

MILWAUKEE OFFICE

SHAREHOLDERS

Katherine L. Charlton  
Timothy E. Hawks  
Thomas Nelson  
Lynn M. Novotnak  
Barbara Zack Quindel  
Israel Ramon  
Richard Saks  
Daniel R. Schoshinski  
Amy L. Shapiro  
B. Michele Sumara  
Jeffrey P. Sweetland

414-271-8650  
Fax 414-271-8442  
www.hqepaw.com  
Offices also in Madison

EMERITUS  
Richard Perry

ASSOCIATES  
Corina M. Diaz-Suazo  
John B. Kiel  
Michele A. Peters

OF COUNSEL TO FIRM  
Walter F. Kelly  
Robert J. Lerner  
Howard N. Myers  
Vicki Schaut  
Daniel L. Shneidman

October 10, 2007

Honorable John Conyers, Jr., Chair  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

**Re: The Politicized "Honest Services" Prosecution of a State Employee  
*U.S. v. Thompson*, case no. 06-CR-20 (Eastern District of Wisconsin)  
Appeal no. 06-3576 (Seventh Circuit Court of Appeals)**

Dear Chairman Conyers:

I am writing on behalf of my client AFT-Wisconsin (AFT-W) and its affiliate unions which represent, among others, approximately 6,500 employees of the State of Wisconsin. AFT-W members are employed in a broad, cross-section of professional positions. Their job responsibilities require them regularly to exercise their professional judgment to decide questions involving large sums of money and affecting fundamental rights of citizens. The highly politicized federal prosecution and conviction of Georgia Thompson for mail and wire fraud based on her alleged deprivation of the public and the State of her "honest services," in violation of 18 U.S.C. §§1341 and 1346, potentially imposes a profound risk of criminal prosecution on AFT-W members in the routine exercise of their duties and responsibilities.

Georgia Thompson was a State procurement section chief, which is a civil service position. In 2005, she presided over a committee selecting a State travel agent to fulfill the needs of about forty percent of the State's annual travel budget. The government prosecuted Ms. Thompson because two executives of the travel agency which was selected each had donated \$10,000 to the re-election campaign of the Democratic Governor. The government's unsupported theory was that Ms. Thompson influenced the travel contract selection of the Governor's benefactors to gain political advantage for her supervisors and to ensure her own job security. A jury found that Ms. Thompson

had criminally steered the travel contract to the winning agency, using a State administratively-sanctioned procedure seeking the "best and final offer" from the competing applicants for the state contract. Although the winning agency was the low bidder for the State's contract, members of the selection committee had preferentially rated other competitors and Ms. Thompson invoked the process to award the contract to the low bidder.

According to the Seventh Circuit Court of Appeals, which reversed the conviction, there was no *quid pro quo* involved and there was not "so much as a whiff of a kickback or any similar impropriety" in the contract choice. Further, there was no dispute that Georgia Thompson had no knowledge about the travel agents' donations to the Governor, which had been properly disclosed and reported. Three months after the decision to award the State travel contract, Ms. Thompson received a meager \$1,000 raise through normal civil-service processes. The prosecuting U.S. Attorney Steven Biskupic portrayed this raise as Ms. Thompson's "private gain" from having criminally skewed the contract award to the Governor's political donor.

As characterized by the Court of Appeals, the government based its prosecution of Ms. Thompson on the theory that "any public employee's knowing deviation from state procurement rules is a federal felony, no matter why the employee chose to bend the rules, as long as the employee gains in the process." Immediately after the Court heard oral argument, it reversed the conviction and Ms. Thompson's 18-month sentence and ordered her released from federal prison. A panel of three Court of Appeals judges issued a blistering opinion that highlighted the paucity of evidence against Ms. Thompson and the shaky basis of the prosecution. *United States v. Thompson*, 484 F.3d 877 (7<sup>th</sup> Cir. 2007). At oral argument, one judge announced that the government's "evidence is beyond thin." In its opinion, the Court assailed the prosecution:

The prosecutor's theory, which the jury accepted, is that Thompson deprived Wisconsin of her "honest services" - that is, of her duty to implement state law the way the administrative code laid it down, with only 300 of 1,000 points apportioned according to price, while 200 points were available to the best-looking or most mellifluous oral presenter, even if Thompson deemed that allocation silly or counterproductive.

[T]hat approach has the potential to turn violations of state rules into federal crimes. When the Supreme Court reverses a court of appeals, it is apt to say (as the prosecutor says about Thompson) that public officials have failed to implement the law correctly. Does it follow that judges who are reversed have deprived the United States of their honest services and thus committed mail fraud?

*United States v. Thompson*, 484 F.3d at 882.

Like Georgia Thompson, State employees represented by AFT-W daily perform a myriad of official functions, including the administration and oversight of State government benefits, funds, licenses, as well as oversight of private business in which the public has an interest. Their work can unknowingly benefit political friends of their supervisors and eventually result in their advancement or a raise for their job well done.

The AFT-W affiliate Wisconsin Professional Employees Council, Local 4848 (WPEC) represents approximately 4,750 members employed by various state agencies in professional fiscal and staff services, such as procurement specialists, accountants, auditors, financial examiners, revenue agents, tax specialists, licensing examiners and program coordinators. WPEC member real estate specialists in the State Department of Transportation acquire and condemn real property and make property value assessments of such properties. Procurement specialists and purchasing agents, who are employed by a number of State agencies, may typically award many state contracts involving less than \$25,000, based on a simplified bidding process. They may execute contracts for larger amounts without using a Request for Proposal process. In those circumstances, procurement specialists and purchasing agents exercise their discretion and professional judgment in recommending such contract awards.

The more than 1,500 members of Wisconsin Science Professionals, Local 3732 (WSP) are employed by the State of Wisconsin in occupations related to fishery, forestry, wildlife, and parks. WSP member hydrogeologists, toxicologists, biologists, water resource management specialists, waste water specialists, air management specialists, and others prepare environmental impact statements. These statements are important factors in the granting of various state permits for construction and development on lands and waterways within the State. Waste management specialists employed by the Department of Natural Resources, the Department of Transportation, and the Department of Agriculture, Trade & Consumer Protection award consulting contracts through three-person committees. These contracts govern repairs to contaminated land and are valued up to \$250,000.

Many other classifications of employees represented by AFT-W affiliates exercise their independent judgment and discretion in ways that have significant economic impact on citizens and businesses involved in various activities within the State of Wisconsin. For example, chemists employed by the Department of Natural Resources are responsible for laboratory certification or registration and effectively issue business licenses. Revenue field auditors assess taxes owed by entities and have discretion to reach agreement on tax issues for amounts not exceeding \$50,000 in tax per issue.

Financial examiners audit the records of insurance companies and make decisions whether capital ratios, reserves and liquidity are sufficient to insure the companies' solvency. Financial examiners employed by the Department of Financial Institutions exercise their professional judgment to audit state-licensed banks and credit unions to insure that losses and uncollected credits are properly reported and that banks maintain a proper ratio between capital savings and capital borrowed. Consumer credit examiners process licenses, conduct examinations and handle consumer complaints regarding state-licensed, financial services companies. State public defenders negotiate plea deals for indigent clients who may have some relation, familial or otherwise, with political donors.

The experience of Georgia Thompson poses unique and limitless risks for these and other state employees. State employees, like employees in the private sector, have legitimate and weighty interests in their job security and in the satisfaction of their supervisors. The government's theory of Ms. Thompson's federal criminal liability, predicated on an employee's actions "intended to cause political advantage for her supervisors" and "help her job security," potentially impugns with criminal scienter an employee's routine, discretionary actions whenever those actions cause significant public benefits, resources, or funds to redound to a political donor or supporter of the employee's superior. The sole fact that an affected party is a political donor to an employee's superior should never by itself create any inference that the employee denied the public and the state her honest services. Such prosecution has a chilling effect on the daily work of State government due to legitimate employee fears that the routine performance of their duties may subject them to prosecutorial scrutiny and potential criminal liability.

Further, the Thompson prosecution under wire and mail fraud subverts a constitutional doctrine that provides immunity to public officials. Such immunity is designed precisely to protect their ability to exercise their professional judgment in discretionary acts.

In addition, the context of the prosecution of Ms. Thompson was a dangerous mix of partisan electoral politics. Following Ms. Thompson's release after four months in federal prison, the New York Times editorialized that U.S. Attorney Biskupic had "turned a flimsy case into a campaign issue that nearly helped Republicans win a pivotal governor's race." Biskupic brought Ms. Thompson to trial in his jurisdiction in the Eastern District of Wisconsin (Milwaukee), although Ms. Thompson lived and worked in state government in the Western District (Madison). In the fall of 2005, Biskupic publicly announced his ongoing investigation of Ms. Thompson, who was indicted in January 2006. The trial began that summer and Ms. Thompson was

sentenced in September, before the gubernatorial election in November. The local press reports that, during that time, the Republican party spent millions of dollars on advertising portraying Ms. Thompson as a symbol of corruption in the administration of the incumbent Democratic governor.

Ms. Thompson's excruciating experience highlights the need for reform of the federal wire and mail fraud statutes to clarify and narrow the elements of the crime of honest services mail fraud. To defend herself and her good name, Ms. Thompson spent approximately \$360,000, exhausting her life savings, losing her job and losing her home. Law-abiding state employees whose daily work and decision-making potentially puts them at the same risk should not work in fear that they too will become political pawns in high-stakes federal, criminal prosecutions serving dubious prosecutorial goals. The Seventh Circuit addressed the need for law reform:

This prosecution, which led to the conviction and imprisonment of a civil servant for conduct that, as far as this record shows, was designed to pursue the public interest as the employee understood it, may well induce Congress to take another look at the wisdom of enacting ambulatory criminal prohibitions. Haziness designed to avoid loopholes through which bad persons can wriggle can impose high costs on people the statute was not designed to catch.

*U.S. v. Thompson*, 484 F.3d at 884.

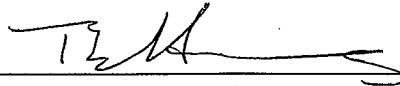
Please enter this statement into the record of the forthcoming Committee hearing on this matter. Thank you for the opportunity to address this matter on behalf of the Wisconsin State employee members of the AFT-Wisconsin. As an advocate for over 6,500 professional state employees, AFT-W seeks to ensure that state employees can perform their jobs and engage in the lawful exercise of their professional judgment without fear of ambiguous, politically-motivated federal criminal prosecution.

Honorable John Conyers, Jr., Chair  
U.S. House of Representatives, Committee on the Judiciary  
October 10, 2007  
Page 6

Very truly yours,

**HAWKS QUINDEL EHLKE & PERRY, S.C.**

By



Timothy E. Hawks

[thawks@hqeplaw.com](mailto:thawks@hqeplaw.com)

B. Michele Sumara

[msumara@hqeplaw.com](mailto:msumara@hqeplaw.com)

cc:

Andy Gussert, President AFT-Wisconsin

Art Foeste, Sr. Vice President, AFT-Wisconsin

Gary Steffen, President, Wisconsin Science Professionals

Steve Phillips, President, Wisconsin State Public Defenders Association

Greg Georg, President, Wisconsin Professional Employees Council

John Schettle, President, Wisconsin Physician & Dentist Association

Jeff Richter, President, Professional Employees in Research, Statistics & Analysis