

WISCONSIN ELECTIONS COMMISSION
212 East Washington Avenue, Third Floor
Madison, Wisconsin 53707,

MEAGAN WOLFE, in her official
capacity as Administrator of the
Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
Madison, Wisconsin 53707,

Plaintiffs,

v.

Case No. 21-CV-
Declaratory Judgment: 30701

WISCONSIN STATE ASSEMBLY
Wisconsin State Capitol
2 East Main Street
Madison, Wisconsin 53703,

ROBIN VOS, in his official capacity as
Speaker of the Wisconsin State Assembly
Wisconsin State Capitol
State Capitol, Room 217 West
Madison, Wisconsin 53702,

MICHAEL GABLEMAN, in his
official capacity as Special Counsel
200 South Executive Drive, Suite 101
Brookfield, Wisconsin 53005,

ASSEMBLY COMMITTEE ON
CAMPAIGNS AND ELECTIONS
Wisconsin State Capitol
2 East Main Street
Madison, Wisconsin 53703,

JANEL BRANDTJEN, in her
official capacity as Chair of the
Assembly Committee on
Campaigns and Elections
Wisconsin State Capitol
State Capitol, Room 12 West
Madison, Wisconsin 53702,

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

Within 20 days after receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 215 South Hamilton Street, Room 1000, Madison, Wisconsin 53703, and to Assistant Attorneys General Gabe Johnson-Karp, Thomas C. Bellavia, and Colin A. Hector, plaintiffs' attorneys,

whose address is Department of Justice, 17 West Main Street, Madison, Wisconsin 53703 or Post Office Box 7857, Madison, Wisconsin 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future and also may be enforced by garnishment or seizure of property.

Dated this 21st day of October, 2021.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Gabe Johnson-Karp
GABE JOHNSON-KARP
Assistant Attorney General
State Bar #1084731

THOMAS C. BELLAVIA
Assistant Attorney General
State Bar #1030182

COLIN A. HECTOR
Assistant Attorney General
State Bar #1120064

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hectorca@doj.state.wi.us

CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed a Summons with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that, unless personal service is waived, a copy of the above document will be personally served on:

Wisconsin State Assembly
Wisconsin State Capitol
2 East Main Street
Madison, WI 53703

Robin Vos
State Capitol, Room 217 West
Madison, WI 53702

Michael Gableman
200 South Executive Drive, Suite 101
Brookfield, WI 53005

Assembly Committee on Campaigns and Elections
Wisconsin State Capitol
2 East Main Street
Madison, WI 53703

Janel Brandtjen
Wisconsin State Capitol
State Capitol, Room 12 West
Madison, WI 53702

Dated this 21st day of October, 2021.

Electronically signed by:

Gabe Johnson-Karp

GABE JOHNSON-KARP
Assistant Attorney General

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State Capitol, Room 12 West
Madison, Wisconsin 53702,

Defendants.

COMPLAINT

Plaintiffs, the Wisconsin Elections Commission and Meagan Wolfe, Administrator of the Wisconsin Elections Commission, by Attorney General Joshua L. Kaul and Assistant Attorneys General Gabe Johnson-Karp, Thomas C. Bellavia, and Colin A. Hector, bring this civil action seeking declaratory and injunctive relief under the Wisconsin and United States Constitutions and Wis. Stat. §§ 13.31, 806.04, and 813.01–02. Plaintiffs allege as follows:

NATURE OF THE ACTION

1. This is an action for declaratory and injunctive relief from two subpoenas issued in support of a legislative investigation into the conduct of the November 2020 general election in Wisconsin. Plaintiffs seek to temporarily and permanently enjoin the Defendants, their attorneys, or other representatives or agents, from taking any actions to enforce those subpoenas

or to seek sanctions for noncompliance with them. Plaintiffs request a temporary restraining order, a temporary injunction, and a permanent injunction, pursuant to Wis. Stat. § 813.02, and a declaratory judgment under Wis. Stat. § 806.04.

PARTIES

2. Plaintiff Wisconsin Elections Commission (the “Commission”) is an agency of the State of Wisconsin created under Wis. Stat. § 15.61(1)(a). The Commission is the governmental body that administers, enforces, and implements Wisconsin’s laws “relating to elections and election campaigns, other than laws relating to campaign financing.” Wis. Stat. § 5.05(1).

3. Plaintiff Meagan Wolfe is the Administrator of the Commission, appointed pursuant to Wis. Stat. § 15.61(1)(b)1. The Administrator performs such duties as the Commission assigns to her and serves as the chief election officer of the State. Wis. Stat. § 5.05(3d)–(3g).

4. Defendant Wisconsin State Assembly (the “Assembly”) is one of the two chambers of the Wisconsin Legislature, in which the legislative power of the State is vested. Wis. Const. art. IV, § 1. On March 17, 2021, the Assembly adopted 2021 Assemb. Res. 15, which directed the Assembly Committee on Campaigns and Elections “to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.” (Ex. A.)

5. Defendant Robin Vos is the Speaker of the Assembly. He appointed the Special Counsel who is conducting the investigation at issue in this Complaint. Speaker Vos and the Assembly's Chief Clerk also signed the subpoenas that are challenged here.

6. Defendant Michael Gableman is the Special Counsel appointed by Speaker Vos to head the investigation at issue in this Complaint.

7. Defendant Assembly Committee on Campaigns and Elections (the "Committee") is a standing committee of the Assembly. 2021 Assemb. R. 9(1)(c). The Committee has been directed by 2021 Assemb. Res. 15 "to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019." (Ex. A.)

8. Defendant Janel Brandtjen is a member of the Assembly and Chair of the Committee.

9. All Defendants are sued in their official capacity.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this Complaint pursuant to Wis. Const. art. VII, § 8 and Wis. Stat. § 753.03, which give the circuit courts subject-matter jurisdiction over all civil matters within this State.

11. The court is authorized to issue temporary restraining orders and to grant temporary and permanent injunctive relief under Wis. Stat. § 813.02.

12. The court is authorized to issue a judgment declaring the rights, status, and legal relations of the parties with regard to the claims in this Complaint. Wis. Stat. § 806.04(1).

13. The court has personal jurisdiction over the Defendants, who are sued in their official capacities and reside within this State. Wis. Stat. § 801.05.

14. Venue is proper in Dane County for multiple reasons. First, it is the county where the claims in this Complaint arose. Wis. Stat. § 801.50(2)(a). Second, it is the county where tangible documents that are the subject of some of the claims in this Complaint are located. Wis. Stat. § 801.50(2)(b). Third, it is the county where one or more of the Defendants reside and conduct substantial business. Wis. Stat. § 801.50(2)(c). Fourth, because all Defendants are agents of the State sued in their official capacity, venue is proper in the county designated by Plaintiffs. Wis. Stat. § 801.50(3)(a). Here, Plaintiffs have designated Dane County.

FACTUAL BACKGROUND

15. On March 17, 2021, the Assembly adopted 2021 Assemb. Res. 15 (the “Resolution”), which directed the Committee “to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.” (Ex. A.)

16. The purposes of the investigation, as identified in the Resolution, include preserving “the integrity of the electoral process,” promoting citizen

confidence in “the fairness of elections and acceptance of election results,” and determining “the extent to which elections in Wisconsin have been conducted in compliance with the law.” (Ex. A.)

17. The Resolution included a finding that “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.” (Ex. A.)

18. On May 28 and August 27, 2021, the Committee on Assembly Organization adopted ballots authorizing Speaker Vos to hire a Special Counsel to oversee and conduct the investigation authorized by the Resolution, assist the Committee, and hire investigators and other staff. Pursuant to that authorization, Speaker Vos appointed Defendant Gableman as Special Counsel.

19. On October 1, 2021, a subpoena was served on Administrator Wolfe. The subpoena was executed on behalf of the Committee by Speaker Vos and the Chief Clerk of the Assembly. It commanded Administrator Wolfe to appear “in person before the Special Counsel or his designee” on October 15, 2021, at an office location in Brookfield, Wisconsin, “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.” (Ex. B.)

20. The October 1 subpoena also commanded Administrator Wolfe to produce “all documents contained in your files and/or in your custody, possession, or control, pertaining to the Election.” Attached to the subpoena was an Exhibit A that specified five particular categories of documents that were demanded, but the subpoena expressly noted that the documents demanded were not limited to those categories. (Ex. B.)

21. On October 6, 2021, a subpoena was served on the Commission. That subpoena, too, was executed on behalf of the Committee by Speaker Vos and the Chief Clerk of the Assembly. It commanded the Commission to cause “the person most knowledgeable in regard to the November 2020 General Election in Wisconsin (the ‘Election’) to appear in person before the Special Counsel or his designee” on October 22, 2021, at the office in Brookfield, Wisconsin, “to give evidence and testimony including, *but not limited to*, potential irregularities and/or illegalities related to the Election.” Attached to the subpoena was an Exhibit A that specified eight particular topics of testimony, but the subpoena expressly noted that the testimony demanded of the witness would not be limited to those topics. (Ex. C.)

22. The October 6 subpoena also commanded that the Commission’s designated witness produce “all documents contained in your files and/or in

your custody, possession, or control, pertaining to the Election.” Attached to the subpoena was an Exhibit B that specified five particular categories of documents that were demanded, but the subpoena expressly noted that “[r]esponsive documents include, *but are not limited to*, the items set forth on Exhibit B.” (Ex. C.)

23. The October 1 and October 6 subpoenas described above will hereinafter be referred to as the “Subpoenas.”

24. On October 11, 2021, Defendant Brandtjen issued a press release which stated, in part: “Justice Michael Gableman does not speak for myself or for the Wisconsin Assembly’s Campaigns and Elections Committee. The current subpoenas have not been approved by the Assembly’s Campaigns and Elections Committee that Justice Gableman is supposed to serve, nor have the subpoenas even been submitted to the committee.” (Ex. E.)

25. Also on October 11, 2021, the Commission and Administrator Wolfe, through their legal counsel, sent a letter to the Special Counsel setting out substantive and procedural objections to the Subpoenas. The letter also communicated to the Special Counsel that both the Commission and Administrator Wolfe stand ready to comply with lawful and appropriately tailored Subpoenas regarding legitimate legislative concerns about election administration. (Ex. D.)

26. On October 15, 2021, the Commission and Administrator Wolfe provided the Office of Special Counsel with numerous responsive documents based on discussions with representatives of the Special Counsel. Staff from the Office of Special Counsel indicated that they would contact Plaintiffs with any additional follow-up on that subpoena.

27. Counsel for the Commission and Administrator Wolfe have discussed their objections to the Subpoenas with representatives of the Special Counsel, but the parties have been unable either to resolve those objections or to agree upon a postponement of the testimony scheduled for October 22, 2021, pursuant to the subpoena served on the Commission.

CLAIMS FOR RELIEF

COUNT 1

The non-public deposition procedure commanded by the Subpoenas is statutorily unauthorized.

28. The Subpoenas at issue here 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 potential charge of contempt for failure to comply. Those statutes do not authorize the current demand for sworn testimony.

29. The legislative subpoena statute, Wis. Stat. § 13.31, provides that a witness may be compelled to testify and to produce documents “before any committee of the legislature, or of either house thereof, appointed to

investigate any subject matter.” 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*.” Those statutes do not authorize compelling a witness to appear before a person or entity other than a house of the Legislature or a legislative committee. They would authorize subpoenas compelling a witness to appear before the Committee, but not before the Special Counsel or his staff apart from any meeting of the Committee.

30. The Subpoenas at issue here, on their face, do not comply with the plain language of Wis. Stat. §§ 13.31 and 13.26(1)(c). They call for testimony “before the Special Counsel or his designee.” (Exs. B, C.) The Special Counsel and his staff, however, have been charged with assisting the Committee, but they are not themselves a house of the Legislature or a legislative committee. The Subpoenas also command the witnesses to appear not in the state capitol or any other location in which a legislative committee would ordinarily meet, but rather in a non-public office “at 200 South Executive Drive, Suite 101, Brookfield, WI 53005.” (Exs. B, C.) Nor is there any indication that the

testimony commanded by the Subpoenas would be taken in a legislative proceeding, within the meaning of Wis. Stat. § 13.26(1)(c).¹

31. In fact, although the Subpoenas do not use the label “deposition,” the contemplated non-public appearance before the Special Counsel or his designee appears to possess all the hallmarks of the type of deposition procedure typically used to examine a witness in the context of a judicial proceeding. But Wis. Stat. §§ 13.31 and 13.26(1)(c) plainly contemplate compelling a witness to testify in a *legislative* proceeding, not a judicial proceeding. Nothing in those statutes authorizes the use of such mechanisms of civil procedure in a non-judicial, legislative proceeding.

32. Moreover, far from complying with Wis. Stat. § 13.31, the Subpoenas at issue here are entirely untethered from the activities of the Committee that the Special Counsel is supposed to be serving. The Chair of the Committee, Defendant Brandtjen, has publicly stated that Special Counsel Gableman does not speak for the Committee, and that the recently issued Subpoenas have not been submitted to or approved by that Committee. (See Ex. E.)

¹ Similarly, Wis. Stat. § 13.32(1) provides for summary process to compel the attendance of a witness who has “failed or neglected to appear *before the committee* in obedience to the mandate of [a subpoena issued under Wis. Stat. § 13.31].” Again, the statutes contemplate compelled legislative testimony before a committee, not in a closed proceeding before an attorney.

33. In sum, the Subpoenas are legislatively unauthorized because they command sworn testimony not before a house of the Legislature or a legislative committee, but before an attorney at a non-public office in Brookfield, with no authorization by the Committee and no connection with any public meeting of the Committee. The court, therefore, should declare the Subpoenas statutorily invalid and enjoin their enforcement.

COUNT 2

The Subpoenas are unlawful because the underlying investigation is not in furtherance of a valid legislative purpose, but rather infringes upon the executive function of law enforcement.

34. The Legislature has inherent power to investigate subjects on which it needs information to aid it in discharging its legislative function, and to have such an investigation conducted by a duly authorized legislative committee. *State ex rel. Rosenhein v. Frear*, 138 Wis. 173, 176–77, 119 N.W. 894 (1909); *see also McGrain v. Daugherty*, 273 U.S. 135, 175 (1927).

35. Legislative investigations, however, are not entitled to unlimited deference from the courts. The legislative power to investigate “is justified solely as an adjunct to the legislative process.” *Watkins v. United States*, 354 U.S. 178, 197 (1957). A subpoena from the Legislature, one of its committees, or any authorized agent thus “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).

36. The legitimate purpose of a legislative investigation is to inform the Legislature about subjects susceptible to legislation, not to inform the public about matters the Legislature deems important, to expose facts for the sake of exposure, or to intimidate or assign guilt to individual public officials. *See Mazars USA, LLP*, 140 S. Ct. at 2032; *Watkins*, 354 U.S. at 200; *Miller v. Transamerican Press, Inc.*, 709 F.2d 524, 531 (9th Cir. 1983) (citing *Hutchinson v. Proxmire*, 443 U.S. 111, 132–33 (1979)).

37. In particular, the legitimate legislative purposes of an investigation do not include the function of law enforcement, which is assigned under our Constitution to the Executive branch. *See Mazars USA, LLP*, 140 S. Ct. at 2032. A legislative subpoena, therefore, cannot issue for the purpose of law enforcement. *Id.*

38. This is just as true under the Wisconsin Constitution as it is under the United States 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 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)).

39. Contrary to these limits, the Resolution that authorized the investigation at issue here is 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.” 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. (Ex. A.)

40. In fact Speaker Vos himself recently acknowledged that the Special Counsel’s investigation is effectively equivalent to a law enforcement investigation. Vos publicly announced that he is resisting any public release of records related to the investigation because it would be akin to a district

attorney releasing records in the middle of a murder investigation: “If you think about just the basic way an investigation is conducted, if the district attorney decides they’re going to try to find out who killed somebody on the street corner, they do not put out for public display, for everybody to read, who they’re talking to and who they’re investigating—giving an advantage to the people who actually committed the crime to avoid prosecution,” Vos said. “That’s exactly what would happen if we decided to put all the documents out.” It could hardly be made clearer that Speaker Vos, who hired the special Counsel to conduct the investigation at issue here, considers that investigation to be in furtherance of the executive functions of law enforcement, rather than in furtherance of a legitimate legislative purpose. Molly Beck, *Assembly Speaker Robin Vos says he wants to withhold records on taxpayer-funded election review until it’s over*, Milwaukee Journal-Sentinel, October 20, 2021, 2021 WLNR 34547842.

41. The Subpoenas challenged here are directed at the same purposes set forth in the Resolution. Those Subpoenas, too, lack a legitimate legislative purpose and instead seek to serve the executive purpose of law enforcement. They thus exceed the investigative power of the Legislature and violate the constitutional separation of powers between the Legislative and Executive branches. On that basis, the court should declare the Subpoenas invalid and enjoin their enforcement.

COUNT 3

The Subpoenas are not clear enough or definite enough to meet the constitutional requirement of due process.

42. Due process of law is constitutionally required both by Wis. Const. art. I, § 8 and by U.S. Const. amend. 14. That constitutional requirement applies to legislative investigations and to subpoenas issued in furtherance of such investigations.

43. Due process requires that the subject matter of a legislative investigation be “defined with sufficient explicitness and clarity to provide a reasonable basis for judgment by the witness whether a specific question put to him is pertinent to that subject matter.” *Goldman v. Olson*, 286 F. Supp. 35, 43 (W.D. Wis. 1968).

44. 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*, 354 U.S. at 209. To avoid this “vice of vagueness,” the authorizing committee and any authorized agents must make clear the “question under inquiry.” *Id.* (citation omitted).

45. Neither the Resolution nor the subpoenas at issue here are sufficiently clear or definite to avoid this vice of vagueness and satisfy the demands of due process.

46. The Resolution directs the Committee to “investigate the administration of elections in Wisconsin.” (Ex. A.) 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.

47. 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 v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 545 (1963).

48. Like the Resolution, the Subpoenas challenged here also provide nothing close to the explicitness and clarity necessary to compel testimony under oath. Although the 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 Election” (emphasis added). (Exs. B, C.) Even when limited to November 2020, that includes nearly 2,000 separately administered election jurisdictions throughout the State. Moreover, the Subpoenas purport to demand testimony “including, *but not limited to*” this already sweeping topic. (Exs. B, C.)

49. Both the Subpoenas and the underlying Resolution are of such sweeping and uncertain scope that they fail to inform the subpoenaed witnesses of the subject of questioning with sufficient clarity and definiteness to satisfy the constitutional requirement of due process. On this basis, too, the court should declare the Subpoenas invalid and enjoin their enforcement.

COUNT 4

In the alternative, the Subpoenas are unreasonably overbroad and burdensome.

50. Even if the Subpoenas were not found invalid for any of the reasons discussed above, their demands for testimony and document production are unreasonably overbroad and burdensome, and must be narrowed before the Subpoenas can be enforced.

51. As previously noted, the Subpoenas demand documents and testimony “including, *but not limited to*, potential irregularities and/or illegalities related to the [2020 General] Election.” (Exs. B, C.) The use of “*but not limited to*” makes this already broad demand unlimited in scope. In

particular, the command that the Commission and Administrator Wolfe produce “all documents contained in [their] files and/or in [their] custody, possession, or control, pertaining to the Election” would cover millions of election-related documents in the files and databases of the Commission. (Exs. B, C.) That document request sweeps far more broadly than the purposes of the investigation authorized by the Resolution. (*See* Ex. A.) It also imposes an extreme undue burden on the Commission and on Administrator Wolfe, both in terms of effectively preparing to give testimony and in terms of the impossible logistics of producing such a massive quantity of documents.

52. Even the somewhat more specific requests enumerated in the exhibits attached to the two Subpoenas are unreasonably overbroad as written. For example, Exhibit A to the Wolfe subpoena and Exhibit B to the Commission subpoena both demand documents containing communications between any Commission personnel and various municipal officials, and between any Commission personnel and various non-governmental persons and organizations, “regarding or in any way related to the Election.” (Exs. B, C.) Similarly, the topics of testimony enumerated in Exhibit A to the Commission subpoena include the same categories of communications “regarding or in any way related to the Election in Wisconsin.” (Ex. C.) The demand for documents and testimony regarding or in any way related to the November 2020 general election is unreasonably overbroad and imprecise.

53. The exhibits to the Subpoenas also try to identify the communications in question as involving not only specified municipal officials, and specified non-governmental persons and organizations, but also communications with “any other employee, representative agent or other person affiliated with them.” (Exs. B, C.) That demand is also unreasonably overbroad and imprecise.

54. These objectionable demands must be narrowed and clarified before Administrator Wolfe and the Commission can reasonably be required to comply with the Subpoenas. Both the Commission and Administrator Wolfe stand ready to comply with lawful and appropriately tailored subpoenas regarding legitimate legislative concerns about election administration.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to enter judgment in their favor and to provide the following relief:

a. An immediate temporary restraining order pursuant to Wis. Stat. § 813.02(1), preserving the status quo by prohibiting the Defendants, their attorneys, or other representatives or agents, from taking any actions to enforce the Subpoenas or to seek sanctions for noncompliance with the Subpoenas, until such time as the Court may hear and decide Plaintiffs’ request for a temporary injunction.

b. Following a hearing, a temporary injunction pursuant to Wis. Stat. § 813.02(1), prohibiting Defendants, their attorneys, or other representatives or agents, from taking any actions to enforce the Subpoenas or to seek sanctions for noncompliance with the Subpoenas during the pendency of this case.

c. A declaratory judgment pursuant to Wis. Stat. § 806.04, declaring that the Subpoenas are invalid and unenforceable under the United States and Wisconsin Constitutions and the laws of the State of Wisconsin.

d. A permanent injunction prohibiting Defendants, their attorneys, or other representatives or agents, from taking any actions to enforce the Subpoenas or to seek sanctions for noncompliance with the Subpoenas.

e. In the alternative, an order requiring that the Subpoenas be narrowed and clarified before Administrator Wolfe and the Commission can be required to comply with them.

f. Any such other relief as the Court may deem just and proper.

Dated this 21st day of October, 2021.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Gabe Johnson-Karp
GABE JOHNSON-KARP
Assistant Attorney General
State Bar #1084731

THOMAS C. BELLAVIA
Assistant Attorney General
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bellaviatc@doj.state.wi.us
hectorca@doj.state.wi.us

CERTIFICATE OF SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed the Complaint with the clerk of court using the Wisconsin Circuit Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

I further certify that, unless personal service is waived, a copy of the above document will be personally served on:

Wisconsin State Assembly
Wisconsin State Capitol
2 East Main Street
Madison, WI 53703

Robin Vos
State Capitol, Room 217 West
Madison, WI 53702

Michael Gableman
200 South Executive Drive, Suite 101
Brookfield, WI 53005

Assembly Committee on Campaigns and Elections
Wisconsin State Capitol
2 East Main Street
Madison, WI 53703

Janel Brandtjen
Wisconsin State Capitol
State Capitol, Room 12 West
Madison, WI 53702

Dated this 21st day of October, 2021.

Electronically signed by:

Gabe Johnson-Karp

GABE JOHNSON-KARP
Assistant Attorney General



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2247/1
MPG:skw

2021 ASSEMBLY RESOLUTION 15

March 17, 2021 - Introduced by Representatives SANFELIPPO, BRANDTJEN, MURPHY, ROZAR, THIESFELDT and TUSLER. Referred to Committee on Rules.

1 **Relating to:** directing the Assembly Committee on Campaigns and Elections to
2 investigate the administration of elections in Wisconsin.

3 Whereas, the ability of American citizens to exercise their right to vote is
4 foundational to our representative democracy; and

5 Whereas, the legitimacy of the American form of government depends on the
6 citizens' widespread confidence in the fairness of elections and acceptance of election
7 results; and

8 Whereas, preserving the integrity of the electoral process is one of our
9 government's most important responsibilities; and

10 Whereas, the administration of elections in Wisconsin is governed by an
11 extensive set of duly enacted laws; and

12 Whereas, however, election laws are not self-enforcing but rely on the good
13 faith efforts of election officials to dutifully carry out those laws as written in order
14 to ensure fair elections; and

Whereas, 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; and

Whereas, it is the duty of the Wisconsin Legislature to make laws and to exercise its oversight and investigative authority to determine the extent to which elections in Wisconsin have been conducted in compliance with the law; now, therefore, be it

Resolved by the assembly, That the Wisconsin Assembly hereby directs the Assembly Committee on Campaigns and Elections to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.

(END)

Michael Gableman
Special Counsel
WI State Assembly Committee
on Elections and Campaigns



www.WIFraud.com
To report fraud:
262-202-8722

September 30, 2021

Via personal service

Megan Wolfe
Administrator
Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, WI 53707-7984

Re: *Subpoena Deuces Tecum*

Dear Ms. Wolfe:

Please find enclosed and personally served upon you a *subpoena deuces tecum* compelling the production of documents related to the 2020 state and federal election in the City of Green Bay as well as appearing before Special Counsel Mike Gableman to provide testimony on the same subject.

Additionally enclosed is a Witness Fee Voucher. As a witness, under Wisconsin Statutes you are entitled to a witness fee and mileage. After testifying, the witness should fill out the Witness Fee Voucher and send it to Speaker of the Assembly of the State of Wisconsin Robin Vos. Speaker Vos shall then certify the voucher to the department of administration.

Sincerely,

A handwritten signature in black ink, appearing to be "MJG", written over a horizontal line.

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

WISCONSIN STATE ASSEMBLY

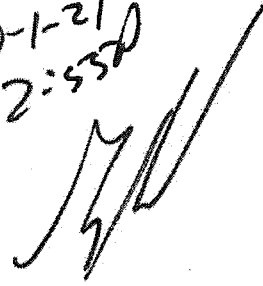
2021-2022 Regular Session

Assembly Committee on Campaigns and Elections

SUBPOENA DUCES TECUM

STATE OF WISCONSIN)
) ss.
COUNTY OF Waukesha County)

THE STATE OF WISCONSIN TO: Megan Wolfe
 Administrator
 Wisconsin Elections Commission
 212 East Washington Avenue, Third Floor
 P.O. Box 7984
 Madison, WI 53707-7984

10-1-21
2:55 PM


PURSUANT TO WIS. STAT. § 13.31 YOU ARE HEREBY COMMANDED TO APPEAR in person before the Special Counsel or his designee on **Friday, October 15, 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.

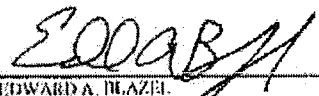
FAILURE TO COMPLY WITH THIS SUBPOENA MAY CONSTITUTE CONTEMPT OF THE LEGISLATURE, PURSUANT TO WIS. STAT. § 13.26(1)(C) AND IS SUBJECT TO PUNISHMENT, INCLUDING IMPRISONMENT, PURSUANT TO WIS. STAT. § 13.27.

Dated at Madison, Wisconsin this 28 Day of September 2021.

WISCONSIN STATE ASSEMBLY

By: 

REP. JOHN VOS, SPEAKER
Wisconsin State Assembly

By: 

EDWARD A. BLAZEK
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 committee.
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:
 - a. 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.
 - b. 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 committee to assess your claim of privilege, protection, or exemption.
- a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. Failure to strictly comply with these provisions constitutes waiver of any asserted privilege, protection, or exemption.
9. The committee does not recognize 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 chair of the committee 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 committee, 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 committee since the date of receiving the committee's subpoena or in anticipation of receiving the committee's subpoena;
 - f. A statement that all Documents located during the search that are responsive have been produced to the committee 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 committee 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 committee'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:

- 1. Documents shall be produced in their native format with all meta-data intact.
- 2. Documents produced shall be organized, identified, and indexed electronically.
- 3. Only alphanumeric characters and the underscore ("_") character are permitted in file and folder names. Special characters are not permitted.
- 4. Production media and produced Documents shall not be encrypted, contain any password protections, or have any limitations that restrict access and use.
- 5. Documents shall be produced to the committee 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.
- 6. All Documents shall be Bates-stamped sequentially and should not duplicate any Bates-numbering used in producing physical documents.

SCHEDULE B

DEFINITIONS

7. "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.
8. "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.
9. "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.
10. "Committee" means the committee named in the subpoena.
11. "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.
12. "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.
13. "CTCL" means the Center for Tech and Civic Life.
14. "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.
15. "Election" means the November 3, 2020, Wisconsin General Election for, inter alia, President of the United States.

16. "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.
17. 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.
18. "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.
19. "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.
20. "Party" refers to any person involved or contemplating involvement in any act, affair, contract, transaction, judicial proceeding, administrative proceeding, or legislative proceeding.
21. "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.
22. "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.
23. "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.
24. "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.
25. "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 in regard to the Mayors and/or Clerks of the Cities of Madison, Milwaukee, Kenosha, Racine, and Green Bay.
2. All documents and communications between the WEC and 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 WEC and officials or employees of the Cities of Green Bay, Kenosha, Milwaukee, Madison, and Racine and/or any other employee, representative agent or other person affiliated with these cities, regarding or in any way related to the Election.
4. All documents and communications between the WEC and employees of any private corporation, 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.
5. All documents or communications between the WEC 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.

Schedule A

WITNESS FEE VOUCHER

(This section to be completed by the witness)

I, _____, state and affirm that I appeared and gave testimony at a deposition or hearing for the

Special Counsel, Assembly Committee on Campaigns and Elections

Pursuant to a subpoena issued by the (check one):

 X Assembly of the State of Wisconsin
 Senate of the State of Wisconsin

Number of the days on which I gave testimony: _____

Miles travelled (one-way) to attend the deposition or hearing: _____

(witness signature)

(address)

Date: _____

Mail or deliver to the Special Counsel at the address to which the subpoena directs the Sergeant at Arms to make return

(This section for use by the legislature only)

I certify that the above-named witness travelled the indicated number of miles to attend a deposition or hearing to give testimony for the indicated number of days.

(special counsel's signature)

WISCONSIN STATE ASSEMBLY

2021-2022 Regular Session

Assembly Committee on Campaigns and Elections

SUBPOENA FOR DEPOSITION

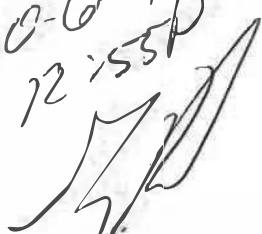
STATE OF WISCONSIN)

) ss.

COUNTY OF WAUKESHA)

THE STATE OF WISCONSIN TO:

Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, WI 53707-7984

10-6-21
12:55P


PURSUANT TO WIS. STAT. § 13.31 YOU ARE HEREBY COMMANDED TO CAUSE the person most knowledgeable in regard to the November 2020 General Election in Wisconsin (the "Election") 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 including, *but not limited to*, potential irregularities and/or illegalities related to the Election, including the Topics of Testimony (Exhibit A).

You are further commanded that your designee or representative bring with her 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 B, 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 ~~Madison~~ Plain Wisconsin this 4th day of Oct 2021.

WISCONSIN STATE ASSEMBLY

By: 

REP. ROBIN VOS, SPEAKER
Wisconsin State Assembly

By: 

EDWARD A. BLAZIEL, 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

TOPICS OF TESTIMONY

The entity on which the attached subpoena was served must designate an official, officer, director, or managing agent who consents to testify on its behalf. Such individual shall testify as to matters known or reasonably available to the organization on the following topics.

These topics of testimony are limited to the time period from January 1, 2020 to current:

1. The 2020 Election in Wisconsin.
2. Public and private funding of local municipal entities including but not limited to Milwaukee, Kenosha, Green Bay, Racine, and Madison during 2020 related to the Election in Wisconsin.
3. The Election in Wisconsin including but not limited to the election administration by the “Wisconsin 5 cities”—Racine, Kenosha, Green Bay, Milwaukee and Madison.
4. All Wisconsin Election Commission 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.
5. Wisconsin Election Commission communications with Center for Tech and Civic Life or its employee Tiana Epps-Johnson, The National Vote At Home Institute or its employee Michael Spitzer Rubenstein, The Elections Group or its employee Ryan Chew, Ideas42, Power the Polls, Mikva Challenge, US Digital Response, Center for Civic Design, Center for Election and Innovation Research (CEIR), Center for Secure and Modern Elections (CSME) 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 them, regarding or in any way related to the Election in Wisconsin.
6. In-person voting processes in the 2020 election in the Wisconsin 5 cities of Green Bay, Madison, Racine, Kenosha and Milwaukee as compared to statewide.
7. Absentee voting processes in the 2020 election in the Wisconsin 5 cities of Green Bay, Madison, Racine, Kenosha and Milwaukee as compared to statewide.
8. Voter education programs in the 2020 election in the Wisconsin 5 cities of Green Bay, Madison, Racine, Kenosha and Milwaukee as compared to statewide.

EXHIBIT B

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

1. All Wisconsin Election Commission documents relating to public and private funding of local municipal entities including but not limited to Milwaukee, Kenosha, Green Bay, Racine, and Madison that they received during 2020 related to the Election in Wisconsin.
2. All documents relating to the Election in Wisconsin including but not limited to documents relating to the election administration by the "Wisconsin 5 cities"—Racine, Kenosha, Green Bay, Milwaukee and Madison.
3. All written communications, including electronic communications, with 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.
4. All documents and communications between the Wisconsin Election Commission and its employees and employees of any private corporation, 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.
5. All documents or communications between the Wisconsin Election Commission and its employees 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.



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-2247/1
MPG:skw

2021 ASSEMBLY RESOLUTION 15

March 17, 2021 – Introduced by Representatives SANFELIPPO, BRANDTJEN, MURPHY, ROZAR, THIESFELDT and TUSLER. Referred to Committee on Rules.

1 **Relating to:** directing the Assembly Committee on Campaigns and Elections to
2 investigate the administration of elections in Wisconsin.

3 Whereas, the ability of American citizens to exercise their right to vote is
4 foundational to our representative democracy; and

5 Whereas, the legitimacy of the American form of government depends on the
6 citizens' widespread confidence in the fairness of elections and acceptance of election
7 results; and

8 Whereas, preserving the integrity of the electoral process is one of our
9 government's most important responsibilities; and

10 Whereas, the administration of elections in Wisconsin is governed by an
11 extensive set of duly enacted laws; and

12 Whereas, however, election laws are not self-enforcing but rely on the good
13 faith efforts of election officials to dutifully carry out those laws as written in order
14 to ensure fair elections; and

Whereas, 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; and

Whereas, it is the duty of the Wisconsin Legislature to make laws and to exercise its oversight and investigative authority to determine the extent to which elections in Wisconsin have been conducted in compliance with the law; now, therefore, be it

Resolved by the assembly, That the Wisconsin Assembly hereby directs the Assembly Committee on Campaigns and Elections to investigate the administration of elections in Wisconsin, focusing in particular on elections conducted after January 1, 2019.

(END)

Schedule A

WITNESS FEE VOUCHER

(This section to be completed by the witness)

I, _____, state and affirm that I appeared and gave testimony at a deposition or hearing for the

Special Counsel. Assembly Committee on Campaigns and Elections

Pursuant to a subpoena issued by the (check one):

 X Assembly of the State of Wisconsin
 Senate of the State of Wisconsin

Number of the days on which I gave testimony: _____

Miles travelled (one-way) to attend the deposition or hearing: _____

(witness signature)

(address)

Date: _____

Mail or deliver to the Special Counsel at the address to which the subpoena directs the Sergeant at Arms to make return

(This section for use by the legislature only)

I certify that the above-named witness travelled the indicated number of miles to attend a deposition or hearing to give testimony for the indicated number of days.

(special counsel's signature)



**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

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)



JANEL BRANDTJEN

STATE REPRESENTATIVE



Rep. Brandtjen Does Not Support Immunity for Mayors

For more information contact:
Rep. Brandtjen (414) 915-8425

October 11, 2021

MADISON - State Representative Janel Brandtjen (R-Menomonee Falls) issued the following statement regarding Justice Gableman's subpoenas to five Wisconsin mayors:

"Justice Michael Gableman does not speak for myself or for the Wisconsin Assembly's Campaigns and Elections Committee. The current subpoenas have not been approved by the Assembly's Campaigns and Elections Committee that Justice Gableman is supposed to serve, nor have the subpoenas even been submitted to the committee. Like the public, the committee members learn of Justice Gableman's actions by radio interviews, newspaper reports and YouTube videos. His videos must have had approved spending by the speaker, as I have not approved them.

I do not approve of the current list of subpoenas to the five Wisconsin Mayors, as this provides immunity to them in any trial or criminal proceedings. Mayor Genrich of Green Bay allowed a non-profit group to operate central count, provided this non-profit group keys to central count, and issued a city ID to a partisan operative from New York. He has committed dereliction of duty and should be held accountable. Providing him immunity after all the time it has taken to uncover his actions will not serve justice. Speaker Vos stated in an interview that he is okay with providing immunity to these Mayors; I am not.

Justice Gableman has recently defamed the Arizona Audit as ineffectual. If he had read the report, he would have realized they discovered 17,000 duplicate ballots, 23,000 mail-in ballots from people who no longer live at the listed address, and 9,000 more mail-in ballots received than sent. We are not questioning how many ballots were counted; we are questioning the number of ballots that may be fraudulent.

Justice Gableman and Speaker Vos continue to dismiss the need for a similar audit of physical ballots and voting machines in Wisconsin. The Wisconsin Elections Commission does not consider routers and splunk logs as part of the election materials, but they were recently made available at the Arizona audit. Until we address these issues, questions will remain about tabulator hacking. Even Justice Gableman seems to find it difficult to have a "comprehensive understanding of how elections work." A cyber forensic audit, including the recounting of physical ballots and an audit of the machines, would finally rebuild trust in Wisconsin elections."

###

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Exhibit E