

MJG notes:

These lines print out and they should not. Let's get rid of the weird formatting issues and have a stand-alone title/ caption page (this made more sense when this was the only comment and it was on the caption page where weird lines appear).

§ 885.12 talks about a "committee" and so we will need to both rely upon and highlight the language in the first legislative committee ballot that says I am supposed to assist the "committee." I wonder now as I write this if this is the glitch? While I have been delegated investigatory power to conduct legislative oversight by investigation, where am I explicitly granted authority to issue subpoenas. We are going to have to argue in a Memorandum in Support of these petitions that the relevant authorizing documents give me that authority. The defendants certainly acted as though I have authority by complying with our subpoenas and have given us no notice that they do not recognize it.

In the memo, we will need to walk through the fact that no hearing is required under the statute: "upon sworn statement," and we must highlight the timing of all of this: if ct finds no good notice for continued date, there was no excuse for defendants not showing up 10/22.

Do we do a memorandum in support? Maybe just a short one explaining that we recognize the discretionary nature of the ct's decision and that if, in the exercise of that discretion, she finds it preferable to set a show cause hearing, we can do that. I mean, let's take it on: we think it is absolutely clear that we are entitled to this because defendants blew us off without excuse but we recognize this is a rarely-used statutory vehicle and it would be understandable if she wanted a hearing. Shows us as what we are: honest, unafraid of application of any legal variant, forthright. But also explain why some are in personal capacity

and

say we want costs and any amounts we are entitled to ask for.

We'll need to explain why we have the City subpoenas in here: that the mayor is responsible for compliance with subpoenas issued to his city.

MICHAEL J. GABLEMAN, IN HIS OFFICIAL CAPACITY AS SPECIAL
COUNSEL TO THE WISCONSIN ASSEMBLY,

Plaintiff

v.

Case No.: _____

SATYA RHODES-CONWAY, PERSONALLY, AND IN HER OFFICIAL
CAPACITY AS MAYOR OF MADISON, WISCONSIN;

MARIBETH WITZEL-BEHL, PERSONALLY, AND IN HER OFFICIAL
CAPACITY AS CITY CLERK OF MADISON, WISCONSIN,

ERIC GENRICH, PERSONALLY, AND IN HIS OFFICIAL CAPACITY
AS MAYOR OF GREEN BAY, WISCONSIN, and

CELESTINE JEFFRIES, PERSONALLY, AND IN HER OFFICIAL
CAPACITY AS CITY CLERK OF GREEN BAY, WISCONSIN,

Defendants

**I. PETITION FOR ORDERS TO COMPEL COMPLIANCE WITH
LEGISLATIVE SUBPOENAS**

AND

II. PETITION FOR ORDERS TO SHOW CAUSE

COMES NOW the Special Counsel, and for his petition states:

THE PARTIES

1. Plaintiff Michael J. Gableman has been duly appointed Special Counsel

and as such authorized by the Wisconsin Assembly and charged with aiding in the conduct of legislative oversight of administration of Wisconsin's elections, focusing in particular on elections conducted after January 1, 2019.

2. Defendant Satya Rhodes-Conway, is mayor of Madison, Wisconsin, serving as such both during the November 3, 2020 election as well as at the time a legislative subpoena was issued to and served upon her.

3. Defendant Maribeth Witzel-Behl, is city clerk of Madison, Wisconsin, and was employed as such both during the November 3, 2020 election as well as at the time a legislative subpoena was issued to and served upon her.

4. Defendant Eric Genrich, is Mayor of Green Bay, Wisconsin, serving as such both during the November 3, 2020 election as well as at the time a legislative subpoena was issued to and served upon him.

5. Defendant Celestine Jefferies, is city clerk of Green Bay, Wisconsin and was employed as such at the time a legislative subpoena was issued to and served upon her and formerly was employed by Defendant Three (Mayor Genrich) as his chief of staff during the November 3, 2020 election.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the parties pursuant to Wis. Stat. § 13.31 and Wis. Stat. § 885.12.

7. Venue is proper in this court pursuant to Wis. Stat. § 885.12 because the subpoena was to be returned and the deposition was to be attended in Waukesha

County.

COMPLIANCE WITH WIS. STAT. § 802.01(2)(B)

8. Copies of the Wisconsin Assembly documents both appointing Plaintiff Special Counsel and setting forth his charge are attached as Exhibit One and are hereby incorporated as if fully set forth herein.

9. Copies of the legislative subpoenas issued to Defendant Mayor Satya Rhodes-Conway, as well as to the City of Madison are attached as Exhibit Two, and are hereby incorporated as if fully set forth herein.

10. A copy of the legislative subpoena issued to Defendant Mayor Maribeth Witzel-Behl, is attached as Exhibit Three, and is incorporated by reference as if fully set forth herein.

11. Copies of the legislative subpoenas issued to Defendant Mayor Eric Genrich, as well as to the City of Green Bay, are attached as Exhibit Four and are hereby incorporated as if fully set forth herein.

12. A copy of the legislative subpoena issued to Defendant Celestine Jefferies, is attached as Exhibit Five, and is hereby incorporated as if fully set forth herein.

13. Email correspondence reflecting the continued dates of the depositions for Defendant Mayor Satya Rhodes-Conway and Defendant Maribeth Witzel-Behl is attached as Exhibit Eight and is hereby incorporated as if fully set forth herein.

14. Email correspondence reflecting the continued dates of the depositions

for Defendant Mayor Eric Genrich and Defendant Celestine Jefferies is attached as Exhibit Nine and is hereby incorporated as if fully set forth herein.

SWORN STATEMENT OF FACTS (IS THIS RIGHT?)

15. Plaintiff was appointed Special Counsel by the Wisconsin Assembly on June 26, 2021. *See* Ex. 1.

16. Pursuant to his appointment, Plaintiff is to conduct an investigation for the purpose of exercising legislative oversight into Wisconsin elections, focusing in particular on elections conducted after January 1, 2019. *Id.*

17. As part of his exercise of the legislative oversight authority delegated to him by the Wisconsin Assembly, Plaintiff sought information relating to execution of statutes relevant to election administration in the Cities of Madison and Green Bay during the time frame which included the November 3, 2020 election.

18. Plaintiff served a subpoena *duces tecum* upon Defendant Mayor Satya Rhodes-Conway on [Need Date] pursuant to Wis. Stat. § 13.31. *See* Exs. 2–3. This subpoena *duces tecum* required both the production of documents as well as testimony by deposition in Brookfield, Wisconsin, located within Waukesha County on October 22, 2021. *Id.*

19. Plaintiff served a subpoena *duces tecum* upon Defendant Maribeth Witzel-Behl on [Need Date] pursuant to Wis. Stat. § 13.31. *See* Ex. 4. This subpoena *duces tecum* required the production of documents and testimony by deposition in

Brookfield, Wisconsin, located within Waukesha County, on October 15, 2021 at 9:30 a.m. *Id.*

20. The City of Madison, Defendant Mayor Rhodes-Conway, and Defendant Maribeth Witzel-Behl timely caused production of documents as required by the subpoena *duces tecum* that was served upon them on [Need Date] but did not appear personally on October 15, 2021.

21. To allow time to review the documents so produced in preparation for the depositions noticed in the [Need Date] subpoena *duces tecum*, Plaintiff continued the depositions of Mayor Rhodes-Conway and Witzel-Behl until November 15, 2021, at 9:30 a.m. *See Ex. 8.* [I am not certain we have this timing right. I can't remember what caused us to move the depo date but I do not think it all sprang out of one set of subpoenas]

22. Plaintiff served a subpoena *duces tecum* upon Defendant Mayor Eric Genrich and the City of Green Bay, Wisconsin on [Need Date], pursuant to Wis. Stat. § 13.31. *See Exs. 5-6.* This subpoena *duces tecum* required the production of documents and testimony by deposition in Brookfield, Wisconsin, located within Waukesha County, on October 22, 2021, at 9:00 a.m. *Id.*

23. Plaintiff served a subpoena *duces tecum* upon Celestine Jefferies on [Need Date] pursuant to Wis. Stat. § 13.31. *See Ex. 7.* This subpoena *duces tecum* required the production of documents and testimony by deposition in Brookfield, Wisconsin, located within Waukesha County on October 15, 2021, at 9:00 a.m. *Id.*

24. The City of Green Bay, Mayor Genrich, and Celestine Jefferies timely

caused production of documents required by the [Need Date] subpoena *duces tecum* but did not appear personally in Brookfield, Wisconsin on October 15, 2021.

25. To allow time to review the documents so produced in preparation for the depositions noticed in the [Need Date] *subpoena duces tecum*, Plaintiff continued the depositions of Defendant Mayor Genrich and Defendant Celestine Jefferies to November 17, 2021, at 9:30 a.m. *See* Ex. 9.

26. On November 15, 2021, in the City of Brookfield, Waukesha County, Wisconsin, Defendant Satya Rhodes-Conway failed without excuse to appear and give testimony.

27. On November 15, 2021, in the City of Brookfield, Waukesha County, Wisconsin, Defendant Maribeth Witzel-Behl failed without excuse to appear and give testimony.

28. On November 17, 2021, in the City of Brookfield, Waukesha County, Wisconsin, Defendant Mayor Eric Genrich failed without excuse to appear and give testimony.

29. On November 17, 2021, in the City of Brookfield, Waukesha County, Wisconsin, Defendant Celestine Jefferies failed without excuse to appear and give testimony.

CAUSE OF ACTION AND REQUESTED RELIEF

30. The circuit court in which a witness's attendance is required by legislative subpoena has the authority to enforce a legislative subpoena.

31. Plaintiff now petitions this Court for an Order Compelling Compliance

with Legislative Subpoena requiring Defendant Satya Rhodes-Conway to appear for deposition and give testimony on December 14, 2021, at 9:00 a.m.

32. In the alternative, Plaintiff petitions this Court for an order compelling Defendant Satya Rhodes-Conway to appear and show cause for her failure to attend the deposition or otherwise comply with the [Date Needed] subpoena *duces tecum*.

33. Plaintiff petitions this Court for an Order Compelling Compliance with Legislative Subpoena requiring Defendant Maribeth Witzel-Behl by to appear for deposition and give testimony on December 14, 2021, at 9:00 a.m.

34. In the alternative, Plaintiff petitions this Court for an order compelling Defendant Maribeth Witzel-Behl to appear and show cause for her failure to attend the deposition or otherwise comply with the [Date Needed] subpoena *duces tecum*.

35. Plaintiff petitions this Court for an Order Compelling Compliance with Legislative Subpoena requiring Defendant Mayor Eric Genrich to appear for deposition and give testimony on December 16, 2021, at 9:00 a.m.

36. In the alternative, Plaintiff petitions this Court for an order compelling Defendant Mayor Eric Genrich to appear and show cause for his failure to attend the deposition or otherwise comply with the [Date Needed] subpoena *duces tecum*.

37. Plaintiff petitions this court for an Order Compelling Compliance with Legislative Subpoena requiring Defendant Celestine Jefferies to appear for deposition and give testimony on December 16, 2021, at 9:00 a.m.

38. In the alternative, Plaintiff petitions this Court for an order compelling Defendant Celestine Jefferies to appear and show cause for her failure to attend the

RESPECTFULLY SUBMITTED,

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