



LIBERTY JUSTICE CENTER

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January 9, 2020

Attorney General Josh Kaul
Wisconsin State Capitol
Madison, WI 53702
And via e-mail

RE: *John K. MacIver Institute for Public Policy v. Evers*,
3:19-cv-00649-jdp (W.D.Wis.)

Dear General Kaul,

In a recent comment to Fox 11 News (WLUK) in Green Bay (January 5, 2020)¹, your client Governor Tony Evers said of our client, the MacIver Institute and its journalists:

“They’re getting all the information that any other media gets so we feel confident we’re meeting our expectation. And when I have press conferences, I see them in the room so I’m guessing they have as much access as they need to cover.” . . .

“I’m guessing from time to time they don’t agree with me and that’s fine, I don’t care about that, but I think we’re in a good place. People can come to our press conference, chat with me as long as they want,” said Evers.

When asked if he was barring any political ideal that maybe doesn’t go along his from his briefings, Evers responded: “No, absolutely not.”

Unfortunately, your litigating position on behalf of Governor Evers in this case is totally at odds with Governor Evers’ statements to Fox 11:

- “They’re getting all the information that any other media gets...” – Not true. The MacIver journalists have been refused access to media briefings. *See* Dkt. 15, Declaration of Melissa Baldauff, at ¶ 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.”); Dkt. 14, Defendant’s Memorandum of Law, at 7 (“MacIver Institute was not invited to this event so they were not permitted to attend.”). And they have been refused on repeated requests to join the media advisory list. *See* Dkt. 15, Declaration of Melissa Baldauff, at ¶ 26 (“I did not grant MacIver Institute’s request to be added to our media advisory list...”). *Accord* Dkt. 15-2, the governor’s current media advisory list, which does not include MacIver journalists. Your position in the case is that this distinction is acceptable. *See* Dkt. 14, Defendant’s Memorandum of Law.
- “[T]hey have as much access as they need to cover...” – Not true. Because they have been refused access to media briefings and inclusion on the media advisory list, they do not get

¹ Mark Leland, “FOX 11 Investigates 'freedom of the press' lawsuit facing Gov. Evers,” Jan. 5, 2020, available at <https://fox11online.com/news/fox-11-investigates/fox-11-investigates-freedom-of-the-press-lawsuit-facing-gov-evers>.

opportunities to hear information or ask questions. *See* Dkt. 7, Plaintiffs' Memorandum of Law, at 7 ("Every day that the MacIver journalists are denied equal access to these events, their ability to report important news is substantially compromised."). Your position in the case is that this sub-par access is acceptable. *See* Dkt. 14, Defendant's Memorandum of Law, at 11 ("Being prevented from asking the Governor questions about stories they are reporting on or the news he is making simply is not a cognizable First Amendment injury." Internal punctuation omitted).

- "People can come to our press conference, chat with me as long as they want." – Not true. The governor's staff has refused to include MacIver journalists on the media advisory list which alerts reporters to the time and place of press conferences. *See* Dkt. 15, Declaration of Melissa Baldauff, at ¶ 34. MacIver cannot attend events it is purposefully not told about. Your position in the case is that this exclusion is acceptable. *See* Dkt. 14, Defendant's Memorandum of Law. Moreover, your position defending Ms. Baldauff's use of her criteria means other reporters also cannot come to the governor's press conferences. *See* Dkt. 19, Plaintiff's Reply Brief, at 5-6 (noting that the official newspapers of two of Wisconsin's Indian tribes fail her criteria and that the *Wisconsin Jewish Chronicle* has been removed from the governor's media advisory list).
- "When asked if he was barring any political ideal that maybe doesn't go along his from his briefings, Evers responded: 'No, absolutely not.'" Clearly the MacIver journalists are *not* receiving equal treatment compared to the rest of the press corps. Your position in this case is that unequal treatment is acceptable because of MacIver's supposed politics. *See, e.g.,* Dkt. 16, Defendant's Response to Plaintiff's Proposed Facts, at 2 ("MacIver Institute is a strong supporter of a cause and engages in political advocacy and lobbying activity." Incidentally, neither of these claims in your brief is true: MacIver is not registered to lobby and is barred by federal tax law from engaging in political advocacy).

We request that your office align your position in this case with the Governor's position in his interview with Fox 11. Do what the Governor said—give MacIver the same information and access as everyone else, let them do their jobs as journalists, open up the press conferences, and don't discriminate based on editorial viewpoint. Settle, and agree that MacIver's journalists may attend the governor's press events and briefings and receive the governor's media advisories. Settle, and adopt the Wisconsin State Legislature's straightforward and inclusive criteria for credentialing.

Sincerely yours,



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