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TO: Milwaukee County Board of Supervisors

FROM: Margaret C. Daun *MCD*
Colleen A. Foley *CF*
Paul D. Kuglitsch *PK*

DATE: March 19, 2018

RE: Referral on File 17-302

File 17-302 is a resolution to “request that the Wisconsin Congressional Delegation [] support and advocate for the creation of a bipartisan commission to study United States of America immigration policy and border security.” At its November 2, 2017 meeting, the County Board voted to refer this file to the Office of Corporation Counsel (OCC) for an opinion “evaluate how this resolution would interface with current ordinances around immigration and provide an analysis of current federal immigration laws.” This is a very broad request regarding an area of the law outside the OCC’s current core areas of expertise.

But in brief, as currently drafted, there is no legally relevant relationship between Resolution 17-302 and any existing County ordinances, state statutes, or federal immigration laws, since the resolution does not alter or create any County ordinance, nor does it adopt any particular stance or viewpoint on any particular immigration-related County ordinance or policy, state statute, or federal law or regulation. Instead, the Resolution does two things: it (1) directs that the County Board’s legislative liaison deliver a copy of the Resolution to the United States President, Wisconsin Congressional Delegation, the National Association of Counties, National League of Cities, and Wisconsin Counties Association, and (2) merely *requests* that the Wisconsin Congressional delegation “support and advocate for the creation of a bipartisan commission to study ... immigration policy and border security.” The Resolution does not take any position on what the United States’ immigration policy or border security should be or should not be. And while the Resolution does include a number of “Whereas” clauses, these also do not mandate any specific action, policy, or lawmaking by the County, state or federal government. Instead, the “Whereas” clauses provide statistics and other data relevant to the Resolution. Amendment 1 to Resolution 17-302 also has no legal import, since it too simply makes reference to a particular Wisconsin resident’s interaction with the federal immigration apparatus, but takes absolutely no stance regarding his case whatsoever.

The OCC previously provided guidance on this topic on February 1, 2017 (regarding Resolutions 16-738 and 12-135), and on June 28, 2017, we submitted a certification of the County’s compliance with 8 U.S.C. § 1373 to the United States Department of Justice. These are attached as Exhibits 1

and 2 (without attachments, which are very voluminous), as these comprise the likely bounds of the guidance and advice from the OCC related to the interrelationship between County policies and ordinances and federal immigration laws and regulations that the OCC believes it can prudently provide to its stakeholder clients, absent a more narrowly-tailored inquiry, assistance from subject matter experts, and/or additional staff to dedicate to this particular legal specialty.
