

## Memorandum

### Wisconsin 5 Cities Investigation Into Privately-Funded GOTV

**I. Statement of the Case: we are investigating whether the “Wisconsin 5” cities violated federal and state law by accepting and using \$8,800,000 of private money for get-out-the-vote operations.**

As to the 2020 federal elections, we are investigating whether the Wisconsin 5 cities (Milwaukee, Madison, Green Bay, Racine and Kenosha) unconstitutionally departed from Wisconsin’s election law scheme, violated the Equal Protection Clause, and violated Wisconsin state law when they accepted \$8,800,000 of Center for Tech and Civic Life money for their get-out-the-vote operations which came from Mark Zuckerberg and Priscilla Chan’s more than \$300,000,000 gift to Center for Tech and Civic Life.

First, the Wisconsin 5 cities have unconstitutionally departed from Wisconsin’s election law scheme. The Wisconsin 5 cities do not have the legal authority to depart from the Wisconsin’s election law scheme which includes federal laws like the U.S. Constitution, and state laws like Wisconsin Statutes, the Commission’s administrative rules and the Commission’s 250-page Election Administration Manual for Wisconsin Municipal Clerks. The U.S. Court of Appeals for the Seventh Circuit, in a recent 2020 Wisconsin case, suggested that the Electors Clause may apply when Wisconsin public officials have engaged in a “departure” from the state’s election law scheme. *Trump v. Wisconsin Elections Commission*, 983 F.3d 919, 927 (7<sup>th</sup> Cir. 2020), citing *Carson v. Simon*, 978 F.3d 1051, 1059–60 (8<sup>th</sup> Cir. 2020) (preliminary injunction against Minnesota Secretary of State changing November 2020 absentee ballot receipt deadline).

Specifically, the Wisconsin 5 cities’ unconstitutional departure is characterized (1) by the Wisconsin 5 cities jointly applying and accepting an enormous private grant of \$8.8 million for 2020 election administration, (2) by the violative contract provisions in the Wisconsin Safe Voting Plan (WSVP) picking and choosing among groups of similarly situated voters to get-out-the-vote, typically associated with campaigning, and (3) by the ubiquitous involvement of private corporations in the Wisconsin 5 cities’ election administration prior to, during and after the election.

Second, the Wisconsin 5 cities are not “permitted to pick and choose among groups of similarly situated voters to dole out special voting privileges.” *Obama for America v. Husted*, 697 F.3d 423, 435 (6<sup>th</sup> Cir. 2012) (affirming preliminary injunction against Ohio statute authorizing three extra days of in-person voting for military personnel residing in Ohio only as an unconstitutional favoring of a demographic group). In *Bush v. Gore*, the U.S. Supreme