

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

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

Plaintiffs,

v.

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

Defendant.

No. 3:19-cv-00649-jdp

NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiffs submit this notice of supplemental authority (*see Yvonne Mart Fox v. Iowa Health Sys.*, No. 18-cv-327-jdp, 2019 U.S. Dist. LEXIS 123794, at *3 (W.D. Wis. July 24, 2019) (accepting notices of non-binding supplemental authorities)) to support their motion for preliminary injunction. Plaintiffs draw the Court’s attention to *Toll v. Wilson*, 135 Nev. Adv. Op. 58 (Dec. 5, 2019) (copy attached), recently decided by the Nevada Supreme Court.

An independent blogger (Toll) sought to qualify as a journalist under the state’s news-shield statute. *Id.* at 2. Toll started the blog specifically to “express[]

a counter-narrative to local news sources, which he felt were publishing stories that were critical of Antinoro,” a local official facing a recall election. *Id.* at 2-3.

Nevada’s news-shield statute has two requirements: that the writer qualify as a “reporter,” and the outlet for which he reports is a “newspaper, periodical or press association or ... any radio or television station.” *Id.* at 6 (quoting NRS 49.275).

The Court began by noting the evolution of the news industry: “Previously, most news outlets disseminated news via physically printed newspapers and magazines or by radio and television broadcasts. Now, in addition to these sources, independent bloggers disseminate news through personal websites.” *Id.* at 2.

Addressing the first question, the Court held that Toll is a reporter since he “reports various public events, opinions, and current news.” *Id.* at 6-7. Turning to the second, the Court “conclude[d] that a blog should not be disqualified from the news shield statute under NRS 49.275 merely on the basis that the blog is digital...” *Id.* at 9.

These holdings are relevant to Defendant’s contention that MacIver is not a bona fide news organization and that its employees are not bona fide journalists. (Doc. 14, at 16-18; Doc. 15, at 6-8; Doc. 16, at 2). As Plaintiffs have argued, they are legitimate journalists and a legitimate news outlet even if they don’t belong to the traditional news media and even if their outlet has an editorial viewpoint. (Doc. 7, at 12-15; Doc. 19, at 6-8). The Nevada Supreme Court recognized that Toll was a

legitimate journalist under the state's news-shield law, and that blogs could qualify as legitimate news outlets. It did so even knowing that he started his blog to represent a particular viewpoint in a controversial election.

As the Nevada Supreme Court did in *Toll*, this Court should respect the evolving nature of the news industry and the necessity for a broad conception of journalists and news organizations to ensure a free, modern, multimedia press.

Dated: December 10, 2019

Respectfully Submitted,

**JOHN K. MACIVER INSTITUTE
FOR PUBLIC POLICY**

WILLIAM OSMULSKI

By: /s/ Daniel R. Suhr

Daniel R. Suhr
WI State Bar #6321108
WDWI admission April 9, 2019
Liberty Justice Center
190 South LaSalle Street, Suite 1500, Chicago, Illinois 60603
Telephone (312) 263-7668
Facsimile (312) 263-7702
dsuhr@libertyjusticecenter.org

Attorneys for Plaintiffs