

# 2023 HOUSE IMPEACHMENT COMMITTEE

## Minutes of the 4th Meeting

February 2, 2023

### Call to Order and Roll Call

The 4th meeting of the 2023 House Impeachment Committee was held on February 2, 2023, at 9:00 AM in Room 129 of the Capitol Annex. Representative Daniel Elliott, Chair, called the meeting to order, and the secretary called the roll.

### Present were:

Members: Representative Daniel Elliott, Chair; Representative Lindsey Burke, Representative Jennifer Decker, Representative Kim King, Representative Nima Kulkarni, Representative Suzanne Miles, and Representative Jason Nemes.

Guests: Brian Wright, Commonwealth's Attorney, 29th Judicial Circuit; Rob Sanders, Commonwealth's Attorney, 16th Judicial Circuit; and Jackie Steele, Commonwealth's Attorney, 27th Judicial Circuit.

LRC Staff: Roberta Kiser, Matt Trebelhorn, and Elishea Schweickart.

### Adoption of the Minutes

The minutes from the January 25, 2023 meeting were adopted.

### Testimony from Commonwealth's Attorneys

Brian Wright, Commonwealth's Attorney in the 29th Judicial Circuit; Rob Sanders, Commonwealth's Attorney in the 16th Judicial Circuit; and Jackie Steele, Commonwealth's Attorney in the 27th Judicial Circuit testified before the committee. Each Commonwealth's Attorney introduced themselves to the committee and spent a few moments talking about their experience and their districts. All three attorneys are also three of the five elected commonwealth attorney representatives on the Prosecutors Advisory Council. Mr. Sanders currently serves as co-chairman on the legislative committee of the Commonwealth's Attorneys' Association and Mr. Wright is the immediate past president.

Responding to a question from Chairman Elliott, all three attorneys agreed that the amount and context of the contact between Mr. Goldy and a defendant in his circuit, who was represented by other counsel, was outside the bounds of contact that prosecutors normally engage in. Not only was the contact between the two abnormal, it was unprofessional and wrong. Mr. Steele added that when the allegations about Mr. Goldy first surfaced, the Commonwealth's Attorneys' Association was in the process of amending their rules and constitution so that members could be expelled for wrongful conduct. Mr. Goldy was expelled in August 2022. Mr. Sanders added that power between a prosecutor and a criminal defendant is never, and can never, be equal.

Responding to a question from Chairman Elliott, Mr. Sanders stated that until 2022 no one had ever been expelled from the Commonwealth's Attorneys' Association. Since their constitution was amended two members have been expelled.

Responding to a question from Chairman Elliott, Mr. Steele stated that someone who has been temporarily suspended from the practice of law cannot be an effective Commonwealth's attorney since the position requires a license to practice. Mr. Sanders and Mr. Wright agreed. Mr. Sanders added and explained that even if someone could practice, the lack of trust from the community would be extremely difficult to overcome. Mr. Wright added that no Commonwealth's attorney would be able to effectively represent their district in a legal capacity.

Responding to a question from Representative Miles, Mr. Sanders explained that there is very limited recourse available against a Commonwealth's attorney, and the only people they report to are the constituents that elected them and the Prosecutors Advisory Council. The Prosecutors Advisory Council has control over the budget of every prosecutor's office in Kentucky, but it cannot discipline or suspend prosecutors. The Prosecutors Advisory Council did vote for Mr. Goldy to either voluntarily suspend his salary or they would sue him to recoup the salary from the day his law license was suspended. Mr. Goldy agreed to forgo his salary effective February 1, 2023. Mr. Steele added that because Commonwealth's attorneys are constitutional officers the only way to stop their salaries or remove them from office is if they agree to stop their salary, resign, or if they are impeached.

Responding to a question from Representative Kulkarni, Mr. Sanders stated that if a person's law license is suspended for more than six months the Kentucky Bar Association requires them to go through a character and fitness process that every applicant goes through. If Mr. Goldy reapplied for his license, received it, and then ran for the office of Commonwealth's attorney again it would be up to the voters whether to elect him.

Responding to a question from Representative Nemes, Mr. Sanders explained that he agrees that the committee should add a prohibition for running for office again if Mr. Goldy is impeached. Mr. Steele and Mr. Wright agreed. Mr. Wright added that, if all the evidence is true, Mr. Goldy's lack of appropriate discretion is compromised.

Responding to a question from Representative Decker, Mr. Steele stated that the standard applied by the Committee on Impeachment and the standard applied by the Supreme Court is different.

Responding to a question from Representative Miles, Mr. Wright stated that, in his opinion, Mr. Goldy was attempting to somehow explain his conduct in his response, but his conduct is inexcusable. Responding to a follow-up question from Representative Miles, Mr. Sanders explained that he believes the committee is allowed to determine if what Mr. Goldy provided and says is a plausible explanation for his conduct. Mr. Wright added that the apparent quid pro quo use of his authority is clearly wrong. Mr. Steele agreed and added that the evidence provided by Mr. Goldy, in his opinion, shows that he does not believe he has done anything wrong. Responding to another follow-up question from Representative Miles, Mr. Wright stated that sometimes prosecutors will speak on behalf of a defendant, but advocating the way Mr. Goldy did for a defendant, inside and outside the court, is unethical. Mr. Sanders agreed and added that a request for a special prosecutor did not come until State Police observed messages from Mr. Goldy on the defendant's phone. Mr. Steele agreed and added that the appropriate thing for a prosecutor to do is tell a defendant to contact their attorney.

Responding to a question from Representative Burke, Mr. Sanders explained that, as defined in KRS 63.035, he believed there are more than one misdemeanors for impeachment, including

misconduct. Mr. Wright and Mr. Steele agreed. Mr. Wright added that he thinks pecuniary interest needs to be broadened to include sexual photos and videos.

Responding to a question from Representative Decker, Mr. Wright explained that because of the position of Commonwealth's attorney, and its importance, impeachment would be warranted in the case of Mr. Goldy because of his conduct.

Responding to a question from Chairman Elliott, Mr. Wright explained that sometimes prosecutors will share information with other jurisdictions about a defendant, but it is unusual to advocate in this context. Mr. Steele and Mr. Sanders agreed.

In closing, Mr. Sanders stated that, if not now, when will a prosecutor be impeached. He also stated that he believes the vote to expel Mr. Goldy from the Commonwealth Attorneys Association was their symbolic impeachment and showed the gravity of his actions. He added that none of them want to be in this situation, but most importantly, none of them want a situation to happen like this in Kentucky which is why they came to testify and encourage the committee to move forward with impeaching Mr. Goldy. Mr. Wright and Mr. Steele agreed and added that they believe the conduct in this case rises to the level of impeachment.

### **Executive Session**

The committee entered executive session.

### **Communications and Announcements**

Upon return from executive session, Chairman Elliott announced that the committee had reviewed the testimony from earlier. The next meeting will be Tuesday, February 7, 2023 on the call of the chair.

### **Adjournment**

With there being no further business, the committee was adjourned at 11:29 AM.