Statement of Joseph L. Walsh

Iowa Senate Government Oversight Committee

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My name is Joe Walsh. I graduated from Drake Law School in 1996 and worked for a prestigious labor law firm in Des Moines. I eventually became a partner and had a successful legal career. In 2007 Gov. Culver asked me to serve the State of Iowa as Deputy Director of Iowa Workforce Development. I did. This was a political position and I served at the pleasure of the Governor. In 2010, I agreed to serve as Chief Administrative Law Judge for Iowa Workforce Development (IWD). I was hired through the merit system. I served in that position until I was relieved of my duties in July 2013.

In January 2011, Teresa Wahlert became the Director of IWD. I was excited about working with her. I have been a lifelong Democrat but I had spent the previous three and a half years learning how to bridge gaps of partisanship to solve real workforce problems. I saw this as an opportunity. I presumed, without even thinking about it, that she intended to respect the administrative judicial process. Judicial integrity is not and should never be a partisan issue.

The Appeals Bureau resolves disputes involving unemployment benefits. A Judge's job is to hold a fair hearing, ascertain the facts and apply the facts to the law.

My relationship with Teresa Wahlert was generally professional in the beginning. She told me she was happy to have me on staff. From the time of our very first meeting, it was apparent that she harbored a notable bias in favor of employers over unemployed Iowans. For nearly two years, however, I was able to redirect her efforts to insert her bias in the judicial process. I spent a great deal of time educating her about the process and her role in it. I insisted on an agency tone of judicial integrity and independence. While I sensed resistance from her to the idea of independence of the Appeals Bureau, we reached an understanding that worked for about two years in part because of my constant efforts to protect her.

I am prepared to go into detail today about the ways in which Director Wahlert ultimately attempted to interfere with the administrative judicial process at IWD. I presume most of your questions will be about this topic. I would like to make two points just so you understand the context.

First, everything that occurred in the Bureau in 2012 and 2013, occurred under the backdrop of what Gov. Branstad had done to Commissioner Godfrey. The Division of Workers' Compensation is in our building. I knew - all of the judges knew - that Gov. Branstad had demanded Commissioner Godfrey resign. We knew he threatened to cut his pay if he did not resign. We knew he ultimately cut his pay and vetoed funding for his agency. We all knew that Gov. Branstad had stated the reason he did this to Commissioner Godfrey was because he was not pro-business enough. We all witnessed this first-hand.

Second, it is critical to understand Teresa Wahlert's leadership style. I witnessed it firsthand as a member of her leadership team. She is calculated and her primary leadership tool is fear. She sends messages to her staff and others to scare them into doing what she wants. In my experience, her messages always had a purpose.

With this context in mind, these are the types of activities she engaged in, which I felt encroached upon judicial integrity. She instructed me to write and have staff prepare "employer tip sheets" which, to her,

were essentially legal advice for employers to avoid paying unemployment insurance benefits – a "how-to". She repeatedly attempted to compel policy interpretations of the law upon Judges under the guise of obtaining uniformity. In my experience, this was always designed to make legal interpretations more employer-friendly. She ordered me, against my advice, to poll the Judges about their understanding of a point of law which she did not feel was fair to employers. She instructed me to gather data on the Judges to determine which Judges were more likely to rule in favor of employers. She refused to utilize her legitimate powers of rulemaking and proposal of legislation. With many of these actions, I believe she was attempting to send messages to Judges or myself that we were granting benefits too often or that she was dissatisfied with judicial outcomes. Again, these incidents occurred over a period of time, but by late 2012 and early 2013, they became much more forceful and aggressive.

Throughout all of this, the Judges were watching what was happening. As much as I attempted to be a buffer between the Judges and Director Wahlert, by 2013, I was regularly approached by Judges who were concerned about their judicial independence. These issues all came to a head in the Spring of 2013. At that time, the Director had elicited the assistance of one of my subordinates to undermine my leadership in the unit.

As I mentioned earlier, when I was hired, the position of Chief ALJ was a merit position. "Merit status" simply means that a supervisor must have a good reason for removing a person; they cannot be fired for political reasons or no reason at all. A merit employee can still be removed for a good reason although there is supposed to be due process before that occurs.

In April 2013, Director Wahlert notified me of her intent to change my employment status from merit to at-will. This status change was part of the Branstad Administration's larger plan to make fewer State workers merit employees. This, however, in the context of unemployment appeals law, is a violation established legal principles. I immediately went to IWD Human Resources Manager, Jon Nelson, and explained the problem. He agreed there was a problem. He agreed to place the action on hold and fix it. Instead of fixing it, however, Director Wahlert ignored it. She ignored the HR Manager's promise to place the matter on hold and officially classified me as "non-merit" in May 2013.

I contacted the United States Department of Labor and explained the situation to them. I then confronted Teresa Wahlert who told me that her lawyer from DAS, Ryan Lamb, made the decision that I should be non-merit. I met with Lamb. He denied this assertion. He told me he merely gave her a legal opinion. He further told me he based his legal opinion on Director Wahlert's assertions that my position was "mostly managerial". There is no such exception in the law for "mostly managerial" Judges although the characterization was untrue in any event. Mr. Lamb agreed to contact U.S. DOL himself. When he did, he was told the same thing: Judges who hear cases must have merit protection under federal law.

Within a few days of Lamb confirming this, Director Wahlert called me into her office and told me that she was stripping me of my authority to hear cases. This was obviously unprecedented. I went to U.S. DOL, the IWD Board and the Governor's Office to fight this. To date, I have never been contacted by the Governor's Office.

Toward the end of June 2013, Director Wahlert reversed her decision to make my position at-will without any explanation. I believe the U.S. DOL instructed her that her actions were illegal and inappropriate. Approximately 3 weeks later on July 15, 2013, without notice, she laid me off and had

me removed from the building. She laid off my wife on the same day. My wife had worked at the agency long before I did and had run a number of important programs and grants. Her position was fully funded, as was mine. In fact, I had repeatedly been told by Financial Management that my budget was a quarter of a million dollars under for FY 14.

Since I was removed, Director Wahlert has taken over the management of the Appeals Bureau herself which means that a partisan political appointee is in charge of the direct management of Administrative Law Judges. This is something I never thought I would see at IWD. I believe it inherently violates the fundamental tenets of judicial independence. I think it places both her, and the entire Bureau, in a bad position with a built-in appearance of impropriety and conflict. It is a terrible way to run the agency.

Since my layoff, Director Wahlert and officials from DAS have continued to interfere with my career. In January 2014, I was reinstated at IWD through the Outplacement program in the Division of Workers' Compensation. Since January 2014, I have been a Deputy Workers' Compensation Commissioner. In January the Director wrote to the Commissioner and told him he should not reinstate me because I had a complaint pending with the Public Employment Relations Board. Nevertheless, Commissioner Godfrey followed the Outplacement policy and reinstated me. I was reinstated because I am highly qualified and deserved the job based upon merit.

In April this year, I filed a lawsuit against the State of Iowa based upon Teresa Wahlert's actions. Her response was to issue a press release under IWD's letterhead attacking my work performance and insinuating that I am dishonest. She said my lawsuit is frivolous. According to The Des Moines Register, she did this contrary to the advice of the Attorney General's Office.

I feel compelled to take just a moment to defend myself from that unprecedented attack.

In that press release, she alleged for the first time ever that I was laid off for performance reasons. If true, this means that her layoff plan which she submitted to DAS, was false. In the layoff plan, the only reason she listed for my layoff was budget. In any event, I was never told that my performance was an issue prior to my layoff, which is required by law, and I have never received a "does not meet" expectations in any evaluation.

My performance, in fact, was excellent. When I took over the Bureau, we were under a performance plan due to one of the worst recessions in U.S. history. In 2010 and 2011, we had record numbers of appeals and decisions. U.S. DOL sets a primary performance standard for timeliness that the Bureau must issue decisions within 30 days or less for 60 percent of our cases. When I took over Appeals was issuing less than 10 percent in 30 days or less. By the end of my first year, we were regularly meeting the 30 day standard on a month by month basis.

Our efficiency metrics were more important to the Director, though, so that is what I focused on. While other divisions in the agency were lagging in efficiency performance, the Appeals Bureau had moved from 36th in the nation to 18th in case processing efficiency. In 2013, Appeals was the only UI funded unit in the entire agency which was moving in the right direction in terms of MPU efficiency.

In addition, in 2012, I received an unambiguously successful review from U.S. DOL. We met U.S. DOL quality standards in every quarter. And I provided my staff with direct, regular communication regarding their performance.

In that press release she made a number of other misleading attacks against me which are really nothing more than her attempt to damage my reputation and otherwise retaliate for blowing the whistle on her improper conduct. My fear with coming forward here today, is that it will incite more attacks or retaliation from her. Because I feel so strongly that she is damaging the integrity of our administrative judiciary, I feel I have no choice but to speak.

The truth is, I was not fired for performance. And I was not laid off for budget reasons. I was reorganized out of my job because I stood up to her.

Canon I of the Code of Administrative Judicial Conduct states:

> **10.29(1)** *Canon 1.* A presiding officer shall uphold the integrity and independence of the administrative judiciary.
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> *a.* An independent and honorable administrative judiciary is indispensable to justice in society.
>
> *b.* A presiding officer shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards so that the integrity and independence of the administrative judiciary will be preserved.

I have devoted my career to the concept that every human being deserves a fair, fighting chance in our justice system: whether you are the CEO of powerful, wealthy corporation or a frontline worker in the dirtiest, lowest paid job in the state. To me, this is not some abstract principle or philosophical ideal. It is the fundamental working reality of the rule of law. Having a fair, unbiased system for resolving disputes is essential to stability in our society and it is what decent people strive for regardless of our political leanings.

When people file for unemployment benefits, they are often at the very lowest point in their life. Those workers, their families and their communities who rely upon those benefits, they deserve better than this. They deserve a fair system.

With this in mind, I have two recommendations. First, it is my recommendation that you pass legislation which requires Judges to be free of pressure from political operatives in the Executive Branch. Every Judge, including managing Judges, should be merit employees. If this cannot be done, Administrative Judges should be moved to the Judicial Branch. Second, I urge you to appoint independent counsel to fully review all of the Branstad Administration's abuses of the administrative judiciary. I think this has to be removed from politics and all political processes and reviewed independently. Unless we do this, I fear there will never be accountability.