

September 3, 2010

Louise E. Schulz
Juneau County Clerk of Court
Justice Center
200 Oak Street
Mauston, WI 53948-1365

By FedEx

RE: *One Wisconsin Now, et al. v. Southworth*

Dear Ms. Schulz:

Enclosed for filing, please find the original and three copies of the summons and complaint in the above matter, along with a check for \$265.50 as the filing fee. Please file the summons and complaint with the Court, authenticate and return the three copies in the enclosed, preaddressed stamped envelope.

Thank you for your attention to this matter.

Sincerely,

GODFREY & KAHN, S.C.



Robert J. Dreps

RJD:jlm
Enclosures
5342661_1

STATE OF WISCONSIN : CIRCUIT COURT : JUNEAU COUNTY
BRANCH ____

ONE WISCONSIN NOW, INC.
152 West Johnson Street, Suite 214
Madison, WI 53703

Case No.

and

Case Classification No.:
Other Extraordinary Writ

SCOT ROSS
152 West Johnson Street, Suite 214
Madison, WI 53703,

Case Code: 30954

Plaintiffs,

v.

SCOTT HAROLD SOUTHWORTH
Juneau County District Attorney
Justice Center
200 Oak Street
Mauston, WI 53948,

Defendant.

SUMMONS

To each person named above as a Defendant:

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

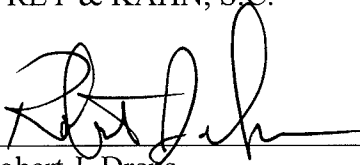
Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Clerk of Circuit Court, Juneau County Courthouse, Justice Center, 200 Oak Street, Mauston, WI 53948, and to Robert

J. Dreps of Godfrey & Kahn, S.C., One East Main Street, Suite 500, P.O. Box 2719, Madison, WI 53701. You may have an attorney help or represent you.

If you do not provide an answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: September 3, 2010.

GODFREY & KAHN, S.C.

By: 
Robert J. Dreps
State Bar No. 1006643

Attorneys for Plaintiffs, One Wisconsin Now, Inc.
and Scot Ross

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STATE OF WISCONSIN : CIRCUIT COURT : JUNEAU COUNTY
BRANCH ____

ONE WISCONSIN NOW, INC.
152 West Johnson Street, Suite 214
Madison, WI 53703

Case No.

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Other Extraordinary Writ

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152 West Johnson Street, Suite 214
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Case Code: 30954

Plaintiffs,

v.

SCOTT HAROLD SOUTHWORTH
Juneau County District Attorney
Justice Center
200 Oak Street
Mauston, WI 53948,

Defendant.

COMPLAINT

The plaintiffs, One Wisconsin Now, Inc. and Scot Ross, by their attorneys, Godfrey & Kahn, S.C., for their claims under Wis. Stat. § 19.37(1)(a), allege that:

PARTIES

1. One Wisconsin Now, Inc. (“OWN”) is a political advocacy group that works to advance progressive leadership and values.

2. The plaintiff, Scot Ross, is an adult resident of the state of Wisconsin and the Executive Director of OWN.

3. The defendant, Scott Harold Southworth, is the elected district attorney of Juneau County and an “authority” as that term is defined in Wis. Stat. § 19.32, and as that term is used in the Open Records Law, Wis. Stat. §§ 19.31-19.39.

BACKGROUND FACTS

4. Southworth sent a letter dated March 24, 2010 to school board members and district administrators of the five school districts located in Juneau County addressing his interpretation of 2009 Wisconsin Act 134, which revised the statute governing human growth and development instruction (sex education) in Wisconsin schools. Southworth's letter warned that compliance with the Act's requirements could lead to the criminal prosecution of educators for contributing to the delinquency of minors and recommended that school districts cease sex education altogether "until the Wisconsin Legislature amends or repeals these new mandates." A copy of Southworth's letter is attached to and incorporated in this complaint as Exhibit A.

5. On April 1, 2010, Ross requested in writing on behalf of OWN and pursuant to the Open Records Law that Southworth produce the following records:

- A copy of electronic and written correspondence between any employee of the Office of the Juneau County District Attorney, including the District Attorney with any and all agent(s), employee(s) or affiliate(s) of Alliance Defense Fund, Pro-Life Wisconsin or Wisconsin Right to Life.
- Any and all correspondence or documents created or received by any employee of the Office of the Juneau County District Attorney, including the District Attorney, related to the "Healthy Youth Act," "sex ed," "human growth and development," "2009 Wisconsin Act 134," "Assembly Bill 458," "AB 458."

A copy of OWN's request is attached to and incorporated in this complaint as Exhibit B.

6. Southworth responded to OWN's request on April 16, 2010, producing 23 pages of responsive records. A copy of Southworth's response letter is attached to and incorporated in this complaint as Exhibit C.

7. On May 19, 2010, some Juneau County residents filed a registration statement of intent to circulate a recall petition against Southworth based, in part, on his letter concerning 2009 Wisconsin Act 134. Under Wisconsin law, the recall organizers had 60 days to gather

2,000 signatures and force a recall election. The recall effort failed when organizers were unable to obtain sufficient signatures by July 19, 2010.

8. On July 19, 2010, Southworth sent OWN a supplemental response to its records request, enclosing an e-mail that he said “was saved to a different location than the other material previously sent to [OWN], and went unnoticed during preparation of the original response.” Enclosed with the supplemental response was an e-mail dated March 25, 2010 concerning 2009 Wisconsin Act 134 that Southworth had received from Jolene Churchill. A copy of Southworth’s supplemental response letter is attached to and incorporated in this complaint as Exhibit D.

9. Jolene Churchill is an aide to State Senator Glenn Grothman, who also heads a political advocacy group called Working for Wisconsin’s Families. Churchill’s March 25, 2010 e-mail forwarded Southworth’s letter on 2009 Wisconsin Act 134 to “Friends” of her advocacy group, the number and identities of whom are not shown on the copy Southworth received and produced to OWN. A copy of Churchill’s e-mail is attached to and incorporated in this complaint as Exhibit E.

10. On July 20, 2010, Southworth notified *The Capital Times* in response to that newspaper’s public records request dated May 18, 2010, that he had sent by e-mail a copy of his letter concerning 2009 Wisconsin Act 134 to Churchill on March 24, 2010, the same day he sent it to the school board members and administrators of the five school districts located in Juneau County.

11. Southworth’s March 24, 2010 e-mail to Churchill concerning 2009 Wisconsin Act 134 was within the scope of OWN’s records request dated April 1, 2010.

12. Southworth did not acknowledge or produce his e-mail to Churchill concerning 2009 Wisconsin Act 134 in his April 6, 2010 response to OWN or in his July 19, 2010 supplemental response to OWN.

CLAIMS

13. Under Wis. Stat. § 19.31, it is the declared public policy of this state that every citizen is entitled to the greatest possible information regarding the affairs of government. Wis. Stat. § 19.31 affirms the presumption of complete public access to governmental records, consistent with governmental business. The statute provides that “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.” Wis. Stat. § 19.31. This is not an exceptional case.

14. Southworth violated the Open Records Law by failing to timely acknowledge and disclose his communications with Churchill in his responses to OWN’s public records request.

15. Contrary to his public statements concerning the purpose of his March 24, 2010 letter to the school board members and administrators in Juneau County, Southworth’s communications with Churchill on 2009 Wisconsin Act 134 indicate the letter was sent for political purposes.

16. On information and belief, Southworth delayed publicly disclosing that he had sent Churchill a copy of his letter to the school board members and administrators concerning 2009 Wisconsin Act 134, and that she had copied him on her email forwarding the letter to “Friends” of her political advocacy group, to conceal his political motivation for those communications until the time for gathering signatures to support the recall petition had expired.

17. Southworth’s actions have caused and will continue to cause injury to the plaintiffs in that they deprive the plaintiffs and the rest of the public of their rights under the Open Records Law.

RELIEF REQUESTED

WHEREFORE the plaintiffs demand judgment against the defendants under Wis. Stat.

§ 19.37(1)(a):

- (a) Compelling the defendant to permit the plaintiffs forthwith to inspect and copy his March 24, 2010 e-mail to Jolene Churchill, along with any other records responsive to OWN's request that have not yet been disclosed or produced;
- (b) Awarding the plaintiffs their reasonable attorneys' fees, actual costs and damages under Wis. Stat. § 19.37(2); and
- (c) Awarding such other relief as the Court deems just.

Dated: September 3, 2010.

GODFREY & KAHN, S.C.

By: 

Robert J. Dreps
State Bar No. 1006643

Attorneys for Plaintiffs, One Wisconsin Now, Inc.
and Scot Ross

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JUNEAU COUNTY DISTRICT ATTORNEY'S OFFICE

Juneau County Justice Center
200 Oak Street
Mauston, WI 53948
Phone (608)847-9314 / Fax (608)847-9320

District Attorney
SCOTT HAROLD SOUTHWORTH
Victim / Witness Coordinator
MICHELE MEHNE

Assistant District Attorneys
JOHN NEWTON
KEVIN D. CRONINGER

To: Mauston School District
Necedah School District
New Lisbon School District
Royall School District
Wonewoc-Center School District

From: District Attorney Scott Harold Southworth

Date: March 24, 2010

Subject: 2009 Wisconsin Act 134 – Sex Education Mandates

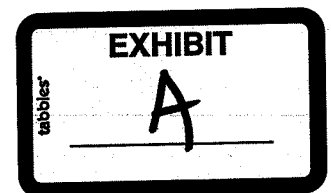
Dear School Board Members and District Administrators:

I reviewed 2009 Wisconsin Act 134, which became law on March 11, 2010. This re-write of §118.019 of the Wisconsin Statutes imposes troubling new mandates on school districts, requiring that you transform your current human growth and development curricula into programming that promotes the sexualization – and sexual assault – of our children. Specifically, the new law does the following:

- **Promotes the sexual assault of children** – §118.019(2)6 requires schools to provide instruction on how to utilize contraception. However, it is a crime to engage in sexual intercourse with any child under the age of 18. If convicted or adjudicated delinquent for sexually assaulting a child under the age of 16, an individual must register as a sex offender and may be incarcerated. Sexual intercourse with a child aged 16 or 17 can result in a misdemeanor conviction / delinquency adjudication and incarceration, as well.

I handle many cases of sexual assault of our children each year, to include young adults engaging in sexual intercourse with teenage children. Forcing our schools to instruct children on how to utilize contraceptives encourages our children to engage in sexual behavior, whether as a victim or an offender. It is akin to teaching children about alcohol use, then instructing them on how to make mixed alcoholic drinks. While it is true that some children will wrongly choose to engage in sexual behavior before entering adulthood, our school districts should never promote illegal activity.

- **Exposes our teachers to possible criminal liability** – §948.40 of Wisconsin's Criminal Code deals with "Contributing to the Delinquency of a Child." Anyone who intentionally encourages or contributes to the delinquent (criminal) act of a child can be charged under this statute. For example, if a teacher instructs any student aged 16 or younger how to



utilize contraceptives under circumstances where the teacher knows the child is engaging in sexual activity with another child – or even where the “natural and probable consequences” of the teacher’s instruction is to cause that child to engage in sexual intercourse with a child – that teacher can be charged under this statute. The teacher need not be deliberately encourage the illegal behavior; he or she only need be aware that his or her instruction is “practically certain” to cause the child to engage in the illegal act. Moreover, the teacher could be charged with this crime even if the child does not actually engage in the criminal behavior. Depending on the nature of the child’s behavior, the teacher could face either misdemeanor or felony charges with maximum punishments ranging from 9 months of jail to up to six years of prison.

To be clear, the new legislative mandate does not just require fact-based instruction on what contraceptives can and cannot do (which would *not* result in criminal liability) – it requires instruction that includes how to properly use contraceptives, which turns objective instruction into implicit encouragement and advocacy. Depending on the specific facts of a case referred to my office upon a complaint by a parent, another teacher or a child, this encouragement and advocacy could lead to criminal charges. Our teachers should never be put in this position.

- **Undermines parental authority** – §118.019(2)1 requires school districts to encourage children to communicate about sexuality and sexual behaviors with “other family members” outside of the parent / child relationship. In essence, while a parent or guardian may be stressing abstinence with their child, the child must be instructed by our schools that it’s o.k. to seek advice on sexuality from another family member (including another child!). This can lead children to “shop around” for any family member who will provide the approval they want in order to justify illegal and dangerous sexual behavior.
- **Requires school districts to condone controversial sexual behavior** – §118.019(2)(a)3 requires districts to instruct children on “gender stereotypes” and §118.019(2)(b) requires instruction that does “not promote bias against pupils of any . . . sexual orientation . . . or against sexually active pupils.” Obviously, we want to ensure that every student is treated with dignity and respect, regardless of their lifestyle, sexual orientation or choices. However, in order to comply with these new mandates, our schools may need to provide instruction on homosexuality and heterosexuality alike. Moreover, “gender stereotype” instruction will likely need to include discussions about transgender and transsexual individuals. Likewise, the new mandates make it impossible for teachers to instruct our children that sexual promiscuity is even wrong. In effect, the new law injects an intense amount of unnecessary politics into our human growth and development classrooms, and places our teachers and children into a position of discussing extremely controversial issues that will likely conflict with the religious beliefs and values of most Juneau County families.
- **Provides access to our children by the contraceptive industry** – §146.890(3r)(e) was modified in Act 134 to give “volunteer health care providers” access to our children in order to teach sexual education. Under previous law, only our trained teachers could provide this sensitive instruction. Now, schools can utilize these “health care providers,” who may come in the form of contraceptive industry representatives (e.g. employees of Planned Parenthood, the nation’s largest abortion and contraceptive provider, which

