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April 4, 2019

Hon. Tony Evers
Office of the Governor
115 East State Capitol
Madison, WI 53702

Melissa Baldauff
Deputy Chief of Staff
115 East State Capitol
Madison, WI 53702

Dear Governor Evers and Ms. Baldauff:

We are counsel to the John K. MacIver Institute for Public Policy. We are writing on the Institute's behalf regarding the decision of your staff to exclude reporters from its MacIver News Service (MNS) from briefings, advisories, and press releases made generally available to other members of the Wisconsin press corps. The MNS journalists have reached out to your staff on several occasions seeking equal access and have consistently received no response.

MNS has been covering news at the state capitol for ten years, and is a well-established news outlet read throughout the state of Wisconsin. Its news director, Bill Osmulski, has been a member of the Society of Professional Journalists for many years in good standing and has received awards for his work from the Wisconsin Broadcasters Association, CBS-58 in Milwaukee, and News-18 in Eau Claire. Osmulski also produces and hosts a regular news program for VCY-30 in Milwaukee. MNS's lead reporter, Matt Kittle, is a 25-year veteran of print, broadcast, and online journalism and is a regular contributor on 1310 WIBA and 1130 WISN. Matt and Bill often break news before any other outlet, and they are known for their in-depth analysis of many facets of state and local government. The Wisconsin State Legislature has credentialed the MNS to cover its activities.

Denying the MNS access to the budget briefing at the end of February and excluding it from the press release and media advisory email list which are otherwise made generally available to members of the media are a clear violation of MNS's First Amendment rights. There are two well-established principles of law in equal access cases. First, no journalist has a right to an exclusive interview or off-the-record comment. Second, no public official may engage in a targeted denial of access to a particular journalist or news outlet when providing information or events to news media generally. Note, *Viewpoint Discrimination and Media Access to Public Officials*, 120 HARV. L. REV. 1019 (2007). The *Anderson v. Cryovac, Inc.* decision from the U.S. Court of Appeals for the First Circuit (805 F.2d 1, 9 (1986)) states the second principle clearly:

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The danger in granting favorable treatment to certain members of the media is obvious: it allows the government to influence the type of substantive media coverage that public events will receive. Such a practice is unquestionably at odds with the first amendment. Neither the courts nor any other branch of the government can be allowed to affect the content or tenor of the news by choreographing which news organizations have access to relevant information.

This right of equal access for journalists has been recognized by federal circuit courts across the country. *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986); *McCoy v. Providence Journal Co.*, 190 F.2d 760, 766 (1st Cir. 1951); *Huminski v. Corsones*, 386 F.3d 116, 147 (2nd Cir. 2004); *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977); *McBride v. Vill. of Michiana*, 100 F.3d 457, 461-62 (6th Cir. 1996); *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977); *Frank v. Herter*, 269 F.2d 245, 247 (D.C. Cir. 1959) (Burger, J., concurring). *See also Wis. Interscholastic Ath. Ass'n v. Gannett Co.*, 658 F.3d 614, 625 (7th Cir. 2011). Numerous federal district court and state appellate court decisions are in accord.

Your office's decision to exclude credentialed journalists from a press briefing and news release/advisory email lists generally available to other members of the Capitol press corps is a clear and ongoing violation of the MNS journalists' First Amendment rights. Unless you respond with a letter guaranteeing MNS's access to future press events, press releases, and advisories on an equal basis with other news media, we will be forced to move forward with other legal remedies to vindicate MNS's rights.

Sincerely yours,



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