SCOTT FITZGERALD:

A REPORT

By

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I. INTRODUCTION

In developing this report on Scott Fitzgerald, I primarily relied upon online articles from the three newspapers which most closely follow Wisconsin state politics: the Milwaukee Journal Sentinel [JS], Wisconsin State Journal [WSJ], and Capitol Times [CT]. On occasion, I relied upon other websites, usually to nail down a particular fact.

With respect to all of the facts from online sources, I first give the internet cite. I follow it with the source and the date, if applicable, in brackets after the cite.

Regarding the newspaper articles, the date reflects the date of the posting of the article online. With respect to the most recent articles, the printed article actually appeared in the newspaper the next day. I would assume this would be the case for most, if not all, of the newspaper articles cited in this report.

In addition to the online sources, I also pulled information, particularly about the gerrymandering issue, from a recent book on Wisconsin politics: Kaufman, Dan. *The Fall of Wisconsin*, W.W. Norton + Co., 2018. Facts from the book are cited as follows: [FOW, p.].

Where the same source has just been previously cited, I use “Id.” as the cite.

On two occasions, Fitzgerald refers to the process of developing and passing the lame duck laws, which reduced the powers of Governor Evers and Attorney General Kaul before they took office, as “inside baseball”. (see p. 31, 39)

In two words, I think he summed up his approach to politics. He is the classic political insider. The word “inside” captures this beautifully.
He also appears to see politics as a game that you “win”, as opposed to working with everybody to produce the best possible results for all of the constituents and citizens of the State. These characteristics are made abundantly clear by the pattern which emerges from the facts discussed in this report.

The prominent roles that he played in gerrymandering the districts in 2011, attempting to gut the open records law in 2015, developing and passing the lame duck laws of 2018, and numerous other actions discussed in this report, are all examples of him playing “inside baseball”.

Although the pattern of Fitzgerald and his colleagues to place their own personal power over the interests of the public is strongly illustrated in this report, there is one instance in which that pattern was actually stated explicitly.

In 2011, when the Republicans were about to release their gerrymandered district maps, Adam Foltz, an aide to Assembly Majority Leader Jeff Fitzgerald, included the following instruction to Republican legislators: “Public comments on this map may be different than what you hear in this room. Ignore the public comments.” (see p. 11)

In testimony, Foltz admitted this was an instruction for the legislators to ignore any public comments on the maps, and instead, listen only to the legislative leaders in the strategy sessions. It is hard to imagine a more explicit acknowledgement of political leaders putting their own interests above those of their constituents and the citizens.

Although Adam Foltz worked for Assembly Majority Leader Jeff Fitzgerald at the time, he later joined the staff of Scott Fitzgerald. He still works for Scott Fitzgerald today.

During the time when the Legislature was considering the lame duck laws, Scott Fitzgerald, speaking on a conservative radio talk show, described the outrage which resulted from the proposals as “hilarious”. (see p. 34) I rather doubt that the citizens of Wisconsin, who overwhelmingly disapproved of the lame duck laws, would think it was “hilarious” that their elected leaders were being hamstrung and undermined, before they even had a chance to take office.

Since Governor Evers has taken office, the Legislature has accomplished very little. In October 2019, Fitzgerald admitted he didn’t mind that little was being accomplished. He explained, "That’s our job right now is to play goalie.” (see p. 111)

For him to admit he does not mind that little is being accomplished is troubling. However, he then explains it away with another game analogy. Again, this illustrates his view that his job is to “win”, not necessarily to govern.

In this respect, the comments of Dale Schultz, a former long-time Republican senator, contained on pages 109-110 and 111-112 of this report, are instructive. Schultz describes how important it is for politicians to compromise, and to listen to each other, for government to function properly.

I think Schultz is where a lot of Americans are right now. They want problem solvers, not ideologues.

I think you can draw a sharp contract with Fitzgerald by emphasizing the need for legislators to be problems solvers, to work across the political aisle to get things done, and to look on the legislative process as something far more important than just winning a game.
There is very sharp criticism of the lame duck laws by some prominent Republicans in this report. They include then-Ohio Governor John Kasich, former Wisconsin Governor Scott McCallum, former conservative radio host Charlie Sykes, and Milwaukee businessman Sheldon Lubar.

In particular, I would take notice of the extremely strong criticisms leveled against the lame duck laws by Sheldon Lubar. Lubar has been a prominent Republican for decades. He served in two Republican administrations in Washington D.C., and four Republican administrations in Madison. He goes so far as to refer to Scott Fitzgerald and Robin Vos as “petty, mean politicians”. (p. 44)

It is clear that the grand majority of the people of Wisconsin disapproved of the gerrymandering and lame duck laws which Scott Fitzgerald played a prominent role in. We can assume that the grand majority of the voters in the Fifth District feel the same way. Nevertheless, it is surprising how little voters know about Fitzgerald. (see the poll results on p. 118-119)

Even though the grand majority of the voters in the Fifth District probably strongly disapprove of such actions, the majority probably do not associate Scott Fitzgerald with these actions. When voters think of Scott Fitzgerald, we want them to think of gerrymandering, lame duck laws, government secrecy, and insider power plays. Scott Fitzgerald has defined himself by these actions.

II. BACKGROUND
Scott Fitzgerald was born on November 16, 1963 in Chicago, Illinois. He moved to Hustiford at the age of 10. In 1985, he received a BA in Journalism at the University of Wisconsin-Oshkosh. Id.;

https://docs.legis.wisconsin.gov/2019/legislators/senate/1901 [Wisconsin State Legislature];


For six years in the 1990’s, Fitzgerald owned the Dodge County Independent News weekly newspaper. He served in the U.S. Army Reserve for 27 years.


Fitzgerald was first elected to the state Senate in 1994. He represents parts of Dane, Dodge and Jefferson counties. He has been the leader of the Republican caucus in the state Senate for all but three of the last 15 years. Id.

III. GERRYMANDERING

States are required to redraw legislative and congressional districts every 10 years to reflect population changes as reflected in the US Census. In the 2010 election, Republicans gained the majority in both houses of the Wisconsin legislature, as well as the governor’s office. This gave them the opportunity to draw these districts.

These maps were primarily drafted by Ted Ottman, an aide to Senate Majority Leader Scott Fitzgerald, and Adam Foltz, an aide to Assembly Majority Leader Jeff Fitzgerald. The
maps were drafted at the law office of Michael, Best and Friedrich, which is located across the street from the State Capitol. FOW p. 146.

In a memo to Republican lawmakers, Ted Ottman wrote, “We have an opportunity and an obligation to draw these maps that Republicans haven’t had in decades.”


The aides worked with University of Oklahoma political scientist Ronald Keith Gaddie, who had been hired by Republican lawmakers as a consultant. In a deposition, Gaddie described the sophisticated metrics he developed to assess the partisan makeup of the maps. Id.

Gaddie used computer modeling to draw a variety of maps which predicted an increase in GOP seats. The leadership could manipulate the maps to see how a line drawn here or there might expand their base. The leadership ultimately chose the map which would give them the most seats.


Mr. Gaddie testified, “This is an aggressive map. This is an assertive move toward a Republican advantage.”


During the process, they created several different maps. They performed a precision analysis, for example, what happens with a six-point Democratic victory margin, on each map. Then, they settled on the most partisan one. FOW p. 146.
The entire process was done with the utmost of secrecy. The maps were drafted in the law offices of Michael, Best and Friedrich, not in the State Capitol. No Democrats, nor any members of the public, were allowed to see the maps. Id.

Even rank-and-file Republican members of the Legislature were not allowed to see the maps as a whole. They were only allowed to see the maps of their own districts. Even then, they were required to sign a confidentiality agreement before doing so. Id.;

During the spring of 2011, nearly all of the Republican members of the legislature walked across the street for this purpose. FOW, p. 146.

Republican lawmakers signed legal agreements promising not to discuss the new maps while they were being developed. The agreement tells each lawmaker, “You agree not to disclose the fact and/or contents of such discussions or any draft documents in your possession.”

Requesting lawmakers to sign confidentiality agreements is extremely unusual. Legislative leaders will sometimes ask members to keep quiet about sensitive legislation, but they typically do not ask them to sign non-disclosure agreements. Senate President Mike Ellis, R-Neenah, commented that he hadn’t been asked to sign such an agreement during his 40 years in office.
Adam Foltz, the aide to Jeff Fitzgerald, sent a memo to Republican lawmakers with talking points. He stressed that those who discussed the maps could eventually be called as a witness in a court case. Id.;


More significantly, Mr. Foltz included the following talking point, “Public comments on this map may be different than what you hear in this room. Ignore the public comments.” Id.


During his deposition, Mr. Foltz was asked what he meant with his advice to ignore the public comments. He said it meant to ignore comments from the public at large, not those made publicly by Legislative leaders. Id.

The new maps were made public less than a week before the only public hearing on the maps. They were then quickly passed.


There was a reason for the rush. A number of legislators, including six Republican senators, were facing recall elections at the time. The first recall elections were scheduled for August 2011. There was a possibility that Republicans would lose their majority in the Senate. As such, it was imperative to pass the new maps prior to the recall elections. FOW, p. 146;

State law at the time barred the Legislature from drawing legislative district lines until local governments had drawn lines for aldermanic and county board districts. The purpose was to ensure that legislative districts are respectful of local boundaries. In this way, communities would not be cut up for partisan purposes. Citizens with shared history, needs and proximity to one another can be grouped in districts designed to ensure their interests are represented. Id.

The Fitzgeralds disregarded the law. They drew the legislative districts before many communities and counties across the state could complete their mapping processes. At the time they introduced the maps, they asked their colleagues to pass a new law which would lift the requirement that local governments go first. Id.

During a two-day extraordinary session, which took place on July 19 and 20, 2011, the new maps were passed along with the new law. [Professor Justin Levitt, All About Redistricting, Loyola University Law School]

The new maps were drafted to create problems for individual Democratic legislators and candidates, and to carve up certain Democratic strongholds. The residences of three Democratic candidates in the recall elections were drawn out of their districts: State Representative Fred Clark, who was challenging Sen. Luther Olsen; former Brown County Executive Nancy Nusbaum, who was challenging Sen. Rob Cowles; and Democratic state Sen. Bob Wirch, who was facing a recall election as an incumbent. These candidates would either have to move, or run in new districts in 2012, if they were to prevail in the recall elections of 2011. [CT 7/13/11 Editorial]

The new maps moved Chris Taylor’s residence out of the assembly district for which she had just won the Democratic primary in a special election. She was running unopposed in the
general election, so she was assured election. However, after the new maps took effect, she would no longer live in the district she represents. Id.

In Jefferson County, Andy Jorgensen was a popular Democratic assemblyman in a formerly Republican district. He was a prime target. The Fitzgeralnds chopped his 37th Assembly District into four parts. One of the new districts extended almost all the way to Milwaukee County. Other constituents were placed into a Janesville-area district, a Cambridge-area district, and an Oconomowoc-area district.


In addition, Jorgensen’s residence was moved into the overwhelmingly Republican Whitewater-area district, which was represented by well-known Republican state representative Steve Nass. Id.

Simultaneously, the Walker Administration announced plans to close the Fort Atkinson Division of Motor Vehicles Center. This was Jefferson County’s primary site for obtaining the photo IDs required under the Motor/Voter ID legislation, which had recently become law. Id.

Under the old maps, the residence of Democratic Representative Fred Kessler was solidly within his district. Under the new maps, the ward he lived in, which included 2,500 of the 57,000 people in his district, was moved to a new district. The new district extended into Waukesha County and Milwaukee’s wealthiest suburbs, two of the most Republican areas of the state. His residence was left a few blocks away from the edge of his old district, which contained 80% of his old constituents. He chose to move to run for re-election in that district. FOW, p. 214
The new maps also carved heavily Democratic Dane County into 13 assembly districts. The new districts extended into 10 southwestern, southern, central and eastern Wisconsin counties. One northern Dane County district stretched all the way to Fond du Lac County. Much of eastern Dane County was in a district, which extended deep into conservative Waukesha County. Finally, a western Dane County district ran all the way to Wisconsin Dells.


The extent to which the Republican lawmakers attempted to keep the redistricting process secret was illustrated by their response to discovery requests in the subsequent litigation over the maps. The Republicans fought the release of documents pertaining to the redistricting process, and the testimony of pertinent witnesses, by invoking the attorney-client privilege.

http://archive.jsonline.com/news/statepolitics/lawmakers-were-made-to-pledge-secrecy-over-redistricting-9643ep0-138826854.html/ [JS 2/6/2012];


A panel of three federal judges, two of whom were appointed by Republican presidents, strongly rebuked the GOP lawmakers. The Court found that the lawmakers had filed frivolous motions in an attempt to shield the information from the public. Id.

Using especially tough language, the Judges ordered Republican lawmakers to release a collection of e-mails and documents related to the redistricting legislation. They chastised the Republican lawmakers for trying “to cloak the private machinations of Wisconsin’s Republican legislators in the shroud of attorney-client privilege.”

“What could have – indeed should have --- been accomplished publicly instead took place in private, in an all but shameful attempt to hide the redistricting process from public scrutiny”, read the order, written by U.S. District Judge J.P. Stadtmueller. Judge Stadtmueller had been appointed to the federal bench by President Ronald Reagan. Id.

The other two judges on the panel were Robert Dow, who was appointed by President George W. Bush, and Diane Wood, who was appointed by President Bill Clinton. Id.

The Judges wrote, “We cannot help but conclude that the people of Wisconsin deserve better in the next round of redistricting after the 2020 census…. In closing, we simply re-emphasize our previous observations… about the regrettable contentiousness that often accompanies partisan redistricting wherever it takes place, and the additional Wisconsin-specific rancor brought on by the peculiarly furtive process adopted by the majority party this time around.”


The Judges even hinted that regulators might want to investigate why subpoenaed documents were withheld from the groups which had sued the state. Id.

It was only after Republican lawmakers were forced to divulge the documents pursuant to the discovery order that the public learned of the confidentiality agreements, the memo involving talking points, the existence of the consultant from the University of Oklahoma, and the various memoranda and e-mails released by the legislative aides.

http://archive.jsonline.com/news/statepolitics/lawmakers-were-made-to-pledge-secrecy-over-redistricting-9643ep0-138826854.html/ [JS 2/6/2012];
One of the documents discovered was an e-mail from Tad Ottman, Scott Fitzgerald’s aide, to Adam Foltz, Jeff Fitzgerald’s aide. In a speech on the floor of the assembly, representative Fred Kessler had complained that Democrats would not win more than 40 seats in a typical year under the proposed maps. The next day, Ottman e-mailed Foltz, “Kessler was wrong. They’ll only win 39.” FOW, p. 218

In a July 13, 2011 editorial, the Capitol Times noted that Republican legislators had “set the stage for future elections in which few if any seats are competitive – and their political dominance over the next decade is protected not by the will of the people but by the lines on the map;”

This comment proved to be prophetic.

In 2012, Republican candidates for the state Assembly received 168,000 less votes than the Democratic candidates. Republicans received 48.6% of the total, but still won 60 of the 99 seats. Conversely, the Democrats received 51.4% of the total votes, but won only 39 of the 99 seats. [JS 11/22/2016 Editorial];

Tad Ottman’s prediction proved to be exactly right.
Despite having received 175,000 fewer votes than they did in 2010, Republicans actually gained two seats in the Assembly. FOW, p. 214. The maps locked in a large GOP majority even in 2012, a year where the Democratic candidate for President handily won the state by seven percentage points.


After seeing the results of the 2012 election, one Republican who had voted for the maps, Senator Dale Schultz, came to regret his vote. “I was truly surprised when I saw the elections”, he said. “If you’re a fair-minded person, and you look at that, you say, ‘how can that happen?’ “.


In 2016, a year in which the Republican candidate for President took the state by the slimmest of margins, the Republicans laid claim to a 64-35 majority in the Assembly, the largest margin since 1957. They also claimed a 20-13 majority in the Senate, the largest margin since 1971.


In federal court, State attorneys, who were defending the maps, admitted that they were some of the most heavily skewed maps in the nation over the past 40 years.
In December 2018, political reporter Craig Gilbert performed a detailed analysis of the election results under the maps. 

In the 2018 election, where the Democratic candidate for governor won the State by roughly one percentage point, Republicans carried 63 of the 99 Assembly districts. The voting analysis showed that 64 of the 99 seats were more Republican than the state as a whole. As such, Republicans had a built-in 64-35 advantage. That is a massive 29 seat advantage in a 50-50 election. Id.

Because Democrats tend to be more concentrated in urban areas, Republicans have a natural advantage to begin with. Even under the pre-2011 maps, Democrats had to outperform Republicans statewide by 2-3% to gain a majority in the Assembly. However, under the current maps, Democrats would have to outperform the GOP by about 9-10% statewide to have a decent shot at winning an Assembly majority. Id. 

In addition to locking in Republican control, the current maps almost killed off competitive Assembly elections. To maximize their partisan advantage, the Republicans drew a minority of hugely lopsided Democratic districts, thereby minimizing the impact of the Democratic vote, and a sizable majority of less lopsided, but safe, GOP seats. There are hardly any “purple” Assembly districts in this “purple” state. In the 2018 election, only five of the 99 Assembly races were decided by less than 5 points. Only two were decided by less than 3 points. Id.
As such, the maps ensure Republican control of the Assembly in years that are “good” or “bad” for the GOP. In 2018, a year in which Democrats swept the statewide races, they had no realistic chance of winning the state Assembly. The current maps give Republicans a grip on the Legislature which is entirely disproportionate to the party’s level of popular support. Id.

Scott Fitzgerald commented, “On the whole, this has been a pretty good decade if you’re a conservative in Wisconsin.” He added, “We can’t, we won’t yield an inch.”

Republican lawmakers have shown no compunctions about spending millions of taxpayer dollars developing and defending these maps. First, they committed $400,000 to the law firm of Michael, Best and Friedrich for the purpose of developing the maps.

By November 2013, the amount taxpayers had paid outside attorneys to develop and defend the maps had increased to $2.1 million.


https://archive.jsonline.com/news/statepolitics/lawmakers-were-made-to-pledge-secrecy-over-redistricting-9643ep0-138826854.html/ [JS 2/6/2012];


By November 2013, the amount taxpayers had paid outside attorneys to develop and defend the maps had increased to $2.1 million.


In an editorial of November 6, 2013, the Wisconsin State Journal noted that taxpayers received the following for their $2.1 million: rigged legislative and congressional maps which favor Republicans in the few remaining competitive districts; more entrenched Republican and Democratic incumbents in seats which are no longer competitive; and less choice at the polls for a decade of elections, and consequently, less influence with their political leaders. The Journal aptly described this as a “pretty stinky deal”.

On February 2, 2017, after a federal court found the maps to be unconstitutional, Republican leaders pushed through a plan which gave them carte blanch to hire whichever attorneys they deem necessary to overturn the decision. Specifically, they hired former U.S. Solicitor General Paul Clement of Kirkland and Ellis to write the amicus (friend of the court) brief. Mr. Clement charges $1,300 an hour. The firm’s partners, on average, charge $825 an hour. They also hired the Madison law firm of Bell Giftos St. John.

Republican lawmakers on two committees approved the plan, even though they didn’t know how much hiring the firms would cost, and did not even know their hourly rates at the time,. Those details would be ironed out later, said Myranda Tanck, a spokeswoman for Scott
In addition, the plan gave Fitzgerald and Assembly Speaker Robin Vos the power to hire any other firms they deem necessary to work on redistricting. No one else would have a say in how much they’re paid. When the governor or lawmakers hire attorneys, they often put in place a cap which limits how much the attorneys will be paid. However, the lawmakers decided not to do that in this instance. Id.

The plan was approved in a closed-door meeting with very little notice. Neither the Senate Organizing Committee nor the Assembly Organization Committee posted meetings which were to occur that day on the Legislature’s website, as is typically done for committees. The Assembly committee alerted reporters the day before. The only public notice of the Senate Committee’s meeting was a posting on a single bulletin board in a little traveled Capitol hallway.

After the approval in October 2018 to pay the Chicago law firm of Bartlit Beck up to $840,000 to defend the maps at trial, taxpayers were on track to spend $3.5 million overall in legal fees for the development and defense of the maps.
Because the federal lawsuit in which the constitutionality of the Wisconsin maps was being tested, Gill v. Whitford, was withdrawn before its conclusion, it is unclear whether this amount was actually reached.

On October 3, 2017, Gill v. Whitford was heard by the United States Supreme Court. The packed gallery included Arnold Schwarzenegger, the former Republican governor of California, who has championed redistricting reform, as well as Scott Fitzgerald. In addition to Schwarzenegger, U.S. Senator John McCain and Ohio Gov. John Kasich were among the other prominent Republicans who were siding with the Wisconsin Democrats.


On the plaza outside the Court, Schwarzenegger commented, “I say it is time to say hasta la vista to gerrymandering …it is time to terminate gerrymandering.”  Id.

On June 18, 2018, in a unanimous decision, the Supreme Court sent the case back to the federal circuit court on a procedural basis. They found that the plaintiffs lacked legal standing to bring the lawsuit. In a concurring opinion, Justice Elena Kagen quoted James Madison, widely considered the father of the Constitution, as follows:

“The House must be structured, he answered, to instill in its members ‘a habitual recollection of their dependence on the people.’  Legislators must be ‘compelled to anticipate the moment’ when their ‘exercise of (power) is to be reviewed.’  When that moment does not come – when legislators can entrench themselves in office despite the people’s will -- the foundation of effective democratic governance dissolves.”

On June 27, 2019, in a 5 to 4 decision, the Supreme Court upheld gerrymandering as constitutional in a different case. It held federal courts do not have the authority to consider whether lawmakers drew election maps to favor themselves in determining whether the maps are constitutional. The lawsuit in *Gill v. Whitford* was dropped the following day.


In a June 22, 2018 editorial, the Journal Sentinel described the deleterious effects that gerrymandering can have on the democratic process: “Democracy is harmed when politicians choose their voters instead of the other way around. Gerrymandered districts make elections less competitive and contribute to polarization: When the only real race is in the primary, politicians only listen to one side.”


Other, more subtle, deleterious effects of gerrymandering were described by Fred Kessler, the Democratic representative. “In 2014, we didn’t have enough candidates. It was very hard to get candidates once you got clobbered in a landslide year. The same in 2016. We just had a hard time getting candidates. You look at the result, and you see that the last time we had a candidate who was well financed, they got clobbered. It’s demoralizing. And then you have Democrats like myself in these seventy-plus-percent districts.” FOW, p. 217.

The luxury of having such a solid grip on the Legislature has the effect of emboldening politicians to stake out positions they otherwise would be hesitant to take. Political reporter Craig Gilbert believes the current maps emboldened the Republicans to diminish the powers of the Governor and Attorney General after their election in 2018, without fear of electoral
consequences. 


Governor Tony Evers has recommended a redistricting process which is intended to result in maps which favor neither party. Currently, the Legislative Reference Bureau works on a nonpartisan basis to write comprehensive reports on issues facing the Legislature, provides analysis of legislation, and houses files associated with drafting bills. Governor Evers would also have this Bureau draw redistricting maps under the oversight of a nonpartisan five-member commission.


The plan would bar mapmakers from using voting patterns, party information, incumbent residence information, and demographic information to draw the boundaries, except where required by law. Id.

The majority and minority leaders in each house of the Legislature would be allowed to appoint one member each to the five-member commission. Then, the four members would appoint a fifth commissioner to serve as the commission’s chairperson. The commissioners may not hold a partisan public office, or a political party office, nor may they be employed or related to any lawmakers. Id.

Public hearings on the proposed maps would be held in each congressional district. Id.

A January 2019 Marquette University poll shows overwhelming support among the public for a nonpartisan commission to draw legislative and congressional district boundaries. 72% of respondents said they supported such a commission. Only 18% said they would prefer that the
State Legislature continue to draw the boundaries.


62% of Republicans and 76% of independents voiced support for such a nonpartisan commission.


As explained by Sachin Chheda, director of the Fair Elections Project, “Local conservatives seem to feel similarly to local liberals – gerrymandering corrupts our government, forces both parties to the extremes, and makes it harder for the state to advance.” Id.

IV. LAME DUCK LAWS

On November 6, 2018, Wisconsin voters elected Tony Evers governor, Mandela Barnes lieutenant governor, Josh Kaul attorney general, Doug La Follette secretary of state, and Sarah Godlewski state treasurer. It was the first time since 1982 that one party swept the races for the partisan constitutional offices.


Less than 24 hours after the election, Assembly Speaker Robin Vos said he was going to discuss limiting the powers of the new governor with Scott Fitzgerald. Id.
Fitzgerald’s chief of staff, Dan Romporti, said Fitzgerald was willing to consider taking away some of the governor’s powers before he is seated. “He has said previously that he is open to it, and plans to discuss the topic with Senate Republican caucus members.” Id.

Evers spokeswoman Britt Cudaback said it’s “unfortunate Vos is doubling down on division” after Evers asked to set aside differences and work together. "These are the … desperate antics of politicians hell-bent on staying in power after eight years. The people of Wisconsin deserve better from our government, and that’s why they voted for a change yesterday.” Id.

On November 8, Fitzgerald announced that Republicans are looking at giving incoming Gov. Tony Evers less say in state rules which implement state laws. In addition, he and other Republican lawmakers were considering reconstituting a list of state boards "as long as my arm," including the board which oversees the state's jobs agency.


Evers responded that he wanted to find common ground with Republicans. However, he would not tolerate "desperate antics to cling to power and violate the checks and balances of Wisconsin government.” "Let me be clear: the Republicans and Speaker Vos should stop any and all attempts to play politics and weaken the powers of the governor’s office in Wisconsin before I take the oath," he stated. Id.

Fitzgerald denied that Republicans were trying to undermine the new governor. "When I picked up the paper yesterday, I was like I’m not sure why there’s all this discussion about we’re trying to somehow undermine the new governor," Fitzgerald said. "That’s not the case at all. I think there’s some stuff that’s going to be reasonable." Id.
Concerning the timing of the proposals, and the message that it sends to Evers, Fitzgerald said: "It's about the new governor, yeah." Id.

Assembly Minority Leader Gordon Hintz (D-Oshkosh) criticized the effort. "Speaker Robin Vos' statements in the last two days are indicative of the kind of politician who can never have the deck stacked too far in their favor." Id.

Over the next week, Republicans revealed that they were considering calling an extraordinary session for the purpose of adding more legislative appointees to several state boards, changing state law to make it impossible for the governor to change state regulations without the Legislature’s permission, codify certain current regulations, and confirm a number of Walker appointees, to prevent Evers replacing them once he takes power.


Republicans were also considering a plan to move the presidential primary from April 2020 to March 2020 in an effort to bolster the chances that conservative Supreme Court Justice Daniel Kelly will get re-elected. Kelly had been appointed to the Court by Governor Walker. Id.

Republicans were concerned about the 2020 state Supreme Court race, because it was scheduled to be held alongside Wisconsin’s presidential primary. Democratic turnout was expected to far outpace Republican turnout in the primary, due to what was expected to be a competitive Democratic field. Id.

Moving the presidential primary would have tacked on costs for taxpayers. It would force clerks to hold three elections that spring. A primary for the state Supreme Court and some local
elections were scheduled for February, and a general election for those races were scheduled in April, along with the presidential primary. Id.

The April 2016 elections, which consisted of a general election for the Supreme Court and a presidential primary, cost taxpayers $6.8 million. Adding a third election in the spring of 2020 had the potential to cost an additional similar amount. Id.

Analiese Eicher, program director for One Wisconsin Now, noted Republicans had fought plans to hold special elections earlier in 2018, and had complained about the cost of past recall elections. (see p. 64-72) "The only consistent thing about this gang is their unwillingness to respect voters and the choices they make," she said in a statement. Id.

Democrats said the election plan showed Republicans were trying to seize any power they could before the governor's office leaves their hands. Id.

Britt Cudaback, spokeswoman for Governor-Elect Evers responded, “Republicans are desperate to cling to power. The people of Wisconsin said loud and clear last week that we want a change from this petty, divisive partisanship, and Governor-elect Evers believes Republicans should stop any and all attempts to override the will of the people and instead focus on solving the problems of this state.” Id.

Within a week, city and county clerks weighed in on the practical difficulties of conducting three elections within three months. They felt it would create headaches for election workers, confusion for voters, and may be all but impossible to implement.

"The logistics of it is not easy to do at all," said Kelly Michaels, Brookfield's city clerk and president of the Wisconsin Municipal Clerks Association. "Our feedback (to lawmakers) is, no, it's not a good idea." Id.

Clerks would need to process absentee ballots for different elections at the same time, which would run the risk that some ballots would get in the wrong batch and not get counted, clerks said in interviews. Poll workers would have to be persuaded to work an extra election. This could be difficult since recruiting poll workers was already hard. Some clerks would need to buy more memory cards for their voting machines, because they would need to preserve results for one election while programming their machines for a different election. And voters could wind up at the polls to vote in one election only to discover a different one was being held, clerks said. Id.

"From my perspective, it would be virtually impossible for any county clerk to do all we need to get ready for an election in that scenario," outgoing Waukesha County Clerk Kathleen Novack said of adding a March election in 2020. "There isn't anyone among the 72 county clerks who thinks it even has a shred of a possibility to be done logistically." Id.

Lisa Freiberg, Fond du Lac County Clerk and president of the Wisconsin County Clerks Association, said she struggles to find election workers. She believes it would be hard to get them to work three elections in the spring of 2020. Voters, too, would face challenges, she said. "It would definitely cause voter confusion," said Freiberg. Id.

Absentee ballots for the March and April elections would be available to voters at the same time. Clerks could use different colored envelopes for the two elections, but some voters
might put the wrong ballots in the envelopes, she said. "I wouldn't even know how to begin to try to explain this to everyone," she said. Id.

U.S. Rep. Mark Pocan, a Madison Democrat, told reporters he was urging Vos not to change the election schedule. "You don't change elections because you may not like the outcome, right?" Pocan said. "How much more ... third-world country can you get?" Id.

A week later, Fitzgerald said Republicans hadn't made a decision on moving the presidential primary. They were listening to the concerns of the clerks. He also noted that the move could dilute the strength of Wisconsin’s delegates to the Republican National Convention. https://www.jsonline.com/story/news/politics/elections/2018/11/27/wisconsin-republicans-6-7-votes-short-kimberly-clark-bill/2125199002/ [JS 11/28/2018]

Asked about the upside of moving the primary, Fitzgerald said, "I think there’s many people that think that Justice Kelly would have a better chance if there’s not really this competitive Democrat primary for president. That’s the concern, I think. But I’ve got to be honest with you, I think the campaign would be just as concerned that that would be a criticism used against Kelly in the end." Id.

Sen. Jon Erpenbach (D-Middleton) expressed surprise at Fitzgerald's open talk of moving the primary only to help Kelly. "We all knew this, but to hear it that bluntly is shocking," Erpenbach said. Id.

Despite the cost, and the concerns expressed by the clerks, Republicans included the change in the date of the presidential primary among the list of proposals at the start of the lame-duck extraordinary session.
Prior to the extraordinary session, the Wisconsin Elections Commission, which consists of three Republicans and three Democrats, estimated that moving the presidential primary would cost between $6.4 million and $6.8 million. Furthermore, it unanimously concluded that moving the presidential primary would be "extraordinarily difficult to accomplish" for clerks, and may not be feasible since three elections would have to be conducted in as many months.

By November 29, 2018, Assembly Republicans had rolled numerous pieces of legislation into an omnibus bill which ran more than 100 pages. The bill had gone through more than 15 drafts, but versions of it had not been made public.

Scott Fitzgerald mentioned that his house may go a different direction, and take up individual bills rather than an omnibus package. Id.

Late in the day on November 30, 2018, Republicans released their plan. They intended to hold a public hearing on it on December 3, and vote on it as soon as December 4.
The 141-page plan went much further than what Fitzgerald and Vos had previously suggested would be taken up during the extraordinary session. Three days before its release, Fitzgerald said, “It’s real kind of inside baseball, kind of legislative stuff that it’s hard for me to believe people will get too excited about.”


Among the far reaching provisions of the proposal were the following: Move the 2020 presidential primary from April to March, to ensure a lower turnout for the April election for the state Supreme Court, and thereby, make it easier for conservatives to maintain their court majority; limit early voting to two weeks (a similar provision had been ruled unconstitutional by a federal court in 2016); give lawmakers, instead of the Attorney General, control over how court settlements are spent; allow the legislature to substitute the Attorney General with taxpayer-funded private attorneys, picked by lawmakers, when state laws are challenged in court; make it easier for lawmakers to hire private attorneys at taxpayer expense when they are accused of violating the open records law or other statutes; eliminate the solicitor general’s office, which oversees high-profile litigation, from the Department of Justice; make it much more difficult, in numerous ways, for the Evers administration to put in place rules which implement current and future state laws; give lawmakers greater power to block any rules that Evers manages to put into place; force Evers to get permission from the Legislature before asking the federal government to make any changes to programs which are run jointly be the federal and state governments; increase the number of members on the Group Insurance Board from 11 to 15, with the new members to be appointed by leaders of the Legislature; and channel federal money into a smaller number of state road projects, so that other projects can avoid having to comply with federal
environmental and wage laws.

sible-prevent-gop-plan-take-away-his-power/2181201002/ [JS 12/2/2018]

In response, Governor-elect Evers said he would take any steps possible to prevent Republican lawmakers from removing key powers from his new administration. “I view this as a repudiation of the last election. I will take any steps possible to assure the people of Wisconsin that I will not invalidate those votes,” Evers said. Id.

Evers characterized the efforts of the GOP-led Legislature as an attempt to change the result of the gubernatorial election. "We had 2.6 million people in the state of Wisconsin voting in the election and they thought very carefully about that vote," Evers said. "This special session bill will take us to a place where people in Wisconsin will feel their vote has not been counted." Id.

One provision would give Republicans more control over the Wisconsin Economic Development Corp., the state's job creation agency. Under the GOP plan, Evers would lose the ability to choose the leader of the WEDC, and lawmakers would get more appointments to the board which oversees the agency. The board, not Evers, would pick the agency's leader. Id.

Another provision would remove Evers' power to approve actions taken by Attorney General Kaul, and give that power to the Legislature's GOP-controlled budget committee. This would give lawmakers the power to block any attempt of Kaul and Evers to withdraw the state from a federal lawsuit to overturn the Affordable Care Act, as the two had promised during their campaigns. Id.
Evers was "very concerned" about that prospect. "Certainly, that is something that was part and parcel to this last campaign and there's no question the governor and I were on different sides of that issue," Evers said. "I also think that's one of the reasons I won." Id.

According to Evers, the GOP plan went far beyond simply protecting past Republican policies. It attempts to prevent the decision by voters to elect Democrats to state offices from becoming reality. Id.

"Frankly, it's another embarrassment for the state of Wisconsin," Evers said. "The people of the state certainly indicated we needed to move beyond rancor and politics as usual. And what is the first thing that's happened? Rancor and politics as usual. I don't think the people of this state will take this well." Id.

"I’ve said all along I’m committed to working across the aisle, but I will not tolerate attempts to violate our constitutional checks and balances and separation of powers by people who are desperate to cling to control. Enough is enough," Evers said in a statement.


Democrats said Republicans were throwing a fit following the defeat of Walker and Schimel. "It's clear they're out to try to cripple the incoming governor and attorney general as best they can," said Sen. Jon Erpenbach, a Middleton Democrat on the Legislature's finance committee. "It's a tantrum because Scott Walker lost. It's frustrating because they're not even giving Tony Evers a chance to be governor." Id.

Incoming Lt. Gov. Mandela Barnes said the plan "is the path of most resistance. It’s the dysfunction people just said no to a few weeks ago." Id.
The plan also gave legislators the ability to sign off on court settlements. The Legislature’s budget committee, not the Governor, would decide whether to continue or drop legal actions. Id.

On December 3, Scott Fitzgerald said he helped write the sweeping plan because Republicans "don't trust Tony Evers right now."


"The manufactured outrage by the Democrats right now is hilarious," Fitzgerald told WISN's conservative radio host Jay Weber. "I mean, most of these items are things (that) we never really had to kind of address because guess what — we trusted Scott Walker and the administration to be able to manage the back and forth with the Legislature. We don’t trust Tony Evers right now in a lot of these areas." Id.

Fitzgerald's comments came hours before Democrats planned to pack a Capitol hearing room before the Legislature's finance committee, which intended to vote to send the plan to the full Legislature. Id.

“It’s unfortunate that Senator Fitzgerald is continuing to play politics and rushing to make sweeping partisan changes before even meeting with Governor-elect Tony Evers," Evers’ spokeswoman Carrie Lynch said. "Senator Fitzgerald should stop this rush to a lame-duck session and at least take the time to meet with Governor-elect Tony Evers before making any dramatic changes to state laws." Id.

Evers said he would consider litigation should the plan pass the Legislature and be signed by Walker. Fitzgerald called this notion "troubling". He warned conservatives that Evers will
have "absolutely the most liberal administration that we have ever seen in the state of Wisconsin." Id.

“He was the lap dog of WEAC and that’s how he emerged as a statewide candidate,” Fitzgerald said. "He is going to unleash the most liberal agenda in the middle of February which will be his day to introduce the state budget. You have never seen anything like this. He will make Jim Doyle look like a piker." Id.

Evers, Attorney General-elect Josh Kaul, and other Democrats said the Republican plan seeks to ignore the will of voters, which elected Democrats to all statewide offices on Nov. 6. Kaul, whose authority would be most affected by the plan, said "this is just not the process we should have in an advanced democracy.” Id.

The plan would allow lawmakers to replace the attorney general with private attorneys of their choosing for key cases; require lawmakers to sign off on court settlements; give lawmakers instead of the attorney general control of how to spend court settlements; and eliminate the solicitor general’s office that oversees high-profile litigation. Fitzgerald said the measures were, in part, a response to Kaul being unknown to Republicans. Id.

"I literally did not know Josh Kaul before the election," Fitzgerald said. "I have met him for one minute outside the Capitol. We have no idea what Josh Kaul has up his sleeve." Id.

On December 4, 2018, eight former heads of the state's job-creation efforts, including two appointed by Gov. Scott Walker, released a lengthy statement, urging Republican lawmakers to drop a lame-duck plan to change who appoints the head of the Wisconsin Economic Development Corp.
"If the head of WEDC isn’t a trusted, even central, part of the governor’s cabinet, the whole economic development enterprise will suffer. And so will Wisconsin’s economy," the eight wrote. "The Legislature shouldn’t strip the governor’s power to appoint the quarterback of the economic development team. And if they do, Governor Walker should veto it." Id.

Among the eight who signed it were Paul Jadin and Reed Hall, Walker’s first and second directors of the WEDC. Id.

Also signing the letter was Bill McCoshen, who headed the state Commerce Department under Republican Gov. Tommy Thompson. He was a prime mover in the 2011 effort to convert the Commerce Department into WEDC, a semi-private entity that supporters consider more nimble than its predecessor. Id.

The others who signed the statement were commerce secretaries under Democratic Gov. Jim Doyle — Cory Nettles, Mary Burke, Jack Fischer, Dick Leinenkugel and Aaron Olver. Id.

The eight wrote that it’s essential for the person heading the job-creation agency to be trusted by the governor. WEDC’s leader must be able to work hand-in-hand with agencies led by the governor’s appointees such as the Department of Workforce Development, they wrote. Completing deals sometimes needs the governor to get on the phone, they added. Id.

"Economic development simply won’t work if the leader of WEDC isn’t part of the governor’s team," they wrote. Id.
After ten hours of testimony and debate, the Joint Finance Committee passed the grand majority of the proposed measures on a 12 to 4 party line vote. The last of the votes came just after midnight on the morning of December 4.


The last of the votes came just after midnight on the morning of December 4.

The proposal to move the presidential primary from April to March was dropped by the Joint Finance Committee. Id.

The Legislature worked on and passed the final version of the lame duck laws during an all-night session, spanning December 4 and December 5.


Republicans spent much of the night working behind closed doors on the legislation. They unveiled a modified version of it around 4 a.m. Senators passed the legislation 17-16. Republican Sen. Rob Cowles of Green Bay joined Democrats in opposing the legislation. The Assembly passed the measure 56-27 along party lines. Id.

The updated bill would give the Legislature control of the Wisconsin Economic Development Corp. board, and allow the board to choose the leader of the agency, instead of the governor, until September. Republicans would initially have a majority of the board. However, after September, control would be split evenly between Republicans and Democrats. Id.

Lawmakers also removed a measure which would have allowed the Legislature to replace incoming Democratic Attorney General Josh Kaul with private attorneys picked by lawmakers at taxpayer expense. The provisions which would allow lawmakers to intervene in lawsuits when
state statutes are challenged, and which would allow them to hire private attorneys when they are sued, remained. Id.

Republicans backed off on some of the changes which would have limited Evers' control of state rules. However, they kept in place a provision which would expand lawmakers' power to block those rules. Id.

The Senate also confirmed more than 80 appointments by Governor Walker on party-line votes. They ignored objections from Democrats to the effect that most of the appointees had not had public hearings, and had not submitted statements of economic interest. Id.

Both houses wrapped up soon after the sun came up. It was the latest session for the Senate since 1995, when it deliberated over the legislation to build Miller Park. Id.

The stated reason for calling the extraordinary session in the first place, a tax incentive package for Fox Valley papermaker Kimberly-Clark, never made it to the floor. Id.

The actions taken by the GOP-led Legislature were similar to actions taken by Republican legislators in two other states, North Carolina and Michigan, under similar circumstances.

In 2016, Republican Gov. Pat McCrory of North Carolina signed legislation passed by the North Carolina Legislature, which weakened the powers of incoming Gov. Roy Cooper, after Cooper had defeated McCrory in the election. The legislation weakened Cooper’s power over the state’s election system, reduced the number of appointments he could make, and required lawmakers to sign off on his cabinet appointments. The legislation ended up in court, and was found to be unconstitutional.

[JS 12/2/2018]

Similarly, in 2018, Democrats took over the governor, attorney general and secretary of state offices in Michigan. Republican lawmakers proposed bills to allow the Legislature to intervene in any legal proceeding involving the state, a task normally within the province of the governor and attorney general. Another bill proposed to move campaign finance law regulation from the secretary of state’s office to a six-person commission appointed by the governor, with the thought that the outgoing governor, Republican Rick Synder, would make the initial appointments.

In Wisconsin, Democrats decried the effort to give more power to Republican lawmakers after their party lost every statewide election. "You rig the system when you win and you rig the system when you lose," said Rep. Chris Taylor, D-Madison. "How is it that you have more power when you lose?" Id.

Scott Fitzgerald downplayed the measures. "People are outraged. I'm not sure where that's coming from right now," he said. "I still characterize this as inside baseball." Id.

Incoming Attorney General Josh Kaul emphasized the practical difficulties of operating under the strictures being put in place by the Republican lawmakers. “This is an attempt to undermine the election we had less than a month ago by fundamentally changing the way our state government operates”, Kaul said.
Kaul noted that the bill would be expensive for taxpayers. Lawmakers could pick private attorneys to conduct the most complicated, costly litigation. The legislation would also give lawmakers a chance to more easily use private lawyers at taxpayer expense when they themselves are sued. “That’s great if you’re a highly connected attorney, but it’s bad if you’re a taxpayer,” Kaul said. Id.

The provision which would require a legislative committee to approve court settlements would make it harder to resolve cases, Kaul said. Opposing attorneys may not want to make public the details of settlement talks, if they aren’t sure the state would go for them. Legislators would also have to get up to speed on a raft of mundane cases. Id.

“Is that committee really going to come in and meet every time there’s an environmental case the (Department of Justice) wants to settle?” Kaul said. “It’s another illustration of how bad the process is here.” Id.

Former Governor Jim Doyle, who had served as governor for eight years, and attorney general for 12 years, blasted the proposals as blatant "unconstitutional violations of separations of powers", which will lead to years of litigation.
completely different from anything we have seen in my experience," Doyle said at a news conference. "We are seeing something that's really quite unprecedented."


Some of the strongest criticisms of the lame duck laws came from prominent Republicans. Ohio Governor John Kasich released the following statement about the Wisconsin lame duck laws: “It’s outrageous. I mean, you lost the election, OK? When you lose, you say you lost. You can’t try to reverse the election by manipulation. I’m frankly shocked at what is going on here.”

https://twitter.com/patrickdmarley/status/1073678398323593216

During a December 14, 2018 appearance on CNN, Kasich called Wisconsin's lame-duck legislation an attempt to "reverse the election by manipulation."


Sheldon Lubar, a prominent Milwaukee businessman and philanthropist, has been a powerful and influential Republican in Wisconsin for decades. He had been a strong supporter of Gov. Scott Walker. He had held several important posts in Republican administrations in both Madison and Washington DC.


In Madison, Lubar had held appointed positions under Republican governors Warren Knowles, Lee Dreyfus, Tommy Thompson and Scott McCallum. Id.
In Washington DC, he served as an appointee under three presidents. Under President Richard Nixon, Lubar was assistant secretary of housing production and mortgage credit, in the Department of Housing and Urban Development; commissioner of the Federal Housing Administration; and director of the Federal National Mortgage Association, completing his service under President Gerald Ford. President Jimmy Carter appointed him commissioner of the White House Conference on Small Business. Id.

Lubar’s criticism of Republican actions pertaining to the lame duck laws was intense. In a sharply worded email sent to Governor Walker, Lubar criticized the governor and asked him to consider what the governor's recently deceased father and Jesus Christ would say about his actions concerning legislative efforts to limit the powers of Gov.-elect Tony Evers and Attorney General-elect Josh Kaul. Lubar asked Walker to do the right thing, and refuse to follow and support Republican legislative leaders. Id.

"I am not proud to read in the Milwaukee newspapers and learn the conniving that Wisconsin Republicans, led by you and certain others, are planning," Lubar wrote. Id.

Lubar reminded Walker that he had voted for him when Walker ran for Milwaukee County executive, and three times for governor, including the recall attempt. But Lubar said he didn't vote for Walker in November. Id.

"If you are asking why I changed, I must say I didn't, you did. You let your presidential political ambitions supersede your duties and obligations to the people of Wisconsin. This was too much for me." Id.

Lubar pleaded with Walker not to destroy his reputation by siding with Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald. Id.
'What they are planning for the Republican Party of Wisconsin will malign its integrity and lead to its downfall. Worse, it will damage Wisconsin, as it ignores the will of the majority of Wisconsin voters." Id.

He encouraged Walker to look beyond “short sighted machinations”. "You can have a long successful career ahead. Don’t stain it by this pointless, poor-loser action."


In a subsequent interview, Lubar said that if Walker signs the bills, it will "destroy" his legacy.


"I mean, he's the last word. And he's the only one (who) can stop it," Lubar said. "I think it will fail in court, but that won't change how the history of Wisconsin looks on him. They can look on him as somebody who ignores the will of the people and creeps into the house at midnight to steal away the result of their vote." Id.

He stressed that he believes Walker's decision will define his legacy. "I think Scott Walker has the most important decision of his life — his life thus far," Lubar said. "And he has to decide, am I going to act as a mature American who believes in honesty and equal justice for every American, or is he going to sacrifice that and have his name attached to defying the will of the people of Wisconsin?" Id.
He warned Walker against "tagging along behind a few petty, mean politicians," referring to Assembly Speaker Robin Vos of Rochester and Senate Majority Leader Scott Fitzgerald of Juneau. Id.

Lubar accused Republican lawmakers of "sneaking around" when they passed the bills in an overnight session that started Tuesday and stretched until Wednesday morning, with most of the votes coming after midnight. "It is so petty, and so wrong, and so disgusting to me," Lubar said. Id.

"Again, is he a man of character or is he a man of exploitation?" Lubar said of Walker. "I think it's a pretty clear decision point for Scott, and I hope he makes the best one." Id.

The criticism of former Republican Governor Scott McCallum was equally intense.

“It appears completely political, (like) a power grab,” McCallum said. McCallum said Walker, who was defeated for a third term by Tony Evers, has an opportunity to avoid the “appearance of sour grapes” and “become open and transparent and reach out in a very public fashion” to discuss the lame-duck legislation with Evers before signing anything into law. 


McCallum said Walker should veto some of the proposals passed by GOP lawmakers and consider vetoing others. He said both parties have played political games, but “we seem to be going down a very slippery slope of personal power over public policy.” Id.

The former GOP governor said the Republican push to curtail the incoming governor’s authority right after losing an election hurts public faith in the democratic process, makes it “difficult for the next person to govern” and invites retaliation by Democrats in the future. Id.
“It’s the wrong time to do it. It's not done for the right reason. It is not transparent. It is not a good way to create public policy,” McCallum said. Id.

“There are going to be differences over executive control and legislative control, but you don’t play it out in the dark of night. You don’t make the changes after an election without hearings, without having the public involved, without having a vetting process. You can understand why there is frustration by the public with the system.” Id.

McCallum was also critical of the number of appointments Walker has made on his way out of office, saying it constrains his successor. Id.

McCallum said this should be an opportunity for Walker and Evers to work together on the transition, set a national example, and “change the tone” at a very partisan and polarized time. Id.

“That tone deteriorated when (Gov. Walker) was in office, maybe through fault of his own, maybe not. Wouldn’t it be just a wonderful thing to conclude (his tenure) by changing the tone for the state and setting a good example for what can be done?” McCallum said. Id.

Even Charlie Sykes, the former long-term conservative radio host on WTMJ-AM (620), wrote a column in the Atlantic to the effect that Walker should veto the legislation. "Signing the lame-duck legislation would be an especially classless way for Walker to leave office; it will tarnish his reputation in ways that I’m not sure he grasps," Sykes wrote. "And, frankly, it’s just not worth it.”

The criticism of Daniel Bice, political columnist for the Milwaukee Journal Sentinel was equally intense:


And then throw in the hypocrisy that many Republican lawmakers whined when Democratic legislators held their own — albeit completely unsuccessful — lame-duck session in 2010.

There is a saying that the two things you don't want to see made are law and sausage. But what the GOP leaders in the Assembly and Senate just produced in Madison reeks like nothing being cooked up by Usinger's.

The governor has yet to sign the controversial legislation, and Democrats are already talking about going to court. Former U.S. Attorney General Eric Holder, Evers, One Wisconsin Now, incoming state Attorney General Josh Kaul — they all sound like they are chomping at the bit to challenge the grab bag of GOP goodies.

‘This is virtually certain to end up in litigation — probably there will be multiple litigations that result from this maybe in multiple courts,’ Kaul said.

Just what everybody wants after a legislative session: Courtrooms filled with suits, many of whom are billing the taxpayers by the hour.”

In a strongly worded editorial, the Milwaukee Journal Sentinel urged action on behalf of the citizens:

“Is this democracy at work?

Is this an example of elected representatives working for the citizens and taxpayers of Wisconsin?

It looks more like party leaders trying arrogantly to hold onto as much power as they can for themselves and the special interests that finance their campaign attack ads. Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald intend to usurp power now in the hands of the governor, the attorney general — and the citizens. They’re doing this for one reason: They don’t like who won the election.

This is the exact same kind of private power play, engineered in secret, to maximize their control and minimize yours.

We haven’t mentioned political party because this isn’t about party platforms — that’s what elections should be about.

This is about keeping the citizens in charge of their government.

It doesn’t matter which party is coming in and going out of office — we would say the exact same thing. In fact, we would shout it — just as we are now.

Let them know who’s boss.

Tell them you are.”

A poll released by Marquette University Law School on January 24, 2019, showed that the grand majority of voters in Wisconsin were opposed to the laws passed during the lame duck session. 55% of voters disapproved of the laws. 31% approved. 14% had no opinion.

https://law.marquette.edu/poll/2019/01/24/mlsp51release/;

Furthermore, nearly 50 percent of voters saw Evers as trying to cooperate with GOP legislative leaders, while only 22 percent saw Republicans in Madison as doing the same.


On December 14, 2019, Governor Walker signed the legislation, scaling back the power of his successor, diminishing the power of the incoming Democratic attorney general, and limiting early voting. Despite his previous comments to the effect that he would likely veto parts of the legislation, he approved it as a whole.


Walker was joined by two GOP lawmakers at the signing event: Senate Majority Leader Scott Fitzgerald of Juneau, and Rep. John Macco of Ledgeview. Id.

The plan to limit early voting to two weeks was all but certain to draw a legal challenge. In 2016, U.S. District Judge James Peterson had found a similar law to be unconstitutional, finding that it “intentionally discriminates on the basis of race”.

law’s purpose was to help Republicans deter minorities from voting.


If the state were to lose on the issue, taxpayers would likely have to pay the attorney fees for those bringing the case. Id.

Mark Spiva of Perkin Coles, one of the attorneys who brought the earlier case, said one way to fight the new limit is with a contempt motion. "If the Legislature is again contemplating the hours and the days of early voting, that would directly conflict with the injunction that Judge Peterson put in place," he said. Id.

Republicans said the new early voting restriction was needed to create consistency across the state.


But, much like voter ID laws and other restrictions, it was widely seen by critics as a move to curtail voting, especially in large, urban areas which tend to vote Democratic. Many point to the latest governor's race, which was decided by 30,000 votes. Id.

In Milwaukee County, for example, more than 70,000 people voted early. About 11,000 of those did so more than two weeks before Election Day. The county voted for Evers by a 2-to-1 margin. Id.

As of December 2018, Judge Peterson’s initial decision of 2016 was still on appeal before the 7th Circuit. The 7th Circuit had heard arguments on the case a year and a half previously. It had taken the Court an unusually long time to decide the case.
To the best of my knowledge, the case has yet to be decided.

Election officials and advocacy groups discussed the uncertainty caused by the Legislature passing an early voting limit of uncertain legality. They felt it would create confusion for election officials already awaiting a court ruling on the issue as they headed into the February 2019 primary.

"This will create an unnecessary hardship for a lot of voters. And I don't think creating unnecessary hardship is consistent with democracy," said Neil Albrecht, executive director of the Election Commission for the City of Milwaukee, where almost 10 percent of voters cast in-person absentee ballots in November's midterm elections. Id.

Erin Grunze, executive director of the League of Women Voters of Wisconsin, said the move is inconsistent with its position that elections should be "free, fair and accessible to all." "Anytime you reduce access to the polls, it's going to disenfranchise voters," said Grunze. "The league's position is that we shouldn't be curbing early voting. We should be opening it up so all communities can enjoy the larger window." Id.

"This creates a lot of uncertainty for municipal clerks," said Albrecht, who sought a legal opinion from the Milwaukee city attorney's office on how to proceed. "When we're confused and uncertain, certainly voters are confused and uncertain, and I don't think that benefits the state." Id.
Municipal clerks said that voters have come to expect access to early voting as a convenience; that limiting access burdens municipalities, which must then process votes in a shorter period; and that it should be up to individual communities to set their own limits. Id.

"Politics aside, when you're looking at the limited resources we have when planning an election, we feel that the (local) clerk is the best one to decide what they need to take care of their voting public," said Kelly Michaels, Brookfield city clerk and president of the Wisconsin Municipal Clerks Association, who was speaking for herself, not the organization. "I think your local elected officials are closest to the needs of their communities." Id.

On January 17, 2019, Judge Peterson blocked the new restrictions on early voting from going into effect. He stated, “This is not a close question.” He also struck down several other detailed election provisions, which had been passed during the lame duck session.


[Wisconsin Public Radio 1/17/2019]

Soon, three other lawsuits were filed against the lame duck laws.

In January 2019, The League of Women Voters of Wisconsin, Disability Rights Wisconsin, and Black Leaders Organizing for Communities filed suit in Dane County arguing the laws were improperly passed.


In February 2019, unions filed a separate lawsuit contending the lame-duck laws violated the state constitution's separation-of-powers doctrine. Id.
In that lawsuit, the Evers administration contended the requirements for publications of rules would affect more than 200,000 documents. It would cost millions of dollars because more workers would have to be hired. Legislators passed the provisions "as a transparent attempt to burden the incoming governor, and make it significantly more difficult for him to operate the executive branch, serve the citizens of the state, and 'take care that the laws be faithfully executed,' " according to the brief filed on Governor Evers’ behalf.


In a decision released in March 2019, Judge Frank Remington agreed. He concluded that the requirement for guidance documents was a "cumbersome burden" which "substantially and unreasonably interferes with the orderly operation of the various state agencies to which they apply."


On March 19, 2019, Dane County Circuit Judge Richard Niess blocked the entire series of laws passed during the lame duck session. He issued a temporary injunction after he found the Republican-controlled Legislature did not lawfully meet to pass them.


Within hours, Evers and Kaul used the decision to get Wisconsin out of a multistate lawsuit challenging the Affordable Care Act that their Republican predecessors joined. Until the judge's ruling, Republican lawmakers were able to prevent them from doing that. Id.
Evers called the ruling "a victory" for the Wisconsin Constitution, and immediately directed Kaul to withdraw Wisconsin from the Affordable Care Act lawsuit. Kaul quickly filed a motion to do that. Thereby, the two fulfilled a campaign promise they had made to the voters of Wisconsin when they ran for their respective offices. Id.

"The Legislature overplayed its hand by using an unlawful process to accumulate more power for itself and override the will of the people, despite the outcome of last November's election," Evers said in a statement. "I look forward to putting this disappointing chapter behind us so we can move forward together to put the needs of the people of Wisconsin first." Id.

A few days later, on March 23, 2019, in the separation of powers lawsuit in front of Judge Remington, Republicans argued that the laws are in keeping with the state constitution, and will ensure that they have an appropriate say in the running of the state government. They said the laws were meant to make sure Evers and Kaul don't reverse policies they set when they controlled all of state government.

https://www.jsonline.com/story/news/politics/2019/03/25/lame-duck-laws-back-court-monday/3265931002/ [JS 3/25/2019] In essence, the Republicans made the argument that they were entitled to continue to set the policies, despite the fact that their party had lost the Governor’s office.

On April 1, 2019, an appeals court stayed the decision of Judge Niess, pending further proceedings. Some of the lame duck laws went back into effect.


On June 11, 2019, the state Supreme Court reinstated most of the other lame-duck laws. In a pair of 4-3 orders, the high court canceled a trial which was set to commence the following day. It put almost all the lame-duck laws back into effect, while it considers the appeal.
After these rulings, just two provisions of the lame-duck laws remained blocked. The restriction of early voting was blocked due to the Order issued by District Judge Peterson in federal court. In addition, the state Supreme Court chose to maintain the stay on the legislative provision, which would have revoked older legal documents, if they didn’t go through a commenting period before July 2019. Id.

Because this was a temporary order, the legality of the lame duck laws remained unsettled. The Supreme Court still had to decide on the merits of the underlying issues. Id.

As a result of these rulings, the Evers administration was required to allow for a 21-day commenting period before adopting "guidance documents", which tell the public how it will implement or enforce state rules and laws. Id.

Evers and the other plaintiffs argue that the definition of "guidance documents" is so broad, it would apply to thousands of documents, including emails government workers send to Wisconsin residents about routine matters. That would cripple the ability of the executive branch to provide information to the public, they contend. Id.

The Supreme Court is letting that provision go into effect for documents which have been written since March 2019, and those which will be written in the future, as it decides the case on the merits. Id.

On September 30, 2019, Judge Peterson of the federal court threw out another lawsuit, challenging the lame duck laws, based on a lack of federal jurisdiction over the dispute at issue.
"The bottom line is that federal courts don’t have the authority under the United States Constitution to police the boundaries between legislative and executive power in state government in the absence of a concrete and particularized harm and the violation of a federal constitutional right," Peterson ruled. "If Evers, Kaul, or anyone else believes that the state Legislature has overstepped its lawful authority, the remedy is a lawsuit in state court under the state constitution."  Id.

"There are many reasons to criticize the lame-duck laws," wrote Peterson. "But the role of a federal court is not to second-guess the wisdom of state legislation, or to decide how the state should allocate the power among the branches of its government."  Id.

In the wake of the decision of Judge Niess, invalidating all of the actions taken during the lame duck session, Governor Evers rescinded the 82 Walker appointments who were confirmed by the Legislature during the lame duck session. After the Court of Appeals stayed the Order of Judge Niess, Evers reinstated 67 of the 82 Walker appointees, removing any legal doubts as to whether they can serve.

However, Evers did not act with respect to the other 15 appointments. He contended those jobs are vacant. Fitzgerald and other Republicans claimed that they were still held by the Walker appointees.  Id.
These 15 appointments tended to be those which were more politically sensitive, such as the appointments to the University of Wisconsin System Board of Regents, the Public Service Commission and the Labor and Industry Review Commission.  Id.

On April 9, 2019, the same appeals court which had stayed the Order of Judge Niess declined to reinstate the 15 appointees. In a unanimous decision, the Court noted that Governor Evers withdrew the appointments when the only court order in effect had found their confirmations to be invalid. "In short, if the governor had the authority to withdraw the nominations pursuant to the temporary injunction while that injunction was in place, then the withdrawals were valid and are not affected by our subsequent stay of the injunction,"  Id.

This decision was reached by Judge Mark Seidl, who was elected in 2015; Judge Thomas Hruz, who was appointed by Governor Walker in 2014; and Judge Lisa Stark, who was appointed by Governor Walker in 2013, right before her election. Id.

Fitzgerald said lawmakers would appeal the ruling to the state Supreme Court. He said he was pleased conservative Judge Brian Hagedorn had won a seat on the high court. "Thank God for Brian Hagedorn," Fitzgerald said. "I can’t wait for him to be seated."  Id.

On the day the Court of Appeals issued its decision, Senate Majority Leader Scott Fitzgerald said he was holding off on confirming Evers' cabinet because of the dispute over the Walker appointees. "I think some of those cabinet members are going to be in trouble," he said. Id.

The cabinet secretaries are able to do their jobs without confirmation. However, Fitzgerald's approach gives Republicans the ability to push them out of their jobs with little notice.  Id.
Speaking before the court issued its decision, Evers said a delay in confirming his cabinet would not affect how he handles appointments. He said he saw Fitzgerald's comments as "the huffing and puffing that goes on" in the Capitol, rather than a form of retribution.  Id.

"This will be resolved at some point. Whether it’s retribution or not, it’s not going to work," Evers said. "It’s just important that the hard feelings that were expressed by the senator don't carry over into the day-to-day work of these important agencies.”  Id.

Democrats called the decision to put off confirming Evers' cabinet petty and obstructionist. “The political theatrics from Republican leaders are getting old," said a statement from Senate Minority Leader Jennifer Shilling of La Crosse. Id.

As soon as the lame duck proposals were revealed, it was predicted that they would greatly increase legal costs for the state. The ability of the Legislature to intervene in cases, and to more easily obtain taxpayer funded attorneys when personally sued for statute violations, were bound to increase these costs. “This bill is a full-employment bill for Republican law firms,” said Madison attorney Lester Pines. “It will drive up the cost through the roof.”


It was noted that private attorneys typically charge the state hundreds of dollars an hour, far above the cost of an assistant attorney general. "It's going to be millions of dollars out the door before you even know what's going on," said Sen. Jon Erpenbach, D-Middleton.

On January 17, 2019, Republican lawmakers took the first step to hire private attorneys under the lame duck laws. They sought to intervene in a lawsuit filed against the lame duck laws, themselves. A committee of six Republicans, including Scott Fitzgerald, approved of a plan which gave Assembly Speaker Robin Vos, R-Rochester, and Senate President Roger Roth, R-Appleton, authority to decide which attorneys to hire and how much to pay them. The plan did not include any cost limits.


"How many more millions of dollars are Republicans going to waste on outside attorney fees? Rather than handing a blank check to law firms we should be investing in schools, roads and health care," responded Senate Minority Leader Jennifer Shilling, D- La Crosse. Id.

Separately, Republicans on the Assembly Organization Committee approved giving Vos even broader authority to hire attorneys. That measure, approved on party lines by the committee, “authorizes the Legislature to hire any law firms, entities or counsel deemed necessary for services related to the matter of the December 2018 extraordinary session of the Legislature." Those attorneys were to report to Vos and no one else. Id.

In February 2019, it was revealed that Republican lawmakers are charging taxpayers nearly twice as much per hour as Governor Evers in the legal fight over Wisconsin's lame-duck laws. Taxpayers will pay the lead attorney for the lawmakers $500 an hour, according to contracts released under the state's open records law. The law firm Evers hired is charging taxpayers $275 an hour.

The deals Evers cut with his attorneys are capped at $100,000, though that limit could be raised if the litigation is extensive. There are no caps on how much attorneys for the Republicans can charge. Id.

Legislative leaders signed contracts with the national law firm Troutman Sanders to represent them in the two lawsuits. The lead attorney, former Wisconsin Solicitor General Misha Tseytlin, will charge $500 an hour. Other lawyers at the firm might charge less, but the contracts did not specify their rates. Id.

On April 23, 2019, Republican lawmakers approved the hiring of attorneys to intervene in two environmental cases pending before the Wisconsin Supreme Court. A committee of legislative leaders voted 6-4 on party lines, to hire Husch Blackwell, a national law firm with offices in Wisconsin. GOP leaders did not say how much they would pay the firm's attorneys. For other work by the firm, they recently agreed to pay from $215 to $820 an hour. https://www.jsonline.com/story/news/politics/2019/04/25/republicans-seek-join-environmental-lawsuits-taxpayer-expense/3571861002/ [JS 4/25/2019]

One of the cases concerns the types of requirements which can be included in an environmental permit for a dairy operation in Kewaunee County. The other involves whether the state Department of Natural Resources must take into account the cumulative effects high-capacity wells will have on nearby lakes, rivers and streams. Id.

It was noted that, as of April 25, 2019, the lame-duck cases had cost taxpayers more than $280,000. That number was likely rise sharply, because of the amount of work ahead. Id.

On May 20, 2019, Scott Fitzgerald announced that he and other GOP legislative leaders would seek to intervene in a recent lawsuit over Act 10, the 2011 law which sharply limited
collective bargaining for most public employees in Wisconsin.


This was the fifth time lawmakers had attempted to intervene in a lawsuit since the lame duck laws were passed the previous December. From 1990 to 2018, lawmakers had attempted to intervene in just one case, according to the Legislative Reference Bureau. Id.

Lawmakers agreed to pay up to $840,000 to the Chicago law firm Bartlit Beck in the case involving the election maps. They also retained Bell Giftos St. John at a cost of $300 per hour in that case. That was the firm used by Assembly Speaker Robin Vos to argue that he should not be deposed in the case. Id.

The lawmakers paid $500 an hour to the Virginia law firm of Consovoy McCarthy Park to intervene in a federal lawsuit involving Wisconsin’s abortion laws, an attempt which was ultimately unsuccessful. Id.

They paid $500 per hour to the Chicago law firm Troutman Sanders to intervene in a case involving the validity of the lame duck laws. Id.

By August 30, 2019, taxpayers had paid more than $1 million to attorneys hired by state officials of both parties. Just the lawsuits over the lame duck laws, themselves, had cost taxpayers more than $900,000 by that point.


In late August 2019, Republican lawmakers announced that they were hiring yet another law firm, their fifth. They would be paying Von Briesen and Roper, at $290 per hour, to assist
the Joint Finance Committee concerning how to approve settlements recommended by Attorney General Kaul while preserving confidentiality. Id.

According to Governor Evers, the high legal costs was a foreseeable consequence of the lame duck laws the Republicans passed the previous December. "Well, this is how it plays out, folks. We are in a position where everybody is buying lawyers and hiring staff to solve a problem that should never have occurred," Evers said. Id.

Historically, whether and how to settle lawsuits involving the state was within the purview of the Attorney General. A provision of the lame duck laws gave a panel of lawmakers, the Joint Finance Committee, final approval on resolving certain lawsuits. By September 2019, it was clear that this was creating significant complications.

On September 10, Attorney General Josh Kaul announced that hundreds of millions of dollars could be at stake if Republican lawmakers and Kaul don't agree soon on how to settle lawsuits facing state taxpayers. "The Legislature is at a point now, there are serious consequences the state could face if they don't move forward," Kaul said.

Sixteen lawsuits involving Wisconsin taxpayers had not been settled because Kaul and lawmakers were at an impasse over how to resolve them. Id.

Kaul wants lawmakers to meet behind closed doors to discuss the legal challenges and in at least one case, sign secrecy agreements. He says the pledges to keep details private are needed to avoid jeopardizing the settlement offer. Id.

But lawmakers didn't want to sign the nondisclosure pledges. They said Kaul wasn't providing them with enough details to make decisions. This led to at least one cancelled meeting between the finance committee and Kaul on the issue. Id.

The deadlock had lasted for months. Kaul suggested the only solution would be in taking cases to trial instead of settling. However, in cases involving multiple states, Wisconsin taxpayers could lose out if a process to settle lawsuits isn't figured out, he said. Id.

Kaul said the solution to the standstill is to repeal the law. "This is all totally unnecessary," he said. "The easiest fix is just to get rid of this mess and clean it up." Id.

Governor Evers agreed. "By God, we have a lawyer. His name is Josh Kaul. He should have had the authority all along to do this," Evers said of settling lawsuits. "So, we need to solve it so we can settle lawsuits."


Senate Majority Leader Scott Fitzgerald dismissed Kaul's characterization of the situation. "The Attorney General already knows of numerous ways he can present confidential settlement information to the Joint Finance Committee and he continues to drag his feet," Fitzgerald said in a statement.


However, he didn't say what those ways were. The Legislature's nonpartisan attorneys found that past proposals by Republicans would not ensure confidentiality.

Andrew Phillips of von Briesen and Roper, the attorney hired by Republican lawmakers to handle the issue, signed a nondisclosure agreement. According to the Republicans, that should provide Kaul with the assurances he needs that information will remain confidential. However, according to Kaul and the head of the nonpartisan Legislative Reference Bureau, the agreement Phillips signed would not prevent members of the committee from publicly discussing the settlements. Id.

Furthermore, Kaul and the lawmakers could not agree on which legal settlements are subject to the lame duck laws. Because of this dispute, and the dispute over the proposed confidentiality agreements, Republicans sued Kaul over his handling of the settlements. Id.

V. ADDITIONAL ELECTION ISSUES

In early February 2016, Scott Fitzgerald introduced a bill to bar county executives from serving simultaneously in the State Legislature. Fitzgerald admitted the sole purpose of the bill was to negatively impact Winnebago County Executive Mark Harris, a Democrat who was contemplating a run for the state Senate seat, being vacated by Fond du Lac Republican Rick Gudex.


Fitzgerald did not have any problem when a Republican-caucusing county executive, Manitowoc County's Bob Ziegelbauer, served in the Legislature for six years, while holding
down the county job. Ziegelbauer was an independent, but he caucused with the GOP. Nor was Fitzgerald concerned about "double-dipping," when Republican state Sen. Paul Farrow stayed on his job while running for Waukesha County executive.

The bill passed the Legislature. Governor Walker signed it into law in early March 2016. Undeterred, Harris was willing to give up his County Executive office, to which he had been elected three times, if necessary, to remain in the race for the State Senate.

Harris ultimately lost the State Senate race to Republican Dan Feyen.

In late December 2017, State Sen. Frank Lasee, R-De Pere, and Rep. Keith Ripp, R-Lodi, resigned their seats, in order to take jobs in the Walker Administration.
Wisconsin law requires that a governor call for special elections as quickly as possible to fill vacated seats. Once the call is made, the elections must be held within 62 to 77 days. 

[JS 3/30/2018]

Despite the state law requiring him to call the special elections as promptly as possible, Walker did not call the special elections. He argued that holding special elections would be a “waste” of taxpayer money and time. His decision would leave two districts full of Wisconsin citizens completely without representation for over a year. Id.

At the time, Republican’s concerns about the results of any such special elections were high. President Trump’s popularity had taken a significant dip in Wisconsin the previous year. They were even more concerned about the result of a recent special election held in Senate District 10. The district had gone for Trump by 17 points in 2016. It been held comfortably by a Republican since 2000. Nevertheless, Democrat Patty Schachtner had pulled off an unexpected 9 point victory in the special election. Id.

This delay in the calling of a special election was completely unprecedented in Wisconsin. Wisconsin has a long history of calling special elections. There were 105 of them over a five-decade period. Of these 105, governors had called for the special election before or on the same day the incumbent's resignation formally became effective in 26 instances. In the rest, governors waited only an average of 17 days to call them. Id.

In February 2018, voters in the districts which had been represented by Sen. Lasee and Rep. Ripp filed a lawsuit demanding special elections. 

[JS 3/27/2018]
In March 2018, the issue was decided by Dane County Circuit Judge Josann Reynolds. Judge Reynolds had been appointed to the bench by Governor Walker in 2014. 


Judge Reynolds determined that Walker had a duty under state law to call special elections, so voters could have representation in the Legislature. She said failing to hold special elections infringed on the voting rights of people who lived in the two districts. Judge Reynolds gave Walker approximately one week to call the special elections for the two districts. Id.

In response to the decision, Robin Vos, the Assembly speaker, dismissed Reynolds as an "activist Dane County judge." He said he thought the description fit, even though she was a Walker appointee. Id.

That brought a sharp rebuke from William Hanrahan, the chief judge of the state court system's District 5. District 5 includes Dane County. Id.

Hanrahan praised Reynolds' work as a judge. He said Vos could criticize her decision but shouldn't attack her character. In a letter to Vos, Hanrahan stated, "You took the low road. With a broad brush, you have not only needlessly besmirched my reputation, and that of my colleagues, you have gratuitously denigrated the good citizens of Dane County," Id.

In response to this, Scott Fitzgerald said that Hanrahan's criticism of Vos was inappropriate. He said he would ask Supreme Court Justice Patience Roggensack what, if anything, could be done about it. Id.

An aide to Roggensack declined to comment on the matter. Id.

"It would be senseless to waste taxpayer money on special elections just weeks before voters go to the polls when the Legislature has concluded its business. This is why I support, and will sign, the Senate and Assembly plan to clarify special election law," Walker said in a statement. Id.

Democrat objected. They said Republicans were seeking to block a vote at a time when they were underperforming in special elections. Id.

In a statement, Senate Minority Leader Jennifer Shilling, D-La Crosse, said Republican lawmakers are "clearly intimidated by the thought of losing power." "Rather than depriving thousands of Wisconsin families of their constitutional right to representation, Senator Fitzgerald and Speaker Vos need to get it together and focus on the problems they were sent here to fix," Shilling said. Id.

During a news conference of March 23, 2018, Fitzgerald could offer no specifics on what legislative changes he would make to halt the elections. Furthermore, he acknowledged he wasn't sure if such a bill would be constitutional. Id.
He and Vos claimed they were worried that the tight timeline of a special election might lead to the disenfranchisement of the federally protected voting rights of troops stationed overseas, and other voters abroad. Id.

Democrats scoffed at that. They said it was far worse to let no one vote as Republicans proposed. They said the districts would be left with no representation. Id. In addition, Fitzgerald’s point ignores the requirement that there be 62 to 77 days between the calling of the special election and the day of the election. Obviously, this had been considered sufficient to protect the voting rights of all voters for decades.

Democratic attorney Lester Pines of Madison questioned whether the Republican proposal was an unconstitutional infringement on the people's right to vote. "That strikes me as a very strong argument," Pines said. "The intent is clear: They do not want people to vote." Id.

"Even for Republicans in Wisconsin, this would be a stunning action to keep citizens from exercising their right to vote. They appear to be afraid of the voters," former U.S. Attorney General Eric Holder said. Id.

On March 26, 2018, Fitzgerald and Vos unveiled a bill which would eliminate the requirement that Walker call special elections promptly. It would give the governor wide latitude to decide whether and when to do so. The bill would also bar holding special elections after the spring election in the year the legislative seat would ordinarily be filled.


In an explicit effort to get around the order by Judge Reynolds, the legislation provides that it will supersede "any other law, court order, or order of the governor." Id.
Judge Reynolds had ruled that Walker must call the special elections by April 5. As such, GOP leaders were racing to hold a hearing on the bill, and have a Senate floor vote, by April 4. If approved, the proposal would have led to a fresh legal challenge from Democrats, and an uncertain outcome in court. Id.

However, the bill’s passage was not secure in the Senate. At least two GOP senators voiced concerns about the bill publicly. Another one shared them privately with fellow Republicans. Since Republicans controlled the Senate 18-14 at the time, the opposition of two or more Republicans would doom the bill. Id.

Sen. Luther Olsen, R-Ripon, said his constituents think special elections should be held for the two legislative seats which had been open since December. One of the two vacant seats involved an Assembly district which lies within Olsen's Senate district. "Let's just say I've been getting a lot of calls and emails from my constituents," Olsen said. Id.

Sen. Steve Nass, R-Whitewater, also expressed concerns about the plan. In a statement from his spokesman, he expressed that he wanted to read the bill and the judge's order, and to hear arguments from both sides. Id.

In a private meeting, state Sen. Leah Vukmir, R-Brookfield, also criticized the idea, according to people who were there. Id.

“Governor Walker and legislative Republicans are so desperate to maintain their grip on power that they are changing laws to silence voters," Senate Minority Leader Jennifer Shilling (D-La Crosse) said in a statement. Id.

Rick Esenberg, president of the conservative Wisconsin Institute for Law & Liberty, said Walker had taken a “difficult” legal position by claiming he didn’t have to call a special election.
under existing law. The bill lawmakers wanted to take up would put Walker on stronger footing, even if it was likely to be challenged in court, Esenberg said. Id.

Democrats voiced their fury at the April 4 public hearing on the bill. "It’s ludicrous, but it’s not funny," said Kathleen Finnerty of Sturgeon Bay. She is the chair of the Door County Democratic Party, and lives in one of the vacant districts. "It couldn’t be more transparent as to what is happening here. You’re afraid of having a Democrat elected into this position."

Republicans claimed that every voter in the state still had at least one lawmaker representing them. They also emphasized the costs of holding an election in the two districts. It cost $403,000 to hold the spring election in 2017. “Holding two special elections while the regularly scheduled elections are proceeding as planned is, I think, a waste of money,” Senate Majority Leader Scott Fitzgerald told the committee. Id. Of course, this situation could have been avoided, had Walker promptly called for the special elections the previous December.

On March 27, 2018, a day after the new bill was announced by the Republicans, the Governor’s attorneys were back in Judge Reynolds’ court asking for relief from the Order. Because Judge Reynolds was on vacation, the motion was heard by Dane County Circuit Court Richard Niess.

The governor and his fellow Republicans were seeking to approve legislation which would cancel the need for the special elections. Walker requested that the court to put off the


requirement that he call the special elections for a week, so the bill could get through the Legislature. Niess refused. Id.

Judge Niess noted the legislation to avoid the elections was slated to be taken up without voters from those districts having representation in the Senate and Assembly. "They have no say in that bill at all," Niess said. Id.

"It is certainly the Legislature’s prerogative to change the law. But until they do, it is the obligation of this court to enforce the law, and the law right now in this state under that statute, and by order of this court, is that this election shall be held as promptly as possible, and that it should be ordered no later than Thursday at noon," Judge Niess said from the bench. Id.

Judge Niess was not persuaded that the legislative plans should make him change the court order. "No court that I’m aware of is at liberty to ignore the law in order to facilitate the Legislature’s consideration of bills that might become law," he said from the bench. "When and if a legislative bill becomes the law, it can be brought to the court and at that time the arguments can be made as to what the effect of that law is on already pending (litigation)." Id.

Walker’s lawyers then appealed to District 2 Court of Appeals Judge Paul Reilly in Waukesha, for relief from the Order of the Dane County Circuit Court. They argued that Walker needed an extra eight days to let the Legislature change the law and eliminate the need for the elections.


Judge Reilly refused. He left the lower court Order in place. "We know of no law that allows us to disregard the (statute)," reads the order from Reilly. "Representative government
and the election of our representatives are never 'unnecessary,' never a 'waste of taxpayer resources,' and the calling of the special elections are, as the governor acknowledges, his 'obligation.' " Id.

On March 29, 2019, the day specified in the initial Dane County Order, Governor Walker finally called the two special elections. This was after a three-month delay, a lightning-quick lawsuit, and three orders from as many judges.

Simultaneously, Governor Walker also abandoned a state Supreme Court appeal to overturn the ruling. In addition, lawmakers in both the Senate and Assembly canceled plans to vote to leave the seats vacant. Id.

Reflecting on the entire episode, Emily Mills, Milwaukee Journal Sentinel political columnist, noted, “[F]ear of losing a seat to the opposing party is never a reason to stall or cancel an election…. The whole point is to allow voters to decide for themselves. It should alarm people of all political persuasions that it took a lawsuit to force the governor to do the right — and legally required — thing.”

The special elections were held on June 12, 2018. Democrat Caleb Frostman defeated Republican Andre Jacque in the 1st Senate District. This gave the Democrats a seat which had been held by Republicans for more than 40 years. The GOP held onto the Assembly seat.
Scott Fitzgerald blamed the loss in the 1st Senate District on the timing of the special elections. "With low turnout in the special election tonight, it proved yet again that this was a complete waste of taxpayer money," Fitzgerald said in a statement. Id.

VI. SECRECY

In 2015, Republicans attempted to radically alter the State’s open records law through a set of proposals slipped into the budget, and approved by the Joint Finance Committee on a party line vote, over the 4th of July weekend. Soon thereafter, after overwhelming public outcry, the proposals were dropped.


Senate Majority Leader Scott Fitzgerald, R-Juneau, admitted that he was at the table, along with Assembly leadership and staff for Gov. Scott Walker, when they drafted the set of provisions, which would have drastically altered Wisconsin's open records laws.


Fitzgerald said lawmakers had talked to the governor's office about open records issues, and the number of open records requests Walker's office receives. "The Assembly obviously was involved as well," Fitzgerald said. Id.

Assembly Speaker Robin Vos admitted on Wisconsin Public Radio that “almost all of us on the leadership team” had been on board with the proposed changes. Id.
"It came from a number of different sources," Fitzgerald told reporters. "Some of them related to, certainly, the lawsuit that Sen. Erpenbach was involved in. There were some suggestions from the UW System on open records requests related to some of their research — and also kind of some issues, I think, related to the Legislature and the executive branch dealing with open records requests. So, was I there when it was being put together? Yeah, absolutely. I was there. We tried to put something together we thought that made sense.” Id.

On the Friday before the 4th of July weekend, the Joint Finance Committee placed the proposals previously drafted by the Republican legislative leaders, and Governor Walker’s staff, into the biennial state budget. The proposal was adopted by the Committee on a party line vote of 12 to 4. All six Republican senators and all six Republican representatives on the Committee voted in favor of the proposals.


The changes were included in a package of budget amendments introduced by budget committee co-chairmen Rep. John Nygren, R-Marinette, and Sen. Alberta Darling, R-River Hills. They would have rendered secret virtually all records and communications made by lawmakers and policymakers at the state and local levels. All drafting files for legislation also would no longer be public.

But the scope of the changes was much broader. They would have: barred from public disclosure communications and records made by lawmakers, and given them authority to keep staff communications private; blocked access to files kept by the nonpartisan lawyers who write legislation (those files are now made public once a bill is introduced); kept private “deliberative materials,” defined as “communications and other materials, including opinions, analyses, briefings, background information, recommendations, suggestions, drafts, correspondence about drafts, and notes, created or prepared in the process of reaching a decision concerning a policy or course of action or in the process of drafting a document or formulating an official communication.”


The changes would be retroactive to July 2, the day before they were introduced to the Joint Finance Committee.


The moment the proposed changes became public, opposition exploded across the political spectrum. The proposal sparked outrage among constituents, journalists and good government advocates. Voters reacted overwhelmingly negatively. They flooded lawmakers with emails over the 4th of July weekend.

Scott Fitzgerald said he knew immediately that lawmakers would need to reconsider the proposed changes when he marched in his local 4th of July parade that weekend, and constituents voiced their opposition.

Republican Attorney General Brad Schimel denounced the changes. “Transparency is the cornerstone of democracy, and the provisions in the budget bill limiting access to public records move Wisconsin in the wrong direction.” Schimel said in a statement.

At least one GOP senator, Sen. Rob Cowles, R-Green Bay, said he wouldn’t vote for the 2015-17 budget if it included the changes. With two other senators publicly vowing not to support the budget for other reasons, passage of the budget in the Senate, which was controlled by Republicans 19 to 14, appeared to be in jeopardy. Id.

“I was shocked and appalled to see the attack on open and transparent government last night by the Joint Committee on Finance,” Cowles said in a statement. “Limiting public access to legislative communications and records is against all I have stood for while in office, and I will not support a budget that includes this assault on democracy.” Id.

Rep. John Macco, R-Green Bay, said that he was “working with my fellow representatives to take changes to our Open Records Request laws out of the budget.” Rep. John Jagler,
R-Watertown, said he hadn’t seen the proposals until they were unveiled Thursday night. He said he hoped changes can be made before a vote is taken on the budget. Id.

Opposition transcended party lines. Joint Finance member Rep. Dale Kooyenga, R-Brookfield, sent an email to his constituents the next Tuesday, apologizing for voting in favor of the changes.


Hours after Attorney General Brad Schimel denounced the changes, Walker pledged to work with legislative leaders to change the provision before it goes to the full Assembly and Senate for a vote. However, his spokeswoman did not respond to questions seeking to clarify what kind of changes would be made.


By the next Tuesday, July 7, the decision was made to drop the attempt to alter the open records law. Republicans in the Senate planned to introduce an amendment abandoning those changes, along with a handful of others approved by the Joint Finance Committee.


Scott Fitzgerald told reporters, “[I]t’s not going to be accepted publicly and that’s why we’re here pulling it back today.” Id.
The vote to abandon the changes passed the Senate unanimously.


At the time of the announcement to drop the change, Fitzgerald said, “I think, if you didn't do this and it wasn't part of the budget, you would probably try to address it as separate legislation in the fall. But the environment being as tough as it is, now I don't know if it'll ever get there."


Fitzgerald noted that Wisconsin's statutes governing public records haven't been revisited in a long time, and technology had evolved since they were last published in 1981. "I think it’s something that there are many different entities that want to see if there’s something that can be done," Fitzgerald said. "So we’ll see if that happens in the future." Id.

Six months later, Fitzgerald confirmed there were no plans to revisit the issue of changes to the state’s open records law. However, in an interview with the Capitol Times, he said that many lawmakers still think some changes to the law are needed. "Probably if there was any mistake made, it was something that was tucked into the budget," Fitzgerald said. "It probably wasn't vetted correctly. It should’ve been a separate piece of legislation."


VII. STATE ACCOUNTABILITY BOARDS
On July 16, 2015, the Wisconsin Supreme Court stopped the ongoing John Doe investigations into the Walker campaign and Republican interest groups. It did so on the broad legal principle that collaboration between issue groups and political campaigns is not illegal. Instead, it found such activity to be political activity, which is protected by the First Amendment.


As a result of this decision, Wisconsin joined Florida as the only two states in the nation, which have legalized coordination between candidates and outside special interest groups that engage in “issue advocacy.”


The investigation of Walker’s campaign was conducted by prosecutors and the state Government Accountability Board, which at the time oversaw state ethics and elections laws.


Soon after the Supreme Court decision, Governor Walker and Republican lawmakers dissolved the Government Accountability Board. They did so, because of its role in the John Doe investigations. They thought it had been biased against Republicans. Id.;


They replaced the GAB with two commissions, the Elections Commission and the Ethics Commission. Each Commission consists of three Democrats and three Republicans.
It is the responsibility of the six Commissioners to choose the director of their respective agencies.

The Elections Commission chose Michael Haas as its director. Haas had worked at the old GAB. Haas was not a part of the team, which was involved in the investigation of the Walker campaign. However, after the probe was challenged in court, he did review and edit some legal filings.

The Ethics Commission chose Brian Bell to be its director. Bell joined the military at 17. He volunteered to go to Iraq in 2006 and was deployed to Afghanistan in 2010. As of 2017, he was a captain in the Army Reserve.

In 2012, Bell took a job with the Government Accountability Board. He collected election statistics for counties and municipalities. He later regulated lobbyists. He had no involvement in the investigations of the Walker campaign or the Republican groups. Id.

Bell left the job with the Government Accountability Board in 2015, in part, because he did not like the way it was being run. He became a budget analyst with the Department of Safety
and Professional Services, a position he held until he was named to lead the Ethics Commission. Id.

In the decision shutting down the investigations into the Walker campaign and the Republican issue groups, the Supreme Court ordered prosecutors to return all records which they had seized as part of the investigation, and to destroy any copies that had been made of them. http://archive.jsonline.com/news/statepolitics/wisconsin-supreme-court-ends-john-doe-probe-into-scott-walkers-campaign-b99535414z1-315784501.html/ [JS 7/16/15]

However, nearly 1,400 pages of the secret documents were subsequently published by the Guardian US. https://www.jsonline.com/story/news/politics/2017/12/15/after-john-doe-leak-top-lawmakers-want-commission-leaders-resign/954827001/ [JS 12/15/2017]

Attorney Brad Schimel investigated the leak. In December 2017, he published a report over the mishandling of the documents which had been gathered during the John Doe investigation. Id.

Schimel was unable to identify who leaked the material. However, he said that it came from the state Government Accountability Board. He requested contempt of court proceedings against nine officials for how they handled the evidence. Neither Michael Haas nor Brian Bell were among those officials. Id.; https://www.jsonline.com/story/news/politics/2018/01/11/wisconsin-ethics-commission-stands-behind-its-director-gop-lawmakers-call-him-go-john-doe-aftermath/1024104001/ [1/11/2018]

Brian Bell had no connection to either the John Doe investigation, nor the leak. However, Schimel’s report was critical of how Bell, in his role as director of the Ethics Commission, had
responded to Schimel’s investigation of the leak. The Commissioners on the Ethics Commission verified that Bell had handled the response to the investigation as he had been directed. Id.

The Ethics Commission contended that parts of Schimel's report were inaccurate. Schimel declined to make the changes that the commission requested.


The Elections Commission sought approval from Governor Walker's office to hire an attorney to help it respond to Schimel's report. That request was denied. Id.

On December 14, 2017, Senate Majority Leader Scott Fitzgerald and Assembly Speaker Robin Vos called for the resignations of the heads of the state’s ethics and elections commissions, Michael Haas and Brian Bell. They sent a letter to the heads of the two commissions saying that they should step down.


The next day, Fitzgerald went further. He raised the prospect of forcing the commission leaders out if they didn't quit. “You have lost the confidence of our caucuses to be an impartial administrator,” Fitzgerald and Vos wrote. Id.

In a statement, Haas made clear he was not about to step down. He pointed to his work over the past year, which included leading a statewide recount of the presidential vote. "I look forward to continuing the important work of administering elections on behalf of all Wisconsin residents and taxpayers, and I call on the Legislature to support that work,” Haas said. Id.
The Democratic chairman of the Elections Commission, Mark Thomsen, rejected the call for Haas to resign. "After I learned late last night about Mr. Vos and Mr. Fitzgerald's letter, I talked to Mike Haas and told him under no circumstances would I accept his resignation, knowing full well he had no intention to do so," Thomsen said. "It would be a travesty of justice for him to even consider leaving." Id.

Fitzgerald contended the Senate could force Bell and Haas out of their jobs in January, if they do not voluntarily step down. The two have not been confirmed by the Senate, which Republicans controlled 19-13. Id.

The bipartisan Elections Commission responded by unanimously approving a resolution supporting Haas. The GOP members of the Elections Commission, Jodi Jensen, former state Rep. Dean Knudson, and Beverly Gill, supported the resolution. Id.

Democratic member Ann S. Jacobs noted that Haas and the Elections Commission had successfully navigated the 2016 presidential election, including a rare statewide recount. Jacobs questioned why the state would want to replace Haas, when the next year includes elections for state Supreme Court, governor and U.S. senator. "How do you run an organization with those kinds of upcoming elections without somebody who knows the process?" Jacobs said. Id.

Similarly, the leaders of the Ethics Commission released a letter backing Bell. According to David Halbrooks, the Democratic chairman of that commission, the commissioners had unanimously found that Bell had exceeded all expectations in their review of his performance the previous week. Id.

When asked about the actions of Fitzgerald and Vos, Brad Schimel clarified that he was not calling on anyone to resign. Id.
On December 21, 2017, GOP leaders of the state Senate gave Attorney General Brad Schimel authority to broaden an investigation into the activities of the disbanded Government Accountability Board.

n-investigation-john-doe-probe-thursday/972790001/ [JS 12/21/2017]

The Elections Commission chairman, Mark Thomsen stated that Schimel could not remain impartial, because, in the past, he had relied on "incorrect assumptions and flawed logic to paint (the accountability board's) investigative activities in the worst possible light." Id.

"It is simply wrong and morally repugnant for elected officials to attack the motives and reputations of hard-working public servants," the commission's chairman, Mark Thomsen, wrote in a letter to Senate leaders. "The character assassinations and slander must stop." Id.

In a separate letter, the administrator of the Elections Commission, Michael Haas, asked Fitzgerald and Assembly Speaker Robin Vos to apologize for comments suggesting he and others may have committed crimes when they worked at the accountability board. The comments may be slanderous and could damage his career, Haas wrote. "In short, I am requesting that you stop trashing my name and reputation.” Id.

Dean Knudson, a Republican former lawmaker on the Elections Commission, issued a statement decrying the conduct of the accountability board, but suggesting support for Haas. He said the Senate should hold a "speedy vote on his nomination." Id.

"The commission reviewed his job performance as interim administrator and found no evidence to support his removal," Knudson said in his statement. "Unless more evidence comes
to light, it is unlikely a majority of the commission will vote to remove Haas based solely on his previous employment with the Government Accountability Board."  Id.

At a December 22, 2017 meeting of the state Ethics Committee, members of both parties praised the work of Director Brian Bell. Bell commented that he had been unfairly maligned by the Republican lawmakers. He made the unusual request to have his bosses investigate him in order to clear his name.


"I believe that an objective review of my conduct in service to the state would definitively show that I have consistently conducted myself in a nonpartisan and impartial manner," Bell told the commission. "Such an investigation would also refute baseless allegations that have been made against me."  Id.

Republicans and Democrats on the commission urged GOP lawmakers to hold a hearing on Bell before deciding whether to oust him. If the state Senate won't hold a hearing on whether to confirm or reject Bell, leaders of the commission indicated that they would hold one of their own. They contended his opponents needed to detail the reasons they thought he should go.  Id.

"I have seen no inkling of any kind of partisanship by Mr. Bell," said J. Mac Davis, a Republican member of the commission, who was a former judge and former state senator.  Id.

On January 9, 2018, Mark Thomsen, the chairman of the Elections Commission, sharply criticized Scott Fitzgerald for planning to reject Haas and Bell in a planned January 23 vote without holding public hearings. "Frankly, he’s a coward," Thomsen said of Fitzgerald. "I’m hoping there are senators in his party who will stand up to his bully tactics.
Thomsen said Republican lawmakers should respect the commissioners' views on who they want in charge of the elections agency. "Today, (Haas) has the unanimous support of the commission that he should be driving this bus for the 2018 election at a time when we know the Russian government is going to be there to try to interfere with our elections," Thomsen said. Id.

"The fact that Mr. Fitzgerald wants to fire him without even a hearing, after the commission he created asked for a hearing, shows just how desperate the leaders of the Republican Party have become," Thomsen said. "It looks like he just rammed down a personal vendetta for unknown reasons. ... The fact he won’t even have a hearing shows he’s afraid the truth will really come out." Id.

GOP Sen. Luther Olsen of Ripon said he had not been persuaded that the two should go. Olsen said he wanted to respect the wishes of the commissioners. He said he would understand if they decided to resign, if the Senate second-guessed their staff decisions. Id.

"Who's running the place? The bipartisan board or partisan politicians?" Olsen said in an interview. Id.

On January 11, 2018, the Ethics Commission expressed unanimous support for its director, Brian Bell. The three Republicans on the Commission joined the three Democrats to express that support.
Former Dane County Circuit Judge Patrick Fiedler was chosen by the Ethics Commission to conduct the investigation of Bell, that Bell had previously requested. Id.

“I’m very confident that I’ve conducted myself in a nonpartisan and respectful manner and that an investigation could illustrate that the allegations I’ve acted otherwise could be proven false,” Bell said.

Bell had removed roadside bombs in Iraq and Afghanistan. He described the efforts to force him out of his job as the head of the state Ethics Commission as mild by comparison. “No one’s — at least not yet — trying to shoot at me or blow me up,” Bell said. Id.

Fiedler sought to interview Senate Majority Leader Scott Fitzgerald and Sen. Steve Nass, R-Whitewater, both of whom had criticized Bell and called for his ouster. They declined to talk to him. Id.

Michael Haas, director of the Elections Commission, was getting a similar reception. Haas had worked on elections issues for the state for nine years. He had endured fights over recalls, recounts, hacking attempts, and voter ID. “I would challenge anybody in the Senate to find anyone I have dealt with in the last nine years who wouldn’t say I have treated them with respect and civility,” he said. Id.

Over a period of weeks, Haas sought meetings with Fitzgerald without success. He said he was frustrated that Fitzgerald wouldn’t allow a confirmation hearing before the vote. “That’s one disappointing aspect, to not have any communication, any willingness to explain what they think I did wrong,” he said. Id.
On January 23, 2018, the state senate voted to deny the confirmations of Brian Bell, the director of the Ethics Commission, and Michael Haas, the director of the Elections Commission. They both were party-line, 18-13 votes.


Senate Majority Leader Scott Fitzgerald said Republicans had lost faith in the Ethics Commission and Elections Commission because they continue to employ people who had worked for the now-disbanded Government Accountability Board. "I wish they'd all resign," Fitzgerald told reporters, referring to former accountability board employees. Id.

The vote left the fates of Bell and Haas unclear. According to GOP senators and the Department of Administration, they no longer had their posts, but they did have the ability to move into different state jobs. Id.

However, Mark Thomsen, the chairman of the Elections Commission, said a vote denying Haas' confirmation would have no effect. The Elections Commission — not the Senate — has the power to remove Haas, Thomsen said. "They can't fire him," he said of the senators. Id.

Thomsen scheduled a commission meeting for the following Wednesday. He said he still considered Haas the head of the agency, and would support having the commission vote to make that clear on Wednesday. That would set up another showdown with the Senate. Id.

David Halbrooks, the chairman of the Ethics Commission, said his commission would likely meet the next Thursday to decide whom to hire as its interim director. He declined to say whether he would consider re-hiring Bell for the job. Id.
During the floor debate on the confirmations, Democrats criticized Republicans for tarnishing the reputations of Bell and Haas, without holding a hearing to allow them to make the case for why they should be confirmed. They criticized Republicans for carrying out a vendetta against state elections and ethics workers. “This is a first-rate hatchet job,” said Sen. Fred Risser, D-Madison. Id.;


After the votes, Fitzgerald said he hoped to remove two civil servants at those agencies next.


Fitzgerald said he wants the Legislature's budget committee to review jobs at the two commissions, to find ways to cut the positions for two other employees — Nathan Judnic, counsel at the Elections Commission, and David Buerger, counsel at the Ethics Commission. Id.

Both had previously worked at the Government Accountability Board. However, they had more job protections than Bell and Haas. They were civil servants who could be fired only for specific reasons, such as not performing their duties. Fitzgerald said he believed the budget committee could push them out by eliminating or reclassifying their jobs. Id.

Fitzgerald said he wanted the Legislature's budget committee to meet as soon as Jan. 30 to eliminate the jobs of two lawyers at the commissions, Nathan Judnic and David Buerger. During their time with the Government Accountability Board, Judnic had worked on the John Doe investigation of the Republicans. Buerger had not. Id.
"It’s just hard to develop any type of cooperative relationship or establish credibility as long as some of those people are over there," Fitzgerald said. Id.

Mark Thomsen, the Elections Commission chair, said Republicans risked making a "mockery" of how elections are run by going after the agency, particularly with Fitzgerald saying he wanted to oust Judnic and Buerger. Lawmakers could later go after other former accountability employees, he said. Id.

"Who's next?" Thomsen said. "If there is going to be chaos in elections, it is Mr. Fitzgerald who is creating the chaos." Id.

It does not appear as if the Joint Finance Committee met for that purpose on January 30, as desired by Fitzgerald. When asked about the issue a month later, Rep. John Nygren, R-Marinette, co-chairman of the Joint Finance Committee, said he didn't expect his panel to take up the issue of the Judnic and Buerger jobs.

n-amid-criticism-republicans/376799002/ [JS 2/27/2018]

On January 24, 2018, the day after the Senate vote, the Elections Commission voted to keep Michael Haas as its director through at least April 30. The vote was 4 to 2, with Republican Beverly Gill joining the commission's three Democrats to keep him in the post.

der-reappointing-chief-day-after-his-ouster/1061277001/ [JS 1/24/2018]

"You are opening up the door for chaos," said Dean Knudson, a Republican commissioner who voted against the plan. "You’re picking a fight with the Legislature that you can’t win." Id.
Knudson and Jodi Jensen, the two dissenting GOP commissioners, said the vote would result in litigation over who can run the agency, and would raise questions about any decisions Haas makes, including about who qualifies as a candidate for office. Id.

Commission chair Mark Thomsen blamed Senate Majority Leader Scott Fitzgerald for the fight over Haas, and said he was risking destabilizing the year's elections. "The chaos will end when he stops throwing grenades," Thomsen said of Fitzgerald. Id.

A spokesman for GOP Gov. Scott Walker's administration said it viewed the effort to keep Haas in the job as invalid. It would not give him his full pay. As a result, the Department of Administration would pay him $94,000 as a staff attorney, a job the administration believes he was entitled to take after the Senate vote, instead of the $124,000 a year he would make as director. Id.

On January 25, 2018, the Ethics Commission held off on appointing a new leader. The commission voted, 5-1, to keep Bell's position open for the time being. Republican commissioner Pat Strachota voted against the motion. She said she saw a need to take steps to fill the position now that the Senate had acted.


The Commission decided to discuss the issue further the following month. Id.

Meanwhile, Brian Bell had chosen to return to his previous job as a policy analyst at the Department of Safety and Professional Services, the position he had held before he was named the director of the Ethics Commission.
On January 26, 2018, Scott Fitzgerald announced that GOP lawmakers would appoint a director for the state Elections Commission, if the bipartisan panel doesn’t find someone new to do the job within the next six weeks. Id.

Fitzgerald contended that the Commission’s vote to retain Haas as its director was "unlawful". He would have a committee of legislative leaders, controlled by Republicans, appoint a new leader for the commission, if the commission didn't act by early March. Id.

State law allows the Joint Committee on Legislative Organization to appoint temporary directors for the commissions, if they do not pick leaders within 45 days of a vacancy occurring. Id.

Democrats on the Elections Commission argued that the Senate doesn’t have the power to remove Haas. Fitzgerald's latest comments raised the prospect that the Elections Commission might end up with two leaders, with each side claiming the other's appointee is invalid. Id.

Fitzgerald said it was essential that the commission quickly choose someone other than Haas to run elections to avoid a host of legal challenges. Id.

Senate Minority Leader Jennifer Shilling (D-La Crosse), who sat on the legislative committee which would pick Haas' replacement, criticized Fitzgerald's plan. “Sen. Fitzgerald is using a partisan legislative committee so that Republicans can hand-pick a political ally to oversee our state's elections," she said in a statement. "This is an egregious abuse of power that could cause voters to lose their confidence in the process, and throw this year's elections into chaos.” Id.
Appointing a new director in March would fall in the middle of the spring election cycle. A primary for state Supreme Court and other offices was to be held Feb. 20. The general election was scheduled for April 3. Id.

Election commissioners said that they wanted to keep Haas on at least through April, so they could smoothly run those elections, and canvass and certify the results. Id.

Mark Thomsen, the chairman of the commission, said he was sticking by Haas. "I believe it's a vendetta by Mr. Fitzgerald to try to destroy a decent human being," he said of Fitzgerald's effort to replace Haas. Id.

Haas told reporters he was inclined to stay on with the commission after April 30, if the commissioners wanted to keep him. Id.


Milwaukee Journal Sentinel columnist Emily Mills got to the essence of what made this entire episode so troubling:

“On Tuesday, the Senate voted along party lines to deny the confirmations of Michael Haas, director of the Elections Commission, and Brian Bell, director of the Ethics Commission. Why? Because they used to work for the now-defunct Government Accountability Board, which had the audacity to have run an investigation into Republicans that was eventually shut down by the …state Supreme Court.

Regardless of one’s personal feelings about the legality of that investigation, neither Haas nor Bell played any part in it. But Senate Majority Leader Scott Fitzgerald is so shaken by the
whole matter that he told reporters he wishes all former GAB employees would just resign already.

What’s he so afraid of?

Reports and findings by both the Ethics Commission and the attorney general cleared both Haas and Bell of potential wrongdoing. The ethics and elections commissions, by the way, are bipartisan bodies made up of three Republicans and three Democrats each. For good reason: they’re meant to provide reasonably fair oversight of the non-partisan administrators who work for the commissions. No matter which party holds the majority at any given time, then, the idea is that the folks tasked with making sure lawmakers are acting in an ethical and fair manner, and that our elections are run in the same way, can do so without interference.

Fitzgerald and his fellow GOP senators are meddling in their own oversight. This has, as it should, met with a lot of pushback from fellow legislators, the commissions themselves, and watchdog groups such as Common Cause of Wisconsin and the ACLU of Wisconsin.

The battle isn’t over. The day after the Senate vote, the Elections Commission voted to keep Haas as director until at least April 30. A Walker spokesperson said the vote would be viewed as invalid and Haas not given his full pay. So now the argument before the public and, presumably, future court cases, is just who should have the authority to fire administrators such as Haas and Bell.

I think the answer is obvious: It should be left to the bipartisan commissions formed to oversee these matters and not the Legislature over which the administrators are supposed to be keeping watch. The latter would represent a gross conflict of interest and abuse of power and further muddy the waters when it comes to oversight of the democratic process.
The timing of all this is suspicious, given that Wisconsin has several upcoming elections of great importance. The spring election on April 3 will decide who gets a seat on the state Supreme Court…. The election on Nov. 6 will choose Wisconsin's governor, half the members of the state Senate, all members of the state Assembly, Wisconsin's entire delegation to the U.S. House of Representatives, and a U.S. Senator. It’s more crucial than ever that we can trust that our elections are run fairly and that lawmakers have proper oversight.

I would want the same to be true if the Democrats held the majority. That’s the whole point: Bipartisan commissions and non-partisan civil servants are essential for making sure that whoever holds power faces checks and balances against abuses of power.

Fitzgerald looks like he would rather have free reign to do whatever he pleases. His vehemence about the issue can’t help but make one wonder what he's hiding.”


At the end of February 2018, Michael Haas, director of the Wisconsin Elections Commission, announced that he would move out of his leadership role, and eventually leave the agency, because of opposition from Republican lawmakers.


Haas said he had little to do with the Government Accountability Board’s investigation of Governor Walker’s campaign and the Republicans. He also noted that he had achieved a record
of success, since GOP lawmakers and Walker disbanded the GAB in December 2015 and created his agency. Id.

"Rather than celebrating that success and taking credit for it, some have focused on settling scores with imaginary ghosts of the Government Accountability Board. My appointment was a casualty of that obsession," Haas wrote in his letter to the Elections Commission. Id.

Senate Republicans had argued that by rejecting confirmation for Haas on a party-line 18-13 vote that they had essentially fired him. Haas initially disagreed with the GOP lawmakers' interpretation of the law. He had been considering fighting to stay in his job. Id.

But such a battle would have been difficult, and might have imperiled the commission's work, Haas wrote in his letter. Instead, Haas said he would move for a short time into a staff counsel job at the Elections Commission, and then leave the agency entirely. Id.

Subsequently, the Elections Commission promoted its No. 2 official, Assistant Director Meagan Wolfe, to its top position. She was hired as interim director, putting her on a path to become the permanent director.


Given the fact that neither Michael Haas nor Brian Bell were involved in the John Doe investigation, one could view this entire episode as an irrational personal vendetta by Scott Fitzgerald and his Republican colleagues. However, the truth may lie deeper than this.

This campaign may have had the intention of intimidating the individuals responsible for overseeing elections and regulating the ethics of lawmakers, so that they think twice before taking any actions against Republicans. This would have the effect of weakening the oversight
of the Legislature, which may have been the conscious or subconscious intent of the people involved.

VIII. LEGISLATIVE TACTICS

This section of the report touches on a number of issues, but the common theme throughout are the legislative tactics employed by Fitzgerald. They are characterized by a win-at-all-cost mentality, intentional divisiveness, a general unwillingness to compromise, and a proclivity for limiting public input and scrutiny.

In 2018, the Wisconsin Center for Investigative Journalism, which is an independent, nonpartisan and nonprofit organization, analyzed the deliberation times of Wisconsin legislation. The purpose was to measure the opportunity the public has had to weigh in on legislation, and to see if that has changed over time.


In Wisconsin, the most dramatic increase in the speed of legislation came when the Legislature and the governor’s office flipped from Democratic to Republican control in 2011. The average time from bill introduction to the governor’s signature dropped by 40 days, 25%, compared with the 2009-'10 session under Democratic Gov. Jim Doyle. Id.

West Bend businessman John Torinus, who voted for Walker for governor three times, and contributed to his 2010 campaign, dubbed the strategy “government by surprise.” Id.

Senate Minority Leader Jennifer Schilling, D-La Crosse, commented, “It’s become standard practice now for Republicans to meet with their donors and corporate lobbyists behind

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closed doors, write a bill in secret, and then pass it in a matter of days without any public input.”

Assembly Minority Leader, Gordon Hintz, D-Oshkosh stated that the center’s analysis affirmed his own experience. “Some of the bills that have been the most controversial, where the benefit to the public is questionable, have moved the fastest,” Id.

Jacob Stampen, an emeritus professor of educational leadership and policy analysis at UW-Madison, who has tracked legislative voting patterns in the state, said one factor is the American Legislative Exchange Council (ALEC). ALEC had been tied to at least three dozen bills and budget measures in Wisconsin since Walker took office. Id.

ALEC is a national organization of state lawmakers, most of them conservatives, who meet with corporate interests to craft business-friendly legislation in the form of “model bills,” that can be quickly introduced in numerous states. Id.

According to Stampen, when Walker was elected, “they behaved as if they had a large majority and they could pass anything they wanted to,” adding that the variety of the fast-tracked legislation was “breathtaking.” Id.

The "right to work" law, 2015 Wisconsin Act 1, which ended the ability of unions to require all workers covered by union contracts to pay dues, was a model fast-tracked bill. It was introduced on Feb. 23, 2015. It passed both houses in a specially called session, and was signed into law 14 days later. Id.

Burden said parties “have less dissent, even within their own party.” He added, “There used to be more frequent negotiations between members of both parties, and so that prolonged
the process of dealing with legislation. Now there is very little conversation across the aisle.”

Id.

The influence of “dark money” in the legislative process was illustrated by two examples, which were revealed as a result of the now closed John Doe investigation.

The Guardian news organization, citing documents leaked from the John Doe investigation, found that Harold Simmons, owner of NL Industries, a paint manufacturer, had made donations totaling $750,000 to Wisconsin Club for Growth between April 2011 and January 2012. The spending was used to beat back recall elections against Walker and Republican senators sparked by passage of the controversial Act 10 collective bargaining law.


In 2013, four words were inserted into an omnibus budget motion passed in the early morning hours by the Republican-run Joint Finance Committee. Those words, “whenever filed or accused,” effectively halted the claims of approximately 170 or so lead-poisoned children, by retroactively exempting NL Industries and the other lead-paint manufacturers from liability.  Id.

In a memo obtained by the Center for Media and Democracy, Senate Majority Leader Scott Fitzgerald documented the request by NL lobbyist Eric Petersen to insert the language into the budget.  Id,

According to Attorney Peter Earle, who has represented plaintiffs in lead-paint cases, the language inserted into the 2013-15 budget was “obscure and last-minute.” He added that it was done “without notice, sponsors or a public hearing.” He continued, “It was done because of
greed. Politicians chose the interests of their donors and corporate special interest groups over the rights of innocent children.” Id.

However, the secretive budget move was short-lived. In a case involving one of Attorney Earle’s clients, Milwaukee County Circuit Judge David Hansher found that the client nevertheless still had the right to bring her lawsuit. The decision was upheld on appeal. Id.

“The sole inquiry before the court is whether it is constitutional for the Legislature to deprive innocent and injured plaintiffs of their vested right to pursue claims against manufacturers and sellers of white lead carbonate,” Hansher wrote. “In this Court's view, it is not.” Id.

The other example involves a mining company. Documents briefly unsealed during the John Doe investigation showed that Gogebic Taconite, a company seeking to build a controversial mine in northern Wisconsin, secretly donated $700,000 to Wisconsin Club for Growth during the recall elections in 2011 and 2012. Id.

The next year, in 2013, Walker signed a bill loosening mining restrictions. Scott Fitzgerald subsequently acknowledged in a video that the mining bill was actually written by the company. After several years, the company abandoned the project as not feasible. Id.

As mentioned previously, Wisconsin joined Florida as the only two states in the country, which have legalized coordination between candidates and outside special interest groups that engage in “issue advocacy,” as a result of the 2015 decision issued by the conservative-dominated Supreme Court. Id.;

Also in 2015, Wisconsin’s Legislature eliminated the requirement that candidates list the employers of their donors, a move which further obscures the influence of money on politics. This removed a key detail behind publicly reported campaign contributions. Id.

In the same bill, lawmakers legalized unlimited contributions to political parties and legislative campaign committees, except for corporations and groups such as labor unions. Such organizations can contribute up to $12,000 a year. Id.

The bill containing these two changes passed on a party-line vote. Id.

The tactic of slipping a significant change into a state budget was also used in June 2017. Language quietly inserted into the proposed state budget would allow someone from outside academia to become the University of Wisconsin System's next president or a campus chancellor, potentially moving politics and business interests squarely into future searches for top university leaders.


Britt Cudaback, spokeswoman for Evers, said doing so would ignore the feedback Evers was collecting in listening sessions he was holding before taking office. Id.
"Governor-elect Evers has spent the last two weeks on his ‘Building the People’s Budget’ tour listening directly to what the people of Wisconsin want in this budget. So, it’s unfortunate that Speaker Vos and Majority Leader Fitzgerald are once again going to ignore the will of the people of Wisconsin by disregarding a budget crafted by and with the people of our state without ever having seen it," she said. Id.

On January 22, 2019, immediately after Governor Evers’ first State of the State address, Fitzgerald again said he wanted lawmakers to cast Evers’ entire budget aside from the outset, and use as their starting point the state's current spending plan.


In late January 2019, Foxconn announced that it was considering dropping its plan to build an LCD panel manufacturing facility in Racine County. Immediately after the announcement, Scott Fitzgerald and Robin Vos blamed the company’s change of position on Governor Evers, despite the fact that he had only been in office for a few weeks.


"We don’t blame Foxconn for altering plans in an ever-changing technology business. It’s also not surprising Foxconn would rethink building a manufacturing plant in Wisconsin under the Evers Administration," Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald said in a joint statement about the company's plans. Id.

The Republican leaders claimed that the “company is reacting to the wave of economic uncertainty” brought on by Evers. "Governor Evers has an anti-jobs agenda and pledged to do away with a successful business incentive for manufacturing and agriculture," Fitzgerald and
Vos said, referring to Evers' proposal to pay for a middle-class tax cut by scaling back a tax credit for manufacturers and agriculture producers. Id.

The Taiwanese tech giant attributed its deliberations to high labor costs and not to the election of Evers. Foxconn official Louis Woo said the company had concerns about the steep cost of making advanced TV screens in the United States. He said the company will likely hire mostly engineers and researchers, rather than the manufacturing workforce the project originally promised in the contract with the State. That contract provides the company about $3 billion in taxpayer-funded subsidies in exchange for the manufacturing facility and up to 13,000 jobs. Id.

Democrats characterized the comments of Fitzgerald and Vos as an effort to abdicate responsibility for a bad deal for taxpayers. According to Assembly Minority Leader Gordon Hintz, D-Oshkosh, Fitzgerald and Vos were seeking to distract taxpayers from the reality of the deal the Republicans supported. Id.

"There is nothing more pathetic than legislative leaders responsible for selling taxpayers a bag of coal evading even a whiff of any responsibility and accountability," Hintz said. "You own this and owe taxpayers answers." Id.

A few days later, Foxconn reversed itself, and confirmed that it would be building an LCD manufacturing facility in Racine County.


On January 15, 2019, Governor Evers said he would move ahead with plans to expand a health insurance program under Obamacare, despite Republican opposition. Republican leaders said they would not go along with Evers' plan to provide BadgerCare Plus to more people using
Scott Fitzgerald responded that he believed Evers’ idea would not gain traction, despite having expressed a month previously that he wouldn’t rule the idea out. Id.

As of January 2019, 62% of Wisconsin voters wanted to use Obamacare funds to expand the state BadgerCare Plus program to provide health care to more people. Only 25% opposed. 

The day after he was elected, Tony Evers received dozens of congratulatory phone calls, including one from Governor Walker. But, he didn't hear from the Republican leaders of the Legislature. Instead, Senate Majority Leader Scott Fitzgerald and Assembly Speaker Robin Vos were busy working on legislation to clip the new governor's wings before he took office.

Over time, it has become clear that the animosity which began with the lame duck laws had created an environment where it was almost impossible to have bipartisan cooperation. By early April 2019, Fitzgerald and Vos were barely talking with Evers. Id.

This put the state on a path to adopt a state budget which wouldn’t include anything new, including the education and health-care proposals which propelled Evers to victory in November. Id.
Fitzgerald said lawsuits challenging the laws Republican legislators passed to limit Evers’ powers were hampering progress. "I think we’re still trying to figure out who to talk to, how to talk to them, and when to talk to them," Fitzgerald said in a statement. "With the lawsuits and the distractions that have been brought to the process, it’s been difficult to generate any type of relationship with the governor’s office."  Id.

Senate Minority Leader Jennifer Shilling discounted that claim, saying the relationship wasn't damaged by the lawsuits, so much as the laws which sparked the litigation.  Id.

“I think my Republican colleagues are befuddled and miffed about how the lame-duck session hangover continues to permeate what happens in this building and what actions are taken," the La Crosse Democrat said. “From the get-go, I feel like they haven’t given the governor an inch. I feel like their strategy is to slow-play Gov. Evers.”  Id.

Assembly Minority Leader, Gordon Hintz, D-Oshkosh, stated that the move “eroded all respect and trust” the GOP leaders were looking for. "The idea that you can lash out against the governor hours after he's elected and undermine his powers before he's even sworn in is not exactly sending a sign of 'I look forward to working with you,'" he said. "Everything for the majority leader and the speaker, if you haven't noticed, is about power and control and not really as much interest in governing."  Id.

As of August 2019, seven months after he took office, the State Senate had yet to confirm any of Governor Evers’ cabinet secretaries. The secretaries have full authority to run their agencies without Senate confirmation. However, at any moment, senators can come into session and reject their confirmations, kicking them out of their jobs.
On August 8, 2019, a committee of the state Senate unanimously recommended confirming Transportation Secretary Craig Thompson, despite criticism from some Republicans. But after the vote, Scott Fitzgerald gave no promises that his chamber would take up the confirmation of Thompson or anyone else in Governor Evers’ cabinet. Id.

Thompson previously had led a trade group, the Transportation Development Association of Wisconsin. In that role, he promoted raising the gas tax to help pay for roads. Some Republicans viewed that effort as a campaign against the policies of Republican Gov. Scott Walker, who lost his re-election bid to Evers in 2018. Id.

Despite the GOP criticism, Thompson won approval 4-0 from the Senate Committee on Transportation, Veterans and Military Affairs. Id.

“I believe that Craig is a class act and he will do a great job for the state of Wisconsin,” said Sen. Jerry Petrowski, a Marathon Republican and the chairman of the committee. Id.

Joining Petrowski in supporting Thompson were Sens. Rob Cowles, R-Allouez, Tim Carpenter, D-Milwaukee, and Dave Hansen, D-Green Bay. A fifth member of the committee, Sen. Howard Marklein, R-Spring Green, missed the vote. Id.

The committee also unanimously recommended approving Veterans Affairs Secretary Mary Kolar. Id.

Senate Majority Leader Scott Fitzgerald didn’t say whether the Senate would take up the confirmations when it returns in the fall. “In the coming weeks we’ll meet as a caucus to see where members are at on confirming nominees,” Fitzgerald said. Id.
He noted Petrowski was the one who had the power to call the committee votes. But it is Fitzgerald and other legislative leaders who will decide whether to take up the confirmations on the floor of the Senate. Id.

On October 8, 2019, nine months into Governor Evers’ term, the Senate finally confirmed five of Governor Evers’ cabinet appointees. Four still awaited confirmation.

On November 1, 2019, Senate Majority Leader Scott Fitzgerald asked Evers to withdraw his nomination of Brad Pfaff to lead the state Department of Agriculture, Trade and Consumer Protection. "Senator Fitzgerald does not believe Pfaff has the votes to be confirmed," spokesman Alec Zimmerman said.

Pfaff initially enjoyed broad support. In February 2019, the Senate Agriculture Committee, consisting of 5 Republicans and 4 Democrats, voted 9-0 to support Pfaff’s confirmation. Id.

However, weeks after the biennial budget went into effect, Pfaff was sharply critical of the decision of Republicans not to release the funds budgeted for mental health services for farmers. Id.

Assembly Minority Leader Gordon Hintz, a Democrat from Oshkosh, said Senate Republicans' plans to reject Pfaff, if Evers does not withdraw the nomination "is politics at its worst, and most vindictive." In a statement, he said, "To be clear, the only reason this is
happening is because Brad Pfaff dared to shine a light on the disgraceful Republican inaction on access to farmer mental health care.” Id.

Pfaff, the son of a La Crosse County dairy farmer, had previously worked as deputy chief of staff to U.S. Rep. Ron Kind, before being nominated as the state's agriculture department secretary. He also worked for the U.S. Department of Agriculture Farm Service Agency, overseeing the implementation of federal crop assistance programs, the Conservation Reserve Program, and the federal farm loan program. Id.

Throughout the skirmishes with Republican lawmakers in 2019, Pfaff cited his own personal experience with farming, and his daily work talking to farmers about the struggles they face. This was especially true in the dairy industry, where low milk prices were contributing to the shuttering of operations at a rate of about two farms per day. Id.

At the time, dairy farmers were facing an unprecedented rate of loss. Farm milk prices began plummeting in 2014 triggering a downturn, fueled by overproduction and failing export markets. It had lasted more than four years, and had wiped out dairy farms from Maine to California. Id.

Wisconsin lost almost 700 dairy farms in 2018. As of Feb. 1, 2019, Wisconsin had 8,046 dairy herds, down 40% from 10 years earlier. Id.

"It is astonishing that, in the middle of a dairy crisis and trade war, Republicans want to create even more uncertainty and instability by firing the leader of the agency charged with fighting for Wisconsin's farmers and rural communities," Evers said in a statement. Id.

Senate Minority Leader Jennifer Shilling of La Crosse said Senate Republicans would be dealing "another blow" to Wisconsin farmers if they reject Pfaff. “At a time when Wisconsin is
losing dairy farms daily and suicide rates for farmers are rising, it is unacceptable and callous for Republicans to obstruct the appointment of Secretary Pfaff," she said. Id.

More than a dozen agriculture-related groups supported Pfaff's confirmation, including the Wisconsin Corn Growers Association, the Wisconsin Agri-Business Association, the Wisconsin Dairy Products Association, the Wisconsin Corn Growers Association, Cooperative Network, the Wisconsin Cheese Makers Association, and the Wisconsin Farm Bureau Federation. Id.;


On November 5, 2019, the Senate fired Brad Pfaff as Secretary of Agriculture, Trade and Consumer Protection. It denied him confirmation on a party line 19-14 vote.


Governor Evers said the lawmakers were punishing Pfaff for sticking up for farmers, and publicly criticizing Republicans who control the Legislature for holding back suicide prevention funds. Id.

“I want them to be forthcoming. I want them to be professional. That's why we hired them," Evers said about his cabinet members. "To think that they're going to have to keep their mouth shut for the next …four years in order to get approved by this Senate, this is just absolute B.S." Id.

On the Senate floor, Fitzgerald raised the prospect that other members of Evers' cabinet could be rejected, despite a long history of senators deferring to governors of both parties on the
teams they assemble. "Some are going to go through and I don’t know if the rest of them are going to make it," Fitzgerald said of Evers' cabinet. Id.

Fitzgerald said at least four of the cabinet secretaries could be in jeopardy.

Previously, no cabinet secretary had been rejected by the Senate since sometime before 1963, according to state records going back until then. Older records hadn't been compiled yet.

Administration Secretary Joel Brennan said he did not believe a cabinet secretary had ever been rejected in state history, noting that, in recent months, no one had been able come up with an example of it happening. "It's a new low," Brennan said.

"We’re better than this," said former Republican Sen. Dale Schultz of Richland Center. He had served in the Legislature for three decades alongside five governors, two of whom were Democrats. "What I think they need is just a little reminder by the public that we're in a place that’s kind of unacceptable," he said.

"It doesn’t take a real tough person to hammer on your enemies ... the tough thing is when you have to go back and say no to your friends and explain why you compromised," Schultz said. Id.
"It's this winner-take-all mentality that has led us to this point in history. … This is not a good place and my guess is it will change when the public starts cornering their representatives and asking them what are you doing to fix this? That’s not just a message to Senate Republicans. That’s a message to everyone."  Id.

The episode chipped away even more at an already fractured relationship between Evers and the Republican-controlled Legislature, a dynamic GOP Sen. Luther Olsen said he hadn't seen in the 24 years he had been in the Legislature.


Olsen said he hopes none of the other cabinet picks face Pfaff's fate. "I'm hoping none of them are in trouble. I think there are some little hiccups and a couple of people have some issues but what I can see, they're doing a good job," Olsen said.  Id.

The practical effect of having such a fractured, divided government is that not much gets accomplished. Up until August 5, 2019, seven months into Governor Evers’ term, the Legislature had only sent him one bill.


“Is this the new normal? I hope it’s not because it feels like we’re a do-nothing Legislature with the majority leader putting together a pretty tepid floor calendar," Senate Minority Leader Jennifer Shilling of La Crosse said, referring to Senate Majority Leader Scott Fitzgerald. Id.

By November 8, 2019, Governor Evers had signed only 20 bills into law, a fraction of his predecessors. Not much else was expected to occur prior to the 2020 elections.
Assembly Minority Leader Gordon Hintz said Republicans weren’t performing their jobs. "If you know the Republican playbook by now, it’s meet as few days as possible, adjourn early,” he said. “That means less time to hear about all of the bigger issues that are facing the state, all of the public's priorities which the Republicans seem to have no interest in." Id.

Scott Fitzgerald said he didn’t mind that little was getting done. "That’s our job right now is to play goalie,” he told reporters in October. “There's a lot of bad ideas coming out of the east wing, and that's why it's so important that we were able to maintain majorities in the Senate and the Assembly.” Id.

However, Dale Schultz, the former Republican state senator, said the state could soon face economic hurdles which require the Governor and the Legislature to work together to avoid catastrophes big and small, including the effect of trade wars on agriculture or an economic recession. Id.

"They certainly can work to alleviate a lot of pain and the reality is that’s the least they can and should be doing," Schultz said. "Life is about relationships and to get anything done — whether it’s a marriage or a family or a business — you have to find a way to listen to each other and compromise and work together to get where you want to go. And I don’t think government is a whole lot different." Id.

In December 2019, two Republican lawmakers tried to breathe new life into a proposal to legalize marijuana for medicinal use, but it was blocked within an hour by Fitzgerald.
The proposal from Rep. Mary Felzkowski, R-Irma, and Sen. Kathy Bernier, R-Chippewa Falls, would have created a new state program to license dispensaries of marijuana for anyone with a serious medical condition, like cancer, AIDS or post-traumatic stress disorder. The marijuana would only be manufactured in the form of a liquid, oil, pill, or tincture or in a form that is applied topically. Id.

Scott Fitzgerald quickly rejected the idea as he's done before. He said he personally opposes the idea, and doesn't believe his GOP-controlled chamber is on board. Id.

While Fitzgerald has long opposed such proposals, Democratic Gov. Tony Evers supports creating a state program, and GOP Assembly Speaker Robin Vos is open to the idea. Id.

A Marquette University Law School poll showed 83% of those surveyed supported medical marijuana. Id.

Thirty-three states have medical marijuana programs. In 2018, sixteen counties and two cities in Wisconsin voted to support medical or recreational marijuana in referendums. Id.

On December 20, 2019, Fitzgerald cast doubts on increasing funding for homeless programs by $3.7 million a year. This was despite the fact that the funding had been a top priority of Governor Evers and Assembly Republicans.
Fitzgerald called the issue frustrating. He said Senate Republicans felt left out of early discussions about the funding, and had concerns about the price tag. They are also uncertain how effective the new funding would be to combat homelessness, he said. Id.

However, he did say that it’s still possible GOP senators could come around to the idea. Id.

In January 2020, state officials got new projections that say the state will have an extra $620 million in its main account by July 2021, even after setting aside money for the state's rainy-day fund.


Governor Evers wanted lawmakers to devote $252 million toward schools and property tax relief. This would restore the state's commitment to funding two-thirds of school costs and provide more money for school services for students with disabilities, students with mental health needs, and summer school programs.


Vos and other Republican lawmakers had previously promised that the 2019-21 state budget would achieve the goal of funding two-thirds of school costs. However, they ultimately did not meet that goal. Id.

The Evers plan would also would increase funding for rural schools by $10 million, and provide $130 million in property tax relief by funneling the money into the state's formula for funding schools, known as equalization aid. Id.
"This is a win-win for all of us in the state of Wisconsin," Evers said. "That reinvestment will help districts to get out from going to referendum every two years." Id.

Nevertheless, Governor Evers’ plan was rejected by the Republicans within minutes.

"Senate Republicans have been focused since late last year on using our surplus for a tax cut…, and the governor knows that," Fitzgerald tweeted. "I don’t see us budging off that position. It appears that the teachers' unions are the ones calling all the shots in the East Wing." Id.

A few weeks later, Republicans in the Legislature passed a plan which would use the money to cut income taxes, reduce a business tax, and pay down state debt. However, their plan did not include any additional funding for schools as Governor Evers had sought.


As such, on February 25, 2020, Governor Evers vetoed the bill. He noted that the Republicans should have coupled the tax cut with additional money for schools.


"Republicans are more concerned about the perceptions of giving a Democratic governor a win than by getting things done," Evers said. "Politics, plain and simple.” Id.

He said Republicans should have used a projected surplus to pair a tax cut with increased school funding, which would ensure the state covers two-thirds of the cost of education. Republicans in the past have backed that level of school spending. Id.
"At the end of the day, when the Republicans choose to play politics instead of keeping their own promise on working together to find common ground on something they have supported in the past, I’m not the one that’s losing," Evers said. "The kids are losing, the schools are losing and the property taxpayers are losing." Id.

Senate Majority Leader Scott Fitzgerald shot down the possibility of reaching a compromise with Evers this year. Id.

“I don’t think there’s any common ground between now and February of next year,” he told reporters. “There’s no time for compromise right now.” Id.

Evers called on Republicans to work with him on a compromise over the coming weeks. He said he was open to cutting income taxes and reducing the state debt, as the Republicans want. However, any agreement must include more funding for schools and some reduction in property taxes, Evers said. Id.

"It's time for Republicans to put politics aside so we can do what's right for our kids, our schools, and of course our property tax payers," Evers said. "I'm ready to work across the aisle to get this done, and I'm willing to come to a compromise that works for everyone." Id.

"I don't care who gets the credit, I just know that the people of our state deserve elected officials that get things done, and funding our schools and reducing our property taxes should be something we can agree on." Id.

Scott Fitzgerald rejected finding a compromise this year. He noted the Assembly ended its session for 2020 the previous week. The Senate plans to meet once more this year, in March. Id.
Looking at this situation, it is obvious that only one side has any interest in compromise. The Republicans flat-out refused to allocate any money to schools. Furthermore, they completely ruled out trying to compromise on the issue. As such, nothing got done.

This has been the general pattern since Governor Evers took office. Indeed, this appears to be the intention of the Republicans. To them, it’s not about what is in the best interests of the people of Wisconsin. It is about “playing goalie”. (see p. 107)

In early February 2020, Republican legislative leaders announced a plan to toughen criminal penalties, without bankrolling a new prison.


The bills would result in sending more people who violate the terms of their probation to prison, put more juveniles who commit crimes behind bars, and limit when inmates can be released from prison early. Id.

The state’s prisons are already overpopulated. The bills would make them even more crowded. They were designed to hold about 17,800 adult inmates, but now house about 23,500. Id.

Senate Majority Leader Scott Fitzgerald said the Senate would likely pass the crime bills, despite cost concerns from some Republicans. "I have members that will hold the members' feet to the fire on the cost of those, but it didn’t seem like it was so prohibitive that we can’t tackle them," Fitzgerald said. Id.
Assembly Minority Leader Gordon Hintz called the plan ridiculous and costly. "The corrections policy of Republicans ... has been to double down on the policies that are ineffective, don't work and are expensive," the Oshkosh Democrat said. Id.


Senate Majority Leader Scott Fitzgerald said that Evers' vetoes don't exhibit concern for public safety. Id.

But Democrats noted that crime in Milwaukee is down. Last year was the second in a row with fewer than 100 homicides in the city. Nonfatal shootings and car jackings also dropped. Id.

The costliest piece of legislation that Evers vetoed, Assembly Bill 805, would have required Evers' Department of Corrections to attempt to revoke probation and other types of state supervision for offenders, if they were charged with committing new crimes. Before long, that would lead to judges putting nearly 4,700 people behind bars a year, according to an estimate from the department. Id.

More people in prison means higher costs for taxpayers. The department projected the legislation would result in operations costs of about $200 million over the next two years. It would also force the state to build two new prisons at a cost of about $350 million each,
according to estimates. Together, the construction and operational costs would come to $900 million in the short term. Id.

Building the new prisons would have also exacerbated the state's long-running trouble with hiring and retaining correctional officers. Id.

Evers also vetoed Assembly Bill 806. This bill would have allowed judges to lock up teens whenever they committed offenses which would be treated as felonies if they were adults. That would have led to more teens being put behind bars, despite a recent bipartisan effort to reduce the number of juveniles who are incarcerated, and close the state's juvenile prison, Lincoln Hills School for Boys. Id.

The bills passed exclusively with GOP votes. However, a handful of Republicans sided with Democrats to oppose them. Id.

Republicans admitted that they expected the Governor’s vetoes. However, they saw an opportunity to highlight a contrast with Democrats on crime. They thought this would help them in the suburbs in this fall's elections. Id.

The fact that the Republicans passed a very expensive piece of legislation, without any means to pay for it, demonstrates that they did not expect the proposals to actually become law.

Despite their significant impact on the operation of State Government, it is surprising how little the general public knows about Scott Fitzgerald and Robin Vos. In a Marquette University Law School poll of September 4, 2019, more than half those surveyed could not offer an opinion on whether they had a favorable view of the Republican legislative leaders.

Senate Majority Leader Scott Fitzgerald was viewed favorably by 19%. Assembly Speaker Robin Vos had a 20% favorable rating. They were both viewed unfavorably by 20%. The remaining roughly 60% had no opinion of either one. Id.

IX. GUN SAFETY

In 2014, the Legislature passed a bill which would allow judges to seize the guns of people in cases involving a risk of abuse, neglect or financial exploitation. Robin Vos and all of the Republicans in the Assembly voted for it. It passed the Senate on a voice vote, without any resistance from Scott Fitzgerald. It was signed into law by Governor Walker.


In 2018, Democratic lawmakers proposed bills which would require universal background checks for firearms, bar those convicted of domestic violence from buying firearms, and ban the sale of so-called bump stocks, which effectively turn semiautomatic weapons into machine guns.


When Assembly Democrats in February 2018 sought to force a floor vote on the background check bill, GOP lawmakers responded by stripping the bill of its background check provisions, and replacing those with several other provisions, including grants to schools to hire armed police guards. Id.

Eventually, Assembly Republicans passed a bill which would require somewhat more extensive background checks to gun sales covered by some existing checks. Milwaukee Mayor Tom Barrett said the bill did not go far enough to require background checks on all gun sales in Wisconsin.
The bill also would have applied a state background check system for certain handgun sales to similar purchases of rifles and shotguns.

However, Scott Fitzgerald signaled that GOP senators would not take up the firearm background checks bill passed by the Assembly. “I don’t see that bill moving forward,” Fitzgerald said.

The state Senate never did take up the measure.

In 2018, in response to the Parkland, Florida shooting, lawmakers of both parties approved a $100 million plan written by Republicans to make school buildings safer.

On August 3 and 4, 2019, mass shootings in El Paso, Texas and Dayton, Ohio left a combined 31 people dead, and an additional 41 people wounded.

In the aftermath of these shootings, Governor Evers called on the Legislature to take up legislation requiring background checks for all gun purchases in Wisconsin. He also called for
“red flag” legislation, which would allow people’s firearms to be taken away with a court order, if they were shown to be a danger.


Legislation was eventually drafted on both issues, and introduced into the Legislature by Democratic lawmakers.

The background check legislation would have required background checks for most sales or transfers of guns. The new requirements would not apply to firearms sold or transferred to a firearms dealer, law enforcement, or armed service agencies. In addition, the law would not apply to guns that are considered antiques, or those which are considered a gift between family members. https://www.jsonline.com/story/news/politics/2019/08/15/gun-laws-tony-evers-offers-bill-expand-gun-sale-background-checks/2017353001/  [JS 8/16/2019]

The red-flag legislation was modeled on the existing laws, which allowed firearms to be taken away from people suspected of domestic violence.


The legislation would allow police officers, family members, and household members to ask a court to take someone's guns. If a judge determined that there were reasonable grounds to believe the person was a danger, his or her guns would be temporarily taken away, and a hearing would be scheduled on the issue within two weeks. Id.
At the hearing, the judge would determine whether the guns should be returned or kept away from the person. Id.

On August 5, 2019, in the aftermath of the shootings, President Trump called for expanded background checks and a red-flag law.


The same day, Governor Evers announced his intention to push for these proposals. He said, "It's happened in Wisconsin, so we can't pretend it is only something that happens in Texas or other places across the country. When we see people by the scores being murdered because of their heritage, a proud heritage that our country should be embracing instead of pushing back on, that’s a problem," he said. "We as a state and country have to take a stand and I believe (the) Legislature is part of that, and I think we need to look to them and us for leadership." Id.

"The bottom line is our Legislature has avoided this issue totally," he said. "Whether it’s a special session or not, we need to know the other side’s going to take this seriously." Id.

In a 2018 Marquette University Law School poll, more than 80% of Wisconsin voters supported extending background checks to private gun sales.


Attorney General Josh Kaul had previously called for a red-flag law during his inauguration speech in January 2019. On August 6, 2019, he said that lawmakers need to act now. "I want to see legislators taking action here in Wisconsin, before there is another mass shooting in Wisconsin," he said. Id.
Scott Fitzgerald and Robin Vos agreed to meet with Governor Evers the following week to discuss gun violence. However, both had issued statements, indicating that they were fearful of taking away anyone’s constitutional rights through red flag gun laws. They also had a history of resisting previous efforts to require background checks for all gun purchases. Id.

Kaul said he hoped Republicans in Wisconsin would be more willing to act now that some Republicans elsewhere were calling for background checks and red-flag laws. Id.

On August 13, 2019, Scott Fitzgerald signaled that he would be open to expanding a state law, which allows law enforcement to confiscate firearms from anyone deemed dangerous to others. At the same time, he said he was opposed to expanding background checks on gun sales, because of voters in his district, who see it as a violation of their Second Amendment rights.

"There is always going to be a constituency who vote Republican and (expanding checks) means registering your firearm and they are going to be opposed to it," he said. Id.

Instead, he signaled he would consider widening the scope of a law which allows judges to order the surrender of firearms from people who have been physically abusive and threatening to others. "You could take a look at those statutes and if you wanted to include other types of charges — that's one thing that could be considered," he said. Id.

Fitzgerald said he believes Wisconsin's laws already provide protections included in the red-flag laws being discussed nationwide following the pair of shootings. Id.

On August 14, 2019, Evers indicated he would wait to make a decision about calling a special session, until after he meets with Scott Fitzgerald and Robin Vos on the matter.
"I think Republican opposition to that is going to end up hurting them politically," Evers said. "People of Wisconsin expect something. When 80 percent of the people say 'Hey let’s do this because it’s important to us' and one party is saying no way — that’s a political problem."

The vast majority of people, 81%, in Wisconsin agree with expanding background checks, according to 2018 polling by Marquette University Law School. Nationally, 96% of Democrats, 84% of Republicans, and 89% of independents support the policy, according to a 2019 Marist poll.

Despite the wide support, Republicans are generally opposed to the policy.

"For any Republican to say 'I support universal background checks' would be career suicide," Clemson University political scientist Steven Miller said.

The National Rifle Association would help elect a primary opponent of any Republican candidate who seeks or supports such restrictions, Miller said. He said support for the added safeguard, while wide, isn't that intense.

"Most people think that’s a good idea, but most people don’t care too much, and the people who oppose that are really serious about that," he said. "Because the minority is much more mobilized, they are more likely to get what they want.”

On August 15, 2019, Governor Evers released the legislation to expand background checks to most gun sales. "We cannot pretend this is something that happens in Texas and Ohio,

Under federal law, a background check is required when someone purchases a gun through a federally licensed firearms dealer. A check is not required for private sales, such as at gun shows, or those arranged online. Id.

Twenty-one states have taken the route Evers is recommending, requiring background checks which go beyond federal law. Id.

Wisconsin Attorney General Josh Kaul said that the state's laws, which require background checks for some gun sales but not for others, make "no sense whatsoever." "It's dangerous and we need to change it," he said. Id.

On September 4, 2019, a new poll from Marquette University Law School showed that the vast majority of Wisconsin voters continue to support a new law, which would require anyone buying a gun to pass a background check. 80% of Wisconsin voters said they support expanding background checks to all firearm sales, including private and online sales. https://www.jsonline.com/story/news/politics/2019/09/04/wisconsin-voters-overwhelmingly-back-expanding-gun-background-checks/2209901001/  [JS 9/4/2019]

According to the poll, the proposal was popular even among voters who own guns. 75% of gun owners supported expanding background checks. 88% of people who don't own firearms supported expanded checks. Among voters who refused to say whether they owned a gun or not, 69% supported more background checks. Id.
The Marquette poll showed 81% of Wisconsin voters supported "allowing the police to take guns away from people who have been found by a judge to be a danger to themselves or others."


In early September 2019, Governor Evers said he would call lawmakers into session to take up new gun-related legislation, if Fitzgerald and Vos do not advance a bill to expand background checks.


"It’s time for Republicans to take up universal background checks to ensure that no matter what kind of firearm someone is buying, or where they’re buying it from, the process is the same for everyone," Evers' spokeswoman Britt Cudaback said in a statement. Id.

In mid-September 2019, activists, businesses and faith organizations created a new group to urge Wisconsin legislators to pass gun safety legislation, and to pass a resolution condemning "recent acts of domestic terrorism."


The 24-member organization included the Archdiocese of Milwaukee, Greater Milwaukee Synod ELCA, the Milwaukee Jewish Federation, and the Islamic Society of Milwaukee. Id.

The new group called itself “The 80% Coalition”. The name was taken from the results of the recent Marquette University Law School Poll, which showed that 80% of Wisconsin voters
supported a new law to make "private gun sales and sales at gun shows subject to background checks." Id.

"If folks who own guns and don't own guns can agree on this issue, we expect our Legislature should as well," said Darryl Morin, who was spearheading the new organization. Id.


"Each and every day officials choose cowardice over common sense," Evers said at a news conference. "That choice has significant consequences. The consequences of inaction are too high, folks." Id.

In a joint statement released the same day, Scott Fitzgerald and Robin Vos said the red-flag legislation "poses threats to due process and the Second Amendment rights of law-abiding citizens." However, similar laws had been upheld by courts in Indiana and Connecticut. Those courts found such laws to be consistent with due process and the Second Amendment. Id.

Vos and Fitzgerald did not explain why they let the 2014 law go into effect, if they believed Evers' legislation violated due process rights. Id.

Attorney General Josh Kaul noted that some prominent Republicans, including U.S. Sens. Lindsey Graham of South Carolina and Marco Rubio of Florida, back red-flag legislation. "This is not a partisan issue anywhere other than the Legislature of Wisconsin," Kaul said. Id
On September 25, 2019, the League of Wisconsin Municipalities released a letter from municipal leaders from across the state, calling on state elected leaders to take action to prevent mass violence. The letter had 185 signatures from officials representing 140 communities across Wisconsin.


“Municipal leaders respect your role in deciding on a proper course of action, but we beg you: please decide; please act,” the letter states. Id.

Milwaukee Mayor Tom Barrett couldn’t remember another time when as many local leaders from around the state had signed onto a letter of this kind. "The Legislature is the one that holds the power," he said. "That is even more of the reason why it is important for our legislators to work with our governor, to make sure we are doing everything we can to reduce the violence that we see.” Id.

That so many public officials signed on to the letter shows that this is a deep concern across the state, he said. Id.

Evers' spokeswoman Melissa Baldauff applauded the municipal leaders' letter. "These local officials are clearly listening to their constituents, who overwhelmingly support the common sense gun safety proposals Gov. Evers has championed," she wrote. "Folks in large and small communities alike understand that the consequences of inaction are too high. It’s time for Republicans in the legislature to listen to the will of the people and pass the universal background checks and (red flag) bills that 80 percent of Wisconsinites support.” Id.
In October 2019, Governor Evers formally called for a special session of the Legislature for the purpose of considering the two measures.  


In early November 2019, Scott Fitzgerald said he would likely gavel out of the session within moments of convening it. Robin Vos said his members planned to take the same action. Id.

Evers called Fitzgerald's plans unacceptable. "He has the responsibility to let his Senate vote on this," Evers said. Id.

On November 19, 2019, Republican lawmakers took just seconds to reject Governor Evers' call for action on gun violence, swiftly denying debate and votes on the two bills.  


The GOP leaders of the Assembly and the Senate each took less than one minute to open and close the special legislative session called by Evers to take up two bills. Id.

Scott Fitzgerald stood alone in the Senate chamber to formally gavel into the special session as required by law, and then, just as quickly, ended it. Id.

Though he was the only senator in the chamber, he claimed that all 19 Senate Republicans were united in their opposition to Evers’ bills for universal background checks and a new red-flag law. Id.
"Republicans … just told 80 percent of Wisconsinites and a majority of gun owners, ‘go jump in a lake,’ because they didn’t have the courage to take a vote, much less have a dialogue," Evers said. Id.

Evers' call for a special session on gun legislation required lawmakers to convene. But, they didn't have to do anything else, and they didn't. Id.

Advocates for more gun restrictions expressed frustration that Republicans wouldn't at least hold a vote which would show where they stand. "When lawmakers say they won't even debate this issue, I am being told that my life doesn't matter, that my safety isn't important," said Karly Scholz, the 16-year-old state director of March for Our Lives. Id.

On the morning of February 26, 2020, Governor Evers again called on Republican lawmakers to at least take a vote on expanding background checks for firearm sales, and providing judges with a greater ability to confiscate guns from anyone deemed a threat by a court. https://www.jsonline.com/story/news/politics/2020/02/26/milwaukee-miller-shooting-state-leaders-made-clear-no-new-action-guns/4885483002/ [JS 2/26/2020]

"All I want is a discussion," Evers said. "We had (two) really commonsense solutions on the table, that they wouldn’t even talk about. And that’s the frustration I have about politics these days." Id.

“We could lose (a vote), I understand that," he added. "But I think our state representatives owe it to our constituents to say, 'This is where I stand on this.' And we can’t get to that point.” Id.
In the early afternoon of the same day, February 26, 2020, Scott Fitzgerald made clear that the state’s gun laws would not change under the Republican controlled Legislature, despite the call for a review by Governor Evers. Id.

"We’re going to have that discussion about the Second Amendment forever," Fitzgerald said. "A lot of the provisions that are in place already, people are satisfied with." Id.

An hour or two later, a worker at the Molson Coors Brewery in Milwaukee shot five of his co-workers and himself to death. Id.

After the event, Fitzgerald offered condolences to the victims and their families. Id.

X. TRANSPORTATION

The most significant characteristics of Scott Fitzgerald’s approach to transportation issues is a steadfast support for tolling in Wisconsin, combined with a resolute opposition to any increase in the gas tax. He has also advocated significant borrowing for roads, with the loans to be paid back by money which ordinarily goes to health care and education.

These were the main characteristics of a plan laid out by Fitzgerald on May 10, 2017. https://www.jsonline.com/story/news/politics/2017/05/10/senators-want-rein-ballooning-wisconsin-road-costs/101507330/ [JS 5/10/2017]

At the time, he said that he saw little support in the Senate for an Assembly Republican plan to increase taxes on gasoline to help lower state borrowing and the shortfall in road funding. To support his position, he cited Governor Walker's firm opposition to a tax increase. Id.

Instead, he advocated that the state borrow an undisclosed sum of money, and then pay it off using sales and income taxes, dollar streams which typically go for education and health
programs. He did not want to raise the gasoline tax, which is the state's largest source of road funding. Id.

"It’s going to come down to what is the level of bonding that (GOP Senate) members are comfortable with," Fitzgerald said. Id.

At the same time, he expressed openness to asking the federal government to allow tolling on certain highways in the state. If tolling is approved by the federal government, it could raise substantial money in future years. “It’s something that should be explored,” Fitzgerald said. Id.

Approximately a month later, Fitzgerald repeated his interest in seeking federal approval for toll roads to help pay for long-term transportation needs. He said GOP senators have "very little enthusiasm" for other new sources of road funding.


Soon thereafter, Governor Walker laid out a framework for accepting Wisconsin's first-ever use of tolling. He said any plan would have to bring in money from out-of-state drivers, and then use that money to lower gas taxes for state residents.


In late June 2017, Senate Republicans released their transportation plan. They wanted to borrow an additional $350 million, and repay that money using income and sales taxes. Fitzgerald said Walker also backs that basic approach.

Fitzgerald said he remained open to tolling as a way to raise money. However, he rejected other options, including a fee on heavy trucks proposed by one Assembly Republican. The GOP senator said he was considering having the Senate pass its own version of the budget without a deal in the budget committee. Id.

Senate Minority Leader Jennifer Shilling, D-La Crosse, responded that the state can’t continue to rely on borrowed money to build its roads. She said there were no excuses for the fact that Republicans control all of state government, but hadn’t yet reached a budget deal. “It demonstrates their inability to govern,” she said. Id.

In early July 2017, the Milwaukee Journal Sentinel described the budget impasse. Fitzgerald and Walker were arguing for more borrowing and delay in road projects, whereas Robin Vos was arguing for more revenue streams.


Scott Fitzgerald was advocating for borrowing $750 million over the next two years for roads. He said “it was pointless to discuss raising taxes when Walker has committed to vetoing any tax increase.”  Id.

According to the Journal Sentinel, both Fitzgerald and Walker were “ignoring the essential challenge of transportation funding: an aging and deteriorating road system that traditional revenue streams can no longer adequately repair and expand, coupled with growing demand for roads and transit.”  Id.

In February 2018, Scott Fitzgerald stated that Wisconsin should put tolls on state highways, and use the money to draw more federal dollars from President Trump's proposed
infrastructure plan. Fitzgerald noted that the state would need matching money to take advantage of a potential federal transportation package. The solution, he said, is "open road tolling," in which electronic passes and readers capture the tolls, rather than toll booths and workers.


"The only way that we are going to be able to do this, and the only way that makes sense, is open road tolling," Fitzgerald said. "We’re not going to do it with a nickel or 10-cent gas tax increase." Id.

Republicans who controlled the state Capitol hadn't found a sustainable source of funding for roads. Instead, they closed budget shortfalls through borrowing and project delays. Fitzgerald said Trump's plan might promote a fix, by providing $200 billion in federal infrastructure money over 10 years, but only for states that bring their own money to the table. Id.

After Governor Evers took office, he stated that he is committed to finding more money for roads, possibly by raising the gas tax. Assembly Republicans had been open to that idea, but Senate Republicans had stood against it.


On February 6, 2019, GOP legislative leaders threw their support behind tolling. They said they saw it as the best way to infuse Wisconsin’s highway system with cash.
Assembly Speaker Robin Vos and Senate Majority Leader Scott Fitzgerald described placing tolls around the state as a way to fix the state's highways and bridges. "You can do it on bridges. You can do it in an awful lot of places. So, I think there’s a lot more flexibility (on where tolls can be placed) and that’s why we wanted this study," Vos said. Id.

They said a tolling study would help guide lawmakers on the issue, but emphasized they see it as the best way to pay for roads. But they stopped short of committing to implementing tolling in the 2019-2021 state budget. Id.

Assembly Minority Leader Gordon Hintz responded that he wants more money for roads, but considers tolling the worst way to do it. He said it would take years to implement tolls. Furthermore, much of the money would go toward operating the tolls, instead of building roads. Id.

“That’s not a solution,” Hintz said. “We need money today, and it’s going to have to be something like a gas tax or some additional immediate revenue to stop the hole that we’ve dug to pay for the things that we need to do." Id.

"Sen. Fitzgerald and Rep. Vos have been talking about tolling for six years. It seems to be one of those things they throw out there to act like they’re doing something, but they never actually do something," he said. Id.

XI. ENVIRONMENT

In early 2017, Scott Fitzgerald sponsored legislation which would bar state Department of Natural Resources officials from reviewing the impact of wells drawing more than 100,000
gallons a day, when the wells are replaced, or when the property was sold.


The passage of the Legislation would be considered a win for those seeking to maintain and expand irrigation for agriculture, especially in central Wisconsin. In that area, the practice had become more controversial, as lakes and streams lost substantial volumes over the previous decade. Id.

Fitzgerald claimed that state rules were threatening to "choke off" farms, which produce crops such as vegetables and cranberries. Id.

Sen. Mark Miller, D-Monona, said the legislation would essentially lock in permits for these massive wells in perpetuity. "They are issued to last forever," Miller said. "There's no opportunity to review the permit." Id.

The proposal was opposed by environmentalists and waterfront property owners. They said the bill is the latest example of weakening oversight of public waters and large wells. Id.

GOP senators amended the bill to require the DNR to conduct a hydrological study in one of the most affected regions of the state, sandy central Wisconsin, to determine whether large wells are causing harm there. If wells are to blame, the DNR would have three years to make recommendations to lawmakers. Id.

In May 2016, Republican Attorney General Brad Schimel issued a legal opinion saying the Department of Natural Resources lacked legal authority under its water permits to determine whether a single well may pose a harmful effect when combined with other existing ones. The
DNR subsequently stopped doing that kind of analysis. Environmentalists have sued to reinstate it. Id.

On April 5, 2017, Republicans in the Senate passed the high capacity well bill on a strict party line vote of 19-13. Fitzgerald, the proposal's chief sponsor, called the bill a "pro-farm" measure.


Democrats cautioned that letting some businesses draw more than they should will eventually lead to shortages, not plenty, and uncertainty for farmers, not stability. "The only certainty that this is going to create is that there'll be less water, and in some places, there won't be water at all," Sen. Jon Erpenbach, D-Middleton, said. Id.

The bill was eventually passed by the Assembly, and signed into law by Governor Walker.


In August 2018, Robert Rolley, a retired Department of Natural Resources wildlife research biologist, expressed concerns that regular citizens had lost influence over natural resource decisions, since Governor Walker had taken office.

“There is a long history in the DNR of listening to public input prior to making management decisions,” said Rolley, who worked at the agency for 25 years. “What has changed is which citizens the DNR Board and administration is interested in listening to.” Id.

He added, “The leadership in the DNR is much more interested in facilitating businesses’ opportunity to expand. In the last eight years, it made it a lot easier for businesses to get the permits they want in a quick manner, so they can make more jobs.” The attitude of the current DNR administration is, “If we get a little bit more pollution, it’s a small price to pay,” Rolley said. Id.

Even the Wisconsin Conservation Congress, a nonpartisan group created by the Legislature in 1934 to gather public opinion and advise the DNR on natural resource issues, appeared to be losing influence. Id.

For example, a bill introduced in early 2017 proposed allowing resumption of baiting and feeding of white-tailed deer in areas, where chronic wasting disease had been detected. The disease, fatal to deer, had been found in or near 53 of the state’s 72 counties. Id.

The Conservation Congress came out strongly against the bill. Id.

“Passing this bill would disregard the thousands of volunteer hours citizens across this state have spent engaged in this CWD process: attending meetings, reviewing studies and scientific literature, talking to fellow citizens and participating in this grass-roots effort,” Larry Bonde, chairman of the Wisconsin Conservation Congress, told lawmakers. Id.

“These groups worked diligently to gather public input and get various perspectives on CWD issues … dismissing their hard work and input could be damaging for future efforts to engage the public.” Id.
Ignoring that advice, the Legislature passed the bill in June 2017. Id.

**XII. CURRENT ELECTION**

Scott Fitzgerald was an early supporter of Donald Trump for the presidency, well before many of his Republican colleagues. He even reportedly coined a “Trump Train” call-and-response rally song for him.


At the time he first suggested he might run for Congress, Fitzgerald mentioned that his work with former Governor Walker, to pass legislation in 2011 to eliminate collective bargaining for most public employees, would give him an edge in any potential Republican primary for the seat.


At the time he formally announced his candidacy, he praised President Trump’s economic policies. He stated that they “keep us in a good place”, and that they “work”. Id.

He backed Trump's policy of building a wall on the nation's southern border, including diverting money from the Pentagon budget to pay for the barrier. He also supported the president on trade policy, adding that there has been "back and forth" with Canada on dairy issues. Id.

"You’ve got to be on the offense, and I think that’s where the president is at. He is continually trying to push that envelope," he said. Id.

Asked if climate change was a significant global threat, Fitzgerald said the issue "deserves a lot more scrutiny." "I know that certainly the scientific community has said there are indicators,
definitely something going on. But at this point, I don't know if we can draw any hard conclusions on the issue," he said. Id.

According to Fitzgerald, there was nothing wrong with Trump asking Ukraine's president to investigate one of his political rivals. He also claimed that there is no reason to take seriously Trump's statement that China should investigate former Vice President Joe Biden and his son. https://www.jsonline.com/story/news/politics/2019/10/08/scott-fitzgerald-says-trump-hasnt-done-anything-wrong-over-ukraine/3907379002/ [JS 10/8/2019]

"It sounds like everything that was done within that discussion was in the purview of what a president of the United States should be able to do with a foreign diplomat," Fitzgerald said of Trump's July call with Ukraine's new president, Volodymyr Zelensky. "And it shouldn't necessarily be made public. So far nothing's been proven." Id.

Recently, Fitzgerald has said that he has no issue with President Trump granting clemency to former Illinois Gov. Rod Blagojevich. "It’s pretty clear that the president has these powers and I trust that the president is using them in a way that he sees fit," Fitzgerald told reporters. "So, I don’t have a problem with it." https://www.jsonline.com/story/news/politics/2020/02/20/scott-fitzgerald-ok-trumps-clemency-blagojevich/4818331002/ [JS 2/20/20]

Critics have argued the president has inappropriately used his clemency powers. They note that he doesn't go through the Department of Justice's normal process for recommending clemency, and puts much of his attention on well-connected celebrities. However, Fitzgerald said he didn't have a concern about how Trump made those decisions. Id.

XIII. CONCLUSION
The Fifth Congressional District has historically been, by far, the most Republican congressional district in Wisconsin.

The undemocratic proposals championed by Fitzgerald, and the secretive, insider, power play tactics employed by him, are extremely unpopular with the public, including most Republicans. Fitzgerald’s role is the driving force behind these unpopular and undemocratic methods and laws. Voters should look behind the party affiliations, and see the election as a race between two individuals. Then, the only question will be which of these two individuals will more faithfully represent the interests of the citizens of the Fifth District in Congress.

Most Republicans would prefer to have a fair and vibrant democracy, and a government that is responsive, and gets stuff done for the people. The polls on a variety of subjects, as listed in this report, support that statement.

In most elections, the main contrast between the candidates involve policy differences. The main contrast between Tom Palzewicz and Scott Fitzgerald is one of fairness and integrity versus secretiveness and power plays, problem solving versus rigid ideology, getting things done by working across the aisle versus a win-at-all-cost mentality, a respect for the democratic system versus trying to find ways to cheat the system, and a respect for and responsiveness to the voters versus placing one’s personal interests over the public interest.