



BEFORE THE IOWA SENATE

<p>COMMITTEE ON GOVERNMENT OVERSIGHT</p> <p>In the Matter of IOWA ASSOCIATION OF SCHOOL BOARDS</p>	<p>CASE NO. _____</p> <p>MOTION TO QUASH SUBPOENA AND REQUEST FOR IMMEDIATE RULING</p>
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COMES NOW THE PLAINTIFF, Maxine Kilcrease, through undersigned counsel, Sean P. Spellman, and in support of her Motion to Quash Subpoena and Request for Immediate Ruling states as follows:

1. Attorney Sean P. Spellman hereby enters his appearance on behalf of Plaintiff, Maxine Kilcrease, in the above-captioned matter.
2. On or about April 23, 2010 Plaintiff was served with a "Subpoena to Testify Before the Senate Government Oversight Committee" (hereinafter referred to as "Subpoena").
3. The Subpoena commands Ms. Kilcrease to appear and provide sworn testimony in the matter of "Iowa Association of School Boards" on April 29, 2010, at 10:30 a.m. in the Old Iowa Supreme Court Chambers, State Capitol, 1007 East Grand Avenue, Des Moines, Iowa 50319.
4. At some time prior, a legislative oversight committee was assembled to investigate the Iowa Association of School Boards (hereinafter referred to as "IASB").
5. Ms. Kilcrease formerly served as the Executive Director of the IASB until the IASB improperly terminated her contract.

6. The Iowa Association of School Boards is a non-profit corporation which operates in the private sector and which is organized under Iowa Code Section 504.
7. The IASB is not a state agency and is not a state department within the jurisdiction of the Iowa Legislature.
8. The object of the Subpoena is not legal and proper in conformity with Iowa Code Section 622.88.
9. To date, there have been at least three government oversight committee hearings relating to the IASB.
10. At hearings held on March 15, 2010 certain legislators made the following statements on the record:
  - a. "Iowans, and this committee, are pissed." Senator Richard Olive, D-Story City, Committee Co-Chairman.
  - b. Committee Vice Chairman Senator Tom Courtney, D-Burlington, accused IASB officials of being "common thieves" who should be jailed.
  - c. Senator Courtney also added "This is outrageous. I hope the FBI gets involved. I hope they all wind up in prison. I hope they're there for 100 years."
11. The statements made by members of the committee, including but not limited to those referenced above, do not imply a proper or legitimate or legal object, but rather establish that the committee is serving as an unauthorized and biased criminal tribunal.
12. The prejudicial, inflammatory, pre-judgmental, reckless, arbitrary, and capricious statements of committee members preclude a fair and just hearing and deny Ms.

Kilcrease due process of law and equal protection of the law under the U.S.

Constitution under the 5th and 14th Amendments and under Article I, Sections 6, 9, and 10 of the Constitution of the State of Iowa.

13. The Preamble to the House Code of Ethics states the following:

“ Every legislator and legislative employee has a duty to uphold the integrity and honor of the general assembly, to encourage respect for the law and for the general assembly, and to observe the house code of ethics. The members and employees of the house have a responsibility to conduct themselves so as to reflect credit on the general assembly, and to inspire the confidence, respect, and trust of the public.”

14. The Preamble to the Senate Code of Ethics states the following:

“Every legislator owes a duty to uphold the integrity and honor of the general assembly, to encourage respect for the law and for the general assembly and the members thereof, and to observe the legislative code of ethics. In doing so, members of the senate have a duty to conduct themselves so as to reflect credit on the general assembly, and to inspire the confidence, respect, and trust of the public, and to strive to avoid both unethical and illegal conduct and the appearance of unethical and illegal conduct.”

15. By their words and actions, the committee is engaging in political and ethical misconduct which interferes with other ongoing investigations.

16. The Subpoena ultimately seeks disclosure of privileged information which is subject to protection as trial preparation materials. See Iowa Rule of Civil Procedure 1.503(5)(a).

17. Compelling the Plaintiff to testify could result in the disclosure of privileged, confidential, or other protected matter to which no exception or waiver applies.

18. Compelling the Plaintiff to testify could violate her Fifth Amendment privilege against self-incrimination.

19. The subpoena subjects Ms. Kilcrease to undue burden in that it does not give reasonable notice and opportunity to challenge the subpoena or allow reasonable time for compliance.
20. A Congressional subpoena must meet three requirements for a subpoena to be "legally sufficient." First, the committee investigation of the broad subject area must be authorized by its Chamber; second, the investigation must pursue "a valid legislative purpose" but does not need to involve legislation and does not need to specify the ultimate intent of Congress; and third, the specific inquiries must be pertinent to the subject matter area which have been authorized for investigation. *Wilkinson v. United States*, 354 U.S. 178 (1957).
21. The Committee on Government Oversight is not acting in conformity with Iowa Code Sections 2.14 and 2.15.
22. The Committee lacks legal authority to subpoena Ms. Kilcrease because it has not shown a substantial need for the testimony or material that cannot otherwise be met without undue hardship.
23. The Committee has no authority to issue a subpoena because it has not made an adequate showing of a substantial relation between the information sought and a subject of compelling state interest.
24. The IASB has refused Ms. Kilcrease access to certain information, including but not limited to her personal affects and papers, which might be the basis for certain testimony.
25. The Subpoena is defective on its face because it does not specifically set forth the language of Iowa Rules of Civil Procedure 1.1701(a)(4).

26. Compelling Ms. Kilcrease to appear and be sworn as a witness would constitute an illegal search and seizure. The United States Supreme Court has recognized that the Constitutional requirement against unreasonable searches and seizures applies to Congressional hearings. In *Wilkinson v. United States*, the United States Supreme Court said:

“It is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees and to testify fully with respect to matters within the province of proper investigation. *This, of course, assumes that the constitutional rights of witnesses will be respected by the Congress as they are in a court of justice. The Bill of Rights is applicable to investigations as to all forms of governmental action. Witnesses cannot be compelled to give evidence against themselves. They cannot be subjected to unreasonable search and seizure. Nor can the First Amendment freedoms of speech, press, religion, or political belief and association be abridged.*” (Emphasis supplied.) *Id.* at 187-188.

27. Movant reserves the right to supplement this motion.

28. Movant requests that the issuing court rule on this matter prior to initiation of the hearing.

WHEREFORE, Ms. Kilcrease respectfully requests that the issuing court quash the subpoena and for any other relief which it deems proper under the circumstances.

RESPECTFULLY SUBMITTED:



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ATTORNEY FOR PLAINTIFF.

Original Filed.

Copy to:

Committee

Senator John P. Kibbie  
State Capitol  
1007 East Grand Ave.  
Des Moines, IA 50319

Senator Richard W. Olive,  
State Capitol  
1007 East Grand Ave.  
Des Moines, IA 50319

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 29 day of April, 2019.

By:  U.S. Mail       FAX  
 Hand Delivered       Overnight Courier  
 Federal Express       Other: \_\_\_\_\_

Signature: \_\_\_\_\_

