

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH __

CALUMET COUNTY

WISCONSIN DAIRY ALLIANCE, INC.,
VENTURE DAIRY COOPERATIVE,
and LANE RUHLAND,

Plaintiffs,

v.

JOSH KAUL, in his official capacity as
Attorney General of the State of
Wisconsin,
and WISCONSIN DEPARTMENT OF
JUSTICE,

Defendants.

Case Type: Declaratory Judgment

Case Code: 30701

Case No. 25-cv-

COMPLAINT

Plaintiffs Wisconsin Dairy Alliance, Inc., Venture Dairy Cooperative, and Lane Ruhland, by their undersigned attorneys, hereby allege as follows:

INTRODUCTION

1. This case presents the question whether the Wisconsin Department of Justice is for sale.
2. In particular, this lawsuit challenges the Agreement between the Wisconsin Department of Justice (“DOJ”) and New York University (“NYU”), on behalf of the NYU School of Law State Energy and Environmental Impact Center (“Center”), to authorize a Legal Fellow, employed by the Center, to operate as—and exercise the powers of—a Wisconsin “Special Assistant Attorney General” (“SAAG”).

3. Although exercising the powers of a state attorney, the SAAG is paid exclusively by the Center and its special interest backers—her services offered to the State of Wisconsin seemingly for “free.”

4. But nothing in life is free. The Center’s mission is to incentivize “state attorneys general [to] defend[], enforce[e], and promot[e] strong laws and policies in the areas of climate, environmental justice, environmental protection, and clean energy,”¹ and NYU requires that DOJ use the SAAG’s services to further those goals.

5. The Center began in 2017 with funding from Bloomberg Philanthropies, founded by Michael Bloomberg, a billionaire donor to far-left causes, which pushes states to pursue left-wing programs and policies.²

6. On May 21, 2024, the Milwaukee Journal Sentinel reported that a SAAG working in DOJ was, in fact, employed by the Center rather than the State of Wisconsin.³

7. The Attorney General and DOJ’s decision to create a SAAG position vested with power and then fill it with an attorney who is employed by a third-party special interest group violates Wisconsin law and is repugnant to public policy.

8. Of course, such an arrangement between a special interest group and a Republican Attorney General would be just as outrageous and unlawful. It is not

¹ *About The Center*, State Energy & Env’t Impact Ctr. (last accessed Feb. 17, 2025), <https://perma.cc/NRE3-GLQ6>.

² *NYU Law Launches New Center to Support State Attorneys General in Environmental Litigation*, NYU (last accessed Feb. 17, 2025), <https://perma.cc/Y6XN-PWP6>; *Michael R. Bloomberg*, Bloomberg Philanthropies (last accessed Feb. 17, 2025), <https://perma.cc/247H-FX4M>.

³ Daniel Bice, *New Prosecutor In AG’s Office Paid For By Center Funded By Former NY Mayor Bloomberg*, Milwaukee Journal Sentinel (May 21, 2024) (updated May 22, 2024), <https://www.jsonline.com/story/news/investigations/daniel-bice/2024/05/21/bice-new-state-prosecutor-paid-for-by-bloomberg-funded-center/73721160007/>.

difficult to imagine how a “Second Amendment Fellow” deputized as a SAAG by the Gun Owners of America would be received. Or an “Anti-Abortion Fellow” empowered to act on behalf of the State while being paid by the National Right to Life. The illegal agreement challenged here is no different in principle.

PARTIES

9. Plaintiff Wisconsin Dairy Alliance, Inc. (“Wisconsin Dairy Alliance” or “Alliance”) is a non-profit organization that maintains its office at 946 Progress Way, Chilton, Wisconsin 53014. The Alliance represents, and its membership comprises, modern regulated dairy farms in Wisconsin, especially concentrated animal feeding operations (“CAFOs”). Wisconsin Dairy Alliance works diligently to preserve Wisconsin’s heritage as the Dairy State, including by contesting unnecessary regulations that do not protect natural resources.

10. Plaintiff Venture Dairy Cooperative (“Venture Dairy” or “Cooperative”), whose membership includes farmers in Wisconsin, maintains its office at 310 North Division Street, Loyal, Wisconsin 54446. Venture Dairy is a milk marketing cooperative that works to positively affect policy at the state and local levels, improve public perception of agriculture, and protect technology and innovation in how farmers grow and raise food. The Cooperative works to combat unnecessary regulations, reduce bureaucracy, and advance state and local policy to support the future of Wisconsin’s dairy farmers.

11. Plaintiff Lane Ruhland is a Wisconsin resident and taxpayer, residing in Lodi, Wisconsin. She previously served as Special Counsel and Deputy Chief of Staff in DOJ and, before that, as DOJ's Director of Government Affairs.

12. On February 12, 2025, Plaintiff Ruhland filed a complaint with the Wisconsin Ethics Commission relating to the Attorney General's agreement with the Center and use of a privately funded SAAG. *See Exhibit A.* The issues presented in that proceeding (and any subsequent prosecution) are different from those presented by this Complaint.

13. Defendant Josh Kaul is the Attorney General of the State of Wisconsin and is sued in his official capacity. Defendant Kaul maintains his office at 17 West Main Street, Madison, Wisconsin 53703. Defendant Kaul "direct[s] and supervis[es]" DOJ. Wis. Stat. § 15.25.

14. Defendant Wisconsin Department of Justice is the state agency that entered the challenged Agreement with New York University, on behalf of NYU's School of Law State Energy and Environmental Impact Center. Its principal place of business is 17 West Main Street, Madison, Wisconsin 53703.

JURISDICTION AND VENUE

15. This is an action for declaratory and injunctive relief under Wis. Stat. §§ 806.04 and 813.01.

16. Venue in this Court is proper pursuant to Wis. Stat § 801.50(2)–(3).

STATEMENT OF FACTS

17. On November 5, 2021, NYU, on behalf of the Center, and DOJ entered into an Agreement that empowered a Center Legal Fellow to operate as a SAAG within DOJ. Exhibit B, §§ A.1, B.1.

18. The Agreement is expressly characterized as an “Employee Secondment Agreement between the Wisconsin Department of Justice and the State Energy & Environmental Impact Center at NYU School of Law.” Exhibit B.

19. As an employee of the Center during the course of the secondment, the Legal Fellow owes duties to both the Center and the DOJ.

20. Under the terms of the Agreement, “[d]uring the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, DOJ, and will be subject to DOJ’s policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from DOJ at the commencement of his or her fellowship.”

Id. § A.3.

21. Under the terms of the Agreement, DOJ is restrained in how it may terminate the services of the Legal Fellow. *Id.* § A.6. Notably, DOJ may not terminate the Legal Fellow immediately. *Id.*

22. Under the Agreement, DOJ is restrained in how it may discipline the Legal Fellow. The Agreement requires that DOJ must “attempt to resolve any performance

or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow.” *Id.*

23. Under the Agreement, DOJ is restrained from setting the dates when the Legal Fellow may begin or end her term. The Agreement does not give DOJ the discretion to set the specific start and end dates for Legal Fellow services. *Id.* § A.2.

24. “During the Fellowship Period, salary and benefits will be provided to the Legal Fellow by the NYU School of Law.” *Id.* § A.4.

25. The Agreement permits the Center to request, with DOJ approval, copies of the Legal Fellow’s work product. *Id.* § D.1.

26. The Agreement directs DOJ to assign the Legal Fellow to work on specific projects—namely, “matters relating to clean energy, climate change, and environmental matters of regional and national importance.” *Id.* § B.2. Other lawyers at DOJ, by contrast, receive their assignments from the Attorney General, elected by and answerable to Wisconsin voters, or his senior staff—not outside groups.

27. In its offer letters to both the 2022 and 2024 Legal Fellows, the Center explained that the Fellow would be an “NYU employee.”

28. Upon information and belief, the Legal Fellow is required to send periodic reports on her work to the Center.

29. On April 11, 2022, the Center hired Zachary Corrigan as a Legal Fellow and seconded him to Wisconsin DOJ.

30. Zachary Corrigan resigned from the position on October 21, 2022.

31. On January 8, 2024, the Center hired Karen Heineman as a Legal Fellow and seconded her to Wisconsin DOJ.

32. On May 21, 2024, the Milwaukee Journal Sentinel reported that Attorney General Kaul authorized the Center Legal Fellow to operate as a SAAG on environmental litigation, with the Center paying their Legal Fellow an annual salary of \$90,000.⁴

33. The Center's Legal Fellow, operating as a SAAG within DOJ, regularly represents the Wisconsin Department of Natural Resources ("DNR") and the state of Wisconsin in judicial proceedings. The Center's Legal Fellow is currently representing DNR in Wisconsin circuit court in multiple active cases and recently represented the State of Wisconsin in an enforcement action brought against a rural Clark County farmer for a ditching project that DNR argued impacted wetlands and thus required a permit.⁵

34. The SAAG exercises the same authority exercised by any other assistant attorneys general at DOJ, including initiating investigations, bringing enforcement actions, prosecuting cases, advising the governor and state agencies, and representing state agencies in administrative and judicial proceedings.

⁴ Daniel Bice, *New Prosecutor In AG's Office Paid For By Center Funded By Former NY Mayor Bloomberg*, *supra*.

⁵ See *Phantom Lakes Mgmt. Dist. v. Wis. Dep't Nat. Res.*, 2024cv001834 (Waukesha Cnty. Cir. Ct.); *Bowar v. Wis. Dep't Nat. Res.*, 2024cv003112 (Dane Cnty. Cir. Ct.); *1989 Holdings, LLC v. Wis. Dep't Nat. Res.*, 2024cv001279 (Waukesha Cnty. Cir. Ct.); *North & South Twin Lakes Prot. and Rehab Dist. v. Wis. Dep't Nat. Res.*, 2024cv000076 (Vilas Cnty. Cir. Ct.); *Mustang Props. LLC v. Wis. Dep't Nat. Res.*, 2024cv000075 (Oconto Cnty. Cir. Ct.); see also *State v. Weaver*, 2022CX000002 (Clark Cnty. Cir. Ct.).

35. On information and belief, the Center's Legal Fellow assists with cases assigned to other attorneys within the Public Protection Unit of DOJ regardless of whether the Legal Fellow formally appears in those cases.

36. DOJ has incurred expenses in hiring and retaining SAAGs provided by the Center, including costs from applying for the SAAG funding, entering the Agreement with the Center, hiring the SAAG, and providing the SAAG with equipment and resources.

37. On information and belief, DOJ has incurred expenses in reimbursing the SAAG for work expenses, including, but not limited to, provision of supplies as well as reimbursement for travel expenses (including lodging and meals), state bar dues, and court fees.

38. On information and belief, DOJ has intentionally structured the SAAG's salary in order to circumvent the state appropriations process. DOJ's agreements with the SAAG and the Center require the Center to pay the SAAG's salary and benefits directly, rather than first routing those funds to DOJ, and without DOJ obtaining legislative approval to receive those funds.

39. Members of the Wisconsin Dairy Alliance and the Venture Dairy Cooperative regularly engage with DNR. For example, DNR requires dairy farms that qualify as concentrated animal feeding operations to secure Wisconsin Pollutant Discharge Elimination System ("WPDES") permits.⁶ As part of the monitoring and permitting processes, DNR staff regularly conduct site visits to ensure compliance

⁶ CAFOs, Water Permits, and NR 243, Wis. Dep't Nat. Res. (last accessed Feb. 17, 2025), <https://dnr.wisconsin.gov/topic/CAFO/WPDESNR243.html>.

with the regulations governing the storage and processing of manure and other agricultural regulations.

40. Violations of the complex regulations that govern these dairy operations often result in steep fines, enforcement actions, and attorney's fees. Indeed, DOJ frequently files enforcement actions against CAFOs and publicizes those cases.⁷ And a finding of a violation, or even a settlement of the case with no admission of wrongdoing, can cost hundreds of thousands of dollars.⁸ More, even when a violation is never proven and no settlement ever reached, the allegations remain in the public domain and defending against these allegations requires substantial time and resources.

41. When DNR brings enforcement actions and judicial proceedings against dairy operations, or is otherwise in litigation against them, it is represented by DOJ's Public Protection Unit, in which the SAAAG works.

⁷ See, e.g., <https://www.doj.state.wi.us/news-releases/ag-kaul-announces-nearly-250000-settlement-polluters-violations-wisconsin's-wastewater>; <https://www.doj.state.wi.us/news-releases/ag-kaul-announces-55000-environmental-judgment-pollution-runoff-event-and-other>; <https://www.doj.state.wi.us/news-releases/ag-kaul-announces-settlement-3-facilities-requiring-190000-payment-water-pollution-and>; <https://www.doj.state.wi.us/news-releases/ag-kaul-announces-225000-penalty-against-kewaunee-county-concentrated-animal-feeding>; <https://www.doj.state.wi.us/news-releases/doj-announces-65000-settlement-emerald-sky-dairy-resolve-violations-wisconsin's>; <https://www.doj.state.wi.us/news-releases/kewaunee-co-cafo-owner-manure-hauler-and-crop-consultant-charged-conspiring-submit>; <https://www.doj.state.wi.us/news-releases/attorney-general-kaul-announces-320000-settlement-ledgeview-farms-resolve-violations>; <https://www.doj.state.wi.us/news-releases/phil-mlsna-and-mlsna-dairy-supply-inc-assessed-20964147-violations-wisconsin's>.

⁸ See, e.g., <https://www.doj.state.wi.us/news-releases/ag-kaul-announces-225000-penalty-against-kewaunee-county-concentrated-animal-feeding>; <https://www.doj.state.wi.us/news-releases/phil-mlsna-and-mlsna-dairy-supply-inc-assessed-20964147-violations-wisconsin's>; <https://www.doj.state.wi.us/news-releases/attorney-general-kaul-announces-320000-settlement-ledgeview-farms-resolve-violations>.

42. DNR and DOJ have sued members of Wisconsin Dairy Alliance and the Venture Dairy Cooperative. Undoubtedly DNR and DOJ will continue to institute such enforcement actions and judicial proceedings in the future.

43. The Center tracks the work of the special assistant attorneys general it places in state Attorneys General offices. The Center has placed multiple press releases on its website regarding Wisconsin DOJ's enforcement actions against CAFOs, signaling its approval of certain uses to which its bought-and-paid-for state attorney is being put.⁹

44. The Center also issued a press release on March 25, 2024, entitled "Six AGs Sent Comments Urging EPA to Strengthen Effluent Limitations Guidelines for the Meat and Poultry Industries."¹⁰ The press release highlighted Wisconsin Attorney General Josh Kaul's role in urging the U.S. Environmental Protection Agency ("EPA") to impose harsher effluent limitation guidelines and standards for meat and poultry products point sources. In doing so, Kaul asked the EPA to ignore "industry concerns" about the harmful effects of harsher regulation.¹¹

45. DOJ's decision to designate as a SAAG in its Public Protection Unit an attorney employed by a third-party special interest group (the Center) directly harms the members of the Wisconsin Dairy Alliance and the Venture Dairy Cooperative

⁹ See, e.g., <https://perma.cc/FBE9-BK9W>; <https://perma.cc/JF6R-GMCZ>.

¹⁰ <https://perma.cc/Y73V-ALMG>.

¹¹ The Attorneys General of Cal., Wis., Md., N.J., N.Y., & Or., Comment Letter On EPA's Proposed Clean Water Act Effluent Limitations Guidelines and Standards For the Meat and Poultry Products Point Source Category, 20 (Mar. 25, 2024) <https://perma.cc/82TE-4BCV>.

who, as a result of DOJ's unlawful hiring, face unlawful prosecutions and enforcement actions funded and fueled by third-party special interest groups.

46. Even when the SAAG is not herself prosecuting the members of the Wisconsin Dairy Alliance and the Venture Dairy Cooperative, her support and involvement in the Public Protection Unit frees up other attorneys to investigate, prosecute, and advocate against the interests of Plaintiffs and their members.

47. The infusion of Center-provided resources has made it easier for Attorney General Kaul and DOJ to participate in additional litigation on a national scale. Since January 20, 2025, Attorney General Kaul and DOJ have filed or supported at least five lawsuits challenging actions taken by the Trump administration, on issues ranging from birthright citizenship, to reducing federal government spending, to gender identity and the military.¹² And several of the other Attorneys General joining those suits have likewise entered agreements with the Center to secure their own Legal Fellows.

48. The Agreement between DOJ and the Center also gives the Center outsized influence over the workings of the state government and officials—namely, the Attorney General and DOJ. Other organizations and public-interest groups, including Wisconsin Dairy Alliance and Venture Dairy Cooperative, are not given similar influence.

¹² See <https://www.doj.state.wi.us/news-releases/gov-evers-ag-kaul-join-coalition-states-challenging-unconstitutional-order-attempting>; <https://www.doj.state.wi.us/news-releases/gov-evers-attorney-general-kaul-join-22-states-suing-stop-trump-administration>; <https://www.doj.state.wi.us/news-releases/gov-evers-attorney-general-kaul-join-19-states-suing-stop-elon-musk-and-doge%E2%80%99s-attacks>; <https://www.doj.state.wi.us/news-releases/gov-evers-attorney-general-kaul-sue-trump-administration-defunding-medical-and-public>; <https://www.doj.state.wi.us/news-releases/attorney-general-josh-kaul-stands-transgender-military-members-challenge-president>.

49. In particular, the Center's Agreement with DOJ requires DOJ to use its resources in particular ways—namely, on “matters relating to clean energy, climate change, and environmental matters of regional and national importance.” Exhibit B, § B.2. And, because the Center employs the SAAG and pays her salary, it has control over an assistant attorney general within DOJ.

50. No other group, including Wisconsin Dairy Alliance and Venture Dairy Cooperative, has this kind of influence over DOJ.

51. The Agreement between DOJ and the Center thus directly interferes with the primary work of the Wisconsin Dairy Alliance and the Venture Dairy Cooperative by giving the Center unique, insider access and influence over DOJ's work on agricultural and other environmental issues.

CAUSES OF ACTION

COUNT I – FOR A DECLARATION THAT DOJ'S AGREEMENT WITH THE CENTER IS *ULTRA VIRES* AND UNLAWFUL

52. Plaintiffs incorporate and reallege all of the previous allegations in the Complaint.

53. Plaintiffs seek a declaration that DOJ's Agreement with the Center is *ultra vires* and unlawful.

54. The Attorney General and DOJ have only those powers granted by statute. *State v. City of Oak Creek*, 2000 WI 9, ¶ 24, 232 Wis. 2d 612, 605 N.W.2d 526; *The Ave., Inc. v. La Follette*, 183 Wis. 2d 409, 415, 515 N.W.2d 339 (Ct. App. 1994).

55. No statute empowers DOJ or the Attorney General to hire privately funded attorneys as assistant attorneys general.

56. DOJ's Agreement with the Center for the hiring of a privately funded attorney is therefore *ultra vires* and void.

57. Even if the Center's free legal services could be considered a "gift," DOJ failed to obtain the necessary approvals to accept such a gift, and its actions would still be *ultra vires*.

58. The Wisconsin statutes allow the executive branch to accept gifts and grants only after approval by the Joint Committee on Finance. Wis. Stat. § 20.907(1).

59. On information and belief, neither the Attorney General nor DOJ obtained approval for these gifted legal services from the Joint Committee on Finance.

60. Additionally, even if DOJ could hire a privately funded attorney as an assistant attorney general, upon information and belief, DOJ has failed to follow the statutorily required procedures for hiring and retaining such employees.

61. Wisconsin's civil service laws require the state to follow open and competitive procedures when hiring state employees, including assistant attorneys general. *See* Wis. Stat. §§ 230.14–.16. The laws also require a probationary period and employee evaluations, Wis. Stat. §§ 230.28, .37, an employee-grievance process, Wis. Stat. § 230.445, and a compensation progression plan, Wis. Stat. § 230.12.

62. Upon information and belief, these procedures were not followed with the SAAG. Instead, the SAAG's hiring and retention are governed by the Agreement between DOJ and NYU, on behalf of the Center, which contains entirely different language and processes. *See* Exhibit B.

63. Internal human-resources communications indicate that DOJ created and filled the SAAG position on an *ad hoc* basis rather than through the standard procedures.

64. The written agreements between both Legal Fellows and DOJ expressly stated that the Fellow in his or her role as SAAG is “NOT an employee of the State of Wisconsin” or DOJ.

65. Thus, even if the law permitted DOJ to hire the SAAG, DOJ’s actions are still *ultra vires* for failure to comply with the civil service laws.

66. Because DOJ’s hiring and retention of the SAAG is unlawful, all expenditures incurred by DOJ in hiring and retaining the SAAG, administrative and otherwise, are also unlawful.

COUNT II – FOR A DECLARATION THAT DOJ’S AGREEMENT WITH THE CENTER IS UNCONSTITUTIONAL UNDER SEPARATION-OF-POWERS PRINCIPLES, THE RIGHT TO PETITION, EQUAL PROTECTION, AND DUE PROCESS

67. Plaintiffs incorporate and reallege all of the previous allegations in the Complaint.

68. In Wisconsin, “executive power is to be exercised by the executive branch.” *Serv. Emps. Int’l Union, Loc. 1 v. Vos (“SEIU”)*, 2020 WI 67, ¶ 33, 393 Wis. 2d 38, 946 N.W.2d 35.

69. That, of course, means the legislative and judicial branches may not exercise this power, but it also means that it is the responsibility of the executive branch to exercise this power. *Evers v. Marklein*, 2024 WI 31, ¶ 15, 412 Wis. 2d 525,

8 N.W.3d 395 (“The governor is entrusted to ‘take care that the laws be faithfully executed.’” (citation omitted)); *SEIU*, 2020 WI 67, ¶ 31.

70. Thus, the executive cannot delegate his power to private parties. Indeed, vesting private parties with prosecutorial power tramples these constitutional limits, unleashing private parties to pursue their “personal or pecuniary interest which [often] is inconsistent with or repugnant to the public interest.” *Texas Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 469 (Tex. 1997); *see also A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 553 (1935) (Cardozo, J., concurring) (describing as “delegation running riot” the idea that the President could create a code upon recommendation from a private trade association).

71. The Agreement here unlawfully delegates executive authority to a private person and a private entity, the Center’s Legal Fellow (and by extension the Center itself), by empowering the Fellow to prosecute Wisconsin law as a SAAG.

72. The Legal Fellow is a private party because she is an employee of the Center, a private third party, not Wisconsin DOJ.

73. The Center controls the Legal Fellow’s salary and so retains ultimate control over the Fellow. Exhibit B, § A.4.

74. More, the Agreement insulates the Legal Fellow from discipline and termination by DOJ and directs how DOJ allocates its resources by requiring that the Legal Fellow work on particular matters. *Id.* §§ A.6, B.2.

75. The Agreement therefore unlawfully delegates executive power to a private party.

76. In addition, only the Legislature may make appropriations; this rule acts as a “particularly important as a restraint on Executive Branch officers.” *U.S. Dep’t of Navy v. Fed. Lab. Rels. Auth.*, 665 F.3d 1339, 1347 (D.C. Cir. 2012); *see also Marklein*, 2024 WI 31, ¶¶ 10, 14, 30.

77. The Agreement between NYU, on behalf of the Center, and DOJ unlawfully circumvents the appropriations process by routing funds to pay the salary of the SAAG directly to the SAAG.

78. Separately, granting prosecutorial power to a private entity violates due process. *See Carter v. Carter Coal Co.*, 298 U.S. 238, 311 (1936). “Authority to prosecute an individual is that government power which most threatens personal liberty.” *In re Sealed Case*, 838 F.2d 476, 487 (D.C. Cir. 1988), *rev’d on other grounds sub nom. Morrison v. Olson*, 487 U.S. 654 (1988).

79. The Center and its Legal Fellows are third parties with interests that are or may be adverse to the interests of many Wisconsinites and many Wisconsin businesses and organizations.

80. The Center influences the decisions of the Attorney General and DOJ both directly through its Agreement with DOJ and through the authority it exercises over its Legal Fellow, who then wields prosecutorial power in Wisconsin.

81. Allowing the Center and its Legal Fellows to wield, either directly or indirectly, the prosecutorial power, thus violates due process.

82. The right to petition is fundamental because it “allows citizens to express their ideas, hopes, and concerns to their government and their elected

representatives.” *Borough of Duryea, Pa. v. Guarnieri*, 564 U.S. 379, 388 (2011); *see Wisconsin Power & Light Co. v. Pub. Serv. Comm’n*, 5 Wis. 2d 167, 177, 92 N.W.2d 241 (1958). The right “is implicit in ‘the very idea of government, republican in form.’” *McDonald v. Smith*, 472 U.S. 479, 482 (1985) (alterations adopted) (quoting *United States v. Cruikshank*, 92 U.S. 542, 552 (1876)). And government action that “impermissibly interferes” with the fundamental rights of some individuals but not others unconstitutionally denies those individuals equal protection of law. *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1008 (7th Cir. 2019); *see Matter of Adoption of M.M.C.*, 2024 WI 18, ¶ 12, 411 Wis. 2d 389, 5 N.W.3d 238.

83. DOJ’s Agreement with the Center denies Plaintiffs and their members equal protection of law by granting the Center pay-to-play, preferred access to express its ideas and priorities to DOJ and the Attorney General.

84. The Agreement disadvantages Plaintiffs and hampers their ability to petition the government because they lack access to a comparable SAAG position.

85. The Agreement imposes a barrier between Plaintiffs and the Attorney General and DOJ, giving the Center insider leverage to undermine or oppose any attempts by Plaintiffs to petition government officials on agricultural and other environmental issues.

86. DOJ has thus infringed Plaintiffs’ right to petition and denied them equal protection of law.

87. Because DOJ's hiring and retention of the SAAG is unlawful, all expenditures by DOJ in hiring and retaining the SAAG are also unlawful.

Prayer for Relief

WHEREFORE, Plaintiffs request the following relief:

- A. A declaration that DOJ's Agreement with NYU on behalf of the Center and DOJ's hiring and retention of the SAAG is *ultra vires* and unlawful.
- B. A declaration that DOJ's Agreement with NYU on behalf of the Center and DOJ's hiring and retention of the SAAG is unconstitutional.
- C. An injunction requiring DOJ to terminate its Agreement with NYU on behalf of the Center and to eliminate the SAAG position, prohibiting DOJ from entering an agreement with NYU or the Center to hire privately funded SAAGs in the future.
- D. Such other relief as the Court deems just and proper.

Date: February 20, 2025

Respectfully submitted,

Electronically Signed by Ryan J. Walsh

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Attorneys for Plaintiffs

FILED
02-20-2025
Clerk of Circuit Court
Calumet County
2025CV000022

Exhibit A



WISCONSIN ETHICS COMMISSION COMPLAINT FORM

1. Please provide the following information about yourself (Complainant):

Complainant name Lane Ruhand			
Street address 215 S Century Avenue, #198	City Waunakee	State WI	Zip code 53597
Email address lane@ruhlandlaw.com	Phone number (608) 291-7504		

2. Please provide the following information for the person you allege violated the law (Respondent):

Respondent name Josh Kaul			
Street address 17 West Main Street	City Madison	State WI	Zip code 53703
Email address josh.kaul@doj.state.wi.us	Phone number 608-266-1221		

3. Please state the applicable section(s) of law in Chapter 11, subchapter III of Chapter 13, or subchapter III of Chapter 19, if known:

Wis. Stat. s. 19.45(3)

4.**STATE OF WISCONSIN****Before the Ethics Commission**I, Lane Ruhand, allege that:

See attached pages

 Please see additional pages attached. (No more than 10 pages total.)



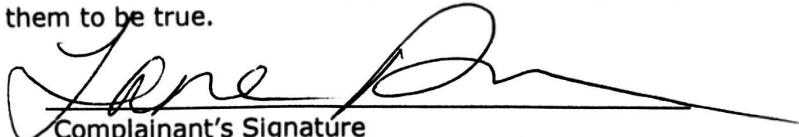
WISCONSIN ETHICS COMMISSION

COMPLAINT FORM

NOTARIAL CERTIFICATE

I, Lane Ruhand, being first duly sworn, on oath, state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Date: 2/12/25

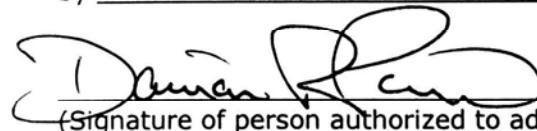


Complainant's Signature

STATE OF WISCONSIN

COUNTY OF Columbia,
(county of notarization)

Signed and sworn to (or affirmed) before me on February 12, 2025
by Lane Ruhand (name of individual making statement).



(Signature of person authorized to administer oaths)

Notary Public or _____

(official title if not notary)

My commission expires 12/10/28, or is permanent.



Instructions

- Section 1 - Please provide your full name and address. Anonymous complaints are NOT accepted.
- Section 2 - Please provide the full name and address of the person against whom the complaint is filed. If multiple persons are alleged to have committed a violation, file a separate complaint for each person.
- Section 3 - Please state the applicable section of law that has been violated. Complaints that fail to allege a violation of Chapter 11, subchapter III of Chapter 13, or subchapter III of Chapter 19 cannot be considered.
- Section 4:
 - Please insert your name.
 - Include a concise statement of the facts supporting each alleged violation.
 - Indicate whether an allegation is based on first-hand personal knowledge or information and belief.
 - For allegations based on information and belief, please identify the source of the information.
 - If citing legal authority, please include a public domain citation, if available. Citations shall also include a page or paragraph number, as appropriate.
 - Please attach additional pages or documentation, if necessary.

! No more than 10 total pages will be accepted without prior approval.
- Notarial Certificate - Please take the completed complaint to a notary public. The notary will place you under oath before asking you to sign the complaint.
- If an attorney or other authorized person is filing this complaint on behalf of the complainant, please include a notice of representation that includes the name and address of the attorney or authorized person.

Please send this completed form to:

Email: ethics.complaints@wi.gov	Fax: (608) 264-9319	Mail: Wisconsin Ethics Commission P.O. Box 7125 Madison, WI 53707-7125	In-Person Delivery: Wisconsin Ethics Commission 101 E. Wilson St., Suite 127 Madison, WI 53703
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INTRODUCTION

All forms of corruption undermine the public's faith in government. Sometimes it is blatant—such as a senator's trading favors for cash, gold, and fast cars.¹ Other abuses are more subtle. None of it is okay. Sovereignty is the property of the People—not the Red Team, the Blue Team, and certainly not private monied interests. Our government is not for sale.

The kind of corruption here is of the subtler sort. Instead of personally handing state Attorneys General envelopes of cash to induce them, for example, to sue energy companies under radically progressive climate-change theories, New York mogul Michael Bloomberg opened a “State Energy & Environmental Impact Center” at New York University School of Law, which then offered state Attorneys General prepaid attorneys—for “free”—with an understanding that they would be used to pursue ideologically driven litigation. But a circuitous bribe is still a bribe. When “private persons and special interest groups directly pa[y] the salaries of purportedly neutral government attorneys,” it raises serious “concern[s] about corruption, fraud, and prosecutorial misconduct.” *United States v. Smith*, 324 F.3d 922, 926 (7th Cir. 2003). And, of course, it should make no difference which private person or group is paying. Neither corporations nor “climate justice” groups should be buying Assistant Attorneys General.

That is why Wisconsin, like most States, prohibits government officials from accepting anything of value that might even “reasonably be expected to influence [their] official actions or judgment.” Wis. Stat. § 19.45(3); *see also*, e.g., N.Y. Public Officers Law § 73(5) (prohibiting public officers from accepting a gift “under circumstances in which it could reasonably be inferred that the gift was intended to influence him or her, or could reasonably be expected to influence him or her”); Ohio Stat. § 102.03(A)(10); Mich. Stat. § 15.342(4); Hawaii Stat. § 84-11.

But Attorney General Kaul has done exactly what the law forbids, accepting the services of a privately funded attorney—even giving her authority to act on behalf of the State of Wisconsin—the provision of whom reasonably can be expected to cause Kaul and his office to pursue the kind of litigation desired by the funder. As columnist Daniel Bice put it, Kaul has “outsourc[ed] the funding for his fight against climate change in Wisconsin.”² And with the purse comes power. The ideologically driven, billionaire-funded NYU Center now wields undue influence over the actions of the Wisconsin Department of Justice—whose one and only client is, or at least ought to be, the People. That raises serious and valid “concern[s] about the potential for corruption, fraud, and prosecutorial misconduct.” *Smith*, 324 F.3d at 926. And—at minimum—this deal certainly creates a “reasonabl[e] expect[ation]” that the gift of free legal services will “influence” the Attorney General’s official decisions. Wis. Stat. § 19.45(3). Unfortunately, this problem is not limited to the Attorney General—private funds flow into other high-ranking offices, including the Governor’s.³ This pattern, as one ethics expert has observed, “raise[s] the question of, Who’s really representing the state?”⁴ The Ethics Commission should investigate and enjoin this unethical practice.

¹ <https://www.justice.gov/usao-sdny/pr/us-senator-robert-menendez-his-wife-and-three-new-jersey-businessmen-charged-bribery>.

² Daniel Bice, *New prosecutor in AG’s office paid for by center funded by former NY Mayor Bloomberg*, Milwaukee Journal-Sentinel (May 21, 2024), <https://www.jsonline.com/story/news/investigations/daniel-bice/2024/05/21/bice-new-state-prosecutor-paid-for-by-bloomberg-funded-center/73721160007/>.

³ See <https://www.wispolitics.com/2023/institute-for-reforming-government-un-foundation-funding-wi-dnrs-climate-agenda/>.

⁴ Bice, *supra*, n.2.

JURISDICTION

This ethics complaint alleges a violation of Wis. Stat. § 19.45(3). The Commission has jurisdiction to investigate this complaint under Wis. Stat. § 19.49(1). “If the commission believes that there is reasonable suspicion that a violation under subd. 1. has occurred or is occurring, the commission may by resolution authorize the commencement of an investigation.” Wis. Stat. 19.49(2)(b)(3).

FACTS

In 2017, Michael Bloomberg gave \$6 million to New York University Law School to pay—via free legal services—state Attorneys General to pursue climate related litigation.⁵ Michael Bloomberg is a former Democratic primary presidential candidate. He donates many millions of dollars to various Democratic candidates and causes.⁶

When it opened in 2017, Bloomberg and NYU’s State Energy & Environmental Impact Center (the “Center”) announced that a “primary goal” of the Center was to “enable interested state [A]ttorneys [G]eneral to expand their capacity to take on important clean energy, climate, and environmental matters by recruiting and hiring NYU fellows to serve as special assistant attorneys general.” Exhibit A. The Center explained that the purpose of the free legal services was to fight “actions that undermine key clean energy, climate change, and environmental values and protections.” Exhibit A. To receive the free services of an attorney, a state Attorney General had to “demonstrate [to the Center] a need and commitment to defending environmental values and advancing progressive clean energy, climate change and environmental legal positions.” Exhibit B.

Bloomberg and NYU structured the program to generate new progressive climate litigation. The Center required state Attorneys General to show in their funding requests that their “funding or other capacity constraints have limited the[ir] ability to work on [climate] issues.” Exhibit B. The Center told the Attorneys General that “[p]riority consideration will be given to state attorneys general who demonstrate a commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.” *Id.* And the Center retained leverage to direct state Attorneys General litigation efforts by limiting the fellow agreements to two years, which forces state Attorneys General to adopt the Center’s goals if they want renewed funding. Exhibit B.

The Center later scrubbed its website of any reference to “progressive” legal positions or “funding or other capacity constraints.”⁷ On information and belief, this public relations change had no effect on the way that the Center offered the free legal services.

⁵ See Juliet Eilperin, *NYU Law Launches New Center to Help State AGs Fight Environmental Rollbacks*, Washington Post (Aug. 16, 2017), <https://perma.cc/UY2P-MQAT>.

⁶ See, e.g., Bloomberg Philanthropies, *Bloomberg.org* (last accessed Feb. 12, 2025); Chris Cameron, *Bloomberg Backs Biden With \$20 Million Donation*, New York Times (June 20, 2024), <https://www.nytimes.com/2024/06/20/us/politics/michael-bloomberg-biden-donation.html>.

⁷ State Energy & Environmental Impact Center, *How to Hire an NYU Law Fellow – AG Offices*, NYU School of Law (last accessed July 31, 2024), <https://stateimpactcenter.org/about/fellows-program/hire>.

The Center has given free legal services only to Democratic Attorneys General.⁸ These Attorneys General, in turn, take up causes supported by the Center, like bringing climate-change suits against energy producers.⁹ And these lawsuits involve Attorneys General taking the same positions over and over.¹⁰ The Center has never given free legal services to an Attorney General of either party who took contrary positions in environmental litigation.¹¹ The Center also engages with these lawsuits, including taking its own public positions on them,¹² tracking them,¹³ and publicizing them.¹⁴

For example, the Center led the charge to ban gas stoves and the charge to force consumers into electric vehicles. A Center fellow placed as a special assistant attorney general with the Attorney General of the District of Columbia drafted a comment letter, cosigned by 10 state Attorneys General, that pushed the Consumer Product Safety Commission “to address the public health and safety dangers of gas stoves.”¹⁵ The fellow placed with the Minnesota Attorney General has played a primary role in defending the Minnesota Pollution Control Agency and Governor Tim Walz for their decision to impose California’s harsh vehicle emissions limits wholesale on Minnesotans.¹⁶

Lawmakers and commentators across the country have raised concerns about the Center’s influence on state Attorneys General. For example, Paul Nolette, Associate Professor of Political Science at Marquette University, “saw reason for concern about the arrangement” because it “raise[s] the question of ‘Who’s really representing the state?’”¹⁷ In its most recent appropriation, the state of Virginia prohibited this practice by requiring that “all legal services of the Office of the

⁸ The Center has given free legal services to the Attorneys General of the Connecticut, the District of Columbia, Delaware, Illinois, Massachusetts, Maryland, Minnesota, New Mexico, New York, Oregon, Washington, and Wisconsin. *Id.*

⁹ See, e.g., *Connecticut v. Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Sup. Ct. Sept. 14, 2020); *District of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020); *Delaware v. BP America Inc.*, No. N20C-08-087-AML CCLD (Del. Sup. Ct. Sept. 10, 2020); *Massachusetts v. Exxon Mobil Corp.*, 1984-cv-03333 (Mass. Sup. Ct. Oct. 24, 2019).

¹⁰ See, e.g., *Connecticut v. Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Sup. Ct. Sept. 14, 2020) (alleging that Exxon Mobil misled consumers about climate change); *District of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020) (same allegation against Exxon Mobil, BP, and other companies); *Delaware v. BP America Inc.*, No. N20C-08-087-AML CCLD (Del. Sup. Ct. Sept. 10, 2020) (same); *Massachusetts v. Exxon Mobil Corp.*, 1984-cv-03333 (Mass. Sup. Ct. Oct. 24, 2019) (same allegation against Exxon Mobil).

¹¹ See, e.g., *Alabama v. California*, No. 22O158 (U.S. May 24, 2024).

¹² State Energy & Environmental Impact Center, *Insights*, NYU School of Law (last accessed July 31, 2024), <https://stateimpactcenter.org/insights/reports>.

¹³ State Energy & Environmental Impact Center, *AG Actions Database*, NYU School of Law (June 11, 2024), <https://stateimpactcenter.org/ag-work/ag-actions>.

¹⁴ State Energy & Environmental Impact Center, *Legally Speaking*, NYU School of Law (last accessed July 31, 2024), <https://stateimpactcenter.org/news-events/legally-speaking>.

¹⁵ *AG Schwalb Leads 11 Attorneys General Urging Federal Action to Address Health and Safety Risks of Gas Stoves*, Office of the Attorney General for D.C. (May 8, 2023) <https://perma.cc/Z7F7-Z8CD>; see *Lauren Cullum*, LinkedIn (last accessed Feb. 8, 2025), <https://www.linkedin.com/in/lauren-cullum-149b1ba7>.

¹⁶ See *Clean Fuels Dev. Coal. v. Kessler*, No. 23-cv-00610-KMM-DTS (D. Minn.); *Pete Surdo*, LinkedIn (last accessed Feb. 8, 2025) <https://www.linkedin.com/in/pete-surdo-aa81a05>.

¹⁷ Daniel Bice, *Bice: New prosecutor in AG’s office paid for by center funded by former NY Mayor Bloomberg*, Milwaukee Journal Sentinel, May 21, 2024, <https://www.jsonline.com/story/news/investigations/daniel-bice/2024/05/21/bice-new-state-prosecutor-paid-for-by-bloomberg-funded-center/73721160007/>.

Attorney General” be performed by state employees paid through appropriations.¹⁸ And several members of the United States House of Representatives have announced a similar bill at the federal level.¹⁹

In 2021, Attorney General Kaul, on behalf of the Wisconsin Department of Justice and through the Deputy Attorney General, entered into a contract with the Center for free legal services. Exhibit C. The contract states that “DOJ ha[d] been selected by the State Impact Center” to receive “the services of one attorney” whose “substantive work will be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance.” *Id.* Attorney General Kaul obtained from the Center a Legal Fellow in 2022, and another Legal Fellow in January 2024.

COMPLAINT

I. Attorney General Kaul’s Acceptance of Free Legal Services From the Center Violates Wis. Stat. § 19.45(3) Because One Would Reasonably Expect The Gift to Influence His Official Actions and Judgments

In Wisconsin, “high moral and ethical standards among state public officials and state employees are essential to the conduct of free government.” Wis. Stat. § 19.41(1). The state has “a compelling state interest” in preventing even the appearance of government corruption “because it distorts both the concept of popular sovereignty and the theory of representative government.” *N. Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 716 (4th Cir. 1999); *see also Schickel v. Dilger*, 925 F.3d 858, 869–70 (6th Cir. 2019). “[T]o eliminate the apparent [or] actual corruption from the political system,” many states have enacted codes of ethics for public officials. *Associated Indus. of Kentucky v. Com.*, 912 S.W.2d 947, 950 (Ky. 1995). And Wisconsin is no exception. The state’s ethics code for government officials is designed to “promote and strengthen the faith and confidence of the people of this state in their state public officials and state employees.” *Id.*

The classic example of government corruption “is the financial *quid pro quo*: dollars for political favors.” *Fed. Election Comm’n v. Nat’l Conservative Pol. Action Comm.*, 470 U.S. 480, 497 (1985). “Quid pro quo is a Latin term meaning ‘what for whom’ and is defined as ‘an action or thing that is exchanged for another action or thing of more or less equal value.’” *State ex rel. Two Unnamed Petitioners v. Peterson*, 363 Wis. 2d 1, 48 n.18 (2016) (citing *Black’s Law Dictionary* 1367 (9th ed. 2009)). A *quid pro quo* is “a specific intent to give or receive something of value *in exchange* for an official act.” *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404–05 (1999) (emphasis in original).

Because even the appearance of a *quid pro quo* threatens public trust in government officials, *Schickel*, 925 F.3d at 872 (states have an interest in “the prevention of actual quid pro quo corruption or its appearance”), Wisconsin law prohibits any “state public official” from “accept[ing] from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the state public official’s vote, official actions or judgment.” Wis. Stat. § 19.45(3).

¹⁸ Virginia State Budget, HB 6001 Bill Order, Item 49, Attorney General and Department of Law, 2024 (<https://budget.lis.virginia.gov/item/2024/2/HB6001/Enrolled/1/49/>).

¹⁹ WisPolitics, U.S. Rep. Fitzgerald: Introduces bill to ban private interest funding for state attorney generals, July 24, 2024 (<https://www.wispolitics.com/2024/u-s-rep-fitzgerald-introduces-bill-to-ban-private-interest-funding-for-state-attorney-generals/>).

The Attorney General’s acceptance of free legal services from the Center in exchange for his agreement to initiate certain categories of litigation violates this rule because—at minimum—it appears to be a *quid pro quo* that influences his official decisions regarding what cases to prosecute and how to prosecute them.

Much of this is almost indisputable. To start, the Attorney General must comply with the state’s ethics rules.²⁰ He is a “state public official” because he “hold[s] a state public office.” Wis. Stat. § 19.42(14); *see also* Wis. Stat. § 19.42(13)(c); Wis. Stat. § 20.923(2). And free legal services fall under the umbrella of “anything of value” covered by § 19.45(3) because “anything of value” means any money or property, favor, *service*, payment, advance, forbearance, loan, or promise of future employment.” Wis. Stat. § 19.42(1) (emphasis added). Lastly, determining how to allocate the Department of Justice’s resources, whether to bring lawsuits, whether to settle, what positions to take, and whether to defend state laws are archetypical “official actions.” The Attorney General’s official duties are granted by statute, *State v. City of Oak Creek*, 2000 WI 9, ¶ 22, 232 Wis. 2d 612, 605 N.W.2d 526, and include the authority to direct and supervise the Department of Justice, Wis. Stat. § 15.25. The Department’s duties include representing the state in the court of appeals and the supreme court and furnishing legal services to other state departments, including the Department of Natural Resources. Wis. Stat. § 165.25.

The crux of the matter is whether the Center’s gift “could reasonably be expected to influence” the Attorney General’s decision-making in his official duties of directing litigation and DOJ resources. A gift can “be reasonably expected to influence” the Attorney General’s official actions or judgments when (1) a member of the public could expect that the gift would have such an influence, and (2) such an expectation “reflect[s] good judgment,” is “fair and proper under the circumstances,” and is “rational, sound, and sensible.” *Reasonable*, Black’s Law Dictionary, 12th ed. And it is significant that the statute uses “could” rather than “would.” It does not require proof that a gift is the kind that likely influences an official; if any reasonable person *could* expect to have such an influence, it is unlawful. And this reasonable-person standard is a common standard. At summary judgment, for example, courts ask whether a reasonable trier of fact *could* find a certain fact, not whether any reasonable trier of fact *would* so find. *See, e.g., Lambrecht v. Estate of Kaczmarczyk*, 241 Wis. 2d 804, 807 (2001).

The free legal services could reasonably be expected to influence Attorney General Kaul’s official decisions. *First*, the Center’s express intent is to spur on more environmental litigation by state Attorneys General, and gifts intended to influence a public official fall squarely within Wis. Stat. § 19.45(3). *Second*, the free legal services are expressly earmarked for climate and environmental litigation—the Center-funded attorney *must*, by contract, work on “matters relating to clean energy, climate change, and environmental matters of regional and national importance”—which shows that the Center provides these services in exchange for pursuing that litigation. *Third*, the Center required Attorneys General to prove that they needed free legal services to pursue such litigation, but by asserting “need” the Attorney General signals that he will redirect resources to such litigation and, indeed, Attorneys General receiving the Center’s free legal services have pursued the very litigation the Center desires. *Finally*, the Center requires state Attorneys General to seek to renew free legal services every two years, which gives the Center significant leverage to demand adherence to its environmental and climate priorities.

²⁰ The same is true of the Deputy Attorney General, who is also a “state public official.” *See* Wis. Stat. §§ 19.42(13)(c), (14); 20.923(8); 15.04(2).

A. The Center intends to influence the Attorney General to engage in progressive environmental litigation and that intent brings the gifts squarely within the statute.

While Wisconsin's ethics rule bans gifts that could reasonably be expected to influence a state official regardless of the giver's intent, Wis. Stat. § 19.45(3), gifts from someone with the intent to influence a public official are far more troubling. In fact, giving a gift with the intent to influence a public official is a crime. Wis. Stat. § 946.10(1). The Center's free legal services program, if it does not cross that line, comes awfully close.

From its inception, the Center made its goals unmistakably clear: provide free legal services to spur new "clean energy, climate change and environmental" litigation by offering free legal services to state Attorneys General in exchange for their "commitment to defending environmental values and advancing progressive legal positions." Exhibit B. The Center has scrubbed evidence of its overt purpose from its website, but, upon information and belief, it continues with the same *modus operandi* as before.

These optics alone are enough to create an ethics problem. The purpose of the ethics rules is not just to prevent corruption, but to prevent even the appearance of it. The Center's intentionally designed program thus, at minimum, could lead a reasonable person to expect that the Attorney General would be influenced by the Center's significant gift of free legal services. Wis. Stat. § 19.45(3).

B. That the free legal services are expected to be used to further certain kinds of litigation creates at least the appearance, if not the fact, of an improper *quid pro quo*.

Both the Center's application requirements and the contract between the Center and the Wisconsin Department of Justice give at least the reasonable appearance of improper influence. When Attorneys General requested free legal services, they needed to "demonstrate [to the Center] a need and commitment to the advancement and defense of progressive clean energy, climate change, and environmental matters." Exhibit B. This requirement creates an appearance of a *quid pro quo*—providing services in exchange for "the advancement and defense of progressive clean energy, climate change, and environmental matters."

Even more egregious, the contract explicitly requires the Attorney General to use the free legal services to advance the Center's interests. In the contract, DOJ promises that "[t]he Legal Fellow's substantive work will be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance." Exhibit C. And, in accordance with the contractual requirement, DOJ's job description for the Legal Fellow's position states that the Fellow "will focus on environmental justice, clean energy, climate change and environmental matters of regional and national importance." This arrangement is a *quid pro quo*: the Center will provide free legal services in exchange for the services being used on "matters relating to clean energy, climate change, and environmental matters of regional and national importance."²¹ In other words, the Center gives "something of value"—the free legal services—in exchange for an "official act" by Attorney General Kaul—climate change litigation. *See Sun-Diamond*, 526 U.S. at 404–05 (1999). At the very least, a member of the public could reasonably expect that these free

²¹ <https://www.doj.state.wi.us/dms/legal-services-fellowship-opportunities>.

legal services would influence the Attorney General's decisions regarding what matters the Department of Justice litigates.

C. The Center's program is designed to cause state Attorneys General to initiate additional environmental litigation and has had its intended effect.

The Center has told Attorneys General that “[p]riority consideration will be given to state attorneys general who demonstrate a commitment to and acute need for additional support on clean energy, climate change, and environmental issues of regional or national importance, such as those matters that cross jurisdictional boundaries or raise legal questions or conflicts that have nationwide applicability.” Exhibit B. In their requests, Attorneys General had to explain “the extent to which funding or other capacity constraints have limited the ability to work on these issues or how additional dedicated support could help advance the work of the state attorney general on behalf of his or her constituents.” Exhibit B.

In light of these requirements, a member of the public could reasonably view Attorney General Kaul’s application as a promise to pursue the Center’s preferred litigation goals if he was given the free legal services.

Indeed, other Attorneys General who have received the Center’s free legal services have done just that. For example, Attorneys General have used their free legal services to bring case after case against energy producers under similar theories, all relating to alleged misleading of consumers.²² In *Connecticut v. Exxon Mobil Corp.*, the Attorney General of Connecticut used the free legal services to accuse Exxon Mobil of misleading consumers about the dangers of climate change. No. HHDCV206132568S (Conn. Sup. Ct. Sept. 14, 2020). The Attorneys General of the District of Columbia, Delaware, and Massachusetts, among other states, have used the free legal services to accuse Exxon Mobil and other energy producers of the same thing. *District of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020); *Delaware v. BP America Inc.*, No. N20C-08-087-AML CCLD (Del. Sup. Ct. Sept. 10, 2020); *Massachusetts v. Exxon Mobil Corp.*, 1984-cv-03333 (Mass. Sup. Ct. Oct. 24, 2019).

And the Center takes public positions on,²³ tracks,²⁴ and publicizes state climate litigation by the Attorneys General receiving their services,²⁵ reinforcing the appearance that the free legal services influence state Attorneys General. In fact, some states even admitted that part of the legal fellow’s duty would be to report back information about their work to the Center. In the job posting for the legal fellow designated to the New York Office of the Attorney General, it made clear that “Fellows hosted by the OAG as special assistants will have responsibilities that include...

²² See, e.g., *Connecticut v. Exxon Mobil Corp.*, No. HHDCV206132568S (Conn. Sup. Ct. Sept. 14, 2020) (alleging that Exxon Mobil misled consumers about climate change); *District of Columbia v. Exxon Mobil Corp.*, No. 2020 CA 002892 B (D.C. Super. Ct. June 25, 2020) (same allegation against Exxon Mobil, BP, and other companies); *Delaware v. BP America Inc.*, No. N20C-08-087-AML CCLD (Del. Sup. Ct. Sept. 10, 2020) (same); *Massachusetts v. Exxon Mobil Corp.*, 1984-cv-03333 (Mass. Sup. Ct. Oct. 24, 2019) (same allegation against Exxon Mobil).

²³ State Energy & Environmental Impact Center, *Insights*, NYU School of Law (last accessed July 31, 2024), <https://stateimpactcenter.org/insights/reports>.

²⁴ State Energy & Environmental Impact Center, *AG Actions Database*, NYU School of Law (June 11, 2024), <https://stateimpactcenter.org/ag-work/ag-actions>.

²⁵ State Energy & Environmental Impact Center, *Legally Speaking*, NYU School of Law (last accessed July 31, 2024), <https://stateimpactcenter.org/news-events/legally-speaking>.

prepar[ing] periodic reports of activities and progress for the State Impact Center.”²⁶ Those sorts of periodic communications strongly suggest that the Center is remains dedicated to its original purpose of coordinating a broader progressive climate and environmental litigation effort.

These facts, including that the state Attorneys General are using the Center’s free legal services to pursue the litigation it requested, confirms that the Center is leveraging its gifts to influence their decision-making. *See Siegelman*, 640 F.3d at 1180 (a *quid pro quo* may be proven “by circumstantial evidence and the fair inferences to be drawn therefrom”). A reasonable citizen could therefore expect this gift to influence Attorney General Kaul’s official decisions, including what cases to litigate and how to use the Department of Justice’s resources. Indeed, members of DOJ have admitted that the Fellow has been valuable, especially when the resources of state-funded AAGs are being used on other matters.

D. The limited-duration, renewable nature of the free legal services empowers the Center to influence Attorneys General by refusing further funding if a state Attorney General fails to cooperate with its agenda.

When the Center gives out free legal services, that lawyer works for the Attorney General only for two years. To keep receiving free legal services after that, the Attorney General must ask for them again. Like limited-duration appropriations give Congress power over executive agencies, this limited-duration gift gives the Center significant leverage to ensure that state Attorneys General stay aligned with the Center’s policy priorities. “A time limit [forces] the [recipient] to come ‘cap in hand’ … at regular intervals,” rendering him both “dependent” and “accountable.” *CFPB v. All Am. Check Cashing, Inc.*, 33 F.4th 218, 232 (5th Cir. 2022) (Jones, J., concurring).

Here, it is reasonable to expect that if the Attorney General does not keep in line with the Center’s policy and litigation goals, then he will not receive the free services again. The repeated applications allow the Center to exercise control over the Attorney General, creating a reasonable expectation that the gift influences the Attorney General’s decisions.

II. The appearance of improper influence is not negated by Attorney General Kaul’s own policy positions or the contract between DOJ and NYU.

It is no defense to say that the free legal services do not influence Attorney General Kaul because he already is inclined to agree with the Center’s policy preferences. Even if that is true (which it may not be), the free legal services still appear to influence his resource allocation.

When an actor has limited resources, making one alternative “cost-free” affects the choice he will make, by making him much more likely to choose the “free” option. For example, in the healthcare context, patients are more likely to seek out preventive care when they do not have to pay for it.²⁷ Here, by making it “free” to pursue the Center’s preferred cases, the free legal services influence Attorney General Kaul by making it more likely that he will pursue those cases.

Neither is the influence here negated by anything in the contract between DOJ and NYU. The contract says that the lawyer’s activities will be directed solely by DOJ, and not by NYU, and that “[n]o part of this agreement is intended to induce DOJ to undertake or refrain from undertaking any action within the purview of DOJ.” Exhibit C. But this does not cure the ethics violation. First,

²⁶ https://web.archive.org/web/20221011181711/https://ag.ny.gov/sites/default/files/job-postings/epb_nyu_fellow_saag_3208_int_1.pdf

²⁷ Meara, E., & Shalowitz, D. E. H. J. (2008). The Effect of Eliminating Cost Sharing on the Use of Preventive Services. *New England Journal of Medicine*, 359(20), 2082-2090. DOI: 10.1056/NEJMsa0804188.

the improper influence is already imbedded in the contract itself. The contract requires DOJ to use the free legal services for certain cases. Exhibit C. Second, for all the reasons explained above, this entire practice gives the appearance of improper influence, regardless of DOJ's control over the lawyer or any purported "inten[t]" of the agreement.

CONCLUSION

The Ethics Commission should investigate and stop the unethical practice of accepting free legal services from the Center.

LIST OF EXHIBITS

Exhibit A – Center's opening press release

Exhibit B – Email from Center to Attorneys General (pages 63 – 67 of New York ethics complaint)

Exhibit C – DOJ – NYU contract

FILED
02-20-2025
Clerk of Circuit Court
Calumet County
2025CV000022

Exhibit

PRIVILEGED & CONFIDENTIAL

Employee Secondment Agreement between the Wisconsin Department of Justice and the State Energy & Environmental Impact Center at NYU School of Law

This AGREEMENT (“Agreement”) is entered into as of November 5, 2021, by and between NEW YORK UNIVERSITY (“NYU”), a New York not-for-profit education corporation, on behalf of the NYU School of Law’s State Energy and Environmental Impact Center (the “State Impact Center”), and the Wisconsin Department of Justice (DOJ).

WHEREAS, The State Impact Center seeks to provide a supplemental, in-house resource to state attorneys general and their senior staffs on clean energy, climate change and environmental matters of regional and national importance; and

WHEREAS, As part of its activities, the State Impact Center conducts a legal fellowship program (“Legal Fellowship Program”), which seeks to provide attorneys to act as fellows in the offices of certain state attorneys general (“Legal Fellows”); and

WHEREAS, DOJ has been selected by the State Impact Center to participate in Legal Fellowship Program; and

WHEREAS, DOJ has the authority consistent with applicable law and regulations to accept a Legal Fellow whose salary and benefits are provided by an outside funding source.

NOW, THEREFORE, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the State Impact Center and DOJ agree to the following:

A. Terms of Service for the Legal Fellowship Program at DOJ:

1. The State Impact Center will provide the services of one attorney to DOJ to act as a Legal Fellow.
2. The specific start and end dates for services will be determined with the mutual agreement between the Legal Fellow, DOJ, and the State Impact Center, provided, however, that the term of the fellowship will be for one year with the expectation that a second one-year term will follow, subject to the mutual agreement among the parties (the “Fellowship Period”).
3. During the Fellowship Period, the Legal Fellow will be under the direction and control of, and owe a duty of loyalty to, DOJ, and will be subject to DOJ’s policies regarding employee conduct, including the policies regarding time and attendance, outside activities, conflicts of interests, and confidentiality. The Legal Fellow will receive instruction and materials regarding these requirements from DOJ at the commencement of his or her fellowship.
4. During the Fellowship Period, salary and benefits will be provided to the Legal Fellow by the NYU School of Law.

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5. During the Fellowship Period, the Legal Fellow, as an agent of the DOJ, will be covered under Wis. Stat. §§ 893.82, 895.46, to the extent provided therein.
6. DOJ may terminate the services of the Legal Fellow for any reason upon seven (7) days' written notice to the State Impact Center, provided that DOJ will attempt to resolve any performance or other issues involving the Legal Fellow with the Legal Fellow and the State Impact Center before terminating the services of the Legal Fellow. The State Impact Center may terminate this Agreement for any reason upon seven (7) days' written notice to DOJ.

B. Nature of the Fellowship Position at the OAG

1. During the Fellowship Period, DOJ will provide the Legal Fellow the title of Special Assistant Attorney General.
2. DOJ will assign the Legal Fellow substantive work and responsibility matching that of other attorneys in the agency with similar experience and background. The Legal Fellow's substantive work will be primarily on matters relating to clean energy, climate change, and environmental matters of regional and national importance.
3. DOJ will aim to include the Legal Fellow in the range of its work where possible, such as strategy discussions and court appearances.
4. DOJ will afford the Legal Fellow the opportunity to partake in the extensive legal education, including CLEs, offered by the DOJ to its attorneys.

C. Prohibited Activity

1. DOJ may not request or permit the Legal Fellow to engage as part of his or her employment in any activities that would constitute any of the following:
 - a. to carry on propaganda, or otherwise attempt to influence any specific legislation through (i) an attempt to affect the opinion of the general public or any segment thereof or (ii) communication with any member or employee of a legislative body, or with any other governmental official or employee who may participate in the formulation of the legislation (except technical advice or assistance provided to a governmental body or to a committee or other subdivision thereof in response to a written request by such body, committee or subdivision), other than through making available the results of non-partisan analysis, study or research;
 - b. to engage in any other activity that may constitute lobbying under federal, state, or local laws or regulations;
 - c. to influence the outcome of any specific public election; or
 - d. to support the election or defeat of a candidate for public office, finance

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electioneering communications, register prospective voters or encourage the general public or any segment thereof to vote in a specific election.

2. DOJ may not request or permit the Legal Fellow to participate, as part of his or her employment, in any matter that involves NYU or any of its affiliates; and, to the extent that DOJ participates in a matter that involves NYU or any of its affiliates, DOJ will create an ethical wall between the Legal Fellow and DOJ with regard to the matter to ensure that the Legal Fellow has access to no information relating to the matter.
3. DOJ has determined that NYU's payment of salary and benefits to the Legal Fellow and the provision of services by the Legal Fellow to DOJ do not constitute an impermissible gift under applicable law or regulation. No part of this agreement is intended to induce DOJ to undertake or refrain from undertaking any action within the purview of DOJ. DOJ retains sole discretion to determine whether to undertake any action, including any actions relating to clean energy, climate change, and environmental matters of regional and national importance or involving NYU or any of its affiliates.

D. Communications and Reporting

1. The State Impact Center will not have a proprietary interest in the work product generated by the Legal Fellow during the fellowship. The State Impact Center will not be authorized to obtain confidential work product from the Legal Fellow unless the Legal Fellow has obtained prior authorization from the Legal Fellow's supervisor at DOJ.
2. DOJ acknowledges that NYU may be required to make filings or disclosures that reference DOJ, the Legal Fellow, or the Legal Fellowship Program, and that DOJ is not required to review or approve any such filings except where NYU requests such review or approval.
3. Notifications to DOJ relating to this agreement should be directed to:

Name: R. Duane Harlow, Division of Legal Services - PP Unit

Title: Assistant Attorney General, Unit Director

State of Wisconsin

Department of Justice

Address: PO Box 7857

Madison, WI 53707-7857

Email: HarlowRD@doj.state.wi.us

4. Notifications to the State Impact Center relating to this agreement should be directed to:
Bethany Davis Noll, Executive Director

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State Energy & Environmental Impact Center, NYU School of Law
139 MacDougal St, Wilf Hall
New York, NY 10012
bethany.davisnoll@nyu.edu

E. Miscellaneous

1. This Agreement constitutes the complete understanding of the parties and supersedes any other agreements between the parties. No amendment to this Agreement will be valid and binding unless reduced to writing and signed by the parties.
2. This agreement shall not be assigned by either party without the consent of the other party.
3. This Agreement may be executed in multiple counterparts, each of which will be fully effective as an original and all of which together will constitute the same document. The parties may exchange of copies of this Agreement and signature pages in electronic form.

Dated: November 5, 2021

New York University

By:

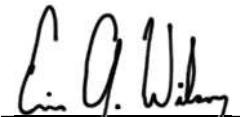


Bethany Davis Noll
Executive Director
State Energy & Environmental Impact Center

Dated: November 15, 2021

Wisconsin Department of Justice

By:



Name: Eric J. Wilson
Title: Deputy Attorney General