

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN K. MACIVER INSTITUTE
FOR PUBLIC POLICY and
WILLIAM OSMULSKI,

Plaintiffs,

v.

Case No. 19-CV-0649

TONY EVERS, in his official capacity as
Governor of the State of Wisconsin,

Defendant.

DECLARATION OF MELISSA BALDAUFF

1. I am a Deputy Chief of Staff in the Office of Governor Tony Evers (the “Office”). I lead the Office’s communications department. I have held this position since January 7, 2019.

2. In that capacity, I regularly coordinate communications between the Office and members of the press.

3. The press generally has access to the Office in four ways: (a) public events, (b) press conferences and other press-specific events, (c) press briefings, and (d) one-on-one meetings with the Governor or staff.

Public Events

4. Some Office events are entirely open to the public. These public events also can include press availability, also known as a “press avail,” which is an additional opportunity for press to ask questions directly of the Governor or other Office staff, usually after the publicly attended event.

5. One example of this is the Governor’s appearance at the opening ceremonies of the 2019 Wisconsin State Fair, which included a press avail. Another example is the budget listening sessions held across the state, which included press avails.

6. Public events are announced in several different ways. One way of providing information to the public is through social media channels. The Office uses Facebook, YouTube, and Twitter to announce public events. Anyone can follow the Governor on these social media platforms. I am not aware of the Governor’s Office ever blocking any user or censoring public comment on any of these platforms.

7. Press releases are another way the Office alerts the public about upcoming public events. Anyone can sign up on the Office’s website (evers.wi.gov) to receive press releases via email. Press releases are delivered directly to requesters’ email accounts as soon as the press release is issued.

8. Additionally, if another agency, official, or organization is the host of an event, they would primarily handle the invitations or public notification.

Press Conferences and Other Press-Specific Events

9. Press conferences and other press-exclusive events serve to highlight different Governor initiatives and to allow media to learn more about the Governor's plans or priorities so they can report back to the public. These events also can include press avails.

10. An example of this type of event is the Governor's tour of the University of Wisconsin Milwaukee School of Freshwater Sciences, where the Governor was invited to tour that facility, journalists were present, and a press avail was held.

11. For these events, an open invitation to the public is not practical. There are multiple reasons for this: (a) space or capacity at the venue may be limited; (b) security concerns for the Governor or other dignitaries in attendance; or (c) the venue may be private property, with its own facility rules.

12. Also, some events implicate unique considerations, such as privacy concerns. For example, if an appearance is at a healthcare facility, there are likely additional privacy considerations that would make unmanaged public invitation impossible.

13. One way that members of the media are alerted to these types of events is via notification from our communications department, which maintains a media advisory email list.

14. The media advisory email list is used to alert a wide array of media representatives to different events throughout the state, including press conferences, so that regardless of the location, there are local media representatives notified of the opportunity for press coverage. Attendees are asked to RSVP to the Office's communications department, which allows the Office and security personnel to effectively plan and prepare for the event.

15. The media advisory list is not the only way in which the press may be alerted to media events involving the Office. Depending on the type of event, our office may directly reach out to members of the press from a specific area of the state or those who tend to cover a particular subject matter related to the event.

16. Additionally, if another agency, elected official, or organization is the host of the event, they would primarily handle invitations and monitor attendance. For example, when legislative Democrats hosted a press conference about Medicaid expansion, they handled the invitations and media advisories.

17. Immediately after Governor Evers's inauguration, our communications department compiled a list of email recipients to serve as the Office's media advisory list. This list was built on a list of email recipients put together during the campaign, which is why some non-media individuals or groups were included on the list. This version of the media advisory list—which is the version Plaintiffs attached to their complaint—is no longer used.

18. In June 2019, the Governor's Office of Legal Counsel provided a memorandum outlining a set of neutral factors for the communications department to apply when determining whether a requester should be added to the media advisory list or considered "media" for purposes of access to any press-specific events. The standards in the memorandum are based on standards provided by the Wisconsin Capitol Correspondents Board, as adopted by the Wisconsin Legislature, as well as standards set by the United States Congress. A true and correct copy of this memorandum is attached as Exhibit 1.

19. As a result of the guidance from the Office of Legal Counsel, the list has substantially changed. A true and correct copy of the media advisory list as of September 17, 2019, is attached as Exhibit 2.

20. The current list includes numerous bona fide journalists and news organizations, including outlets usually perceived as "conservative leaning,"

such as the Washington Times, Wall Street Journal, and Fox News, as well as others usually perceived as “liberal leaning,” such as the Capitol Times, the New York Times, and the Huffington Post.

21. The MacIver Institute, including its employees, do not qualify as bona fide press under our adopted standards for press-specific events.

22. The MacIver News Service and William Osmulski are not included on the medial advisory list and are not invited to press-specific events because their practices run afoul of the neutral factors adopted by our communications department.

23. The MacIver Institute is not principally a news organization. On its website, the organization characterizes itself as “a Wisconsin-based think tank that promotes free markets, individual freedom, personal responsibility and limited government.” The organization’s “news” branch makes no effort to distinguish itself from the overall organization mission. See <http://www.maciverinstitute.com/about-us/>, last accessed on September 17, 2019.

24. In addition, based on my experience with media and politics, it is my understanding that MacIver Institute engages in policy advocacy and lobbying. For example, in June 2017, MacIver Institute joined “44 other free market groups and individuals” in urging the United States Senate to repeal

all Obamacare taxes. See <http://www.maciverinstitute.com/2017/06/maciver-joins-45-conservative-groups-and-activists-urging-senate-to-repeal-all-obamacare-taxes/>, last accessed on September 17, 2019; see also <https://www.wisgop.org/2019-state-convention/> (Wisconsin GOP annual convention; media panel with MacIver journalist Matt Kittle discussing the “effective messaging techniques, and the issues that will motivate voters in 2020”).

25. MacIver Institute’s political advocacy, lobbying activity, and status as a think tank demonstrate that MacIver Institute is not a bona fide press organization under the standards adopted by the Office.

26. Even before the issuance of guidance from the Office of Legal Counsel, I did not grant MacIver Institute’s request to be added to our media advisory list because even before formal guidance, the communication department’s intent was to have a list designed to include bona fide journalists.

27. Without some distinction between media and non-media, the media advisory list would be virtually indistinguishable from any public mailing list. The distinction matters because bona fide journalists can be expected to adhere to widely recognized professional standards, such as honoring embargoes (which are requests that provided information will not be

made public until a designated time) and respecting the distinction between off-the-record and on-the-record communications.

28. MacIver Institute is not the only organization that has not been added to the Office's media advisory list despite requests to be included. For example, the Wisconsin Examiner was denied inclusion because the organization has not been established long enough to meet the criteria.

29. The MacIver Institute's self-described viewpoint is not the basis for its exclusion from the media advisory list. Rather, the issue is that they do not meet the established standards designed to determine whether a requester is a qualifying (i.e., bona fide) media organization.

Press Briefings

30. The Office has also provided the opportunity for smaller groups of media representatives to interact with the Governor or staff in the form of a "briefing." These events are typically offered as a courtesy to members of the press so that they might have additional background before the release of large-scale initiatives. These are off-the-record events, which means that the information provided is not intended for public release or as an official representation or statement.

31. An example of this type of small-scale event is the 2019 budget briefing that occurred on February 28, 2019. That was an invitation-only event

for a small group of journalists. It was an opportunity to introduce the Governor's 2019-2020 Executive Budget in advance of public release so that invited journalists could provide comprehensive press coverage contemporaneously with the budget's public release. The Governor was not present for that event. Rather, state employees from the State Budget Office previewed the items.

32. Invitations for press briefings like this would not go out via the media advisory list.

33. I am not aware of any similar briefing events since the February 28, 2019, briefing.

34. If the Office were to host future briefings, invitees would not only have to meet the guidelines underlying the media advisory list; they would also have to have a readership or viewership that justifies inclusion. While this is partially a matter of the size of readership or viewership, we might also consider additional factors, such as subject-matter specialty. For example, a briefing on education issues might include journalists from a university publication.

35. Additionally, outlets that routinely cover capitol matters, including outlets that are on the Capitol Correspondents list, may be included. A true and correct copy of the Capitol Correspondents list is attached as Exhibit 3.

36. The Office does not determine who is included on the Capitol Correspondents list. It is my understanding that the Capitol Correspondents list is not necessarily the same as the larger listing of individuals who have received press credentials from the Legislature. The Office does not determine who is given credentials to cover the Legislature.

37. The communications department did not invite MacIver Institute to the February 28, 2019, event. As such, they were not admitted, despite having apparently learned about the event from invited journalists.

38. Jason Stein, current Research Director of the Wisconsin Policy Forum and former reporter for the Milwaukee Journal Sentinel and Wisconsin State Journal, similarly asked to attend that event and was denied admission because he is not a member of one of the invited press organizations and is no longer employed as a journalist. A true and correct copy of my texts to and from Mr. Stein are attached as Exhibit 4.

One-on-one meetings

39. Finally, the Governor or his staff sometimes grants a face-to-face interview with a reporter, just as they may have meetings with members of the public, advocacy organizations, and even registered lobbyists. The difference with the former, as opposed to the latter, is the shared understanding of the

terms of the meeting regarding journalist practices, such as embargos and the on-the-record/off-the-record distinction.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury, under the laws of the United States, that the foregoing is true and correct to the best of my knowledge.

Dated this 17th day of September, 2019.

s/ Melissa Baldauff
MELISSA BALDAUFF