

STATE OF WISCONSIN  
IN SUPREME COURT

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Case No.

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ATTORNEY GENERAL  
JOSH KAUL,

Petitioner,

v.

ELON MUSK and  
AMERICA PAC,

Respondents.

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**MEMORANDUM IN SUPPORT OF EMERGENCY  
PETITION FOR ORIGINAL ACTION AND  
EMERGENCY MOTION FOR TEMPORARY  
INJUNCTION**

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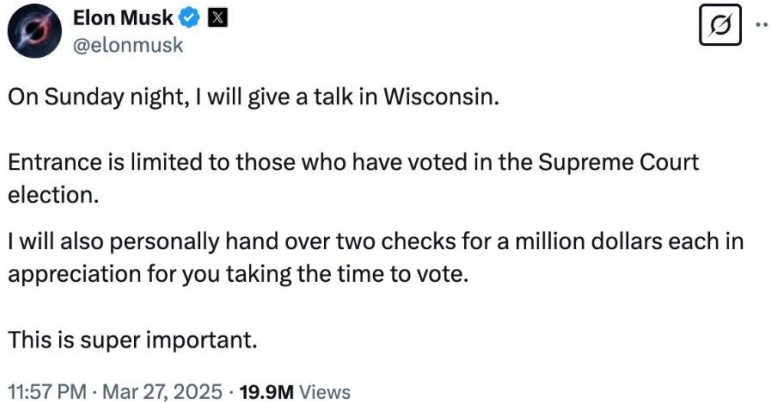
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## ISSUE PRESENTED

On March 27, 2025, Respondent Elon Musk posted this statement to his X.com account:



The issue presented is whether Respondents should be enjoined from making these \$1 million payments. They should be.

## INTRODUCTION

Wisconsin law prohibits offering anything of value to induce anyone to vote. Yet, Elon Musk did just that. He posted on his social media platform, X.com, that he planned to “personally hand over” \$1 million checks to a pair of voters who had cast their ballots in the spring election.

Musk’s offer to pay \$1 million to two Wisconsin electors, specifically conditioned on their having voted in the upcoming election, is a violation of Wis. Stat. § 12.11. And while Musk “clarify[ied]” in a subsequent post that entrance to his talk “is limited to those who have signed” a petition and that he would “hand over checks for a million dollars to 2 people to be spokesmen for the petition,” that does not absolve these payments. Even if Musk had not made the first post, a reasonable inference could be drawn that the offer of two \$1 million payments just two days before the 2025 spring election was intended not simply to encourage people to sign a petition but to induce electors to vote. But in conjunction

with the first post—in which Musk specifically asserted that the payments were “in appreciation for you taking the time to vote”—there can be no serious question that the payments are intended to induce electors to vote.

This petition is based on facts in the public domain and presents a legal issue of great public importance that calls for urgent and authoritative resolution. This Court should grant the petition for that reason.

This Court should also issue an immediate temporary injunction to stop respondents from violating Wis. Stat. § 12.11. Injunctive relief is warranted under both the general standard for injunctive relief and the statute specific to injunctions for election law violations. Musk’s giveaway is scheduled to occur at an event this evening, March 30, 2025, at 6:30 p.m., and Attorney General Kaul requests this emergency relief before the start of Respondents’ scheduled event.

## **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Although this case would warrant oral argument under ordinary circumstances, Petitioner respectfully requests that the Court resolve this urgent dispute without it. Publication is also unnecessary given that the legal questions presented are straightforward and settled.

## **STATEMENT OF THE CASE**

### **I. Statutory background.**

Wisconsin Stat. § 5.07 provides:

Whenever a violation of the laws regulating the conduct of elections or election campaigns, other than a violation of the laws regulating campaign financing, occurs or is proposed to occur, the attorney general or

the district attorney of the county where the violation occurs or is proposed to occur may sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to compel compliance with the law. No bond is required in such actions.

Wisconsin Stat. § 12.11(1m) provides that “[a]ny person who does any of the following violates this chapter:

(a) Offers, gives, lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or immunity to, or for, any elector, or to or for any other person, in order to induce any elector to:

1. Go to or refrain from going to the polls.
2. Vote or refrain from voting.
3. Vote or refrain from voting for or against a particular person.
4. Vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.

(b) Receives, agrees or contracts to receive or accept any money, gift, loan, valuable consideration, office or employment personally or for any other person, in consideration that the person or any elector will, so act or has so acted.

(c) Advances, pays or causes to be paid any money to or for the use of any person with the intent that such money or any part thereof will be used to bribe electors at any election.

## II. Factual and procedural background.

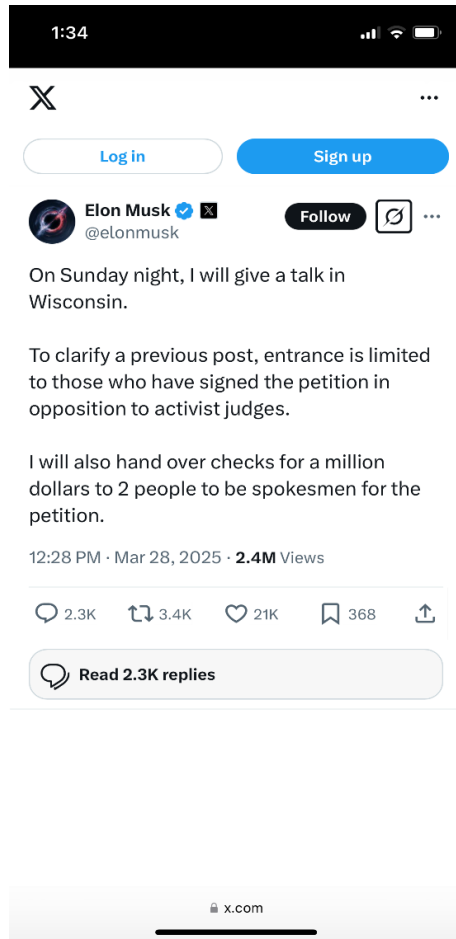
Elon Musk is the founder of America PAC, a federal political action committee. (Petition ¶ 2.)

On March 27, 2025, Musk posted to his X.com account the following statement:



(Petition ¶ 4.) The post was viewed millions of times and was widely reported by the news media. (Petition ¶¶ 5–6.)

On March 28, 2025, Musk's post was taken down and later replaced by a different post:



(Petition ¶¶ 14–15.)

Neither Musk nor America PAC have announced that their plan to pay \$1 million to two Wisconsin electors on Sunday March 30, 2025, has been cancelled. (Petition ¶ 15.)

On Friday, March 28, 2025, Attorney General Kaul filed a summons and complaint in Dane County Circuit court, seeking the same relief sought in this original action. (Ex. A.) He also filed a motion for temporary restraining order and temporary injunction. (Ex. B–D.) The circuit court refused to hear the motion for a temporary restraining order prior to the event on Sunday. The Attorney General sought relief in the court of appeals, which the court of denied *ex parte*, concluding “that the petition fail[ed] to show that the Attorney General is entitled to any form of relief that this court is permitted to provide.” (Ex. F.)

Attorney General Kaul filed a notice of voluntary dismissal of that action, (Ex. G), and now seeks relief in an original action in this Court.<sup>1</sup>

## ARGUMENT

### **I. Respondents’ blatant violation of Wisconsin election law, days before a statewide election, presents a highly important and urgent legal issue warranting this Court’s original jurisdiction.**

In deciding whether to grant a petition for an original action, this Court looks to whether “a judgment by the court significantly affects the community at large.” *Wisconsin Prof’l Police Ass’n, Inc. v. Lightbourn*, 2001 WI 59, ¶ 4, 243 Wis. 2d 512, 627 N.W.2d 807. The exercise of original jurisdiction is warranted when “the questions presented are of such importance as under the circumstances to call for a [ ] speedy and authoritative determination by this court in the first instance.” *Petition of Heil*, 230 Wis. 428, 50 284 N.W. 42 (1938). The Court favors cases involving pure questions of law where “no fact-finding procedure is necessary.” *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 683, 264 N.W.2d 539 (1978); *see also* Sup. Ct. Int. Op. Pro. III. B.3.

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<sup>1</sup> This action is not precluded by any prior action. Claim preclusion requires, among other elements, that prior litigation resulted in a final judgment on the merits by a court with jurisdiction. *Kruckenbergh v. Harvey*, 2005 WI 43, ¶ 21, 279 Wis. 2d 520, 694 N.W.2d 879. Here, no prior case resulted in a final judgment on the merits. Indeed, no court has reviewed the merits of Petitioner’s claim.



This petition squarely meets this Court’s standard for original jurisdiction because the legal issue is of great public importance and calls for urgent and authoritative resolution. Further, the relevant facts are pulled directly from the public domain and cannot be disputed.

Respondents’ offer to pay \$1 million to two Wisconsin electors, specifically conditioned on their having voted in the upcoming spring election, is an issue that “significantly affects the community at large.” *Wisconsin Prof’l Police Ass’n*, 243 Wis. 2d 512, ¶ 4. It is blatantly unlawful under Wis. Stat. § 12.11, but more than that, it erodes public confidence in what is expected to be a close and highly consequential election. This Court has long recognized that “[t]he purity and integrity of elections” is a matter of “prime importance,” *State v. Conness*, 106 Wis. 425, 289, 82 N.W. 288 (1900). Wisconsin’s core interests in election integrity are near its zenith when the world’s richest man undertakes such an audacious effort to influence voting through monetary awards. “No body politic worthy of being called a democracy entrusts the selection of leaders to a process of auction or barter.” *Brown v. Hartlage*, 456 U.S. 45, 54 (1982).

Further, resolution of this legal issue is urgent. Respondents have promised to give away the \$1 million prizes at an event scheduled to begin at 6:30 p.m. this evening, March 30, 2025. If this Court does not take prompt action, and the prizes are awarded, the injury to public confidence in the validity of this election cannot be undone. The circumstances are exigent and necessitate a “speedy and authoritative determination” from this Court. *Petition of Heil*, 230 Wis. at 50.

And the Petition presents pure legal issues that require no factual development. All relevant facts involve the public actions of the parties; they are matters of public record that cannot be disputed.

This Court should exercise its original jurisdiction over this Petition.

**II. This Court should issue an immediate injunction to stop Respondents from violating Wis. Stat. § 12.11.**

A temporary injunction is warranted where the movant shows that (1) it has a reasonable probability of success on the merits; (2) it is likely to suffer irreparable harm absent the temporary injunction; (3) it has no other adequate remedy at law; and (4) a temporary injunction is necessary to preserve the status quo. *Serv. Emps. Int’l Union, Loc. 1 v. Vos* (“SEIU”), 2020 WI 67, ¶ 93, 393 Wis. 2d 38, 946 N.W.2d 35.

In the election law context, there is a special statute authorizing injunctions. Wisconsin Stat. § 5.07 authorizes the attorney general or district attorneys to “sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to compel compliance with the law” “[w]henever a violation of the laws regulating the conduct of elections or election campaigns . . . occurs or is proposed to occur.” Wis. Stat. § 5.07.

An action brought under this statute is an action brought in the public interest, to restrain ongoing or threatened violations of Wisconsin election law. In this case the election law at issue is Wis. Stat. § 12.11, which forbids offering anything of value to or for any elector to induce the elector to go to the election polls, or to vote or refrain from voting. Wis. Stat. § 12.11(1m)(a)1., 2.

In his March 27 post, Musk invited any and all Wisconsin electors to come to his “talk” in Wisconsin on Sunday night. But, according to his original post, they can enter the event only if they have voted in the spring election. This clearly was designed to induce electors to vote in the ongoing election so that they may enter his event. But Musk went further. He also promised that he would personally

“hand over two checks for a million dollars each *in appreciation for you taking the time to vote.*” (Petition ¶ 4 (emphasis added).) In other words, Musk announced that if an elector votes in the spring election prior to the event referenced in his post, the elector can attend the event and possibly be given \$1 million.

Musk expressly asserts that the payments would be “in appreciation for taking the time to vote,” not for any other purpose or reason. And Musk need not have asked participants to vote for any particular candidate. Wis. Stat. § 12.11 is violated if something of value is given or promised to induce someone to vote (or not vote). *See State v. Huff*, 2009 WI App 92, ¶ 6, 319 Wis. 2d 258, 769 N.W.2d 154 (upholding conviction of defendant who drove undercover officers to a polling station and paid them \$5.00 after they exited the station and showed “I Voted” stickers.).

Musk violated Wis. Stat. § 12.11 even though he took down the original post and posted a new statement that the planned \$1 million payments would be made to two attendees who signed a petition against “activist judges.” Attempting to refashion the payments does not absolve Respondents when the original intent of the payment was so clearly to induce electors to vote. Musk cannot unring the bell.

**A. Attorney General Kaul is highly likely to succeed on the merits.**

Attorney General Kaul is likely to succeed on the merits of a claim that Musk and America PAC violated Wis. Stat. § 12.11. As explained, Musk’s announcement of his plan to pay \$1 million to two Wisconsin electors who attend his event this evening, specifically conditioned on their having voted in the upcoming spring election, is a blatant violation of Wis. Stat. § 12.11.

Laws prohibiting the buying of votes are commonplace. At least twenty-four states have similar statutes prohibiting vote buying.<sup>2</sup> The United States prohibits the practice as well. *See* 42 U.S.C. § 1973i(c); 18 U.S.C. § 597.

As the Supreme Court recognized in *Brown v. Hartlage*, “States have a legitimate interest in preserving the integrity of their electoral process.” *Brown*, 456 U.S. at 52. To that end, a state may surely prohibit a candidate from buying votes, as “[n]o body politic worthy of being called a democracy entrusts the selection of leaders to a process of auction or barter.” *Id.* at 54. And as a state “may prohibit the giving of money or other things of value to a voter in exchange for his support, it may also declare unlawful an agreement embodying the intention to make such an exchange,” without running afoul of any right protected by the First Amendment. *Id.* at 54–55.

Musk’s actions violated Wis. Stat. § 12.11. The fact that he attempted to recast his original illegal offer in a different post should not insulate him from the relief sought.

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<sup>2</sup> Ariz. Rev. Stat. § 16–1006; Fla. Stat. § 104.061; Idaho Code Ann. § 18–2305; Kan. Stat. Ann. § 25–2409; Me. Rev. Stat. Ann. tit. 17–A, § 602; Mass. Gen. Laws ch. 56, § 32; Minn. Stat. § 211B.13; Mont. Code Ann. § 45–7–101; Neb. Rev. Stat. § 32–1536; Nev. Rev. Stat. § 293.700; N.H. Rev. Stat. Ann. § 659:40; N.J. Rev. Stat. Ann. § 19:34–25; N.M. Stat. Ann. § 1–20–11; Ohio Rev. Code Ann. § 3599.02; Okla. Stat. § 26–16–106; 25 Pa. Stat. Ann. § 3539; R.I. Gen. Laws § 17–23–5; S.C. Code Ann. § 7–25–60; Tenn. Code Ann. § 2–19–126; Tex. Penal Code § 36.02; Utah Code Ann. § 20A–1–601; Vt. Stat. Ann. tit. 17, § 2017; Va. Code Ann. § 24.2–1007; Wash. Rev. Code § 29.85.060; Wyo. Stat. Ann. § 22–26–109. *United States v. Bowling*, No. CRIM.A. 6:09-16-DCR, 2010 WL 5067698, at \*6 n.1 (E.D. Ky. Dec. 7, 2010), *aff’d sub nom. United States v. Adams*, 722 F.3d 788 (6th Cir. 2013).

**B. Irreparable harm will result unless temporary relief is granted.**

Without immediate temporary relief stopping the payment of monies at this evening's event, irreparable harm will result.

"Irreparable harm is that which is not adequately compensable in damages." *Allen v. Wis. Pub. Serv. Corp.*, 2005 WI App 40, ¶ 30, 279 Wis. 2d 488, 694 N.W.2d 420. "[B]ut at the temporary injunction stage the requirement of irreparable injury is met by a showing that, without it to preserve the status quo pendente lite, the permanent injunction sought would be rendered futile." *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis. 2d 513, 520, 259 N.W.2d 310 (1977).

Defendants planned payment is scheduled to occur this this evening—March 30, 2025. The event has been widely publicized. Without emergency relief from this Court, Respondents will be able to go forward with their plan that would violate Wis. Stat. § 12.11, causing irreparable harm to the public interest. *See generally Pure Milk Prod. Co-op. v. Nat'l Farmers Org.*, 90 Wis. 2d 781, 800, 280 N.W.2d 691 (1979) (court must consider whether "on balance equity favors issuing the injunction"). To help ensure "[c]onfidence in the integrity of the electoral process" and the "orderly administration" of this election, it is critical that the Court address this matter prior to the event this evening. *See Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196–97 (2008) (Stevens, J.) (plurality op.).

**C. There is no other adequate remedy at law; a temporary injunction is necessary to preserve the status quo.**

An immediate injunction is the only adequate remedy in this case; no other remedy will prevent the illegal payments

from occurring this evening. Preventing Respondents from making these payments will be necessary to maintain the status quo if this Court further considers whether Respondents' planned payment of voters to vote is legal. *See Werner*, 80 Wis. 2d at 520–21.

## CONCLUSION

This Court should grant the petition for original action and issue an immediate temporary injunction (1) prohibiting Respondents from further promoting the million-dollar giveaway to attendees of the planned event on Sunday, March 30, 2025, (2) prohibiting Respondents from making any payments to Wisconsin electors to vote, and (3) prohibiting all actions by Respondents taken in furtherance of a planned violation of Wis. Stat. § 12.11.

Dated this 30th day of March 2025.

Respectfully submitted,

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Attorney General of Wisconsin

Electronically signed by:

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## **CERTIFICATE OF EFILE/SERVICE**

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

I further certify that a copy of the above document was emailed to counsel for the Defendants at the time of filing.

Dated this 30th day of March 2025.

Electronically signed by:

Karla Z. Keckhaver  
KARLA Z. KECKHAVER  
Assistant Attorney General