

STATE OF WISCONSIN

Senate Journal

One-Hundred and Sixth Regular Session

WEDNESDAY, September 13, 2023

The Chief Clerk made the following entries under the above date.

CHIEF CLERK'S ENTRIES

AMENDMENTS OFFERED

Senate Amendment 1 to **Senate Bill 325** offered by Senator Marklein.

REPORT OF COMMITTEES

Minority Report

On September 13, 2023, Senator Spreitzer offered the following minority report, pursuant to Senate Rule 28, to the Senate Committee on Shared Revenue, Elections and Consumer Protection.

Minority Report of Senator Spreitzer Regarding the September 11, 2023 Vote on Wisconsin Elections Commission Administrator Meagan Wolfe

Senator Mark Spreitzer, the Democratic ranking member of the Senate Committee on Shared Revenue, Elections, and Consumer Protection, submits the following minority report on the topic of the committee's September 11, 2023 vote by paper ballot on Wisconsin Elections Commission Administrator Meagan Wolfe, her service to the state of Wisconsin, and the legal status of the Administrator's position.

I object to this so-called "confirmation vote" because it is not properly before the State Senate. I raised this critical issue in the August 29 public hearing, and would have raised it again if the opportunity to do so had been afforded via an in-person executive session. I am deeply disappointed that the committee did not meet to discuss the legal issues that are explored further below, and instead held a "vote" on an issue not properly before the Senate.

This report briefly reviews statutory issues with the nominations being considered by the State Senate and review Administrator Wolfe's exemplary work on behalf of Wisconsin voters.

A Nomination is Not Before the Wisconsin State Senate or This Committee

First, it is critical to address a fundamental objection to the process being undertaken by the Wisconsin State Senate and the so-called "confirmation vote: taken by this committee: the Wisconsin Elections Commission has not sent a nomination to the Wisconsin State Senate for confirmation.

The process for appointing the Administrator of the Wisconsin Elections Commission is laid out in Wisconsin State Statute 15.61 (1)(b)1. Statute makes clear that the Administrator "shall be appointed by a majority of the members of the commission." The Wisconsin Elections Commission has six commissioners, meaning that a majority of the members requires four affirmative votes to appoint an administrator. This process has been independently reviewed by attorneys at the nonpartisan Wisconsin Legislative Council and at the Wisconsin Department of Justice, and they all agree that four votes are required for an appointment (see Appendix 1-Wisconsin Legislative Council memo to Senator Spreitzer and Appendix 2-Wisconsin Attorney General Josh Kaul letter to Legislative Council Director Anne Sappenfield).

The four-vote threshold required by statute for the appointment of a Wisconsin Elections Commission Administrator has not been met. The only time that the Wisconsin Elections Commission met this year to consider a nomination for the position of Wisconsin Elections Commission Administrator was on June 27, 2023 in a special meeting called by the Chair of the Commission, Don Millis. During that meeting, a vote was held on a motion to confirm Meagan Wolfe as the Administrator for the next four years. As reflected in the meeting minutes (see Appendix 3-Approved WEC June 27 Open Session Minutes), this motion failed with only three votes in support. Due to his failed motion, a nomination cannot be before the Wisconsin State Senate, and any so-called "confirmation vote" is inappropriate and has no legal effect.

Not only is there no nomination to confirm, there is no vacancy in the position of Wisconsin Elections Commission Administrator. Instead, as detailed in the Attorney General's letter to Legislative Council Director Sappenfield, Administrator Wolfe is a lawful holdover in her position, consistent with precedent set in 2022 by the Wisconsin Supreme Court in *Kaul v. Prehn* (holding that the expiration of a term for an appointed official does not create a vacancy as defined in Chapter 17 of Wisconsin State Statutes).

While I strongly disagree with the outcome in *Kaul v. Prehn* and would support changing state statute across the

board to clarify how the expirations of terms of appointed officials are handled, the *Prehn* precedent is recent, clear, applicable to this case, and has not been overturned by either the Legislature and the Governor through a new law, or by a new ruling on the same issue by the Wisconsin Supreme Court.

For these reasons, there is no vacancy in the position of Administrator of the Wisconsin Elections Commission, and there is no nomination before the Wisconsin State Senate for the position of Administrator of the Wisconsin Elections Commission. No further action can be taken by the Senate as a whole, and any vote by the Senate on this non-existent “nomination” will have no legal effect on Meagan Wolfe’s continued service as Administrator of the Wisconsin Elections Commission.

Administrator Wolfe Deserves the Support of the Wisconsin State Senate

While this committee’s vote on Meagan Wolfe has – and any future vote by the State Senate is – merely symbolic, I vote “Aye” to indicate my strong support for Meagan Wolfe’s continued service as Administrator. Since assuming the role of Wisconsin Elections Commission Administrator with the unanimous support of the Commissioners in 2018 and being confirmed with the unanimous support of the State Senate in 2019, Meagan Wolfe has served our state diligently and with the utmost professionalism.

In the year since her unanimous confirmation, Administrator Wolfe has gone above and beyond to serve the voters of Wisconsin and the election administrators in local jurisdictions across our state. As we all heard in the August 29 public hearing held by the committee, clerks from communities across Wisconsin have found the Wisconsin Elections Commission staff, as led by Administrator Wolfe, to be a reliable and trusted resource for them as they administer elections. Groups who routinely work with the Wisconsin Elections Commission on behalf of voters, such as Disability Rights Wisconsin, praised the work of Administrator Wolfe as her staff for dedicated and effective work to protect the rights of voters.

Recognition of Administrator Wolfe’s qualifications and skill is not limited to those who work with her within the State of Wisconsin. Administrator Wolfe has provided detailed information to groups such as the National Conference of State Legislators (NCSL) and the Council of State Governments (CSG) in presentations about her work for the Wisconsin Elections Commission. In recognition of her immense experience and high-quality work, Administrator Wolfe was elected by the chief election officials of other states to be the President of the National Association of State Election Directors in 2022.

The criticisms brought forward in the August 29 hearing ranged from political disagreements with decisions made by the bipartisan Wisconsin Elections Commission (not its Administrator) to full-blown conspiracy theories that have repeatedly been given a platform in the legislature since the 2020 elections. Complaints about the decisions of the Wisconsin Elections Commission should be focused on the

six commissioners who made them – not the staff who are directed by statute and by the Commission to carry them out.

For the last 3 years, Wisconsin and the country as a whole have dealt with lies promoted by former President Donald Trump as he attempted to unduly retain power and disrupt the peaceful transfer of power that has been a hallmark of American governance since its founding. There is no question that the former President lost the state of Wisconsin in 2020. Random machine audits, reviews by nonpartisan agencies, court cases, and recounts all have confirmed this fact.

However, this has not stopped those on the far-right from questioning the results of the 2020 election, attacking election officials, and attempting to undermine our democracy. In the 2021-2022 legislative session, these voices of discord were elevated through a failed “investigation” that wasted millions of taxpayer dollars and made our state the target of national ridicule. As the 2023-2024 legislative session began and following the successful administration of the 2022 elections, it was my hope that these wild conspiracy theories would be put to rest. The former President’s election tampering is the subject of multiple criminal cases that lay out in great detail the false claims asserted by former President Trump, his campaign, and those who used his lies to enrich themselves. Hundreds of followers whom the former President goaded into attacking the U.S. Capitol itself have been sentenced for their violent attempt to disrupt our democracy.

Throughout these attacks on our electoral systems, Wisconsin Elections Commission Administrator Meagan Wolfe has been unduly targeted by conspiracy theorists for her public role in election administration, some of whom even called for her arrest at the August 29 hearing. The Administrator is required by statute to carry out the will of the bipartisan Commission, yet Republican legislators have blamed Administrator Wolfe for decisions that she did not make and election deniers have blamed her for things that did not happen. In the face of this pressure, Administrator Wolfe has continued to lead the Commission staff with professionalism and a strict adherence to the nonpartisan requirements of her position. It is deeply disappointing that she has been put in a position where the demands of conspiracy theorists are now spurring this body to attempt to end her diligent work on behalf of the people of Wisconsin.

Conclusion

Administrator Wolfe has served with distinction, and will continue to do so. Attempting to remove her, or casting doubt on her continued service, would only serve to waste taxpayer money on unnecessary lawsuits and undermine election administration ahead of the four elections in our state in 2024. While this vote was not properly before the Senate Committee on Shared Revenue, Elections and Consumer Protection, the committee could have sent a strong message that we support Meagan Wolfe’s continued service and expect this improper “confirmation” process to end. Unfortunately, the committee failed to do so.

This minority report is submitted to preserve for the official Senate record my objection to this illegitimate process, and my disappointment in the failure of the committee to

stand up to those who are actively undermining democracy in our state.

Respectfully submitted,
MARK SPREITZER
Senator, 15th District

PETITIONS AND COMMUNICATIONS

Pursuant to Senate Rule 17 (5), Representative Macco added as a cosponsor of **Senate Bill 148**.

Pursuant to Senate Rule 17 (5), Senator Carpenter added as a coauthor of **Senate Bill 318**.

Pursuant to Senate Rule 17 (5), Representative Drake added as a cosponsor of **Senate Bill 373**.

Pursuant to Senate Rule 17 (5), Senator Agard added as a coauthor of **Senate Joint Resolution 67**.

LEGISLATIVE REFERENCE BUREAU CORRECTIONS

CORRECTIONS IN:

2023 SENATE BILL 266

Prepared by the Legislative Reference Bureau
(September 12, 2023)

1. Page 2, line 1: delete "(af)" and substitute "(aj)".

MESSAGES FROM THE ASSEMBLY

By Edward A. Blazel, chief clerk.

Mr. President:

I am directed to inform you that the Assembly has

Adopted and asks concurrence in:

Assembly Joint Resolution 6
Assembly Joint Resolution 66

Passed and asks concurrence in:

Assembly Bill 386

Concurred in:

Senate Joint Resolution 48