

Michael Gableman
Special Counsel
WI State Assembly Committee
on Elections and Campaigns



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262-202-8722

September 30, 2021

Via personal service

Maribeth Witzel-Behl
Clerk, City of Madison
City Clerk's Office
210 Martin Luther King Jr Blvd
Room 103, City-County Building
Madison, Wisconsin 53703

Re: *Subpoena Deuces Tecum*

Dear Ms. Witzel-Behl:

Please find enclosed and personally served upon you a *subpoena deuces tecum* compelling the production of documents related to the 2020 state and federal election in the City of Green Bay as well as appearing before Special Counsel Mike Gableman to provide testimony on the same subject.

Additionally enclosed is a Witness Fee Voucher. As a witness, under Wisconsin Statutes you are entitled to a witness fee and mileage. After testifying, the witness should fill out the Witness Fee Voucher and send it to Speaker of the Assembly of the State of Wisconsin Robin Vos. Speaker Vos shall then certify the voucher to the department of administration.

Sincerely,

A handwritten signature in black ink, appearing to be "M. Gableman".

Justice Mike Gableman
Special Counsel
Wisconsin State Assembly Committee on Elections and Campaigns

WISCONSIN STATE ASSEMBLY
2021-2022 Regular Session

Assembly Committee on Campaigns and Elections

SUBPOENA DUCES TECUM

STATE OF WISCONSIN)
) ss.
COUNTY OF Waukesha County)

THE STATE OF WISCONSIN TO: Maribeth Witzel-Behl
Clerk, City of Madison
City Clerk's Office
210 Martin Luther King Jr Blvd
Room 103, City-County Building
Madison, Wisconsin 53703

~~10-1-21~~
10-1-21
2:50
JH


PURSUANT TO WIS. STAT. § 13.31 YOU ARE HEREBY COMMANDED TO APPEAR in person before the Special Counsel or his designee on **Friday, October 15, 2021 at 9:00 am at 200 South Executive Drive, Suite 101, Brookfield, WI 53005**, to give evidence and testimony with regard to the November 2020 General Election in Wisconsin (the "Election") including, *but not limited to*, potential irregularities and/or illegalities related to the Election.

You are further commanded to bring with you originals or copies, if originals are not available, of all documents contained in your files and/or in your custody, possession, or control, pertaining to the Election. Responsive documents include, *but are not limited to*, the items set forth on Exhibit A, attached hereto and incorporated herein.

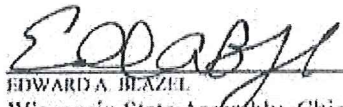
FAILURE TO COMPLY WITH THIS SUBPOENA MAY CONSTITUTE CONTEMPT OF THE LEGISLATURE, PURSUANT TO WIS. STAT. § 13.26(1)(C) AND IS SUBJECT TO PUNISHMENT, INCLUDING IMPRISONMENT, PURSUANT TO WIS. STAT. § 13.27.

Dated at Madison, Wisconsin this 28th day of September, 2021.

WISCONSIN STATE ASSEMBLY

By: 

REP. ROBIN VOS, SPEAKER
Wisconsin State Assembly

By: 

EDWARD A. BEAZEL
Wisconsin State Assembly, Chief Clerk

SCHEDULE A

GENERAL INSTRUCTIONS

1. These Instructions incorporate the Definitions attached to the subpoena. Please read them carefully before reading this document.
2. In complying with this subpoena, you are required to produce all responsive Documents that are in your possession, custody, or control. You shall also produce Documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as Documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed Documents shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the committee.
3. All Documents produced in response to this subpoena shall be sequentially and uniquely Bates-stamped.
4. In the event that any entity, organization, or person identified in this subpoena has been, or is also known by any other name than that herein identified, the subpoena shall be read also to include that alternative identification.
5. It shall not be a basis for refusal to produce Documents that any other person or entity also possesses non-identical or identical copies of the same Documents.
6. If a date or other descriptive detail set forth in this subpoena referring to a Document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, you are required to produce all Documents that would be responsive as if the date or other descriptive detail were correct.
7. Documents produced in response to this subpoena shall be produced as they were kept in the normal course of business together with copies of file labels, dividers, or identifying markers with which they were associated when the subpoena was served.
8. If you withhold any Document pursuant to a claimed right protected by the state or federal constitution, or pursuant to a claim of non-disclosure privileges including, but not limited to, the deliberative-process privilege, the attorney-client privilege, attorney work product protections, any purported privileges, protections, or exemptions from disclosure under Wis. Stat. § 19.35 or the Freedom of Information Act, then you must comply with the following procedure:
 - a. You may only withhold that portion of a Document over which you assert a claim of privilege, protection, or exemption. Accordingly, you may only withhold a Document in its entirety if you maintain that the entire Document is privileged or protected. Otherwise you must produce the Document in redacted form.
 - b. In the event that you withhold a Document—in whole or in part—on the basis of a privilege, protection, or exemption, you must provide a privilege log containing the following information concerning each discrete claim of privilege, protection, or exemption:
 - the privilege, protection, or exemption asserted;
 - the type of Document;

- the date, author, and addressee;
 - the relationship of the author and addressee to each other; and
 - a general description of the nature of the Document that, without revealing information itself privileged or protected, will enable the committee to assess your claim of privilege, protection, or exemption.
- a. In the event a Document or a portion thereof is withheld under multiple discrete claims of privilege, protection, or exemption, each claim of privilege, protection, or exemption must be separately logged.
 - b. In the event portions of a Document are withheld on discrete claims of privilege, protection, or exemption, each separate claim of privilege, protection, or exemption within that Document must be separately logged.
 - c. You must produce the privilege log contemporaneously with the withholding of any Document in whole or in part on the basis of a privilege, protection, or exemption.
 - d. You must certify that your privilege log contains only those assertions of privilege, protection, or exemption as are consistent with these Instructions and are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law, or for establishing new law.
 - e. Failure to strictly comply with these provisions constitutes waiver of any asserted privilege, protection, or exemption.
9. The committee does not recognize any purported contractual privileges, such as non-disclosure agreements, as a basis for withholding the production of a Document. Any such assertion shall be of no legal force or effect, and shall not provide a justification for such withholding or refusal, unless and only to the extent that the chair of the committee has consented to recognize the assertion as valid.
 10. This subpoena is continuing in nature and applies to any newly-discovered information. Any Document not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
 11. If you discover any portion of your response is incorrect in a material respect you must immediately and contemporaneously submit to the committee, in writing, an explanation setting forth: (1) how you became aware of the defect in the response; (2) how the defect came about (or how you believe it to have come about); and (3) a detailed description of the steps you took to remedy the defect.
 12. A cover letter shall be included with each production and include the following:
 - a. The Bates-numbering range of the Documents produced, including any Bates-prefixes or -suffixes;
 - b. If the subpoena is directed to an entity as opposed to an individual, a list of custodians for the produced Documents, identifying the Bates range associated with each custodian;

- c. A statement that a diligent search has been completed of all Documents in your possession, custody, or control that reasonably could contain responsive material;
 - d. A statement that the search complies with good forensic practices;
 - e. A statement that Documents responsive to this subpoena have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the committee since the date of receiving the committee's subpoena or in anticipation of receiving the committee's subpoena;
 - f. A statement that all Documents located during the search that are responsive have been produced to the committee or withheld in whole or in part on the basis of an assertion of a claim of privilege or protection in compliance with these Instructions; and
 - g. Your signature, attesting that everything stated in the cover letter is true and correct and that you made the statements under penalty of perjury.
13. You must identify any Documents that you believe contain confidential or proprietary information. However, the fact that a Document contains confidential or proprietary information is not a justification for not producing the Document, or redacting any part of it.
14. Electronically-stored Documents must be produced to the committee in accordance with the attached Electronic Production Instructions in order to be considered to be in compliance with the subpoena. Failure to produce Documents in accordance with the attached Electronic Production Instructions, may, in an exercise of the committee's discretion, be deemed an act of contumacy.
15. If properties or permissions are modified for any Documents produced electronically, receipt of such Documents will not be considered full compliance with the subpoena.

ELECTRONIC PRODUCTION INSTRUCTIONS

The production of electronically-stored Documents shall be prepared according to, and strictly adhere to, the following standards:

- 1. Documents shall be produced in their native format with all meta-data intact.
- 2. Documents produced shall be organized, identified, and indexed electronically.
- 3. Only alphanumeric characters and the underscore ("_") character are permitted in file and folder names. Special characters are not permitted.
- 4. Production media and produced Documents shall not be encrypted, contain any password protections, or have any limitations that restrict access and use.
- 5. Documents shall be produced to the committee on one or more memory sticks, thumb drives, or USB hard drives. Production media shall be labeled with the following information: production date, name of the subpoena recipient, Bates range.
- 6. All Documents shall be Bates-stamped sequentially and should not duplicate any Bates-numbering used in producing physical documents.

SCHEDULE B

DEFINITIONS

7. "All," "any," and "each" shall each be construed as encompassing any and all. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.
8. "And" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information that might otherwise be construed to be outside its scope.
9. "Ballot" means a ballot related to the Election, including mail-in ballots, early in-person ballots, provisional ballots, and physical ballots cast in person the day of the election.
10. "Committee" means the committee named in the subpoena.
11. "Communication" means each manner or means of disclosure or exchange of information (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in an in-person meeting, by telephone, facsimile, e-mail (desktop or mobile device), text message, MMS or SMS message, regular mail, telexes, releases, intra-company messaging channels, or otherwise.
12. "Communication with," "communications from," and "communications between" means any communication involving two or more people or entities, regardless of whether other persons were involved in the communication, and includes, but is not limited to, communications where one party is cc'd or bcc'd, both parties are cc'd or bcc'd, or some combination thereof.
13. "CTCL" means the Center for Tech and Civic Life.
14. "Documents" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (emails), text messages, instant messages, MMS or SMS messages, contracts, cables, telexes, notations of any type of conversation, telephone call, voicemail, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electronic records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
15. "Election" means the November 3, 2020, Wisconsin General Election for, inter alia, President of the United States.

16. **"Employee"** means a current or former: officer, director, shareholder, partner, member, consultant, senior manager, manager, senior associate, permanent employee, staff employee, attorney, agent (whether de jure, de facto, or apparent, without limitation), advisor, representative, attorney (in law or in fact), lobbyist (registered or unregistered), borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, provisional employee, or subcontractor.
17. When referring to a person, **"to identify"** means to give, to the extent known: (1) the person's full name; (2) present or last known address; and (3) when referring to a natural person, additionally: (a) the present or last known place of employment; (b) the natural person's complete title at the place of employment; and (c) the individual's business address. When referring to documents, **"to identify"** means to give, to the extent known the: (1) type of document; (2) general subject matter; (3) date of the document; and (4) author, addressee, and recipient.
18. **"Forensic Image"** means a bit-by-bit, sector-by-sector direct copy of a physical storage device, including all files, folders and unallocated, free and slack space. Forensic images include not only all the files visible to the operating system but also deleted files and pieces of files left in the slack and free space.
19. **"Indicating"** with respect to any given subject means anything showing, evidencing, pointing out or pointing to, directing attention to, making known, stating, or expressing that subject of any sort, form, or level of formality or informality, whatsoever, without limitation.
20. **"Party"** refers to any person involved or contemplating involvement in any act, affair, contract, transaction, judicial proceeding, administrative proceeding, or legislative proceeding.
21. **"Person"** is defined as any natural person or any legal entity, including, without limitation, any business or governmental entity or association, and all subsidiaries, divisions, partnerships, properties, affiliates, branches, groups, special purpose entities, joint ventures, predecessors, successors, or any other entity in which they have or had a controlling interest, and any employee, and any other units thereof.
22. **"Pertaining to," "referring," "relating," or "concerning"** with respect to any given subject means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.
23. **"Possession, custody or control"** means (a) documents that are in your possession, custody, or control, whether held by you or your employees; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
24. **"Processes"** means any processes, procedures, methodologies, materials, practices, techniques, systems, or other like activity, of any sort, form, or level of formality or informality, whatsoever, without limitation.
25. **"You" or "Your"** shall mean (in the case of an entity) the entity named in the subpoena, as well as its officers, directors, subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party. If the person named in the entity is either an individual or an entity, "you" and "your" also means your employees, agents, representatives, consultants, accountants and attorneys, including anyone who served in any such capacity at any time during the relevant time period specified herein.

EXHIBIT A

TO SUBPOENA DUCES TECUM

These document requests are limited to the time period from January 1, 2020 to current:

1. All documents pertaining to election administration related to interactions, communication with, or comments in regard to Mayor of the City of Madison Satya Rhodes-Conway.
2. All documents and communications between the Office of the City Clerk of the City of Madison with the Center for Tech and Civic Life ("CTCL"). This includes, but is not limited to, documents and communications with Tiana Epps-Johnson and Whitney May.
3. All documents and communications between the Office of the City Clerk of the City of Madison and the Wisconsin Elections Commission ("WEC") and its officials or employees regarding or in any way related to the Election.
4. All documents and communications between the Office of the City Clerk of the City of Madison and officials or employees of the Cities of Green Bay, Kenosha, Milwaukee and Racine and/or any other employee, representative agent or other person affiliated with these cities, regarding or in any way related to the Election.
5. All documents and communications between the Office of the City Clerk of the City of Madison and employees of any private corporation, including but not limited to CTCL, and/or any other employee, representative agent or other person affiliated with them, regarding or in any way related to the Election.
6. All documents or communications between the Office of the City Clerk of the City of Madison and CTCL and/or its employees Tiana Epps-Johnson and Whitney May, The National Vote At Home Institute and/or its employee Michael Spitzer-Rubenstein, The Elections Group and/or its employee Ryan Chew, Ideas42, Power to the Polls and/or Fair Elections Center, Mikva Challenge, US Digital Response, Center for Civic Design, Center for Election and Innovation Research ("CEIR"), Center for Secure and Modern Elections ("CSME") and/or its employee Eric Ming, The Brennan Center for Justice, HVS Productions, Facebook, Modern Selections and/or any other employee, representative agent or other person affiliated with the above named entities, regarding or in any way related to the Election.

Schedule A

WITNESS FEE VOUCHER

(This section to be completed by the witness)

I, _____, state and affirm that I appeared and gave testimony at a deposition or hearing for the

Special Counsel, Assembly Committee on Campaigns and Elections

Pursuant to a subpoena issued by the (check one):

 X Assembly of the State of Wisconsin
 Senate of the State of Wisconsin

Number of the days on which I gave testimony: _____

Miles travelled (one-way) to attend the deposition or hearing: _____

(witness signature)

(address)

Date: _____

Mail or deliver to the Special Counsel at the address to which the subpoena directs the Sergeant at Arms to make return

(This section for use by the legislature only)

I certify that the above-named witness travelled the indicated number of miles to attend a deposition or hearing to give testimony for the indicated number of days.

(special counsel's signature)