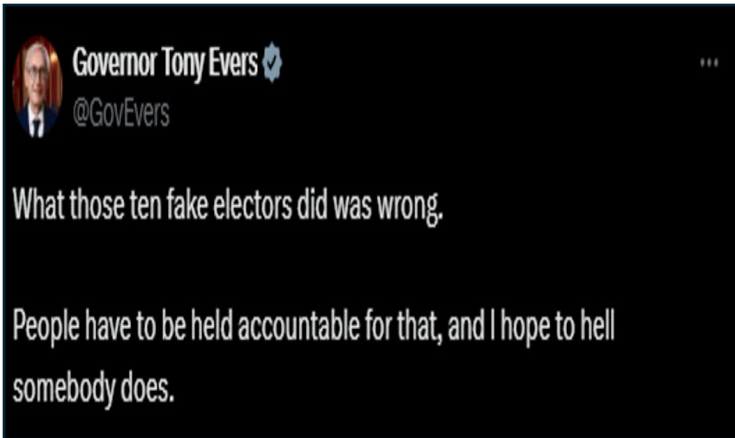
Yet that process (the one prescribed by the Legislature) wasn't acceptable to some. For instance, in response to a *Milwaukee Journal Sentinel* article about the alternate electors, one person tweeted publicly:

"What those fake electors did was wrong. People have to be held accountable for that, and I hope to hell somebody does."

When video of the alternate electors was released *years* later and after the Commission dismissed the complaint, the same person retweeted the video and adding this warning:

"Republican fake electors had the nerve to sit in The People's House and cheer when they voted to overturn our election and tell Wisconsinites their votes didn't matter. This never, ever, ever should've happened. And there sure as hell must be accountability."

Those are strong words—even by Twitter's standards. Certainly, most people on Twitter do not have the power to back it up when they publicly demand that "people have to be held accountable for that, and I hope to hell somebody does" but the most powerful man in Wisconsin does. And months after those tweets, when these charges were brought, Governor Ever's tweet was as telling as it was terse: "Good." Here are three tweets from the most powerful man in Wisconsin about the need to bring charges against Troupis and his co-defendants.



Following the Governor’s tweets about holding the electors “accountable,” the Attorney General’s Office acted and brought these charges. But it didn’t bring any charges under Chapter 12; instead, it repackaged the alleged crime and pursued a creative reading of the Wisconsin forgery statutes – a statute that has never been applied to an election case before. But legal innovation cannot get around the Legislature’s clear and unequivocal instruction that “the general provisions of Chs 5–12 apply to *all* elections.” Those provisions contain two important guarantees. First, no charges can issue without a probable cause finding and referral by the Commission; and second, only the District Attorney of the defendant’s home county can bring a case. When election-related charges are brought (without the referral) and when they’re brought by anyone other than the District Attorney, the Circuit Court – *this* Court – is without power to hear the case. It lacks competence. The Court can’t have an initial appearance and the case can’t proceed. It must be dismissed.

Everything that follows builds on the simultaneously filed First Motion to Dismiss, which sets out why using alternate electors was the only path Troupis could take to protect his client’s rights during the recount and why the complaint does not state a crime. That brief sets the stage for understanding this case. While some essential background points are repeated in this brief, most of what follows lays out how this case falls under the procedural guardrails given to election-related prosecutions in Wis. Stat. § 11.1401(2).

II. All of Troupis's actions related to 2020 election and fell under Chapters 5-12.

Before addressing Troupis's actions in the recount, it's important to take a step back and examine the history of the statutes at play in this case. To understand *why* the Attorney General cannot "plead around" the Legislature's commands, it's important to understand how Wisconsin has for the past half-century sought to cool the tensions that elections can create and ensure that there's a wide berth separating politics and the power to prosecute – a berth lined with procedural bulwarks that cannot be ignored or simply plead around.

A. For generations, Wisconsin has guarded against using the criminal law as a tool against political opponents.

For fifty years, the Wisconsin Legislature has been wary of prosecutor's power in the realm of politics – particularly elections. And it has built into the law procedures, which ensure that in election cases the power to prosecute is not wielded without additional checks. The legislature started adding those additional checks in 1974, where it provided that any election-related criminal case be investigated by the nonpartisan Elections Board, who then brought their evidence to "the district attorney of the proper county or the attorney general where appropriate."¹ In 1983, additional checks were added, and the circumstances where Attorney General referral would be "appropriate" were spelled out: "If the district attorney refuses to act... the attorney general may then conduct the prosecution."² Twenty years later, the circumstances where Attorney

¹ Wis. Stat. § 5.05(3) (1973-74).

² Wis. Stat. § 11.61(2) (1983-84).

General could be involved were curtailed even further: the Attorney General could only bring charges after *two* district attorneys refused to act.³ And as an additional check, the Legislature promised that the defendant could only be charged in his or her county of residence.⁴

In 2008, the Legislature provided even more checks, adding that a prosecution can only commence after there's been a referral (based on probable cause) by a bipartisan body.⁵ And with that promise, the Legislature also created the Government Accountability Board.⁶ If a majority of that Board found probable cause that a person committed a crime involving an election and made the referral, then the Legislature was comfortable with a prosecution following.⁷ And the power to prosecute an election-related crime of that nature was given over to three bodies: the District Attorney, an independent prosecutor appointed by the court, or the Attorney General.⁸ It's important to stress that the Legislature's grant of authority to the Attorney General accorded with how (in Wisconsin) the Attorney General is limited to the precise powers the Legislature has given that office.⁹

For many years, a referral from the Board based on probable cause and limiting charges to the defendant's home county provided an effective check on political

³ Wis. Stat. § 11.61(2) (2007–08); 5.05(2m)(c)(15)–(16) (2007–08) (requiring two counties' District Attorneys to decline prosecution before Attorney General may prosecute).

⁴ Wis. Stat. § 11.61(2) (2007–08).

⁵ Wis. Stat. § 5.05(2m)(a), *et seq.* (2007–08).

⁶ *Id.*; Dee J. Hall, *State Employees Secretly Campaign*, Milwaukee J. Sentinel (May 20, 2001).

⁷ Wis. Stat. § 5.05(2m)(5)(a) (2007–08).

⁸ Wis. Stat. § 5.05(2m)(c)(15)–(17) (2007–08).

⁹ Wis. Const. Art. VI § 3; Wis. Stat. § 165.015(1)–(6)); *see also In re Estate of Sharp*, 63 Wis. 2d 254, 260, 217 N.W.2d 258 (1974); *State v. Snyder*, 172 Wis. 415, 417, 179 N.W. 579 (1920).

prosecutions. But then in 2012, after Governor Walker's contentious election, a John Doe investigation was launched into politicians and political groups.¹⁰ Early morning raids by SWAT teams and secrecy orders upset (to put it mildly) many Wisconsin politicians.¹¹ As the legal challenges to the John Doe investigations worked their way through the courts (state and federal), the Legislature completely revamped the statutes to ensure actions of that sort could not be waged unchecked against political enemies. Eventually, the Wisconsin Supreme Court would confirm that the John Doe's theory of prosecution was "unsupported in either reason or law."¹²

The John Doe was driven by creative prosecutors, and they had found loopholes around the protections that the Legislature had previously created. So the Legislature closed them. In 2015, it revamped Chapters 5–12, turned the Government Accountability Board into the Wisconsin Ethics Commission and Wisconsin Elections Commission (each with separate duties), and it curtailed the John Doe procedures, making them unavailable in election-related cases.¹³ Critically, it also stripped the power of the Attorney General and a special prosecutor from bringing election-related charges; instead, the power is vested exclusively with the District Attorney in the defendant's home county.¹⁴

Since the 2015 changes, election-related cases proceeded as they should: conduct that involved Chapters 5–12 got the protection and procedures set out in § 11.1401(2).

¹⁰ *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶ 161–73, 363 Wis. 2d 1, 866 N.W.2d 165 (Prosser, J., concurring); Monica Davey, *Scott Walker 2012 Campaign Inquiry Ended by Wisconsin Court*, N.Y. Times (July 16, 2015).

¹¹ *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶ 330 (Prosser, J., concurring).

¹² *Id.* ¶ 11.

¹³ Wis. Stat. § 968.26(1b)(a); 2015 Wis. Act 64.

¹⁴ Wis. Stat. § 11.1401(2); 2015 Wis. Act 117.

That meant when it comes to a person's actions during an election anyone could bring a complaint to the Commission.¹⁵ The Commission would then investigate, and if it found probable cause of a crime, then it would refer the matter to the District Attorney in the defendant's home county.¹⁶ Absent those procedures being fulfilled – those careful and critical checks to avoiding political prosecutions – the case could not be brought.

B. Troupis's every action in the 2020 election was covered by Chapters 5–12.

Back to Jim Troupis. The criminal complaint is clear (and everyone agrees) that Troupis acted as Trump's attorney during the Wisconsin recount. What follows sets out *briefly* how all of Troupis's actions as the attorney in the recount were covered by Chapters 5-12 of the Wisconsin Statutes and he is entitled to those protections, including those set out in Wis. Stat. § 11.1401.

Days after the election, Troupis was hired to represent the then-President (now President-elect) in pursuing a recount.¹⁷ A week later, Troupis filed a petition for a partial recount with the Wisconsin Elections Commission.¹⁸ As one would expect, Chapter 9 sets out strict procedures for recounts – file the wrong form, miss the deadline, or fail to pay the fee and the candidate forfeits his right to a recount.¹⁹ Over the next eleven days, Troupis followed all the recount procedures laid out in Chapter 9.²⁰ He paid the bond, he

¹⁵ Wis. Stat. § 5(2m)(c)2.a.

¹⁶ Wis. Stat. §§ 5(2m)(c)6–11. To be clear, there are exceptions within those statements but they don't apply here and under these circumstances.

¹⁷ See *Trump v. Biden*, 2020 WI 91, ¶ 4–5, 394 Wis. 2d 629, 951 N.W.2d 568, Petitioners' App. Vol. 1, 2–9; R.2 at 7.

¹⁸ *Id.*; R.2 at 6.

¹⁹ See Wis. Stat. § 9.01(1)(a).

²⁰ Wis. Stat. § 9.01.

filed the recount petition, cited the basis for the recount and the wards to be recounted.²¹ Once he satisfied all of those provisions, then the Commission's duties kicked in, and it conducted a recount in the challenged wards and it eventually filed a Statement of Canvass.²² The next day, Troupis filed a challenge through an original action.²³ After that was denied, consistent with Chapter 9, he filed suit in two Circuit Courts and the matter was consolidated before a single judge.²⁴ When that suit was denied, the Wisconsin Supreme Court heard his challenge to the absentee ballots, which (again) arose under Chapter 9 and centered on the violations in Chapters 5 and 7.

From there, everything happened *very* quickly. That Friday, Troupis filed two appellate briefs and in the second alerted the Court that the electors must meet at noon on Monday to cast their ballots.²⁵ And to preserve the candidate's rights and give the Supreme Court time, the alternate electors would meet and vote, thereby securing Trump's rights if the Wisconsin Supreme Court or the U.S. Supreme Court reversed the Election Commission.²⁶ Oral argument happened the next day – Saturday. And then on Monday around 10 A.M. the Court split 4-3, against Troupis's claims that some ballots had been cast in violation of Chapter 6, finding that these claims should have been brought before the election—not after.²⁷ And two hours later, consistent with the

²¹ Wis. Stat. §§ 5.90, 5.92, 9.01(1)(a)1.-3.; *Trump v. Biden*, Petitioners' App. Vol. 1, 2-9.

²² *Trump v. Biden*, 2020 WI 91, ¶ 4-5, 394 Wis. 2d 629, 951 N.W.2d 568.

²³ *Id.* ¶ 110 (Roggensack, J., dissenting); *Trump v. Evers*, No. 2020AP1971-OA, 405 Wis. 2d 80, 985 N.W.2d 450 (2020).

²⁴ *Trump v. Biden*, 2020 WI 91, ¶ 4-5, 394 Wis. 2d 629, 951 N.W.2d 568.

²⁵ *Trump v. Biden*, Supplemental brief filed Dec. 12, 2020 at 8 n.3; R.2 at 11.

²⁶ Petition for Writ of Certiorari, *Trump v. Biden*, 141 S. Ct. 1387 (No. 20-882).

²⁷ See *Trump v. Biden*, 2020 WI 91, ¶¶ 14, 17, 32, 394 Wis. 2d 629, 951 N.W.2d 568; R.2 at 7.

commands of the Constitution and (more importantly for purposes of this motion) Chapters 5 and 7 and Title 3 of the U.S. Code, the alternate electors met and cast their vote.²⁸ After the ballots were filed out, also consistent with those provisions, they were sent to the statutorily prescribed places.²⁹ And two weeks later, Troupis filed for certiorari and expedited review before the United States Supreme Court.

Fast forward to a year later. On behalf of a private citizen, the public interest firm LawForward filed a complaint with the Wisconsin Elections Commission claiming that the use of alternate electors constituted election fraud.³⁰ That is, of course, the individual's and organization's right under Chapter 5.³¹ And once that complaint was made, the procedures set out in Chapter 5 for claims of election-related misconduct were set into motion.³² The Commission began its investigation and gathered all the evidence.³³

The legislature has ensured a detailed and exacting process once a complaint has been made to ensure that actual crimes are prosecuted and political maneuvering and harassment are quashed.³⁴ In this case, the Commission solicited the Attorney General's viewpoint on the matter—that is, of course, provided for under Chapter 5.³⁵ It's important to note all that the Attorney General said about the crime of election fraud as it related to the alternate electors and whether anything violated Chapters 5-12. Distilled

²⁸ 3 U.S.C. § 6-11; Wis. Stat. § 7.75; R.2 at 14.

²⁹ R.2 at 15-16; 3 U.S.C. §§ 6-11.

³⁰ Wisconsin Elections Commission, Case No. 2021 EL 2021-13; *Sickel v. Hitt*, et al.

³¹ *Id.*; Wis. Stat. § 5(2m)(c)2.a.

³² Wis. Stat. § 5.05(2m).

³³ *Id.*

³⁴ *See id.*

³⁵ *See* Case No. 2021 EL 2021-13; *Sickel v. Hitt*, et al., Feb. 9, 2022 Memorandum on Complaint under Wis. Stat. §§ 7.75 and 5.10. at 1.

to three short paragraphs, the Attorney General's eleven-page report had these salient points, all of which are relevant here. The report is attached as Exhibit A.

First, the Attorney General noted that Troupis openly and publicly forecasted that the alternate electors would meet by stating in his brief: "Following the recommended approach to situations involving court challenges in Presidential elections which are not resolved by the time the Presidential electors must cast their votes pursuant to Art. II, § 1, cl. 4, and 3 U.S.C. § 7 (this year, December 14), *the Trump-Pence Campaign has requested its electors to sign and send to Washington on that date their votes, to ensure that their votes will count on January 6 if there is a later determination that they are the duly appointed electors for Wisconsin.*"³⁶

Second, after outlining the relevant law, the Attorney General found that nothing "prohibits or otherwise limits a party from meeting to cast electoral votes during a challenge to an election tabulation. [The statutes] say nothing about an alternative set of electors casting votes and do not expressly prohibit a slate of electors from casting votes to preserve their votes in case pending legal challenges prove successful."³⁷ Then it noted, "even assuming the Complainants were right that the Respondents had no duty to meet, it does not necessarily follow that meeting violated the law."³⁸ And in that same paragraph, it adds: "the Complainant's argument—that the Respondents were not

³⁶ *Id.* at 5.

³⁷ *Id.* at 7.

³⁸ *Id.*

electors – presumes the outcome of the state procedures. And as noted above, *Wisconsin law does not prohibit an alternative set of electors from meeting.*³⁹

Third, and most importantly, the Attorney General made the following finding on whether any of the actions related to the alternate electors constituted the crime of fraud or forgery, as alleged in LawForward’s complaint. “Finally, Complainants argue that the Respondents ‘met in a concerted effort to ensure that they would be mistaken, as a result of their deliberate forgery and fraud, for Wisconsin’s legitimate Presidential Electors.’ *The record does not support this allegation.* Before and after the December 14 meeting, the Respondents publicly stated, including in court pleadings, that they were meeting to preserve legal options while litigation was pending.”⁴⁰

With that memo by the Attorney General – who we anticipate will be the defense’s first witness at trial – the Commission unanimously dismissed LawForward’s complaint.⁴¹ All of that was, of course, done under Chapter 5.⁴² To make the point plain, everything related to this case (as one would imagine since it was a presidential election) was covered by Chapters 5-12. This table sets that all out, with the various provisions that attach to each action cited on the right.

³⁹ *Id.* at 8 (emphasis added).

⁴⁰ *Id.*

⁴¹ Case No. 2021 EL 2021-13; *Sickel v. Hitt*, et al., March 9, 2022 Meeting of the Wisconsin Elections Commission.

⁴² Wis. Stat. § 5.05(2m).

Date	Event	Statute
Nov. 3, 2020	Election Day	§§ 5.10, 5.02(5), 8.25(1)
Nov. 10, 2020	Troupis agrees to take Trump's recount case.	§§ 9.01(11), 5.90
Nov. 18, 2020	Troupis files petition for partial recount and pays applicable fee.	§§ 5.90, 9.01(1)(a)1.-3.
	Filing Officer publicly notices the recount.	§ 19.84
Nov. 20-29	Recount occurs, following state law procedures.	§§ 5.90, 9.01(1)(b)
Nov. 30, 2020	Results of the recount sent to WEC, which issues a "Statement of Canvas."	§ 9.01(1)(ar)3. § 5.05(2w)
Dec. 1, 2020	Troupis files absentee ballot challenge original action in the Supreme Court of Wisconsin.	§§ 9.01, 6.84-6.87
Dec. 3, 2020	Troupis files absentee ballot lawsuit in Dane and Milwaukee County Circuit Courts.	§ 9.01(8)(d)
Dec. 11, 2020	Troupis files motion to bypass appellate court, and lets the world know that the alternate electors will meet and cast their ballot	§§ 9.01, 6.84-6.87
Dec. 14, 2020	Alternate electors meet in the Capitol.	§§ 5.10, 7.75(1)-(2)
Feb. 15, 2021	Complaint filed with Wisconsin Elections Commission against electors.	§ 5.05(2m)
Feb. 9, 2022	Department of Justice's Memo recommending no violation of §§ 5.10 or 7.75.	§ 5.05 (2m)(c)(2)(a)
March 9, 2022	WEC Complaint against electors dismissed.	§ 5.05 (2m)(c)(9)

It's hard to look at that table and construe this as anything but an election case falling under Chapters 5-12, where, again the legislature has been clear: "the general provisions of chs 5 to 12 *apply to all elections.*"⁴³ Among those provisions ranging from the form of the recount petition to the fee paid and the procedure for appealing claims through the court system is, again, the guarantee that if there is any alleged violation of the law related to elections they will be brought in conformity with the procedures in Wis. Stat. § 11.1401(2).⁴⁴ That includes: a probable cause finding by the Commission and a referral to the local District Attorney who, alone, is empowered to bring charges.⁴⁵

III. The Attorney General has failed to abide by the procedures prescribed by the legislature.

As laid out above, for fifty years, the Legislature has created explicit procedural bulwarks that govern election cases. When politicians or their lawyers face prosecution, the defendants and the public must be assured that politics and political pressure isn't driving it. The Legislature would not countenance another decision from the Wisconsin Supreme Court branding a political prosecution as "unsupported in either reason or law."⁴⁶ Thus, the Legislature has commanded that the provisions of Chapters 5-12 apply to every election-related case.⁴⁷ That includes the assurance that before there is a prosecution there has been a probable-cause finding by the Commission and a referral to

⁴³ Wis. Stat. § 5.01(2).

⁴⁴ Wis. Stat. § 12.60(4)

⁴⁵ Wis. Stat. § 11.1401(2).

⁴⁶ *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, ¶11.

⁴⁷ Wis. Stat. § 5.01(2).

the District Attorney. Until that's done, this Court is not competent to hear this case. The rest of this brief spells out the legal minutiae underlying each of those points.

A. The Commission must make a probable cause finding and referral to the District Attorney – not the Attorney General.

The first 14 pages laid out the argument and the facts, so this will be brief. When it comes to statutory construction, we begin with the text.⁴⁸ The second line of Chapter 5 provides: “the general provisions of chs 5 to 12 *apply to all elections.*”⁴⁹ From there, we look at what this allegedly criminal conduct is, and it's clear from the criminal complaint that it's election-related activity – after all, the first paragraph provides the operative (and allegedly forged) document is: “Certificate of the Votes of the 2020 Electors from Wisconsin.”⁵⁰ And if any of Troupis's actions were criminal (or even untoward) they'd be under Wis. Stat. § 12.13 for election fraud: “No person may...forge or falsely make the official endorsement on a ballot.”⁵¹ From there the legislature is clear in Wis. Stat. § 12.60: “Prosecutions under this chapter shall be conducted in accordance with § 11.1401(2).”⁵² And going to Wis. Stat. § 11.1401(2), it provides that “only after the commission has determined probable cause, all prosecutions under this section shall be conducted by the district attorney for the county where the defendant resides.” That's all very clear.

It's also very clear that none of that has happened. The Commission received a complaint, but it did not find probable cause and refer the case to the District Attorney.

⁴⁸ *State ex rel. Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, 271 Wis. 2d 653, 663, 681, N.W.2d 110.

⁴⁹ Wis. Stat. § 5.01(2) (emphasis added).

⁵⁰ R.2 at 2.

⁵¹ Wis. Stat. § 12.13 (3)(k).

⁵² Wis. Stat. § 12.60(4).

Instead, it dismissed the complaint. Dismissing the complaint meant there was no referral and without the referral there can be no action. The law is very, *very* clear on that.⁵³

It's also *very* clear that the Attorney General cannot bring these charges. As explained above, the Legislature has been explicit on *who* can bring election-related charges – the District Attorney. An independent counsel cannot bring them, nor can the Attorney General. And that accords with the way Wisconsin has (from its beginning) empowered local prosecutors and limited the powers of the Attorney General.⁵⁴ The Attorney General's Office is the product of the State Constitution.⁵⁵ And its powers and duties are specifically limited to those prescribed by the legislature.⁵⁶ It's a principle that has been affirmed time and again by the courts and legislature, and summed up with this helpful quote: "The attorney general is devoid of the inherent power to initiate and prosecute litigation intended to protect or promote the interests of the state or its citizens and cannot act for the state as *parens patriae*. Such power must be specifically granted by the legislature. *Unless the power to prosecute a specific action is granted by law, the office of the attorney general is powerless to act.*"⁵⁷ Here, the legislature didn't give the Attorney General the power to prosecute election-related crimes. Put differently, the Attorney General lacks the statutory power to bring these charges because that power hasn't been conferred upon it in either Chapters 5–12 or 165.

⁵³ Wis. Stat. § 5.05(2m).

⁵⁴ Wis. Const. Art. VI § 3.

⁵⁵ *Id.*

⁵⁶ Wis. Stat. § 165.015(6); *In re Sharp's Est.*, 63 Wis. 2d 254, 261, 217 N.W.2d 258 (1974).

⁵⁷ *State Pub. Intervenor v. Wisconsin Dep't of Nat. Res.*, 115 Wis. 2d 28, 35–36, 339 N.W.2d 324 (1983) (quoting *In re Sharp's Est.*, 63 Wis. 2d at 261).

B. The court lacks competency to hear this case and it must be dismissed.

Here, there has been no referral. And here, the Attorney General is powerless to bring these charges. But what does that mean? In a statutory sense, it means that this Court lacks competence to hear the case. The Court doesn't lack subject matter jurisdiction—Wisconsin Circuit Courts always have that.⁵⁸ But because the Attorney General has failed to abide by the law before bringing these charges, this Court can't hear the case; after all, statutory noncompliance triggers a loss of competence.⁵⁹ “[W]hen the failure to abide by a statutory mandate is central to the statutory scheme of which it is a part,” then the circuit court loses competence to proceed.⁶⁰ Whether a mandate is central to a statutory scheme essentially “treat[s] competency as a question of legislative purpose.”⁶¹

As set out above, for a half-century the Legislature has set out detailed procedures to ensure that when it comes to allegations of election misconduct, there's never a hint that politics has polluted a prosecution.⁶² To that end and over the past half-century, the Legislature has created four different non-partisan or bi-partisan boards or commissions to ensure that there is a non-partisan or bi-partisan referral before any charges are brought. That check is central to the statutory scheme and it's essential that it be abided by here. Thus, the failure to abide by those procedures means the case must be dismissed

⁵⁸ *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 1, 273 Wis. 2d 76, 681 N.W.2d 190.

⁵⁹ *Id.* ¶ 2; *City of Cedarburg v. Hansen*, 2020 WI 11, ¶¶ 48–51, 390 Wis. 2d 109, 938 N.W.2d 463, modified on reconsideration, 2020 WI 45, 391 Wis. 2d 671, 943 N.W.2d 544 (internal quotation omitted).

⁶⁰ *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 10.

⁶¹ *Id.* at ¶ 11.

⁶² See Wis. Stat. § 5.05(2m).

against Troupis and his co-defendants because the court is not competent to proceed when those procedures haven't been abided by.

IV. Conclusion

This is not a difficult motion. Prosecutors cannot “plead around” individuals’ rights.⁶³ This case arises from an election—everything Troupis did was rooted in Chapters 5–12. And so he must be given the protections that those chapters afford for alleged wrongdoing. Those procedures haven’t been fulfilled – this case hasn’t proceeded from a referral by a bi-partisan body that had found probable cause, and it hasn’t been brought by the District Attorney. Thus, it must be dismissed.

Dated this 2nd day of December, 2024.

Respectfully submitted,

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Electronically signed by Joseph A. Bugni

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⁶³ See *SEC v. Jarkesy*, 144 S. Ct. 2117, 2127 (2023).