

Michael Gableman
Special Counsel
WI State Assembly
Committee on Campaigns and Elections
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New Berlin, WI 53151
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262-202-8722

January 14, 2022

Daniel S. Lenz, Esq.
Staff Counsel
Law Forward, Inc.
P.O. Box 326
Madison, WI 53703-0326

**RE: Response to your Email of January 13, 2022 and
Demand pursuant to Wisconsin Public Records Law**

Dear Mr. Lenz.

Thank you for your email dated January 13, 2022.

First, your email confirms that the subpoenas duces tecum served upon the City of Green Bay's Information Technology Service Department were a necessary step in the Committee's oversight of the election activities of the City of Green Bay: you state that in addition to the over 1,600 pages of newly-produced documents, there will be more documents forthcoming. I look forward to receiving these 1,600-plus documents and thank the City for its efforts in this regard.

You also state that "[t]he City of Green Bay is committed to open, transparent, democratic government." As such, I presume that the City is no longer objecting to the subpoena issued to Mayor Genrich by this office for his deposition. We propose the following dates for his deposition: February 1, 2 or 3, 2022. Please confirm on which of these dates Mayor Genrich will be present.

Second, I received your email at 9:31 a.m. on the above-noted date. I received neither the letter nor the production described therein until this morning.

What I did receive at 10:08 a.m. the same day was the attached email from Patrick Marley—a reporter with the Milwaukee Journal Sentinel—to which he attached a copy of your letter dated January 13, 2022. Mr. Marley received a copy of your letter before I did.

I demand the following pursuant to Wisconsin Public Records law for the time period August 1, 2021 up to and including January 14, 2022—

- All communications between the City of Green Bay, including any of its employees, elected officials, directors, officers, agents,

attorneys or other representatives, and any person employed by Gannett Co., Inc., including but not limited to Patrick Marley, regarding elections in the City of Green Bay;

- All communications for that same time period between the City of Green Bay, including any of its employees, elected officials, directors, officers, agents, attorneys or other representatives, and any person employed by Gannett Co., Inc., including but not limited to Patrick Marley that contain the following terms, words, and/or phrases (whether or not capitalized as written below):

- Special Counsel;
- Gableman;
- Vos;
- Assembly;
- Assembly investigation;
- Spitzer;
- Spitzer-Rubenstein;
- Cory Mason;
- David Becker;
- Meghan Wolfe;
- Wisconsin Elections Commission;
- WEC;
- Center for Tech and Civic Life;
- CTCL;
- Ideas42;
- National Vote at Home Institute;
- NVHI;
- CEIR;
- Center for Election Integrity and Research;
- Quickbase;
- Central Command;
- EOLDW.

As you are aware, ten (10) days is the presumed response time to provide the requested records as identified by the Wisconsin Department of Justice. I look forward to receiving a response to the above within that timeframe.

Sincerely,



Justice Michael Gableman
Special Counsel
Wisconsin State Assembly Committee on Elections and Campaigns



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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October 11, 2021

Mr. Michael Gableman
Special Counsel
200 South Executive Drive, Suite 101
Brookfield, WI 53005

Re: Subpoenas issued to the Wisconsin Elections Commission

Dear Counsel:

I represent the Wisconsin Elections Commission (“the Commission”) and its Administrator Meagan Wolfe in connection with two subpoenas recently issued from your office: one to Administrator Wolfe, served October 1, 2021; the second directed to the Commission, served October 6, 2021. As our office has made clear in recent communications with your office, the Commission and Administrator Wolfe stand ready to comply with lawful and appropriately tailored subpoenas regarding relevant concerns about election administration. To that end, the Commission will be providing numerous documents contemplated by the subpoenas, subject to the significant substantive objections discussed herein.

As a threshold matter, we have significant concerns about the highly unusual manner in which this investigation is unfolding. Over the past two weeks, your office issued numerous subpoenas to officials in five large Wisconsin cities, the Commission, and the Commission’s Administrator, purporting to compel testimony on wide-ranging election-related topics, as well as the production of potentially millions of documents. In many instances, media accounts of these subpoenas were hours, if not a full day, ahead of the actual service of the subpoenas. Until late last week, the subpoenas themselves and their cover letters were the only communications we have received from your office.

However, since the subpoenas were served, we learned that your office was effectively withdrawing the subpoenas issued to all municipal officials and instead

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only seeking reproduction of documents previously produced pursuant to public record requests. Having only learned of these changes secondhand and through the media, we sought clarification from your office regarding the scope of the nearly identical subpoenas issued to the Commission and Administrator Wolfe, to determine if and how your office intends to proceed under those subpoenas. While your staff recently confirmed that your office now seeks the same reproduction of previously produced public records, we have not received written confirmation of that modified expectation, despite the return date for one of those subpoenas coming at the end of this week.

As noted, the Commission and Administrator Wolfe will be producing numerous documents based on your office's recent representation about the current scope of what is expected under the subpoenas. Going forward, we ask that your office communicates directly with ours to ensure that this process will proceed lawfully, efficiently, and professionally.

In addition to these process-related problems, the recent subpoenas present a number of substantive issues that will need to be resolved before Administrator Wolfe will appear to testify under oath. These issues are described below.

Some of these are concerns of a constitutional magnitude, including issues of due process related to the breadth of the inquiry and the topics of testimony. Other problems relate to the authority under state statutes and rules to compel testimony in the manner called for in the subpoenas. In addition, the subpoena's document requests include demands that are overly broad, vague, unduly burdensome, and redundant of existing or already concluded investigations or inquiries.

We will await communication from your office regarding a proposal to resolve these deficiencies.

- I. This investigation must comply with constitutional protections, including due process and the separation of powers.
 - A. Due process mandates that any subpoenas clearly and explicitly define the documents and testimony to be compelled.

First, your office's investigation, including all subpoenas, must comply with the United States and Wisconsin Constitutions and with federal and state statutes. At the constitutional level, any investigation and required testimony must comply

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with the requirements of due process and must respect the separation of powers between the three branches of state government. The current investigation and recent subpoenas raise serious concerns as to both protections.

The authority of the Legislature to investigate, “broad as it may be, is not without limit.” *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 545 (1963). The fact that the general scope of an inquiry may be authorized and permissible does not mean that investigators are “free to inquire into or demand all forms of information.” *Id.*

Just like in any other context in which a witness is required to testify under oath and on penalty of perjury or contempt, due process requires that the subject be informed of the subject of questioning “with the same degree of explicitness and clarity that the Due Process clause requires in the expression of any element of a criminal offense.” *Watkins v. United States*, 354 U.S. 178, 209 (1957). To avoid this “vice of vagueness,” the authorizing committee and any authorized agents must make clear the “question under inquiry.” *Id.* (citation omitted). Neither the resolution that authorizes this investigation, nor the recent subpoenas (discussed below), nor the informal communications from your office are sufficiently clear to avoid this “vice of vagueness.”

The authorizing resolution, 2021 Assemb. Res. 15, directs the Assembly Committee on Campaigns and Elections to “investigate the administration of elections in Wisconsin.” This extreme sweep is narrowed only slightly by limiting the inquiry to the past three years. During that time, there have been multiple elections conducted across Wisconsin, including its 72 counties and 1,850 municipalities.

Such “[b]roadly drafted and loosely worded” resolutions give investigators an impermissible amount of discretion, inviting actions that are either not in accordance with the authorizing committee’s intention, or not even sufficiently related to lawful exercises of the legislative power. *Watkins*, 354 U.S. at 201. It is therefore imperative, both for potential witnesses as well as any court that might review the matter, that the scope of the inquiry be properly defined. *See id.*; *see also Gibson*, 372 U.S. at 545.

Like the authorizing resolution, the recently issued subpoenas also provide nothing close to the “explicitness and clarity” necessary to compel testimony under oath. Although the recent subpoenas, unlike the resolution, seek evidence related only to the November 2020 general election, each subpoena nonetheless lists as possible topics of inquiry “potential irregularities and/or illegalities *related to the*

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Election.” (Emphasis added.) Even when limited to November 2020, that includes nearly 2,000 separately administered elections throughout the state. Not only that, the subpoenas purport to demand testimony “including, *but not limited to*” this already sweeping topic.

Recent communications from your office also have not meaningfully narrowed the otherwise overbroad requests. Indeed, until we receive written confirmation about your office’s updated expectations, we can only rely on the written subpoenas that your office has issued.

The “sweeping and uncertain scope” of the resolution and subpoenas casts great doubt on whether they could “withstand an attack on the ground of vagueness.” *Watkins*, 354 U.S. at 209. These concerns must be addressed before Administrator Wolfe can appear to testify under oath.

- B. The constitutional separation of powers prohibits the Legislature from conducting law enforcement investigations.

In addition to these due process concerns, the current investigation and recent subpoenas also raise concerns related to whether your office is appropriately exercising the investigative power of the legislative branch of state government. Because the powers of investigation and subpoena by the Legislature are justified solely as a necessary corollary to the lawmaking process, those powers are subject to several limits. Most notable here, a subpoena from the Legislature, one of its committees, or any authorized agent “is valid only if it is ‘related to, and in furtherance of, a legitimate [legislative] task.’” *Trump v. Mazars USA, LLP*, 140 S. Ct. 2019, 2031–32 (2020) (quoting *Watkins*, 354 U.S. at 187). This means that a legislative subpoena cannot issue “for the purpose of ‘law enforcement,’ because ‘those powers are assigned under our Constitution to the Executive and the Judiciary.’” *Id.* at 2032 (quoting *Quinn v. United States*, 349 U.S. 155, 161 (1955)).

This is just as true under the Wisconsin Constitution as it is under our federal Constitution. Under the state Constitution, the legislative power includes the powers “to declare whether or not there shall be a law; to determine the general purpose or policy to be achieved by the law; [and] to fix the limits within which the law shall operate.” *Koschkee v. Taylor*, 2019 WI 76, ¶ 11, 387 Wis. 2d 552, 929 N.W.2d 600 (alteration in original) (quoting *Schmidt v. Dep’t of Res. Dev.*, 39 Wis. 2d 46, 59, 158 N.W.2d 306 (1968)). The Legislature thus has “the authority

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to make laws, but not to enforce them.” *Id.* (quoting *Schuette v. Van De Hey*, 205 Wis. 2d 475, 480–81, 556 N.W.2d 127 (Ct. App. 1996)).

Contrary to these limits, the resolution that authorized this investigation, 2021 Assemb. Res. 15, appears pointedly focused on law enforcement, not lawmaking. The resolution asserts that action is needed because “the integrity of our electoral process has been jeopardized by election officials who, either through willful disregard or reckless neglect, have failed to adhere to our election laws by, at various times, ignoring, violating, and encouraging noncompliance with bright-line rules established by the statutes and regulations governing the administration of elections in Wisconsin.” Setting to one side the fact that similar allegations concerning the 2020 election have been repeatedly and unanimously rejected as baseless by both state and federal courts, the plain language of the resolution is focused not on supplying the Legislature with information pertinent to future legislative efforts to *improve* Wisconsin’s election statutes, but rather on enforcing compliance with *existing* “bright-line rules.” The language of the resolution thus is plainly directed at the executive function of law enforcement, not at facilitating future legislative activity.

Recent public comments from your office about the purportedly legislative nature of this investigation do little to remedy the problems inherent in the authorizing resolution. For one, as noted previously, the process by which this investigation is being administered (namely, via social media and press accounts) is problem enough. More to the point, these informal changes cannot transform the investigation into something other than what the authorizing resolution directed. The people of Wisconsin (to say nothing of the witnesses whose testimony your office has purportedly compelled) are entitled to be shown the lawful, legislative purpose for this investigation.

The Commission and Administrator Wolfe will of course comply with any lawful and appropriately tailored subpoenas in furtherance of a valid legislative purpose. We therefore await further communication from your office regarding how you propose ensuring that the investigation will adhere to these limitations.

II. This investigation must comply with Wisconsin Statutes defining the lawful scope of any legislative investigation.

Second, separate from the problems of vagueness and the scope of this legislative inquiry, it is at best questionable whether your office has authority under

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the relevant state statutes and rules to compel sworn testimony as currently demanded. The recent subpoenas direct government officials, on penalty of contempt, to testify at a private location outside the context of a hearing of the Assembly Committee on Campaigns and Elections, under whose name the subpoenas were issued. Both subpoenas rely on Wis. Stat. § 13.31 as the sole basis to compel testimony, and point to Wis. Stat. § 13.26(1)(c) as the basis for a charge of contempt for failure to comply. Neither of the cited statutes authorize the current demand for sworn testimony.

Wisconsin Stat. § 13.31 authorizes subpoenas compelling testimony “before any committee of the legislature, or of either house thereof.” Wisconsin Stat. § 13.26(1)(c) then authorizes punishment for contempt where a witness refuses to provide testimony ordered to occur “before the *house or a committee*, or before any person authorized to take testimony *in legislative proceedings*.”

Nothing on the face of the recent subpoenas or any publicly available documents demonstrates that the subpoenas comply with the terms of either statute. The subpoenas call for testimony “before the Special Counsel or his designee . . . at 200 South Executive Drive, Suite 101, Brookfield, WI 53005.” We have seen nothing to indicate that any testimony at the listed address would be “before the house or a committee,” or that either “the Special Counsel or his designee” is “authorized to take testimony in legislative proceedings.” See Wis. Stat. § 13.26(1)(c). Thus, we have seen nothing to suggest that any testimony at the listed location would occur under the circumstances required under Wis. Stat. §§ 13.26(1)(c) or 13.31.

The Legislature’s own rules make clear that the subpoenaed testimony could not be deemed to occur before a committee, as the statutes require. Joint Rule 84(1) provides that a committee may meet in the capitol on the call of the committee chair. It further provides, in part, that a committee may meet at locations other than the capitol, with the prior consent of all of the officers required by assembly rule, but that each committee meeting “shall be given due public notice,” and that no committee “may schedule an executive session outside the capitol unless the executive session is held in conjunction with a public meeting of the committee.”

In short, based on currently available information about your office’s investigation, the subpoenas’ calls for sworn testimony at an office in Brookfield are not lawful under the controlling statutes and legislative rules. If your office intends to compel testimony from Administrator Wolfe, any subpoena must comply with these controlling statutes and rules.

Related to the questionable authority for conducting hearings in a private, closed forum is the issue of “use immunity” that your office recently raised in a media report, stating that your office will grant immunity to anyone who provides testimony. The source and scope of this purported immunity is at best unclear.

The immunity authorized under Wis. Stat. § 13.35 applies to a person who testifies before either house or before a committee. *See* Wis. Stat. § 13.35(1). As noted above, your office’s subpoenas to the Commission and to Administrator Wolfe, served October 1 and 6, call for non-public depositions in a private office, unconnected to any meeting of any house or committee of the Legislature. Wisconsin Stat. § 13.35 does not give immunity to a person who testifies in such a deposition. In addition to the lack of immunity under the statute, there appears no basis for your office (a non-statutory position) to grant immunity to a witness.

III. The subpoena’s specific demands are overbroad, vague, irrelevant, and unduly burdensome.

Third, the subpoena’s specific demands for documents or testimony are also objectionable on multiple grounds. The following, while not intended to be an exhaustive list of substantive objections, provides a summary of the most serious problems with the demands.

As noted above, both subpoenas demand documents and testimony “including, *but not limited to*, potential irregularities and/or illegalities related to the [2020 General] Election.” The use of “*but not limited to*” makes this already broad demand unlimited in scope. For this reason, the demand is objectionable as vague, overly broad, and potentially irrelevant to any valid legislative purpose. The request is also objectionable because it imposes an undue burden for Administrator Wolfe in preparing to present effective, useful testimony, since the subpoena provides absolutely no guidance about the possible matters on which she might be questioned.

These problems are hardly ameliorated by excising the “*but not limited to*” proviso. The same goes for recent oral communications with your staff—until we receive written communication confirming your office’s updated expectations, the vague and overbroad subpoenas provide the only reliable indication of your office’s expectations. Accordingly, before Administrator Wolfe can provide testimony either in her capacity as Administrator or as the person most knowledgeable for the Commission, the topics for testimony will need to be further narrowed and defined.

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Equally problematic, for all the same reasons, is the demand in the subpoena to the Commission, served October 6, 2021, for testimony on the remarkably overbroad topic of “The 2020 Election in Wisconsin.” This overbroad inquiry is barely improved in subsequent individual demands, including demands for testimony on the following wide-ranging topics:

- “In-person voting in the 2020 election in . . . Green Bay, Madison, Racine, Kenosha and Milwaukee as compared to statewide.”
- “Absentee voting processes in the 2020 election in . . . Green Bay, Madison, Racine, Kenosha and Milwaukee as compared to statewide.”
- “Voter education programs in the 2020 election in . . . Green Bay, Madison, Racine, Kenosha and Milwaukee as compared to statewide.”

Uniquely objectionable is the October 6 subpoena’s demand for all “communications between the Wisconsin Election Commission and its officials or employees, and with the officials or employees of the Cities of Racine, Kenosha, Madison, Green Bay and Milwaukee *and/or any other employee, representative agent or other person affiliated with them*, regarding or in any way related to the Election in Wisconsin.” (Emphasis added.) For one, the italicized clause is vague as to whom it is referring, particularly as to “them.” Moreover, the demand for all communications “regarding or in any way related to the Election in Wisconsin” would sweep in potentially tens of thousands of documents, many of which are simply automatically created based on registration processes.

These objectionable demands must be narrowed before Administrator Wolfe and the Commission can reasonably be expected to respond.

Finally, putting aside all the objections related to the overly broad scope, vagueness, and irrelevance, the subpoenas appear to demand documents and information that Administrator Wolfe already provided to the Assembly Committee on Campaigns and Elections on March 24, 2021. Since it appears your investigation is being conducted under that Committee, your office should already have many, if not all, of the documents demanded from Administrator Wolfe and the Commission.

Despite the redundancy of these requests, we will re-produce those documents as a show of Administrator Wolfe’s good-faith effort to comply with your investigation to the greatest extent reasonably possible. This also seems to correspond with recent

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oral communications from your office about the scope of documents expected under the subpoenas.

To be clear, given the problems related to the scope of the subpoenas' requests, Administrator Wolfe and the Commission are construing the subpoena's demands as seeking communications between the Commission and its staff and the Center for Technology and Civic Life and any of its staff, officers, or agents; communications between the Commission and its staff and the five relevant counties related to the Center for Technology and Civic Life or similar entities; as well as documents previously produced pursuant to public record requests related to the November 2020 election. We trust that your office will inform us, through a properly tailored document request or other written communication, if additional documents are required.

As stated at the outset, Administrator Wolfe stands ready to provide testimony and documents to the Committee in response to a lawful and appropriately tailored subpoena. The recent subpoenas to the Commission and Administrator Wolfe, however, suffer multiple shortcomings that must be resolved before any representative of the Commission can testify or provide additional documents. We appreciate your office's recent communications seeking to address some of these issues, and we respectfully urge you or your staff to continue working with our office so we can resolve the remaining concerns without need for the Commission and Administrator Wolfe to take further steps to protect themselves.

Sincerely,



Gabe Johnson-Karp
Assistant Attorney General

GJK:ajw

cc: Office of Special Counsel (via email)
Representative Robin Vos (via U.S. mail and email)

LAB found, at least 17.5% of clerks were not properly trained, and no letters from WEC went out notifying cities and boards about the failure to complete training. This Office continues to review the issue. Moreover, this Office already has ample evidence that in the absence of this legally mandated training, certain private groups filled the vacuum, perhaps for their own, self-interested purposes, providing some municipalities with incorrect and even unlawful advice. In a statement, at least one clerk has noted that outside advice negatively impacted the security of the vote and the physical safety of voters.

Exploitation of Elders

This Office continues to review the issues involving WEC more generally, as well as other plain rules that are apparently without remedy in Wisconsin law, such as the editing of ballot applications by clerks and voting procedures at nursing homes. A recent investigation and report by the Racine County Sheriff's Office highlighted the exploitation of some of our most vulnerable citizens. Furthermore, complaints were apparently made to WEC and ignored, in a system which the sheriff described as leading to our election system being "not just broken, but shattered." I believe that many Wisconsinites share the Sheriff's sentiment. It is my hope that a continued investigation and final report from this Office will help change those perspectives and sentiments.

In the run-up to the November 3, 2020, election, clerks and WEC took numerous steps to alleviate public fears about COVID-19. But in this perceived crisis there was the opportunity for electoral partisan advantage. For example, Wisconsin law mandates that individuals in various types of communal living facility may have special access to absentee voting in person, but only subject to the rules of § 6.875. These rules govern the "Special Voting Deputies" that a municipality may, in turn, train and authorize to collect absentee votes in person: this is the *only* lawful method for collecting absentee ballots outside normal procedures, as Special Voting Deputies swear an oath and become duly authorized "election officials." Without the availability of Special Voting Deputies under

the statute, it would be much more difficult for many senior citizens or those in assisted living facilities to vote, as they would be required to show up at a central, authorized voting location. Yet in 2020, at the recommendation of its top administrator, WEC voted to unilaterally prohibit the use of Special Voting Deputies, explaining that COVID-19 made it too dangerous to allow for Special Voting Deputies to enter these facilities.

This Office has evidence that WEC and some clerks instructed residential care staff to act in a manner unauthorized by law, collecting and assisting in completing ballots for individuals in these group homes, including those with dementia. The residential care staff followed the instructions of WEC and the clerks. This led to record-high voting by individuals who had not voted for nearly a decade and may have lacked the cognitive ability to vote.

On its face, this type of activity could lead to criminal referral for the residential care staff, as the Chairperson of WEC has suggested. But residential care staff represent the “little fish” in this alleged criminal enterprise. This Office is reviewing the relevant Wisconsin statutes to facilitate the criminal referral process and make legislative recommendations. This includes reviewing legal methods for ensuring our senior citizens are not bullied or taken advantage of, and that neither nursing homes nor their residents are used for are unlawful election activity, merely because these citizens are vulnerable, easy targets for partisan predators.

WEC Self-Policing and Self-Serving

Numerous members of the public, as well as the clerks, have questioned the independent authority clerks have to administer an election consistent with state law in light of WEC’s guidance, which in several instances was contrary to those voting laws. Some clerks feel WEC may legally bind the clerks in granular decisions about their local needs. Other clerks are concerned about repercussions for not following WEC guidance. Many clerks have expressed disagreement with WEC conclusions, and some have done so publicly.

Numerous members of the public have raised concerns about WEC's ability to police itself: the discretionary nature of WEC intake, review, and response to complaints, and the fact that complaints about WEC are handled, under law, by WEC itself.

This Office continues to interview clerks and expects to discuss with WEC staff what the appropriate role for WEC is in future Wisconsin elections

How can the Public be Confident in Our Elections?: The Black Box

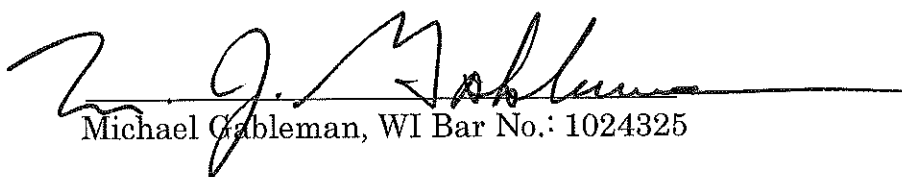
As former GAB Director Kevin Kennedy noted, the new WEC system is, apparently, "no more transparent" than the old one which he ran. Without robust legislative oversight, many Wisconsinites are at risk of feeling that their vote does not count, or that there is widespread election fraud in the state. Worse, their fears may be accurate. Two major areas of inquiry are being looked at by my Office, both dealing with the appropriate level of transparency for our election systems. First, my Office is reviewing the laws and procedures relating to the use of technological tools in administering elections: the "voting machines" and the various election databases used by WEC. Second, my Office is reviewing barriers to public access to information, such as charges for access to voter registration data.

While this Office draws no conclusions, interviews with clerks, citizens, and other groups suggest that there is widespread concern about the inability of an average citizen to track how elections are run. This inability has huge downstream consequences, as citizens are often presented with snippets of information reminiscent of the "confusopoly" in health insurance. Presented with outdated data sets of dubious quality, citizens seeking to use public information to confirm election results are unable to do so, while those with money and access (or preferential contracts, as noted above) can access better data, more quickly. Further, the precise operations of voting machines are not readily accessible or understood by the public, or by commissioners on WEC itself. As with health insurance,

Now, therefore, Petitioner respectfully requests that the Waukesha County Circuit Court issue a writ of attachment on the person of Eric Genrich and order the Waukesha County Sheriff to execute such commitment until Eric Genrich has fulfilled her legal duties in responding to said subpoena.

DULY SWORN AND
RESPECTFULLY SUBMITTED,

Signature:


Michael Gableman, WI Bar No.: 1024325

SPECIAL COUNSEL to the WISCONSIN
ASSEMBLY

P.O. Box 510766
New Berlin, WI 53151
T: (262) 2020-8722

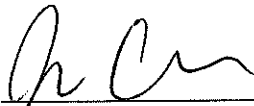
E: coms@wispecialcounsel.org

NOTARY STATEMENT:

State of Wisconsin

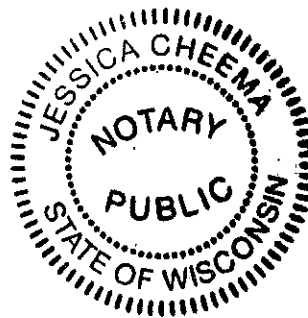
County of Waukesha

This document was sworn before me on November 29th, 2021 by Michael J. Gableman.

Signature of Notary 

Title Notary

My commission expires on 7/9/22



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

Petitioner

v.

Case No.: _____

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

Respondent

WRIT OF ATTACHMENT OF THE PERSON

THE STATE OF WISCONSIN, to the person named above as Respondent:

You are hereby notified that pursuant to Wisconsin Statutes § 13.31 and Wisconsin Statutes § 885.12,
the Petitioner named above has filed a verified complaint with this Court attesting that you are
noncompliant with a valid legislative subpoena.

Within 45 days of receiving this notice, you must produce the documents and testimony as required by
law.

Dated this ____ day of _____, 2021.

WITNESS MY HAND AND SEAL

Circuit Court Judge

EXHIBIT A

WISCONSIN STATE ASSEMBLY

2021-2022 Regular Session

Assembly Committee on Campaigns and Elections

SUBPOENA DUCES TECUM

STATE OF WISCONSIN)
) ss.
COUNTY OF WAUKESHA)

THE STATE OF WISCONSIN TO: Hon. Eric Genrich
 Mayor, City of Green Bay
 100 N. Jefferson St.
 Green Bay WI 54301


PURSUANT TO WIS. STAT. § 13.31 YOU ARE HEREBY COMMANDED TO APPEAR in person before the Special Counsel or his designee on **Friday, October 22, 2021 at 9:00 am at 200 South Executive Drive, Suite 101, Brookfield, WI 53005**, to give evidence and testimony with regard to the November 2020 General Election in Wisconsin (the "Election") including, *but not limited to*, potential irregularities and/or illegalities related to the Election.

You are further commanded to bring with you originals or copies, if originals are not available, of all documents contained in your files and/or in your custody, possession, or control, pertaining to the Election. Responsive documents include, *but are not limited to*, the items set forth on Exhibit A, attached hereto and incorporated herein. Please direct any inquiries to (262) 202-8722.

FAILURE TO COMPLY WITH THIS SUBPOENA MAY CONSTITUTE CONTEMPT OF THE LEGISLATURE, PURSUANT TO WIS. STAT. § 13.26(1)(C) AND IS SUBJECT TO PUNISHMENT, INCLUDING IMPRISONMENT, PURSUANT TO WIS. STAT. § 13.27.

Dated at Plain Prairie Wisconsin this 4th day of October 2021.

WISCONSIN STATE ASSEMBLY

By: 

REP. ROBIN VOS, SPEAKER
Wisconsin State Assembly

By: 

Edward A. Blazel, in Madison, WI
Wisconsin State Assembly, Chief Clerk

SCHEDULE A

GENERAL INSTRUCTIONS

1. These Instructions incorporate the Definitions attached to the subpoena. Please read them carefully before reading this document.
2. In complying with this subpoena, you are required to produce all responsive Documents that are in your possession, custody, or control. You shall also produce Documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as Documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed Documents shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Special Counsel.
3. All Documents produced in response to this subpoena shall be sequentially and uniquely Bates-stamped.
4. In the event that any entity, organization, or person identified in this subpoena has been, or is also known by any other name than that herein identified, the subpoena shall be read also to include that alternative identification.
5. It shall not be a basis for refusal to produce Documents that any other person or entity also possesses non-identical or identical copies of the same Documents.
6. If a date or other descriptive detail set forth in this subpoena referring to a Document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all Documents that would be responsive as if the date or other descriptive detail were correct.
7. Documents produced in response to this subpoena shall be produced as they were kept in the normal course of business together with copies of file labels, dividers, or identifying markers with which they were associated when the subpoena was served.
8. If you withhold any Document pursuant to a claimed right protected by the state or federal constitution, or pursuant to a claim of non-disclosure privileges including, but not limited to, the deliberative-process privilege, the attorney-client privilege, attorney work product protections, any purported privileges, protections, or exemptions from disclosure under Wis. Stat. § 19.35 or the Freedom of Information Act, then you must comply with the following procedure:
 1. You may only withhold that portion of a Document over which you assert a claim of privilege, protection, or exemption. Accordingly, you may only withhold a Document in its entirety if you maintain that the entire Document is privileged or protected. Otherwise you must produce the Document in redacted form.
 2. In the event that you withhold a Document—in whole or in part—on the basis of a privilege, protection, or exemption, you must provide a privilege log containing the following information concerning each discrete claim of privilege, protection, or exemption:
 - the privilege, protection, or exemption asserted;
 - the type of Document;
 - the date, author, and addressee;

- the relationship of the author and addressee to each other; and
 - a general description of the nature of the Document that, without revealing information itself privileged or protected, will enable the Office of the Special Counsel to assess your claim of privilege, protection, or exemption.
3. In the event a Document or a portion thereof is withheld under multiple discrete claims of privilege, protection, or exemption, each claim of privilege, protection, or exemption must be separately logged.
 4. In the event portions of a Document are withheld on discrete claims of privilege, protection, or exemption, each separate claim of privilege, protection, or exemption within that Document must be separately logged.
 5. You must produce the privilege log contemporaneously with the withholding of any Document in whole or in part on the basis of a privilege, protection, or exemption.
 6. You must certify that your privilege log contains only those assertions of privilege, protection, or exemption as are consistent with these Instructions and are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law.
 7. Failure to strictly comply with these provisions constitutes waiver of any asserted privilege, protection, or exemption.
9. Neither the Office of the Special Counsel nor the Committee recognizes any purported contractual privileges, such as non-disclosure agreements, as a basis for withholding the production of a Document. Any such assertion shall be of no legal force or effect, and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Special Counsel has consented to recognize the assertion as valid.
 10. This subpoena is continuing in nature and applies to any newly-discovered information. Any Document not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
 11. If you discover any portion of your response is incorrect in a material respect you must immediately and contemporaneously submit to the Office of the Special Counsel, in writing, an explanation setting forth: (1) how you became aware of the defect in the response; (2) how the defect came about (or how you believe it to have come about); and (3) a detailed description of the steps you took to remedy the defect.
 12. A cover letter shall be included with each production and include the following:
 - a. The Bates-numbering range of the Documents produced, including any Bates-prefixes or -suffixes;
 - b. If the subpoena is directed to an entity as opposed to an individual, a list of custodians for the produced Documents, identifying the Bates range associated with each custodian;
 - c. A statement that a diligent search has been completed of all Documents in your possession, custody, or control that reasonably could contain responsive material;
 - d. A statement that the search complies with good forensic practices;

- e. A statement that Documents responsive to this subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Office of the Special Counsel since the date of receiving the subpoena or in anticipation of receiving the subpoena;
 - f. A statement that all Documents located during the search that are responsive have been produced to the Office of the Special Counsel or withheld in whole or in part on the basis of an assertion of a claim of privilege or protection in compliance with these Instructions; and
 - g. Your signature, attesting that everything stated in the cover letter is true and correct and that you made the statements under penalty of perjury.
13. You must identify any Documents that you believe contain confidential or proprietary information. However, the fact that a Document contains confidential or proprietary information is not a justification for not producing the Document, or redacting any part of it.
14. Electronically-stored Documents must be produced to the Office of the Special Counsel in accordance with the attached Electronic Production Instructions in order to be considered to be in compliance with the subpoena. Failure to produce Documents in accordance with the attached Electronic Production Instructions, may, in an exercise of the Special Counsel's discretion, be deemed an act of contumacy.
15. If properties or permissions are modified for any Documents produced electronically, receipt of such Documents will not be considered full compliance with the subpoena.

ELECTRONIC PRODUCTION INSTRUCTIONS

The production of electronically-stored Documents shall be prepared according to, and strictly adhere to, the following standards:

- 16. Documents shall be produced in their native format with all meta-data intact.
- 17. Documents produced shall be organized, identified, and indexed electronically.
- 18. Only alphanumeric characters and the underscore ("_") character are permitted in file and folder names. Special characters are not permitted.
- 19. Production media and produced Documents shall not be encrypted, contain any password protections, or have any limitations that restrict access and use.
- 20. Documents shall be produced to the Office of the Special Counsel on one or more memory sticks, thumb drives, or USB hard drives. Production media shall be labeled with the following information: production date, name of the subpoena recipient, Bates range.
- 21. All Documents shall be Bates-stamped sequentially and should not duplicate any Bates-numbering used in producing physical documents.

Schedule B

DEFINITIONS

22. "All," "any," and "each" shall each be construed as encompassing any and all. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
23. "And" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope.
24. "Ballot" means a ballot related to the Election, including mail-in ballots, early in-person ballots, provisional ballots, and physical ballots cast in person the day of the election.
25. "Committee" means the committee named in the subpoena.
26. "Communication" means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, regular mail, telexes, releases, intra-company messaging channels, or otherwise.
27. "Communication with," "communications from," and "communications between" means any communication involving two or more people or entities, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc'd or bcc'd, both parties are cc'd or bcc'd, or some combination thereof.
28. "CTCL" means the Center for Tech and Civic Life.
29. "Documents" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), text messages, instant messages, MMS or SMS messages, contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
30. "Election" means the November 3, 2020, Wisconsin General Election for, inter alia, President of the United States.

31. "Employee" means a current or former: officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, permanent employee, staff employee, attorney, agent (whether de jure, de facto, or apparent, without limitation), advisor, representative, attorney (in law or in fact), lobbyist (registered or unregistered), borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, provisional employee, or subcontractor.
32. When referring to a person, "to identify" means to give, to the extent known: (1) the person's full name; (2) present or last known address; and (3) when referring to a natural person, additionally: (a) the present or last known place of employment; (b) the natural person's complete title at the place of employment; and (c) the individual's business address. When referring to documents, "to identify" means to give, to the extent known the: (1) type of document; (2) general subject matter; (3) date of the document; and (4) author, addressee, and recipient.
33. "Forensic Image" means a bit-by-bit, sector-by-sector direct copy of a physical storage device, including all files, folders and unallocated, free and slack space. Forensic images include not only all the files visible to the operating system but also deleted files and pieces of files left in the slack and free space.
34. "Indicating" with respect to any given subject means anything showing, evidencing, pointing out or pointing to, directing attention to, making known, stating, or expressing that subject of any sort, form, or level of formality or informality, whatsoever, without limitation.
35. "Party" refers to any person involved or contemplating involvement in any act, affair, contract, transaction, judicial proceeding, administrative proceeding, or legislative proceeding.
36. "Person" is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association, and all subsidiaries, divisions, partnerships, properties, affiliates, branches, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any employee, and any other units thereof.
37. "Pertaining to," "referring," "relating," or "concerning" with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
38. "Possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your employees; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
39. "Processes" means any processes, procedures, methodologies, materials, practices, techniques, systems, or other like activity, of any sort, form, or level of formality or informality, whatsoever, without limitation.
40. "You" or "Your" shall mean (in the case of an entity) the entity named in the subpoena, as well as its officers, directors, subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party. If the person named in the entity is either an individual or an entity, "you" and "your" also means your employees, agents, representatives, consultants, accountants and attorneys, including anyone who served in any such capacity at any time during the relevant time period specified herein.

EXHIBIT A

TO SUBPOENA DUCES TECUM

These document requests are limited to the time period from January 1, 2020 to current:

1. All documents pertaining to election administration related to interactions, communication with, or comments regarding the Office of the Clerk of the City of Green Bay and the Chief of Staff of the Office of the Mayor of the City of Green Bay.
2. All documents and communications between the Office of the Mayor of the City of Green Bay with the Center for Tech and Civic Life ("CTCL"). This includes, but is not limited to, documents and communications with Tiana Epps-Johnson and Whitney May
3. All documents and communications between the Office of the Mayor of the City of Green Bay and the Wisconsin Elections Commission ("WEC") and its officials or employees regarding or in any way related to the election.
4. All documents and communications between the Office of the Mayor of the City of Green Bay and officials or employees of the Cities of Racine, Kenosha, Madison and Milwaukee and/or any other employee, representative agent or other person affiliated with these cities, regarding or in any way related to the Election.
5. All documents and communications between the Office of the Mayor of the City of Green Bay and employees of any group, organization, person or entity, including but not limited to CTCL, and/or any other employee, representative agent or other person affiliated with them, regarding or in any way related to the election.
6. All documents or communications between the Office of the Mayor of the City of Green Bay and CTCL and/or its employees Tiana Epps-Johnson and Whitney May, The National Vote At Home Institute and/or its employee Michael Spitzer-Rubenstein, The Elections Group and/or its employee Ryan Chew, Ideas42, Power to the Polls and/or Fair Elections Center, Mikva Challenge, US Digital Response, Center for Civic Design, Center for Election and Innovation Research ("CEIR"), Center for Secure and Modern Elections ("CSME") and/or its employee Eric Ming, The Brennan Center for Justice, HVS Productions, Facebook, Modern Selections and/or any other employee, representative agent or other person affiliated with the above named entities, regarding or in any way related to the election.