

FILED
02-23-2023
CIRCUIT COURT
DANE COUNTY, WI
2021CV002521

BY THE COURT:

DATE SIGNED: February 22, 2023

Electronically signed by Diane Schlipper
Circuit Court Judge

STATE OF WISCONSIN

DANE COUNTY
BRANCH 3

CIRCUIT COURT

AMERICAN OVERSIGHT,

Plaintiff,

vs.

Case No. 21-CV-2521

ROBIN VOS,

Defendant.

DECISION AND ORDER

INTRODUCTION

Last year, the Court¹ ordered Robin Vos (“Vos”) to provide American Oversight with the records it had requested under Wisconsin’s public records law. Decision and Order (July 15, 2022), dkt. 187. When a party prevails against the government in a public records case, “the court shall award reasonable attorney fees.” Wis. Stat. § 19.37(2)(a). The only remaining dispute in this case is the dollar amount of those fees. American Oversight has produced several affidavits and bills of

¹ The Hon. Valerie Bailey-Rihn presided over this matter until Aug. 1, 2022.

costs to support its claim for attorney fees. In response, Vos argues that no fees may be awarded to a non-profit corporation like American Oversight because of Illinois and Ohio statutes, or, alternatively, that if fees must be awarded, that American Oversight's fees should be reduced.

Wisconsin's public records law is not ambiguous and its interpretation requires no assistance from Illinois or Ohio courts. I reject Vos' invitation to apply those states' laws, and under Wisconsin law, I award American Oversight its reasonable fees using the lodestar approach. This is a two-step approach in which courts first determine "the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate," and then "adjust this lodestar figure up or down." *Kolupar v. Wilde Pontiac Cadillac*, 2004 WI 112, ¶28, 275 Wis. 2d 1, 683 N.W.2d 58 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)).

Applying this process, and considering each factor in Wis. Stat. § 814.045, I conclude that American Oversight is entitled to recover its reasonable attorney fees and costs equal to \$135,574.03. I further conclude that American Oversight may recover an amount up to \$7,637.00 for its most recent fees and costs, but I stay this lesser award for seven days to allow Vos an opportunity to file any objections.

I. BACKGROUND

The background of this litigation is detailed in previous orders in this case. *See e.g.* Decision and Order (July 15, 2022), dkt. 187. Briefly, this is one of several public records cases American Oversight has commenced seeking records related to the Wisconsin State Assembly's investigation into the 2020 elections.

On July 15, 2022, the Court ordered Vos to respond to American Oversight's requests within twenty days. Dkt. 187. American Oversight, therefore, prevailed in this litigation. *See Friends of Frame Park, U.A. v. City of Waukesha*, 2022 WI 57, ¶3, 403 Wis. 2d 1, 976 N.W.2d

263 (“to prevail” means to obtain “a judicially sanctioned change in the parties’ relationship.”). The Court further ordered Vos to “pay reasonable attorney fees, damages of not less than \$100, and other actual costs to American Oversight under Wis. Stat. § 19.37(2).” Decision and Order (July 15, 2022), dkt. 187:19.

On January 6, and again on February 17, 2023, American Oversight submitted evidence of the amount of its attorney fees. Dkt. 208-210, 214-215. Vos opposes the fee award. Dkt. 211.

II. LEGAL STANDARD

“The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Kolupar v. Wilde Pontiac Cadillac*, 2004 WI 112, ¶28, 275 Wis. 2d 1, 683 N.W.2d 58 (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). From this starting point, a court next “may adjust this lodestar figure up or down to account for any remaining [SCR 20:1.5(a)]² factors not embodied in the lodestar calculation.” *Id.* ¶29; *Anderson v. MSI Preferred Ins. Co.*, 2005 WI 62, ¶39, 281 Wis. 2d 66, 697 N.W.2d 73 (“The circuit court must first multiply the reasonable hours expended by a reasonable rate. The circuit court may then make adjustments using the SCR 20:1.5(a) factors.”) (internal citations omitted).

Kolupar, *Anderson*, and other past cases refer to SCR 20:1.5(a) for its lodestar adjustment factors. However, identical factors are also set forth in Wis. Stat. §§ 814.045(1)(a)-(p).³ These adjustment factors are:

² The quotation from *Kolupar* is itself a quotation from *Hensley*, in which the United States Supreme Court analyzed similar factors set forth in *Johnson v. Ga. Hwy. Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

³ See 2011 Wisconsin Act 92, § 1 (creating § 814.045); See also *Fuchsbruber v. Custom Accessories, Inc.*, 2001 WI 81, ¶25, 244 Wis. 2d 758, 628 N.W.2d 833 (“It is axiomatic that a statute does not abrogate a rule of common law unless the abrogation is clearly expressed and leaves no doubt of the legislature’s intent.”).

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

SCR 20:1.5(a).

III. DISCUSSION

Vos challenges American Oversight's claimed fee award on three grounds: (1) because parts of American Oversight's litigation were "unjustified," (2) because numerous individual billing entries are vague or unreasonable, and (3) because, Vos says, a nonprofit corporation like American Oversight cannot recover attorney fees. I address these arguments, in turn.

A. **The "justification" for one particular deposition is not material to any part of the lodestar analysis.**

Vos' first argument in opposition to American Oversight's number of reasonable hours is that "a mandamus action is extremely limited" and that any "request for fees for engaging in discovery should be denied as discovery was never justified." Vos Resp. Br., dkt. 211:3, 6.⁴ Vos

⁴ Vos' response brief relies on *Karcher v. DHS*, No. 20AP211, unpublished slip op., 2021 WL 608365 (Wis. Ct. App. Feb. 17, 2021). Vos Resp. Br., dkt. 211:3. In a footnote, Vos says that a copy of the opinion "is being contemporaneously filed with the Court." Vos Resp. br., dkt. 211:3 fn. 1. Vos did not, in fact, file this copy, and Wisconsin statute forbids this citation. *See* Wis. Stat. § 809.23(3).

cites no authority which would make the “justification” of American Oversight’s litigation material to the Court’s present lodestar analysis. Assuming Vos means to say these hours were unreasonable, he does not explain why this might be the case.

Vos next says that documents gathered in this case were irrelevant. Vos Resp. Br., dkt. 211:11. Specifically, Vos says that documents discussing matters like “training regarding how to search for records ... were of no consequence to whether Speaker Vos should have been compelled to respond to the records requests.” Vos Resp. Br., dkt. 211:12. I understand his argument to be that hours expended searching for these irrelevant documents should therefore be discounted as unreasonable.

I disagree with the premise that evidence of Vos’ training practices was irrelevant. On summary judgment, the Court specifically found that “Vos produces no evidence disputing whether his office practices resulted in a failure to produce records.” Decision and Order (July 15, 2022), dkt. 187:11. Accordingly, Vos’ training documents were plainly consequential to American Oversight’s un rebutted prima facie case that Vos never even searched for records, so it was not unreasonable for American Oversight to have sought these documents in the first place.

B. The starting point is the reasonable hours multiplied by a reasonable rate.

Vos’ second argument is that, for various specifically detailed reasons, American Oversight’s attorney fees are unreasonable. The Wisconsin Supreme Court instructs that attorneys “should submit evidence supporting the hours worked and rates claimed.” *Kolupar*, 2004 WI 112, ¶31 (quoting *Hensley*, 461 U.S. at 433). However, Vos does not argue that any of the rates American Oversight has billed are excessive. Accordingly, I accept the billed rates as a reasonable

This is Vos’ second attempt at citing this case in violation of Wis. Stat. § 809.23(3). See Vos Br. on Mtn. to Stay, dkt. 41:4 (misrepresenting *Karcher* as a published opinion.); See Decision and Order (Jan. 11, 2022), dkt. 47:2 fn. 2 (specifically correcting this misleading citation).

starting point, and I turn to a determination of the number of hours reasonably expended in prosecuting this public records case.

1. American Oversight submits line-by-line billing records to show its hours worked and rates claimed.

American Oversight produces several affidavits as evidence in support of its reasonable hours worked. First, Sarah Colombo (Colombo), an attorney directly employed by American Oversight, testifies that she has created an exhibit based on her ordinary business records that shows “the date on which services were rendered, a detailed description of those services, the initials of the attorney who performed the services, and the time that the attorney recorded for performing those services.” Colombo Aff. ¶4, dkt. 209. This evidence shows that American Oversight billed at rates between \$175 - \$375 per hour, for a total of \$94,795.00. Colombo Aff. Ex. A. Second, Christa Westerberg (Westerberg) an attorney retained by American Oversight, testifies to have created a similar exhibit for work done by American Oversight’s retained law firm, Pines Bach, LLC. Westerberg Aff., ¶9, dkt. 208. This evidence shows that Pines Bach billed at rates between \$150 - \$500 per hour, for a total of \$56,130. Westerberg Aff. Ex. A, dkt. 208:13. Third, Attorney James Friedman submits an affidavit in which he says all of the charged fees are reasonable. Friedman Aff., ¶¶12-13, dkt. 210. Finally, American Oversight submits supplementary affidavits attesting to fees incurred during this fee litigation itself. *See* Colombo Supp. Aff., dkt. 214; Westerberg Supp. Aff., dkt. 215.

In response to this evidence, Vos provides an unsworn document titled “Declaration of Ronald S. Stadler.” Dkt. 212. Unsworn statements are not evidence. Wis. Stat. § 906.03. I do not consider this document further.

2. American Oversight’s bills are, for the most part, properly supported by their submitted evidence.

Vos presents a series of line-by-line challenges to dozens of entries in Westerberg and Colombo's affidavits, which generally provide a brief description of each task performed, by whom, and for how long. In sum, the evidence appears altogether typical for how an attorney tracks his or her time. Vos disagrees, and he argues that much of this evidence is either too vague to sustain an award, or, in places where Vos can discern the work that was done, the work was not reasonable. Broadly speaking, Vos subdivides his arguments by first addressing the evidence in Westerberg's affidavit, before then turning to Colombo's affidavit.

a. Vos' objections to Westerberg's affidavit.

Vos first identifies twenty-six separate entries in Westerberg's affidavit as "too vague to be compensable." Here's one example, from January 14, 2022:

[date]	[description]	[initials]	[hours]	[hours x rate]
02/15/22	2521 – Call to plan for meet and confer	COW	0.90	292.50

See Westerberg Aff. Ex. 1, dkt. 208:9. To continue with this example, Vos says this entry "is too vague to justify the time billed to 'plan' for a telephone call with opposing counsel." Vos Resp. Br., dkt. 211:16. For similar reasons, Vos concludes that this and twenty-five other entries should be denied in their entirety. *Id.*

It is possible that a fair system for calculating reasonable fees could require exquisitely detailed, minute-by-minute entries. Perhaps the billing entry I have reproduced above—despite an introduction by an attorney's sworn testimony, or the fact that it is dated, timed to the 1/10th hour, attributed to a specific attorney, and described with a brief explanatory sentence—would fail that

system. But Wisconsin does not use this kind of system. Instead, to award attorney fees, courts must employ “a logical rationale” and “must use the ‘lodestar’ approach.” *Johnson v. Roma II-Waterford LLC*, 2013 WI App 38, ¶¶16-17, 346 Wis. 2d 612, 829 N.W.2d 538. Even the cases Vos cites do not support such a hyper-granular system. *See e.g. Harper v. City of Chicago Heights*, 223 F.3d 593, 604 (7th Cir. 2000) (Recognizing “the impracticalities of requiring courts to do an item-by-item accounting,” and concluding that courts must “provide a concise but clear explanation of its reasons for the fee award ...”); *See also Ohio-Sealy Mattress Mfg. Co. v. Sealy Inc.*, 776 F.2d 646, 651 (7th Cir. 1985) (“excluded are hours for which the plaintiff provides inadequate documentation.”).

Vos next challenges another twelve entries, which he says should be reduced by 25% as block-billing. Vos Resp. Br., dkt. 211:17. For the same reasons just described, I reject this argument. I do not find any of American Oversight’s billing to be block-billed such that Vos or this Court cannot review it for reasonableness.

Vos’ third challenge to American Oversight’s fee request is that seeks “duplicative and excessive” fees for thirty-eight individual entries. Vos Resp. Br., dkt. 211:19-24. It is true that courts should “weed out costs and fees that are merely duplicative, needless, or unreasonable with regard to pressing the claim.” *Anderson*, 2005 WI 62, ¶41. However, Vos does not demonstrate any of these fees are duplicative or excessive. To use an illustrative example, Vos complains about the following entry, billed at 0.30 hours: “12/07/21 Vos 2.0, conf with LAP re discovery; email client re same; email opp counsel re same. COW 0.30.” As I see it, this is an altogether ordinary bill for approximately 13-18 minutes that an attorney used to confer with her partner before writing a couple emails about discovery. But without providing any *reason* why he thinks this work is “duplicative and excessive,” Vos cites several cases in which courts have reduced “intra firm

meeting time.” Vos Resp. Br., dkt. 211:20. The cited cases do not support this argument. For example, in *Bowne of N.Y.C., Inc. v. AmBase Corp.*, the district judge began with this caveat:

The calculation of attorneys’ fees is, admittedly an inexact science. Especially where the fee requests are voluminous, courts need not become enmeshed in a meticulous analysis of every detailed facet of the professional representation.

161 F.R.D. 258, 268 (S.D.N.Y. 1995). Moving on to the “intra-firm” meeting time, the district judge continued to explain:

Several courts have also reimbursed attorneys for intra-firm meetings, recognizing that such time was well spent if it was the least expensive method of facilitating necessary communications between attorneys. Therefore, Judge Dolinger’s decision not to reimburse Bowne and Chemical’s attorneys for any intra-firm meeting time is contrary to law.

Id. (internal quotation marks, citations, and alterations omitted).

Vos’ fourth challenge to American Oversight’s fee request is that it “spent an excessive amount of time on the summary judgment materials.” Vos Resp. Br., dkt. 211:24-25. As best I can tell, Vos’ argument is that the amount of time both Pines Bach and American Oversight spent (about 135 hours) is, on its face, unreasonable. Vos cites no authority in support of this argument. In reply, American Oversight argues that its motion “involved parsing multiple depositions, thousands of pages of document discovery, and a wide variety of legal issues.” AO Reply Br., dkt. 216:9. All of this may be true, however it does not convince me that a reasonable attorney would spend 135 hours—or more than sixteen eight-hour days’ work—briefing a single motion. Upon review of the evidence, I conclude that this objection is better addressed against the billing entries in Colombo’s affidavit, discussed below.

b. Vos’ objections to Colombo’s affidavit.

Vos’ remaining challenges repeat the above arguments, but for Colombo’s affidavit. And,

for the same reasons discussed above, these challenges are not persuasive. Simply put, Colombo's affidavit, like Westerberg's affidavit, adequately details what work was done, by whom, and for how long. The Court declines "to become enmeshed in a meticulous analysis of every detailed facet of the professional representation." *Bowne of N.Y.C.*, 161 F.R.D. at 267.

There are a few exceptions, however. First, Colombo's affidavit contains numerous billing entries for "attendance" at hearings. *See e.g.* Colombo Aff. Ex. A, dkt. 209:7 (billing 1.2 hours for "Attendance at PO hearing, and call with [attorneys] re: same."). At these hearings, the billing attorney appeared via Zoom and remained muted while a second attorney participated directly. I agree with Vos that two attorneys at a relatively routine Zoom hearing "is a luxury a reasonable fee-paying client would not accept." *See Gagliano v. State Collection Serv.*, No. 14-CV-1512, unpublished slip op., 2016 WL 2853538 (E.D. Wis. May 13, 2016). Accordingly, I reduce the number of hours expended on January 4, 2022 (1.2 to 0.6 hours) and February 8, 2022 (1.8 to 0.9 hours), by half to reflect the fact these entries also contained other work, and I reduce the number of hours on each other "attendance" entry Vos identifies: March 10, 2022 (1.5 to 0.0 hours); April 7, 2022 (1.3 to 0.0 hours); and May 19, 2022 (0.2 to 0.0 hours).

Second, Colombo's affidavit details how American Oversight spent 118.6 hours on its summary judgment briefing. Having reviewed the briefs in question, I agree with Vos that a reasonable lawyer would not have spent this amount of time—time spent in addition to all of the discovery and evidentiary groundwork for the motion—and I reduce American Oversight's hours here by 40%.

c. Vos' objections to the supplementary affidavits.

On February 17, 2023, American Oversight submitted the supplementary affidavits of Westerberg and Colombo. Dkt. 214-215. Therein, American Oversight submits evidence of its fees

and costs for this litigation after January 6, 2023, the date of its original evidentiary submissions. These supplemental affidavits describe \$3,477.50 in fees and \$22.00 in costs (Westerberg Aff., dkt. 215) plus another \$4,137.50 in fees (Colombo Aff., dkt. 214). All of these costs appear to have been incurred after submission of the original affidavits. In total, these new costs and fees equal \$7,637.00.

Vos has not yet responded to this supplemental evidence. For purposes of judicial economy, I have reviewed this evidence myself. I do not consider any billed entries here to be unreasonable or worthy of adjustment under the lodestar factors, described below. However, I will not award any of these supplemental fees until Vos first has an opportunity to respond.

d. Conclusion - the reasonable hours starting point.

In sum, in consideration of the unreasonable amount of time spent on a single brief and duplicative billing for a second lawyer's attendance at routine hearings, I reduce American Oversight's claimed fee by approximately fifty-two hours.⁵ For the remaining entries, I conclude that the Westerberg and Colombo affidavits more than adequately document a reasonable number of hours that the prevailing party's attorneys worked, and at what rate. I turn, next, to the lodestar factors for adjusting this award up or down.

⁵ Here is the arithmetic for the reduction in American Oversight's fee requests.

First, the reduction for the attendance at hearings at Colombo Aff., dkt. 209:9-10.

Jan. 4 (0.6h), Feb. 8 (0.9h), Mar. 10 (1.5h), April 7 (1.3h), and May 19, 2022 (0.2h) = 4.5 hours.
4.5 hours x \$375.00 / hour = \$1687.50.

Second, the reduction for the summary judgment briefing at Colombo Aff., dkt. 209:10.

118.6 hours x 0.40 = 47.44 hours.
47.44 hours x \$375 / hour = \$17,790.00

Adding these reductions equals \$19,477.50.

B. The lodestar adjustment factors.

Having determined an initial estimate of the hours expended by American Oversight's attorneys at a reasonable rate, I next turn to the lodestar factors to determine whether the resulting bill should be adjusted to ultimately reflect a reasonable fee. *Kolupar*, 2004 WI 112, ¶28. “[I]deally, the court should discuss each of these factors ...” *Id.* ¶34. American Oversight addresses these factors individually. AO Br., dkt. 207:10-14. Vos does not address them. *See generally* Vos Resp. Br., dkt. 211.

1. Time, labor, difficulty, and skill.

The first factor for adjusting attorney fees inquires into:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

SCR 20:1.5(a); *See* Wis. Stat. §§ 814.045(1)(a)-(c) and (L). American Oversight argues that this litigation required a large deal of time because of Vos' repeated and unsuccessful attempts to seek appeals or reconsideration in the midst of these proceedings. *See e.g.* Decision and Order (Jan. 11, 2022), dkt. 47 (this Court denies Vos' motion to stay discovery); Decision and Order (Oct. 25, 2022), dkt. 201 (this Court denies Vos' motion for reconsideration); *American Oversight v. Robin Vos*, No. 2022AP38-LV, unpub. order (Jan. 10, 2022) (the Wisconsin Court of Appeals denies Vos' motion for a stay); *State ex rel. Robin Vos v. Cir. Ct. for Dane Cnty.*, No. 2022AP50-W, unpub. order (Jan. 11, 2022) (the Wisconsin Supreme Court denies Vos' motion for a supervisory writ). I agree the circumstances of this case have required an unusually large amount of time, labor, and difficulty for a public records case, however this is reflected in the amount of time American Oversight has dedicated to the litigation, and not a reason to adjust the fee up or down.

2. Preclusion of other employment.

The second factor for adjusting attorney fees inquires into:

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

SCR 20:1.5(a); *See* Wis. Stat. § 814.045(1)(d). As a general matter, working on one case precludes using that time to work on another. This is not a reason to adjust American Oversight's fees up or down.

3. Customary fee for similar services.

The third factor for adjusting attorney fees inquires into:

(3) the fee customarily charged in the locality for similar legal services;

SCR 20:1.5(a); *See* Wis. Stat. § 814.045(1)(e). As explained above, the fees charged by American Oversight's attorneys are customary for similar services in Dane County. *See* Friedman Aff., dkt. 210. This is not a reason to adjust American Oversight's fees up or down.

4. Amount involved and results obtained.

The fourth factor for adjusting attorney fees inquires into:

(4) the amount involved and the results obtained:

SCR 20:1.5(a); *See* Wis. Stat. §§ 814.045(1)(f)-(g). There is no "amount involved" in a public records case. American Oversight obtained most of the results it sought—the Court has ordered Vos to search for and produce the requested records and now awards American Oversight its fees. On the other hand, the Court has rejected American Oversight's claims for punitive damages. This is not a reason to adjust American Oversight's fees up or down.

5. Time limitations.

The fifth factor for adjusting attorney fees inquires into:

(5) the time limitations imposed by the client or by the circumstances;

SCR 20:1.5(a); *See* Wis. Stat. § 814.045(1)(h). American Oversight argues that it experienced “front-loaded” time limitations which made it difficult to litigate this case. AO Br., dkt. 207:12. This may be reflected in the front-loaded number of hours American Oversight billed, but it is not a reason to adjust American Oversight’s fees up or down.

6. The attorney-client relationship.

The sixth factor for adjusting attorney fees inquires into:

(6) the nature and length of the professional relationship with the client;

SCR 20:1.5(a); *See* Wis. Stat. § 814.045(1)(i). American Oversight appears to have a close relationship with its retained counsel, who has represented American Oversight in other public records cases in Dane County, but this relationship only began in 2021, and American Oversight does not suggest this is a reason to adjust its fees up or down.

7. The attorney’s ability.

The seventh factor for adjusting attorney fees inquires into:

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

SCR 20:1.5(a); *See* Wis. Stat. § 814.045(1)(j). Vos does not question the experience, reputation, or ability of American Oversight’s lawyers. This is not a reason to adjust American Oversight’s fees up or down.

8. The type of fee.

The eighth factor for adjusting attorney fees inquires into:

(8) whether the fee is fixed or contingent.

SCR 20:1.5(a); *See* Wis. Stat. § 814.045(1)(k). The fee in this case is fixed and, based on the evidence discussed above, reasonable for these matters. This is not a reason to adjust American

Oversight's fees up or down.

9. Other factors.

Finally, courts must consider “[a]wards of costs and fees in similar cases,” “[t]he legitimacy or strength of any affirmative defenses asserted in the action,” and any other factors. Wis. Stat. §§ 814.045(1)(m), (n) and (p). American Oversight points to the purpose of the public records law as an “other factor” that I should consider. I agree that fee-shifting statutes like Wis. Stat. § 19.37 “will provide an incentive to others to protect the public’s right ...” *See State ex rel. Buswell v. Tomah Area Sch. Dist.*, 2007 WI 71, ¶53 n.13, 301 Wis. 2d 178, 732 N.W.2d 804. This is not a reason to adjust American Oversight’s fees up or down.

C. Nonprofit corporations may recover fees under Wis. Stat. § 19.37(2).

In the sections above, I examined evidence supplied by American Oversight to determine a reasonable number of hours multiplied by a reasonable rate, and then examined each of Wisconsin’s lodestar factors, in turn, to adjust the recoverable attorney fees in this case. Vos offers two additional objections, neither of which deal with this process. Instead, Vos’ remaining objections to American Oversight’s reasonable fees arises from these principles: first, that a pro se litigant cannot recover fees, *see State ex rel. Young v. Shaw*, 165 Wis. 2d 276, 295, 477 N.W.2d 340 (Ct. App. 1991), and second, that “Illinois and Ohio appellate courts ... have rejected the argument that a non-profit’s in-house counsel fees may be recovered.” Vos Resp. Br., dkt. 211:32. Based on these principles, Vos says that American Oversight should not receive any fees. I reject both of these arguments.

First, American Oversight has not been deprived of an independent attorney’s judgment by representing itself because a corporation cannot represent itself. When American Oversight retained lawyers to represent it, the reasoning of *Young v. Shaw* ceased to apply. *See Young*, 165

Wis. 2d at 295 (“[t]he provision for attorney's fees implies the existence of an attorney-client relationship.”); *See also Kay v. Ehrler*, 499 U.S. 432 (1991).

Second, “[c]ourts may not add words to a statute to give it a certain meaning.” *Westra v. State Farm Mut. Auto. Ins. Co.*, 2013 WI App 93, ¶18, 349 Wis. 2d 409, 835 N.W.2d 280 (quoted source omitted). Nothing in the text of § 19.37 prohibits a fee recovery based on the method a plaintiff has used to fund its litigation. Even if I could add words to § 19.37 to prohibit some plaintiffs’ fee recovery, Vos fails to explain why a Wisconsin court would turn to Illinois and Ohio for guidance. “Wisconsin courts do not consult extrinsic sources of statutory interpretation unless the language of the statute is ambiguous.” *Kalal v. Cir. Ct. for Dane Cnty.*, 2004 WI 58, ¶49, 271 Wis. 2d 633, 681 N.W.2d 110. Vos does not argue that § 19.37 is ambiguous. *See generally Vos Resp. Br.*, dkt. 211 (the words “ambiguous” or “ambiguity” do not appear). But even if Vos had shown that § 19.37 was ambiguous, Wisconsin’s legislature instructs that its records statutes “shall be construed in every instance with a presumption of complete public access ...” Wis. Stat. § 19.31. This is an “explicit statement[] of legislative purpose ...” *Kalal*, 2004 WI 58, ¶50. So, to conclude, even assuming § 19.37 is ambiguous, and further assuming Illinois and Ohio courts have persuasively interpreted those states’ statutes, I would still defer to the Wisconsin legislature’s policy choices. *State ex rel. Kaul v. Prehn*, 2022 WI 50, ¶25, 402 Wis. 2d 539, 976 N.W.2d 821. And, in doing so, I would reject Vos’ argument that a nonprofit may not recover its fees.

D. Other statutory costs and compensatory damages.

Having settled the matter of American Oversight’s reasonable attorney fees, American Oversight also submits evidence that it incurred other, non-attorney fee, statutory costs. These include the costs for transcripts, process of service, and for a witness fee. *Westerberg Aff. Ex. A*, dkt. 208:13. Additionally, American Oversight is entitled to \$100 in compensatory damages under

Wis. Stat. § 19.37. Vos does not object to these costs, which are properly supported by evidence, and which I award.

ORDER

For the foregoing reasons, the Court orders:

1. Robin Vos, or the unit of government of which his office is a part, shall pay to American Oversight the following amounts:
 - A. \$130,447.50, an amount equal to the prevailing party's reasonable attorney fees of \$56,130.00 (Pines Bach, LLC), plus \$93,795.00 (American Oversight), minus \$19,477.50 for the reductions described in this decision.
 - B. \$100.00, an amount equal to compensatory damages under Wis. Stat. § 19.37(2).
 - C. \$5,026.53, an amount equal to the prevailing party's costs.
 - D. Together, this amount equals: **\$135,574.03**.
 - E. This order is effective immediately.

2. Additionally, Robin Vos, or the unit of government of which his office is a part, shall pay to American Oversight:
 - A. \$7,637.00, an amount equal to the prevailing party's costs and reasonable attorney fees incurred after January 6, 2023.
 - B. This order is stayed for seven days to allow Robin Vos to file any objections to these supplemental costs and fees.

This is a final order for purposes of appeal. Wis. Stat. § 808.03(1).