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[00:00:00] **Speaker 1** To you how these work. There's a whole bunch of Supreme Court decisions over the last year that have really changed the ground work in the capital the relationship between the executive and the legislative reaches. So just start with summarize what, how would you summarize to your public, to your constituents of how these changes mean.

[00:00:21] **Speaker 2** I think there's been a travesty of justice, honestly, because there has been absolute weakening of legislative oversight. And when you do legislation, you have to go through a process which gets the governor's approval with signature, he signs off on it, that's checks and balances. Now the governor can go through the rulemaking process without any legislative oversight and potentially ignoring legislative intent during that process.

[00:00:50] **Speaker 1** So, you serve as a co-chair of JCR, how long have you been on that committee and why do you want to be on that? I mean, tell me. Because that's one of those things where I'm sure from the outside, what committee? Tell me how you got on there and what your goal is there.

[00:01:05] **Speaker 2** Yeah, I actually requested to be on the committee right away. I've been on the Committee the entire time I've been on in the legislature. And I requested to chair, I was actually jobs in the economy chair, and I requested to change over to this committee. And I'm in my second term as the chair. And the reason I did is because the real world impact of administrative rules. People don't necessarily understand. That rules have the same impact as law, and there's a process of adopting these rules. There's a place for this. Agencies exist to implement the legislative intent. So there is a place for administrative rules, but it has a real-world impact on businesses and schools and communities that feel the impact of those rules.

[00:01:57] **Speaker 1** And there's a lot of people, they don't casually follow government over here and they hear a bill was passed and they think that's the way laws are made, but this whole other process exists and they have the strength of laws, right?

[00:02:10] **Speaker 2** Absolutely, yeah. I mean, when so many of the real world rules that you see on a day-to-day basis have been adopted through the administrative rulemaking process, both through legislation that provides rulemaking authority to implement a new law or just simply through general rulemaking authorities that the legislature has provided state agencies. And there are agencies and boards that can promulgate and propose administrative rules that have the same impact as law.

[00:02:44] **Speaker 1** So Governor Evers in his lawsuit said that basically you guys went too far. You're shutting down everything You're showing in the process before the rules even got started You were setting aside after they were passed that you were a pocket veto on putting anything into place. How do you respond?

[00:03:01] **Speaker 2** I would say that's political, because the vast majority of the rules that he proposes and his agency proposes, we pass. There are occasions where we request modifications, especially if there are rules targeting specific businesses, which we're seeing right now with farm-raised deers and the fees that they're trying to propose to put these businesses out of business. And we see this where agencies or the governor might react in a way that is, we believe, targeting or beyond legislative intent. So we think there should be some checks and balances in this system because sometimes he's wrong and there needs to be legislative oversight to make sure that when we pass legislation It's getting implemented in the correct way.

[00:03:51] **Speaker 1** So just to give people the, you know, the old Capitol Hill song of how a bill gets passed and then the governor signs into law, but often it says, you know, this, it doesn't lay out every single granular detail of hardly implemented. So what, what is the rules making process from your point?

[00:04:09] **Speaker 2** Sure. Yeah, I mean, again, there are two different, there's a lot of different paths, but there are the permanent rules that you have and there's emergency rules, right? And there's two different paths that can go, emergency rules go into effect right away. But when go through the permanent rulemaking process. It can come from legislation. So we could pass legislation about deer farms and then they could do fees or they could do things within that rule if it's not spelled out in the legislation to help implement that new law. There's also general rulemaking authority where they believe they have rulemaking authority to promulgate rules on PFOS or water quality standards. And they will do user general making rule making authority or building codes to do a general rule that affects the entire industry. So at that point you have a scope statement that's proposed approved by the governor, and then it goes through the legislative process. Where we have the ability to send to a committee, to do a public hearing, to look at it, and then they can make recommendations. If they recommend to object to it or to, we can then, as a committee review that rule and then we could take action to object to that rule. We could also request modifications. There might be 95% of it. We might think is good but five percent were like hey maybe instead of doing a eight thousand percent increase on farm raised deer we look at going up a little bit less right look what's in line with inflation what won't put these companies out of business what's fair what's the legislative intent and we have some ability to impact that now since we can't object to it we no longer have that ability.

[00:06:10] **Speaker 1** One of the things, one of the rule sets that was part of this lawsuit was about the building. So walk us through why that was objected to and how that would happen under this new regulatory environment.

[00:06:23] **Speaker 2** Sure. Well, the building code, when they proposed the building code, it went what we believe far above and beyond legislative intent. And that they're also, in their proposal, did not follow the law and look at the cost to implement. What was the cost to implement, the cost of compliance on the businesses impacted by that? They did not put a number that made any sense and when we asked them to come to the table They were not really interested in working with the legislature to come up with a better code So they took we objected are we? Permanently objected to that rule and Went to court and now after this court case, we no longer have the ability to object to that rule. So those building codes will be implemented even though we believe it went above and beyond legislative intent and we did not have the able to stop it or even request modifications because they can just ignore it and implement it however they see fit.

[00:07:39] **Speaker 1** You mentioned that you've approved a lot of different rules over the years in this committee. So what percentage of the rules that you either suspended or stopped got all the attention versus the percentage that went through the normal process and were made better by having oversight?

[00:07:57] **Speaker 2** Yeah, the ones that we object to always get more attention, certainly. I think during COVID, you started to see a lot more awareness of the rule-making process because we started to object to the process that the governor was going through through his safer-at-home order through masking. And then those rules and those executive orders that were implemented that we believed through in the courts. Agreed should have gone through the rulemaking process. I think there was a more awareness to it. But yes, I mean the idea that the confrontation always sells so when we object to it that gets more attention and certainly when it goes to court it gets the most attention. But I don't think the headline should be about conversion therapy. Ithink the headline should be we lost legislative oversight because that's what really happened.

[00:08:49] **Speaker 1** And, I mean, Justice Hagedorn referenced that in oral arguments and in his, in part, agreement and dissent in his opinion, that, you know, this really did create a fundamental shift in government oversight and how the branches work together. This overturns a lot of years of how things have worked.

[00:09:09] **Speaker 2** This is a monumental shift in the process of how administrative rules become law or how legislation could potentially be implemented because previously, if we did not believe as a majority that legislation was being implemented correctly through the rule-making process, we could object to that. Now we can't, so however that. Administration or that agency wants to implement that legislation through the rulemaking process, they're able to. We could request modifications, but we have no leverage because now we can't object.

[00:09:50] **Speaker 1** So, one thing that did occur is during the end of Governor Walker's era, they changed how the oversight and the amount of oversight, giving you even stronger powers. Because prior to that, there were 30-day suspensions and much more limited. So, what did that change in terms of the groundwork of how that relationship existed, the amount leverage you have?

[00:10:10] **Speaker 2** Sure. Yeah, I think Governor Walker recognized maybe the potential of misuse in the future, right? And I think that the fact that the governor worked with legislative leaders at the end of his term to look at ways to strengthen legislative oversight and to adopt a more fair rule system that made sure that there wouldn't be, you know, honestly, part of the fear, and I think it came up in the Supreme Court, was this idea of rogue bureaucrats, right? And that was one thing that was discussed in the previous administration was protecting from rogue bureaucrats that might be pushing a political agenda through the rulemaking process and us having the ability to protect from that. But I think what was lost maybe, and what we're seeing now, is how much this has expanded executive authority. And how much has actually expanded the ability to sidestep the legislature and potentially have agency heads create a super legislature where they're able to implement rules with no oversight from the legislature. And that's a real fear I have and a real question for the next governor.

[00:11:26] **Speaker 1** It's interesting that under the legislative process you create a bill and usually within the framework of that legislation exists what rules can be promulgated at the back end. But is there a gray area beyond that where an agency doesn't necessarily need to have a new bill passed in order to have justification for creating a new? I mean the PFAS style, I mean there's lots of room for where this could go, right?

[00:11:50] **Speaker 2** There's a lot of room for where this could go. There is a lot gray area and you could look at where agencies could look old laws that have been passed to adopt new rules, to implement changes from previous laws. You could see a lot increased fees. Like we have examples already now of agencies raising fees through the administrative rulemaking process. You also have agencies that have general rule-making authority that have, for years, had the ability to implement rules like, for example, the Social Workers Examining Board who are adopting these rules for gender conversion therapy standards for practicing psychologists. So they used their rule- making authority to adopt these new standards, which went to the Supreme Court and we lost and here we are because of it.

[00:12:42] **Speaker 1** So, there are some people who say, well, the only reason this lawsuit took place is JCRAR went too far. You stopped too many rules, you did too good of a job, the lame duck laws were too strong and too over-sweeping in one way that the old balance was better, and that's why it was upheld when it had been looked at in prior Supreme Court.

[00:13:02] **Speaker 2** Sure. Yeah, I think that's political. I think that when you look at this from a like, we win this battle that I feel like the left is battling us right now on something that has to do with gender conversion therapy and social worker examining board standards. When in reality, this is about legislative oversight and checks and And I do wish we were able to work together to understand and see what's at stake here and what we could be allowing for in the future because with the line item veto and now the weakened legislative oversight of administrative rules, we've created a system to allow for a very strong executive with very little legislative oversight.

[00:13:55] **Speaker 1** So, in the sense that the Knowles-Nelson stewardship fund, you know, the Republicans say, well, we're not going to refund it. But there's bills out there to say, here's how we could do it under the new standards according to the Supreme Court decision. Is there a possibility of trying to recreate some of the oversight that existed without going as far as it did, to at least give you more of a say?

[00:14:19] **Speaker 2** Yeah, that's a good question and I think there is. I think that there will be an effort to look at, okay, what's possible, right? We can't go back to the old way, right, that didn't work, that was thrown out, but what is a way we could potentially work together? I mean, you could look at the Congressional Review Act at the federal level as a way that a legislative body has the ability to object to a rule from a federal agency, right. You could look maybe at adopting some of that into the state. The issue that we... Currently have now is any objection that we have has to be signed by the governor. And I think that's the the issue that we have that we're not going to be able to stop executive overreach if it happens. And we're seeing a little bit of it here with the some of these rules that are already coming out that are getting promulgated with the farm raised deer program. And we aren't going to have the ability to work with those agencies because we'll have no leverage to object to those rules.

[00:15:22] **Speaker 1** So, similar to the literacy funding, the legislature has been creative in terms of trying to how do they approach the threat of the governor's veto pen or some of these other concerns. Do you think that'll be the status quo going forward where the way the bills are written may be much more specific in terms what they will allow for rule promulgation afterwards instead of being as broad as you knew you had oversight in the past.

[00:15:47] **Speaker 2** Yeah, moving forward, and you're already seeing bills be much more prescriptive and not granting rulemaker authority explicitly through legislation. I think that's been something that we've been careful of this whole session, knowing that there is this pending Supreme Court decision. And I think you'll continue to see that moving forward the same way, you know, in the budget process, you have to look through every line to make sure every word is veto. We're going to have to do that with legislation to try to avoid getting rules promulgated through the administrative rulemaking process.

[00:16:24] **Speaker 1** So one other area that we haven't really referenced is election law because obviously you had oversight over what they were proposing as well. What does that mean is we're going to head into a very expensive and contentious midterm in June 26th.

[00:16:38] **Speaker 2** Yeah, I mean, some may argue you could look at the most recent Wisconsin elections commission administrative rule and see it as a sign of bipartisan agreement. There was a big rule that went through our administrative process. I actually voted no. It's still passed. Um, so I would remind the governor and those that support that administrative rule that there is an opportunity for bipartisan support through the rulemaking process, which if you just read their perspective, we obstruct everything and they're not able to get anything done, which I think is again, being political and it has real world consequences on what's happening today. I didn't answer your question. You can ask me again if you want. I'm sorry.

[00:17:27] **Speaker 1** No, that was actually a good answer, but is there a concern out there that there could be some, because there's always last minute lawsuits when it comes to elections, there's always last-minute rules and emergency rules, things change at the last minute. Is there concern, as more people are skeptical of the security of our elections, that some rule could come out and you don't have oversight to say, hey, no, that's not how it should work.

[00:17:54] **Speaker 2** Yeah, one of my fears is just the amount of people that are generally skeptical about our elections and when you do have decisions like this that weaken legislative oversight and strengthen agencies such as the elections commission to be able to promulgate rules without oversight, that's a massive fear. Not just because they might take advantage, but because the idea that some people already mistrust our elections. So we need to have protections in place to show people that, no, we have a system that works and it's secure. And part of that is having bipartisan agreement, which you saw through the last elections commission rule.

[00:18:42] **Speaker 1** So, Governor Eater's not running. Is this the kind of issue that people can actually pay attention to, or is this, unfortunately, still too in the weeds for the average voter to go, well, that's the reason I'm going to vote one way or the other when it comes to a gubernatorial election.

[00:19:00] **Speaker 2** I hope and pray this is the number one issue in the upcoming gubernatorial election, because there are massive stakes on the line in terms of what the next administration is going to do with their rulemaking authority. Are they going to work in a bipartisan way to put the checks and balances back in place so people are able to believe? In the integrity of our election system to believe that the laws of the land are getting implemented in the correct way, I think there needs to be some sort of bipartisan agreement, some sort working together to make sure that we put checks and balances back into our system.

[00:19:41] **Speaker 1** So, Democrats are bullish that they think they can flip control of the legislature, and obviously every election, especially at the top of the ticket, is up for grabs in Wisconsin. So, could they rue the day if they actually win a narrow majority in the legislature control J.C.A.R.R., but there's a Republican governor that now has no checks and balances.

[00:20:02] **Speaker 2** If you are just looking at it from a objective standpoint, there has to be a fear from both sides that what somebody unethical or maybe not with the best interest of the state might be able to do through the rulemaking process and just the idea that Someone could target a business, someone could target an industry, put them out of business by raising their fees, by making the rules so impossible for them to navigate, that I think there's going to be a fear on both sides that I it is incumbent upon us as leaders in the state to step up and say, no, let's have a bipartisan agreement where there's legislative oversight. We don't have to weaken the ability of the governor. But we can put a check back in place when an agency does a rule, it actually still goes through the legislative process.

[00:20:59] **Speaker 1** So run for, following the Supreme Court decision, what exactly does your committee do?

[00:21:05] **Speaker 2** Sure. Well we can still request modifications. We can still hold public hearings. We can still do a lot of the things we could previously and hopefully the agencies will be able to still want to sit down at the table and negotiate with stakeholders because one of the main things our committee does is just bring stakeholders together with agencies and work through the differences because a lot times when you get them in the same room their goals are actually why. So just being that facilitator, we're still going to play that role. We're still gonna call out bad rules when we see them. We're just not gonna have the ability to object like we used to.

[00:21:43] **Speaker 1** Would you still want to serve on this committee in the next session?

[00:21:46] **Speaker 2** Absolutely, I think this committee is vital. We'll see what the future has in store, but I think that this is the most important issue of our time.

[00:21:55] **Speaker 1** So I see you've got a printout there, so you've referenced a couple times some of the farm-raised deer. Walk me through some of details there, because that's one I haven't heard of yet.

[00:22:03] **Speaker 2** Sure. Well, we have a proposal that's still in the early stages. It's still going to be a scope statement. So it's not out as a promulgated rule, but it's from the Department of Agriculture, Trade and Consumer Protection. And it shows the current fees that businesses that have the farm raised deer program pay when somebody comes in and hunts a deer on their farm. Um, and currently it's...

[00:22:32] **Speaker 1** Sorry, these are like gaming farms. Which I would come in to pay a hundred trophy bucks.

[00:22:37] **Speaker 2** Yeah and their current fee that the businesses are paying the state for the ability to do business is $325 basically and the new proposal and we can share this with you is $2,900 an increase of So we're talking about almost $3,000 fee, new fee through administrative rule. On these farm raise deer programs. So all the farms that offer this service are potentially going to be put out of business by just having, running their business the same way they did last month.

[00:23:24] **Speaker 1** Is the justification, like the cost of CWD coming from these facilities, I mean, do they need to have a justification for that?

[00:23:31] **Speaker 2** Yeah, I mean, they could speak to their justification. I'm sure they have one, but the result will be these companies going out of business.

[00:23:39] **Speaker 1** And this is the example of a rule that if you still had the oversight you did would be

[00:23:44] **Speaker 2** What we would probably do is, and what we probably still will do, is request modifications. But the DADCAP does not have to implement our modifications, and we have no ability to object, so they will take our opinion and in some ways we'll continue to do our best to offer our advice on how we think these rules should look. But the reality is that now they can implement this new fee without a subject.

[00:24:19] **Speaker 1** So, okay, so there's some of the other fees that, there are other fees that the governor proposed in his budget that the Republicans took out. And increased fees on licenses for hunters and fishermen and camps. Are those things that could be put forward in a rule? I mean, is that like a work, instead of getting it through the budget, they could do it through the administrative rule process?

[00:24:38] **Speaker 2** Yeah, I mean, we'll see how blatant some of the rules will be in terms of what authority that they're going to, because in their scope statement they have to point to their authority to do this. Now, a lot of times they will just point to the general authority. Costs are going up, like the CWD program is much more expensive, the testing or whatever are cost of increase, here's the new fee. And they'll promulgate that rule based on their general authority. So yeah, it's very possible we could see that. I think that the real fear is just like, with a new administration in a deadlocked government, if what they will want to legislate as a super majority through their agencies, some sort of super legislature.

[00:25:33] **Speaker 1** So instead of a pocket veto, it's a pocket legislature.

[00:25:38] **Speaker 2** Basically. Yeah, instead of a pocket veto, it's like a pocket legislature.

[00:25:42] **Speaker 1** I mean it's, that is like the complete shifting of power.

[00:25:48] **Speaker 2** Yeah, I mean, we have very much a shift in power after this Supreme Court ruling. I mean it has gone from a system of checks and balances to now expanded executive authority and weakened legislative oversight.

[00:26:02] **Speaker 1** Anything else that you'd like to add on this topic?

[00:26:04] **Speaker 2** No, I appreciate the interest in the topic. I think it's very important. I hope people are paying attention because you look at what's happening with an agency, whatever their intentions are, whatever the cost increase we have seen, we just went through a budget process, so they were able to ask for an increase to cover their expenses. Instead, they're now increasing the fees directly on the businesses. On businesses like. These farm, these deer farms that they have indicated they're no fan of. So it certainly seems to me they're being targeted and put out of business through an administrative rulemaking process. Thank you very much.

[00:26:46] **Speaker 1** Thank you. I'm glad you brought that up because I haven't heard of that one.