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MADISON - A Dane County Circuit Court judge has issued an order preventing the deletion of any records from the first three months of the partisan review of the 2020 presidential election being conducted by former Supreme Court Justice Michael Gableman.

In a 30-minute hearing on Wednesday morning, Judge Valerie Bailey-Rihn said she was amazed she had to make the order telling the leader of the Assembly and a former Supreme Court justice to follow the law.

“I’m frankly amazed that I have to say don’t destroy records that are subject to an open records request or order that to occur. I think all of us know what the law is,” she said.

Gableman has argued he is not required to comply with Wisconsin’s open records laws because he is a contractor of the Assembly, which is exempt from certain provisions. Bailey-Rihn’s order comes two weeks after a similar order by Dane County Judge Frank Remington after an attorney for Gableman said he and his investigators were deleting records they deemed “irrelevant or useless.” Both decisions came in lawsuits brought by the government watchdog

group American Oversight, which has been tracking Gableman’s investigation.

Last month, Bailey-Rihn found Vos in contempt of court for failing to comply with American Oversight’s requests for records. Vos was ultimately forced to turn over thousands of emails his office had deleted but was still able to access. State law says that legislators can delete records, but not if they’ve already been requested by a member of the public.

Nonpartisan attorneys for the Legislature previously told Gableman that he was required to retain records, though he ignored that guidance. At the hearing on Wednesday, Bailey-Rihn said she was “astounded” that Gableman was treating the law this way.

Ronald Stadler, an attorney for the Assembly, said he could tell Gableman to retain his records but it wouldn’t do much good.

“An order from this court simply telling me to tell somebody to comply with the law is a non-event,” Stadler said.

Bailey-Rihn said she didn’t understand how the Assembly, which ordered Gableman’s investigation and authorizes his $11,000 monthly paychecks, is unable to control one of its contractors.

“I just can’t believe the explanation is we can’t control our contractors. That just doesn’t seem to be satisfactory to the court since the contractors work for the Assembly,” she said.

“Their contractors are their agents,” she continued. “They’re under their control. So if those records get destroyed, I’m not holding the contractors in contempt. I’m holding the people that are in control of those contractors in contempt because they are the ones that are responsible for the public records for that three-month period.”

Bailey-Rihn said that Vos, Assembly Chief Clerk Ted Blazel and the Assembly are responsible for making sure Gableman retains the records from the months after the review began in June of 2021.

Gableman’s review, which has now gone months past its original deadline, has resulted in a number of conspiratorial allegations that have been swiftly debunked by election officials and news media. Gableman has aligned himself with a fringe wing of the Wisconsin Republican party that’s advocating for the decertification of the state’s 2020 presidential election results, an impossible and unconstitutional move.

The 2020 election was won by Joe Biden by about 21,000 votes, a result that has been confirmed by numerous lawsuits, recounts, audits and investigations.

Melanie Sloan, a senior advisor for American Oversight, said in a statement that Vos and Gableman keep coming up with bad excuses for hiding the review from the public.

“Speaker Vos’s ever-expanding list of excuses — they don’t exist, they’ve been deleted, we can’t control our contractors — for failing to produce records to which Wisconsin citizens are legally entitled don’t ring true,” she said. “Next, he’ll claim the dog ate them. This deliberate effort to deprive the public of information undermines our democracy and the rule of law.”

by Henry Redman, Wisconsin Examiner
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