

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

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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.

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**DEFENDANT’S RESPONSE TO PLAINTIFFS’  
PROPOSED FINDINGS OF FACTS SUPPORTING  
MOTION FOR PRELIMINARY INJUNCTION**

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1. The MacIver Institute is a 501(c)(3) nonpartisan, nonprofit organization based in Madison, Wisconsin (Healy Affidavit, 2).

**RESPONSE NO. 1:** Defendant disputes that MacIver Institute is “nonpartisan.” MacIver Institute is a strong supporter of a cause—it characterizes itself as “a Wisconsin-based think tank that promotes free markets, individual freedom, personal responsibility and limited government”—and it engages in political advocacy and lobbying activity in support of that cause. (Baldauff Decl. ¶¶ 23–25.) For the purposes of the preliminary injunction only, Defendant does not dispute the remaining facts in this paragraph.

2. The MacIver Institute bills itself as “the Free Market Voice for Wisconsin” (Healy Affidavit, 3).

**RESPONSE NO. 2:** For the purposes of the preliminary injunction only, Defendant does not dispute.

3. The MacIver Institute sponsors research and scholarship and the MacIver News Service, an accredited team of journalists who cover important stories related to state and local government in Wisconsin (Healy Affidavit, 4).

**RESPONSE NO. 3:** Defendant disputes that MacIver News Services’ journalists are “accredited.” MacIver News Services is not a bona fide news organization (Baldauff Decl. ¶¶ 21–25), and whether individual journalists who work for MacIver are “accredited” is irrelevant. For the purposes of the preliminary injunction only, Defendant does not dispute the remaining facts in this paragraph.

4. None of the Institute’s employees are registered to lobby on any pending rules or legislation (Healy Affidavit, 5).

**RESPONSE NO. 4:** Defendant does not dispute, but this proposed fact is irrelevant to whether MacIver Institute engages in political advocacy and is a bona fide news organization. MacIver Institute is a strong supporter of a cause and engages in political advocacy and lobbying activity in support of that cause. (Baldauff Decl. ¶¶ 23–25.)

5. Last year (2018) the MacIver Institute won a bronze award in the “Excellence in Journalism” competition from the Milwaukee Press Club for their long-form, hard-news reporting (Healy Affidavit, 6).

**RESPONSE NO. 5:** For the purposes of the preliminary injunction only, Defendant does not dispute.

6. MacIver is credentialed by the Wisconsin State Legislature to cover its activities (Healy Affidavit, 7).

**RESPONSE NO. 6:** For the purposes of the preliminary injunction only, Defendant does not dispute.

7. Neither William Osmulski nor any other MacIver journalist has ever been ejected from a press conference for being disruptive or disrespectful (Healy Affidavit, 8; Osmulski Affidavit, 12).

**RESPONSE NO. 7:** For the purposes of the preliminary injunction only, Defendant does not dispute.

8. Osmulski is the news director for the MacIver Institute (Osmulski Affidavit, 1).

**RESPONSE NO. 8:** For the purposes of the preliminary injunction only, Defendant does not dispute.

9. Osmulski previously worked as an award-winning television news reporter or editor in Milwaukee, Madison, and Eau Claire (Osmulski Affidavit, 2-3). He currently produces a public-affairs show for WVCY-TV 30 in Milwaukee (Osmulski Affidavit, 4).

**RESPONSE NO. 9:** For the purposes of the preliminary injunction only, Defendant does not dispute.

10. Tony Evers is Governor of Wisconsin.

**RESPONSE NO. 10:** Defendant does not dispute.

11. Governor Evers regularly holds press conferences to answer questions from news media (see examples in Exhibit 2).

**RESPONSE NO. 11:** For the purposes of the preliminary injunction only, Defendant does not dispute.

12. Governor Evers also regularly holds public events after which he will answer questions from news media (sometimes called a media avail or gaggle in the industry) (see examples in Exhibit 2).

**RESPONSE NO. 12:** For the purposes of the preliminary injunction only, Defendant does not dispute.

13. Governor Evers advises over 1,000 media outlets and others of these events by emails that are sent by his press staff to an electronic media- advisory listserv (see Exhibit 1, the list of recipients of the listserv, and Exhibit 2, several example media advisories; both exhibits were obtained through public records requests).

**RESPONSE NO. 13:** Defendant objects to this proposed fact because the evidentiary source lacks sufficient foundation to support these statements. Fed. R. Evid. 602. Notwithstanding and without waiving this objection, Defendant does not dispute that Governor Evers uses an electronic media advisory listserv to advise media outlets and others of events but disputes that Plaintiff's Exhibit 1 is the current media advisory list. (Baldauff Decl. ¶¶ 13, 14, 17–20.)

14. From the beginning of the Evers administration in January, Osmulski and his former MacIver colleague Matt Kittle have requested numerous times to be on the media-advisory listserv, and the Governor continues to exclude them from this listserv (Osmulski Affidavit, 5).

**RESPONSE NO. 14:** Defendant objects to this proposed fact because the evidentiary source lacks sufficient foundation to support these statements. Fed. R. Evid. 602. Notwithstanding and without waiving this objection and for the purposes of the preliminary injunction only, Defendant does not dispute.

15. On Thursday, February 28, 2019, the Governor's office hosted a press briefing for the Capitol press corps several hours before the Governor announced the biennial budget (Exhibit 3).

**RESPONSE NO. 15:** Defendant objects to this proposed fact because the evidentiary source lacks sufficient foundation to support these statements. Fed. R. Evid. 602. Notwithstanding and without waiving this objection and for the purposes of the preliminary injunction only, Defendant does not dispute.

16. During this meeting, Capitol beat reporters were given early access to key budget documents and the opportunity to ask questions of top administration officials (Exhibit 3).

**RESPONSE NO. 16:** Defendant objects to this proposed fact because the evidentiary source lacks sufficient foundation to support these statements. Fed. R. Evid. 602. Notwithstanding and without waiving this objection and for the purposes of the preliminary injunction only, Defendant does not dispute.

17. MacIver journalists did not receive notification of the briefing (Osmulski Affidavit, 6).

**RESPONSE NO. 17:** For the purposes of the preliminary injunction only, Defendant does not dispute.

18. MacIver journalists heard about it from other reporters and emailed the Governor's press staff with their RSVP (Osmulski Affidavit, 7).

**RESPONSE NO. 18:** For the purposes of the preliminary injunction only, Defendant does not dispute.

19. When they went to the room where the briefing was held, the MacIver journalists were stopped by staff and told they were not on the RSVP list (Oslumski Affidavit, 8).

**RESPONSE NO. 19:** For the purposes of the preliminary injunction only, Defendant does not dispute.

20. When they asked whom they could speak to about this, they were told that the relevant staffer (Melissa Baldauff, the Governor's deputy chief of staff responsible for communications) was unavailable, but that they could email or call her (Osmulski Affidavit, 9).

**RESPONSE NO. 20:** For the purposes of the preliminary injunction only, Defendant does not dispute.

21. Kittle and Osmulski were not permitted in the briefing (Osmulski Affidavit, 10).

**RESPONSE NO. 21:** For the purposes of the preliminary injunction only, Defendant does not dispute.

22. The MacIver journalists subsequently contacted Baldauff several times, and never received a response (Osmulski Affidavit, 11).

**RESPONSE NO. 22:** For the purposes of the preliminary injunction only, Defendant does not dispute.

23. Counsel for the journalists also wrote a letter to Baldauff and the Governor explaining the law as laid out in this memorandum, and was rebuffed

in his request for his clients to receive equal access (Exhibits 4, Suhr's initial letter, 5, Governor Office response, and 6, Suhr's response).

**RESPONSE NO. 23:** Defendant objects to this proposed fact because the evidentiary source lacks sufficient foundation to support these statements. Fed. R. Evid. 602. Notwithstanding and without waiving this objection and for the purposes of the preliminary injunction only, Defendant does not dispute.

Dated this 17th day of September, 2019.

Respectfully submitted,

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by:

s/ Gabe Johnson-Karp  
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## CERTIFICATE OF SERVICE

I certify that on September 17, 2019, I electronically filed the foregoing Defendant's Response to Plaintiffs' Proposed Findings of Facts Supporting Motion for Preliminary Injunction with the clerk of court using the CM/ECF system, which will accomplish electronic notice and service for all participants who are registered CM/ECF users.

Dated this 17th day of September, 2019.

s/ Gabe Johnson-Karp  
GABE JOHNSON-KARP  
Assistant Attorney General