

COPY Defense

STATE OF WISCONSIN

CIRCUIT COURT

BROWN COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 16-CM-1239

vs.

JAMES J. SCHMITT,

Defendant.

COPY

SENTENCING MEMORANDUM

INTRODUCTION

James J. Schmitt (Schmitt) will appear before the Court for sentencing on one count of False Statements to an Election Official (Attempt), under Wisconsin Statute sections 12.13(1)(b), 12.60(1)(a) and 939.32¹, one count of Accept Campaign Contribution Funds Not Belonging to Reported Contributor (Attempt), under Wisconsin Statute sections 11.24(1), 11.61(1)(a), and 939.32, and one count of Accept Campaign Contribution in Excess of Limits (Attempt), under Wisconsin Statute sections 11.26, 11.61(1)(b), and 939.32. This memorandum will address the pertinent factual and legal considerations for the Court in the imposition of sentence.

¹ All references to the Wisconsin Statutes in this Sentencing Memorandum are to the 2013-14 edition of the Wisconsin Statutes, prior to 2015 WI Act 117, which renumbered Chapter 11 of these referenced statutes and went into effect on December 16, 2015.

BACKGROUND

Jim Schmitt is an individual who has a strong work ethic and a devotion to bettering the community. In addition to being a devoted husband and father, Schmitt is the Mayor of the City of Green Bay, a title Schmitt has proudly held for 13 years.

Schmitt is 58 years old, and has spent the last 26 of those years married to his wife, Dona Schmitt. Jim and Dona have three daughters, Anna, Greta, and Laura, who range in age from 21-26, and also had a fourth daughter they tragically lost 16 years ago in infancy. When Schmitt is not working or attending Green Bay area events, he and Dona can often be found visiting his daughters where they reside in Nashville, Chicago, and Madison, or his mother, who resides in Appleton, or one of his ten siblings who reside in the area. Schmitt also enjoys reading, riding his bike, and spending time with his Little Brother, through the Big Brother Big Sisters program, for which Schmitt has been volunteering for the past two years.

With regard to his educational background, after graduating high school at Roncalli High School in Manitowoc, Wisconsin, Schmitt attended and graduated from St. Norbert College with a Bachelor's Degree in Business Administration. During his term as mayor, Schmitt was also accepted to and successfully completed the Senior Executives in State and Local Government Program through Harvard University's John F. Kennedy School of Government.

Following his graduation from St. Norbert College, Schmitt was hired by Little Rapids Corporation, where he worked his way up through various leadership positions. Little Rapids employed Schmitt in Chicago, Los Angeles, and ultimately

moved him back to Green Bay. Schmitt worked his way up through various divisions of the company, ultimately becoming a Market Manager, before Schmitt and Little Rapids Corporation parted ways. After leaving Little Rapids Corporation, Schmitt worked for a period of time as a regional sales manager for KI, before transitioning to Cellcom in the position of a national sales manager. Schmitt then founded Famis Manufacturing, Inc. in 1992, in Green Bay. Schmitt was successfully able to build Famis Manufacturing from the ground up, developing it into a multi-million dollar paper-converting business. Famis manufactured products for the medical, industrial, and beauty and barber business. Schmitt remained president of the corporation until 2003, when he ran for and won the election for Mayor of Green Bay. Famis Manufacturing was ultimately sold in 2008 to Little Rapids Corporation, the same company for which Schmitt had previously worked. During his time at Famis Manufacturing, the business received the Small Business Entrepreneur of the Year Award and the Small Business Growth Award from the Green Bay Area Chamber of Commerce.

While he was president of Famis, and prior to running for Mayor of the City of Green Bay, Schmitt successfully ran for the Brown County Board of Supervisors on three occasions, and enjoyed being actively involved in helping the City of Green Bay. Schmitt felt he could do more to help the City, however, which is why he left his position at Famis Manufacturing to become more heavily involved in local politics.

Schmitt is proud of what he has been able to accomplish for the City of Green Bay during his time as mayor. He was first elected to the four-year term in 2003, and has been elected to continue his service as mayor three additional times since (2007,

2011, and 2015). During his 13 years as mayor, Schmitt has accomplished immeasurable growth for the City of Green Bay, including the following:

- Schmitt lead the initiative to revitalize the City's riverfront, including creating community activities held on the riverfront CityDeck to promote entertainment and quality of life for Green Bay residents, while promoting and celebrating local diversity.

- Schmitt undertook a substantial redevelopment of the City's downtown, resulting in increased business and economic activity. This redevelopment included the successful recruitment of two prosperous businesses, to invest in their corporate offices downtown and increase jobs and encourage economic growth for downtown Green Bay.

- In 2003, Schmitt founded and implemented Kids' Day in Green Bay, which occurs on June 25th every year. On Kid's Day, most Green Bay municipal services are free to children, including free rides on city transit, free rides at Bay Beach, and free swimming at municipal pools. Kids' Day has also accumulated a substantial amount of participation from local businesses, including the Green Bay Botanical Garden, National Railroad Museum, Packer Hall of Fame, YWCA, Marcus Cinema East, Brown County Library Central, Children's Museum, and many others. Green Bay received an award from the State of Wisconsin for Mayor Schmitt's Kids' Day Event, and the U.S. Conference of Mayors has used this initiative as a model to encourage all cities across the country to sponsor a Kids' Day on June 25.

- Schmitt implemented a health and wellness program, to encourage a healthier workforce for City employees.
- Schmitt advocated for and formed multiple internship programs in the City, including the Customer Service Internship, which recruits a diverse population for law enforcement personnel, and an internship program in City Hall that includes a greater emphasis on diversity and gender equality.
- Schmitt advocated for the expansion of the Green Bay Neighborhood Leadership Council (GBNLC), which has expanded during his term in office to 45 neighborhood associations. The GBNLC works to improve the quality of life in neighborhoods throughout Green Bay through participation of citizens in their neighborhood associations.
- Schmitt was instrumental in hiring a Residential Housing Investigator, to protect tenants, particularly in low-income neighborhoods.
- Schmitt facilitated a plan with developers to repurpose a vacant downtown warehouse, which now houses a tap room, public market, and office space, and is anticipated to generate \$30 million in new property value.
- Schmitt increased attendance at Bay Beach Amusement Park to record levels by bringing the Zippin Pippin roller coaster to the park.
- Schmitt initiated automatic garbage pick-up within the City to effect more efficient and cleaner disposal services.

- Schmitt created a strategy to attract a Veteran's Affair clinic to the City, competing with other cities for the bid, to provide regional access for veteran care and to create jobs.

- Schmitt initiated a number of innovative programs, such as the annual Mayor's Leadership Awards, Move with Mayor Challenge, and Mayor's Read to Feed summer program.

As with any strong leader, Schmitt has certainly seen his share of opposition to some of his efforts, such as when he rejected the proposition of having a Walmart Supercenter in downtown Green Bay. However, looking at the overall impact of Schmitt's time in office, in short, the City of Green Bay's population continues to grow, property values within the City have increased, and the crime rate is at a 10-year low.

In addition to his accomplishments for the City of Green Bay, Schmitt also has much to be proud of in the type of mayor he has been. Schmitt is a very active, hands-on, hard-working mayor, who has strived to be relatable and approachable for his constituents. Schmitt attends over 500 events per year throughout the community, including walks, picnics, fundraisers, festivals, and various events put on by and for the citizens of Green Bay. Schmitt also participates on numerous boards, commissions, and committees, including, but not limited to, the League of Wisconsin Municipalities, the Community Partnership for Children (Schmitt is on the Executive Board), and the Chamber of Commerce Advance (Schmitt is on the Executive Committee). Schmitt has also been very active within the U.S. Conference of Mayors, which includes mayors

throughout the United States, and was recently elected in June to be a trustee for the U.S. Conference of Mayors. Schmitt also is Chairman of the Children Health and Human Services Committee within the U.S. Conference of Mayors.

With his active involvement within the City and the innumerable accomplishments he has achieved as mayor, it is no surprise that Schmitt has been commended with multiple awards and recognitions, including being recognized by the Green Bay Press Gazette editorial board as the 2011 Person of the Year, receiving the MVP Award at the Green Bay Marathon, the Children's Advocacy Award by Encompass Early Education, Special Recognition by the United Patriotic Society of Green Bay for his dedication and devotion to the well-being of military personnel and veterans of Green Bay in 2015, and the President's Award by the Main Street District, among many others.

Setting aside all of his accomplishments, achievements, and recognition, Schmitt prides himself most on being a devoted husband, dedicated father, and caring leader to his constituents—goals that, with the exception of these charges, Schmitt has managed to accomplish in an exemplary fashion.

FACTUAL INFORMATION PERTAINING TO THE ALLEGATIONS

While there have been no charges, or even rumors of allegations, pertaining to anything Schmitt has handled for the City of Green Bay during his time as mayor, he undoubtedly has regrets over the mistakes he made in the handling of campaign finance matters. These mistakes are the basis for the criminal complaint in this matter, for which Schmitt is prepared to accept responsibility at the upcoming hearing.

To understand how these charges came to light, it is important to understand background on Schmitt's campaigns. Schmitt's campaigns were, and always have been, a far cry from the type of campaign run at the national or state level. In fact, while Green Bay is the third-largest city in Wisconsin, Schmitt's campaigns were well below the level of funding and involvement one might expect to see even at local campaigns in Milwaukee or Madison. Schmitt's campaigns have always been truly small-town local campaigns, with Schmitt and his wife, Dona, running the campaigns along with a skeleton crew. Schmitt did not have lawyers, accounting firms, or election experts drafting his campaign finance reports or advising him as to how to handle various details of his campaigns. Rather, his campaign finance reports were typically drafted and amended by Schmitt himself, under a light at his dining room table in his home, with his papers spread out around him. His advice as to campaign matters, while he certainly recognizes now was ill-advised, came from other candidates and employees of other candidates, in the type of colloquial conversation that takes place among peers.

One such piece of advice that Schmitt received during his campaigns was that if an individual wanted to give money to a campaign, but that the individual had exceeded campaign limits, the donation could be attributed to a family member. Rather than act as he should have and confirm this advice with a clerk, an official from what was then organized as the Government Accountability Board, or with an election law specialist, Schmitt acted on the advice. The fact that Schmitt had a misunderstanding of the election laws applicable to his campaigns is evidenced by the fact that he amended the reports openly and publicly in January of 2015, knowing that he was under the

scrutiny of his opponents. One such amendment, for example, was a change in the name of a contributor from Robert Toonen to Dave Toonen, once Schmitt realized that Robert Toonen had exceeded the individual contribution limit. This amendment, like the others, took place while Schmitt was attempting to ensure that his campaign finance reports were lawful and while he was aware that his opponents and the media would be scrutinizing the changes. Unfortunately, as Schmitt is well-aware, misunderstanding of the law does not excuse his actions, as it was his obligation to learn the laws applicable to campaign finance prior to taking on the responsibility of running for office.

Similar to Schmitt's mistakes in not gaining a complete understanding of campaign finance laws, Schmitt's poorly managed campaign led to additional errors in his initial reporting and amendments. For example, Schmitt relied upon on a fundraising sign-in sheet for initially reporting a contribution as "CS," rather than the Paypal records he had clearly used to tally up contributions. Then, looking back on this report over a year later, Schmitt assumed the "CS" contribution would have been from his brother, Fr. Carl Schmitt, who attended a fundraiser around the same time as the contribution. Rather than thoroughly investigating the source of the "CS" donation, looking through the Paypal records, and returning the \$50 donation to Cantilever Studios (as he had done with several corporate donations in much larger quantities), Schmitt made a quick assumption and relied upon his assumption in swearing to the Clerk that the information he had provided was accurate.

While Schmitt's mistakes are a far cry from any attempt to hide information or mislead the public, Schmitt's failures are the result of a poorly managed campaign, a fundamental misunderstanding of the importance of accurate reporting in his campaign finance reports, and a misunderstanding of the laws applicable to his campaign. Clearly, the State and the defendant disagree with respect to the characterization of Schmitt's amended reports—had the defendant indeed been “lying to thwart a political attack,” he would not have amended the reports to change the name of contributors under the public scrutiny that existed at the time that he filed his amended reports. However, while Schmitt's description of the offenses varies from what is described in the Complaint and the State's Sentencing Memorandum, Schmitt recognizes the full weight and serious nature of his errors, which is why he is accepting responsibility for his actions in this matter.

SENTENCING CONSIDERATIONS

As this Court is aware, in *State v. Gallion*, 2004 WI 42, 271 Wis. 2d 535, 678 N.W.2d 197, the Wisconsin Supreme Court reaffirmed that “[t]he sentence imposed in each case should call for the minimum amount of custody or confinement which is consistent with the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.” *Gallion*, 2004 WI 42 at ¶23 (quoting, *McCleary v. State*, 49 Wis. 2d 263, 276, 182 N.W.2d 512 (1971)).

The Court of Appeals and the Wisconsin Supreme Court have noted that a fine is another effective sentencing alternative to jail or probation:

A fine is a substantially different form of sentence than incarceration. Our supreme court observed in *Will* that a fine can be a useful sentencing alternative, particularly when incarceration or rehabilitation is unnecessary or when, because of the financial resources of the offender, a fine may have a deterrent effect.

State v. Ramel, 2007 WI App 271, ¶13, 306 Wis. 2d 654, 743 N.W.2d 502 (citing, *Will v. State*, 84 Wis. 2d 397, 267 N.W.2d 357 (1978)). Imposition of a fine as a sentence does still require an examination of the reasons supporting a fine. *Ramel*, 2007 WI App 271 at ¶14. In considering whether to impose a fine, the Court of Appeals and the Wisconsin Supreme Court have cited with approval section 2.7 of the American Bar Association's Standards on Sentencing Alternatives and Procedures, which indicate that a court should consider the following:

- (i) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to his other obligations;
- (ii) The ability of the defendant to pay on an installment basis or on other conditions to be fixed by the court;
- (iii) The extent to which payment of a fine will interfere with the ability of the defendant to make any ordered restitution or reparation to the victim of the crime; and
- (iv) Whether there are particular reasons which make a fine appropriate as a deterrent to the offense involved or appropriate as a corrective measure for the defendant.

State v. Kuechler, 2003 WI App 245, ¶15, 268 Wis. 2d 192, 673 N.W.2d 335 (citing, *State v. Iglesias*, 185 Wis. 2d 117, 517 N.W.2d 175 (1994)).

In this case, one thing that both the State and the defendant agree upon is that this is not a case that would be suitable for an incarceration or probation resolution. Rather, a fine-only disposition, or a fine with community service disposition, is

appropriate in consideration of the protection of the public, the gravity of the offense and the rehabilitative needs of the defendant.

First, with regard to the character of the defendant, Schmitt has overwhelmingly positive character attributes. Schmitt is 58 years old with no prior criminal record and a substantial history of dedication and commitment to the community, as outlined above. Schmitt has no history of undesirable behavior patterns, and has been consistently employed since his graduation from St. Norbert College – for Little Rapids Corporation, KI, Cellcom, Famis Manufacturing, and finally for the citizens of the City of Green Bay, as their mayor. With the exception of this offense, Schmitt has been a stable, law-abiding citizen for the entirety of his 58 years. Schmitt is a devoted husband and father to his family, and is also a committed son to his mother in Appleton and a dedicated brother to his ten siblings. He volunteers for the community and spends time with his family when he is not serving the people of Green Bay. His accomplishments as mayor for the citizens of Green Bay have been outlined above and will not be repeated here, but in short his achievements are extensive.

Additionally, with regard to these charges, Schmitt has been cooperative and open throughout the investigation, as noted in the State's Sentencing Memorandum. When his opponents first brought these concerns to light, Schmitt called for an audit of his campaign, examined his own reports, amended them (albeit sloppily), and returned a number of contributions. When Attorney Landgraf and investigators became involved in the case, Schmitt voluntarily turned over each record and piece of information requested by them. Schmitt's wife, Dona, voluntarily agreed to an

interview with investigators to assist in whatever way possible. As the State's Sentencing Memorandum reflects, Attorney Landgraf did not form the opinion that Schmit unduly influenced any witnesses who were interviewed in this matter. Schmitt has been remorseful and nothing but cooperative and transparent for the past 18 months while this investigation has been pending. Finally, with respect to the charges in this matter, rather than battle the charges at each stage in litigation, Schmitt is accepting responsibility by entering pleas of guilty at the first possible opportunity to do so.

With regard to the gravity of the offense, while the State has and will characterize the offenses in a different manner than the defense, it is important to note that both parties can agree that these offenses in no way involved the diversion of campaign funds for personal use, nor did the offenses have anything to do with Schmitt acting in his capacity as mayor. Rather, the charges relate solely to Schmitt acting in his capacity as a candidate for public office, and relate to the improper acceptance of campaign contributions and improper reporting of contributions. The offenses are not violent, vicious or aggravated in nature, and arose out of a poorly managed campaign and a misunderstanding of campaign finance law.

There is no need to protect the public in this case. Schmitt's errors have been, and continue to be, publicly scrutinized for all to observe. In the event that Schmitt chooses to continue his commitment to Green Bay and run for public office again in the future, his guilty pleas in this matter will follow him for the remainder of his political career. Even if his misunderstanding of election laws continued, something that would

be impossible following this case, Schmitt would not be able to accept a contribution in violation of campaign finance laws without that error being reported in every media outlet in the area. As indicated earlier, the nature of this offense is not aggravated or vicious in nature, and the public need not fear that it is somehow in danger of Schmitt.

As to the rehabilitative needs of the defendant, the public nature of these charges and the impact the charges have had on Schmitt have provided substantial rehabilitation for Schmitt. The filing of criminal charges in this matter has had a profound impact on Schmitt. As noted in the State's Sentencing Memorandum, criminal charges for campaign finance violations are very rare, and in fact no charges have ever been filed in Brown County under chapter 11 of the Wisconsin Statutes. Schmitt never diverted campaign funds for his own personal use, or abused any discretion he held while acting as Mayor of Green Bay, yet he has been the subject of editorials calling for the City Council to oust him from office, cries that he should resign, and threats of a recall. As part of his plea agreement in this matter, Schmitt has donated campaign funds of \$23,197.56 to the School Fund, which represents the remainder of his campaign account. This number exceeds the total amount of contributions received or reported in violation of the campaign finance laws as included in the allegations in the Complaint. As part of his plea agreement, Schmitt has also terminated his campaign committee, Friends of Jim Schmitt, and will need to organize a new campaign committee moving forward.

Schmitt has already suffered a significant penalty as a result of the charges filed in this case, and that penalty is one that will follow him for the remainder of his political

career. The penalty Schmitt has suffered and continues to suffer, which is, in short, the public shaming he has endured, well exceeds the need for punishment and deterrence related to the gravity of the offenses involved.

RECOMMENDATION

For all of the reasons described above, it is the Defendant's position that, in this case, in light of the closing of the campaign account, donation of contributions to the School Fund, as well as the mere fact of conviction that will damage Schmitt for the remainder of his political career, a fine only sentence is the most appropriate disposition in this matter. As such, the Defendant is recommending a fine-only disposition of \$1500, which represents a \$500 fine on each of the charged offenses.

Dated this 29th day of November, 2016.

Respectfully submitted,

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