

**UNITED STATES DISTRICT COURT
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-SLC

**PLAINTIFF’S PROPOSED FINDINGS OF FACTS SUPPORTING
MOTION FOR PRELIMINARY INJUNCTION**

1. The MacIver Institute is a 501(c)(3) nonpartisan, nonprofit organization based in Madison, Wisconsin (Healy Affidavit, 2).
2. The MacIver Institute bills itself as “the Free Market Voice for Wisconsin” (Healy Affidavit, 3).
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).

4. None of the Institute's employees are registered to lobby on any pending rules or legislation (Healy Affidavit, 5).
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).
6. MacIver is credentialed by the Wisconsin State Legislature to cover its activities (Healy Affidavit, 7).
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).
8. Osmulski is the news director for the MacIver Institute (Osmulski Affidavit, 1).
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).
10. Tony Evers is Governor of Wisconsin.
11. Governor Evers regularly holds press conferences to answer questions from news media (see examples in Exhibit 2).

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

18. MacIver journalists heard about it from other reporters and emailed the Governor's press staff with their RSVP (Osmulski Affidavit, 7).
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).
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).
21. Kittle and Osmulski were not permitted in the briefing (Osmulski Affidavit, 10).
22. The MacIver journalists subsequently contacted Baldauff several times, and never received a response (Osmulski Affidavit, 11).
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).

Dated: August 21, 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)
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