

WisGOP: Gov. Evers' Administration tosses Constitution to the wayside, threatens to prosecute a journalist

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[Madison, WI] – In case you missed it, Gov. Evers' record of concealing public records took a new turn when his administration threatened to prosecute a journalist, a move the Milwaukee Journal Sentinel says could violate the Constitution.

In response to Gov. Evers' latest snub to public records and the media, The Republican Party of Wisconsin issued the following statement from Executive Director Mark Jefferson:

“The rollback of open government reforms and stonewalling public records have become defining characteristics of the Evers era. Gov. Evers has tossed the public and the Constitution to the wayside in hopes he can wear down the public to the point where he can run state government in secret.”

Read the full write-up [here](#), or find excerpts below.

Wisconsin Gov. Tony Evers' administration threatened to prosecute reporter over confidential child abuse records

[Milwaukee Journal Sentinel](#)

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February 4, 2020

Gov. Tony Evers' administration sought to block a journalist from publishing information from a confidential child abuse investigation by threatening prosecution, a rare move that could violate the U.S. Constitution.

Wisconsin Department of Children and Families officials in January warned an NBC News reporter that his planned publication of a story that included information from the investigation file would violate state law and could result in six months in jail and a \$1,000 fine.

“Please cease and desist immediately from any further illegal use and disclosure of the documents in the child abuse investigation file illegally disclosed to you, and any information obtained in that file,” Therese Durkin, chief legal counsel for the agency, wrote to NBC News reporter Mike Hixenbaugh on Jan. 24. “Failure to comply will lead to further legal action.”

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But media law experts say the First Amendment protects journalists’ possession and publication of truthful information in the public’s interest, regardless of how the information was released to them — and even trying to stop a reporter from publishing violates the U.S. Constitution.

“If somebody unlawfully discloses information to the journalist, but the journalist did nothing wrong, they have a First Amendment right to publish that information,” Sarah Matthews, a staff attorney with the Reporters Committee for Freedom of the Press, said in an interview.

Hixenbaugh, the NBC News reporter, obtained records related to a child protective services case involving a former emergency room doctor at Children’s Wisconsin Hospital who has been charged with physical abuse of his newborn daughter. The reporter did not ultimately cite the records in his reporting.

The story includes details of the case, including information from medical records, and raises questions about whether the child was injured by an accident, rather than by abuse.

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An attorney for NBC News wrote back to the department, saying virtually all the information contained in the investigation file is available through other sources, including court records — which are public records — and cited two U.S. Supreme Court decisions from 1975 and 2001 that said the First Amendment protects the publication of information required to be confidential by state law, even if the

information's release to a journalist is illegal.

Robert Drechsel, a journalism professor at the University of Wisconsin-Madison who specializes in media law and constitutional issues, said the agency is free to ask the reporter not to publish but cannot legally compel them to do so.

"I don't know how common it is for a Wisconsin state agency to tell a reporter to 'cease and desist' and threaten prosecution this way. No other examples come to mind in all the years I've lived in Wisconsin," Drechsel said after reviewing the agency's letter to NBC News. "Any formal legal cease and desist order issued against the news media would be a prior restraint that is almost certainly unconstitutional."

Matthews said the warning also could have a chilling effect on journalists who receive information in the public's interest.

"We don't want to stifle vigorous reporting on an area of public interest," Matthews said. "Ultimately it means the public could lose out on having important information."

Matthews cited two more Supreme Court cases from 1979 and 1989 that said the First Amendment protects journalists from being held liable for reporting information that was illegally released to them.

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Bill Lueders, president of the Wisconsin Freedom of Information Council, said Hixenbaugh's reporting raises legitimate questions about whether such systems are working properly for the public.

"Even if the materials were improperly released, it does not follow that using them in a story — especially a story that raises serious questions about the conduct of child abuse professionals — is a punishable offense," he said.