

**CENTER FOR MEDIA & DEMOCRACY**  
520 University Avenue, Suite 260  
Madison, WI 53703,

Plaintiff,

v.

**LEAH VUKMIR**  
State Senator  
Room 131 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707

Defendant.

**COMPLAINT**

Case No.: \_\_\_\_\_  
Code No.: 30952

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**COMPLAINT FOR MANDAMUS**

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The Center for Media and Democracy (hereinafter "CMD"), allege as their Complaint against Defendant, Senator Leah Vukmir, as follows:

1. CMD brings this action for mandamus under Wis. Stat §19.37(1)(a), requesting that this court order Defendant to release public records that Defendant has heretofore failed to release pursuant to CMD's

written request under the public records law, and assess appropriate damages, Wis. Stat. §§ 19.31-19.39.

2. Under Wisconsin law, “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts” of their representatives, and providing such information is “an essential function of a representative government.” Wis. Stat. § 19.31 (Declaration of Policy). As the Wisconsin Supreme Court has observed, “If Wisconsin were not known as the Dairy State it could be known, and rightfully so, as the Sunshine State. All branches of Wisconsin government have, over many years, kept a strong commitment to transparent government.” *Schill v. WI Rapids School Dist.*, 2010 WI 86 ¶ 1, 327 Wis. 2d 572, 580 ¶1 (2010) (Abrahamson, C.J., lead opinion). Defendant has failed Wisconsin’s clean government traditions by refusing to comply with her responsibilities under the public records law, and by apparently accepting assertions from a private organization that its correspondence with legislators should not be subject to Wisconsin’s sunshine-in-government laws.

### **FACTUAL ALLEGATIONS**

3. CMD is a nonprofit, nonpartisan organization engaged in investigative reporting and research, with headquarters located at 520 University Avenue, Suite 260, Madison, WI 53703.

4. CMD is a “requester” as that term is defined in Wis. Stat. § 19.32(3) and as used in throughout Wisconsin’s public records law, Wis. Stat. § 19.31-19.39.

5. Defendant Senator Vukmir is an “authority” as that term is defined in Wis. Stat. § 19.32(1) and as that term is used throughout the public records law, § 19.31-19.39, and has a legal duty to disclose records in response to a lawful request.

6. On April 5th, 2013, CMD Research Director Nick Surgey submitted a public records request to Defendant’s office for all records received “directly or indirectly from the American Legislative Exchange Council (ALEC)” between March 15th and April 5th, 2013, relating to its upcoming task force meeting held May 2nd & 3rd, 2013, in Oklahoma City, OK, encompassing “all emails sent or received on official state email accounts, as well as other email accounts that have been used for official business.” ALEC has typically sent meeting agendas and proposed model legislation to its legislative members thirty-five days in advance of its

meetings, and this request sought the records included in these “35 Day Mailings.” The request clarified it:

“[s]pecifically . . . includes (but is not limited to) any ALEC task force 35-Day Mailing / Task Force Mailing (or similar) materials. It is understood that these materials have in the past been provided by ALEC as downloadable files via a website: box.com.”<sup>1</sup>

7. The requested documents are “records” as the term is defined in Wis. Stat. § 19.32(2) and as used throughout the Public Records law, Wis. Stat. § 19.31-19.39. CMD has previously received hundreds of pages of such materials through public records requests to Wisconsin legislators, including Defendant.

a. The content of the meeting agendas, handouts, model legislation and other requested documents are indisputably related to official government business. ALEC is an organization through which state legislators meet with corporate representatives (many of whom are registered lobbyists) to adopt “model” legislation, and ALEC advocates for the introduction and passage of that model legislation in Wisconsin and elsewhere. Wisconsin legislators are members of ALEC only by virtue of their status as a state legislator, and they attend ALEC meetings and correspond with ALEC in

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<sup>1</sup> Request attached as Exhibit A.

their official capacity as Wisconsin legislators. *See* Exhibit B.<sup>2</sup> The Government Accountability Board has held that legislators attend ALEC meetings primarily on behalf and for the benefit of the state. *See* Exhibit C. The ALEC-related documents sought by plaintiffs are clearly related to official government business; indeed, ALEC itself has told the State of Wisconsin, through the Government Accountability Board, that its interactions with state legislators are related to official government business. *See* Exhibit B.

b. Meeting agendas, task force materials, and other documents distributed to legislators via an external link to a box.com internet dropbox are still “records” subject to disclosure under the public records law. It is the content that determines whether a document is a “record,” not medium, format, or location. OAG 1-06-09 (December 23, 2009), at 2.1. “In determining whether a document is a record under Wis. Stat. § 19.32(2), the focus is on the content of the document. To be a record under § 19.32(2), the content of the document must have a connection to a government

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<sup>2</sup> Letter from ALEC to Wisconsin Government Accountability Board, May 27, 2010 (discussing how state legislators “attend ALEC conferences on behalf of and for the benefit of the state”). CMD has disputed some of the other claims ALEC has made in this letter, as noted in the Exhibit B cover page.

function." *Schill*, 2010 WI 86, ¶ 140, 327 Wis. 2d at 632 ¶ 140

(Abrahamson, C.J., lead opinion).

c. The request is *not* for e-mails of a purely personal nature, nor is it for e-mails relating to campaign activity (especially because ALEC, as a charity organized under Section 501(c)(3) of the Internal Revenue Code, is legally prohibited from engaging in electoral activity).<sup>3</sup>

8. On April 25, 2013, Senator Vukmir's office responded:

Upon receiving your Email formally requesting the records specified above, Senator Vukmir and staff conducted the requisite search. After completing the requested search for records relating to the upcoming task force meeting in Oklahoma City, Senator Vukmir's office does not have any documents that are responsive to your request.<sup>4</sup>

9. On May 6, 2013, after the Oklahoma City meeting, CMD

Research Director Nick Surgey submitted another public records request to Defendant's office for:

"access to and a copy of all records, including but not limited to emails, minutes, agendas, draft legislation, draft resolutions, handouts, and correspondence, received at or pertaining

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<sup>3</sup> See I.R.C. § 501(c)(3): such an organization "does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

<sup>4</sup> See Exhibit A.

to the American Legislative Exchange Council (ALEC) 2013 Spring Task Force Summit, held in Oklahoma City, OK, on 2-3 May, 2013. Please note that this request includes all emails sent or received on official state email accounts, as well as other email accounts that have been used for official business.”<sup>5</sup>

10. In response to this request, Defendant released nine pages of records, which CMD retrieved from the Senate Chief Clerk’s office on May 21.<sup>6</sup> Defendant did in fact attend the meeting, and the majority of the records were emails between Defendant and ALEC staffers coordinating times to get together at the ALEC meeting. However, Defendant did not release any of the requested meeting agendas, proposed legislation or resolutions, or handouts from the meeting.

11. Through other sources, CMD was able to obtain a limited number of meeting agendas and proposed model bills from the Oklahoma meeting. At the bottom of those documents was the following disclaimer:

"Because this is an internal ALEC document, ALEC believes it is not subject to disclosure under any state Freedom of Information or Public Records Act. Should you want to make copies, or if you receive a request for disclosure of this or any other ALEC document under your state's Freedom of Information or Public Records Act, please contact Michael Bowman,

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<sup>5</sup> Request attached as Exhibit D.

<sup>6</sup> Records attached as Exhibit E.

Senior Director, Policy and Strategic Initiatives," and listing his phone number and email address.<sup>7</sup>

12. Defendant is on the ALEC National Board of Directors, is the ALEC State Chair for Wisconsin, and is a member of the ALEC Health and Human Services Task Force. Documents obtained from a separate public records request for text messages suggest Defendant sponsored model legislation that was presented to a task force at the Oklahoma ALEC meeting, and her proposal was adopted. *See* Exhibit G.<sup>8</sup>

13. Given Defendant's leadership role in the organization and the fact that she both attended the Oklahoma meeting and sponsored legislation, it is not credible to believe that Defendant did not have a single document in her or her office's custody or control in advance of the meeting, and had no meeting agendas, handouts, proposed bills, or other records in her or her office's custody or control after the meeting.

14. Under Wisconsin's public records law, an authority may not destroy a record after receipt of a request for that record until at least sixty

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<sup>7</sup> See Exhibit F (containing examples of a model bill and a meeting agenda from the May 2013 meeting with this disclaimer.)

<sup>8</sup> On May 3, at the conclusion of the task force meetings scheduled for that day, Vukmir texted Christie Herrera, former head of the ALEC Health and Human Services Task Force, asking "How did it go?" Herrera replied, "Passed unanimously. Great job Madame Sponsor!"



days after denial or until related litigation is completed. Wis. Stat. § 19.35(5).

15. ALEC's effort to wrap the documents it distributes to Wisconsin legislators in a cloak of secrecy is not recognized as an exception to Wisconsin's public records law. The law presumes that all documents that meet the definition of "records" in Wis. Stat. § 19.32(2) are subject to disclosure, unless they meet a specific exception. *Hathaway v. Joint School Dist.*, 116 Wis. 2d 388, 397 (1984). The legislature has declared that the public records law "shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business." Wis. Stat. § 19.31 (Declaration of Policy). "Public policy favors the right of inspection of public records and documents, and it is only in the exceptional case that inspection should be denied." *State ex rel. Youmans v. Owens*, 28 Wis. 2d 672, 683 (1965).

16. There is no provision in Wisconsin law allowing private organizations to create their own exceptions to the public records statutes.

17. Additionally, records that may have been distributed to Defendant via a link to an external internet dropbox are still subject to disclosure under the law. "[T]he policy underlying the public records law is not so ephemeral and its mandates are not so easily circumvented" by a

digital sleight-of-hand. *Schill*, 2010 WI 86 ¶ 156, 327 Wis.2d at 637, (Bradley, J., concurring).

18. If an authority believes that particular documents responsive to a request are not subject to release under the public records law, they are required to tell the requester what part of the law they believe entitles them to deny that part of the request. Wis. Stat. § 19.35(4)(a). CMD asked specifically for meeting agendas, model bills, and handouts, and in the May 5 request further asked Defendant to “please acknowledge if any materials from the ALEC conference are not considered to be a public record.” Defendant neither cited a statutory exception nor any other justification for not releasing the requested records.<sup>9</sup>

19. On review of a writ of mandamus, it is not the court’s role to hypothesize or consider reasons not asserted by the records custodian’s response. If the custodian fails to state sufficient reasons for denying the request, the court shall issue a writ of mandamus compelling disclosure of the requested records. *Osborn v. Bd. of Regents*, 2002 WI 83, ¶ 16, 254 Wis. 2d 266, 283 (2002).

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<sup>9</sup> In its disclaimer, ALEC asserts that its materials are subject to copyright, but Defendant did not cite the copyright exception when refusing to disclose the requested records. In any case, the copyright exception is to be narrowly construed, and does not apply to materials such as those requested by plaintiffs, which fall under the “fair use” exception to federal copyright law. *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53 ¶¶ 28-30, 300 Wis. 2d 290, 304-06, 731 N.W.2d 240 (2007).

20. Wisconsin's proud traditions of open government are undermined by private efforts to keep the basic operations of government secret, and made worse when elected officials are complicit in these efforts. As the legislature declared in enacting the public records law, "all persons are entitled to the greatest possible information regarding the affairs of government," and such transparency is crucial to guarantee an accountable and fully representative democracy. Wis. Stat. § 19.31.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff CMD requests that the Court grant the following relief pursuant to Wis. Stat. §§ 19.31-19.39 and Wis. Stat. § 806.04:

- a. Allow additional legal argument, as necessary, after the Defendant has answered the Complaint;
- b. Order the Defendants to provide copies of the requested records to CMD;
- c. Award CMD its actual costs and damages under Wis. Stats. § 19.37(2)(a);
- d. Assess whether Defendants acted in a willful or intentional manner, and arbitrarily and capriciously denied or delayed

response to the request from CMD, and assess appropriate damages under Wis. Stats. §§ 19.37(2)(b) and (3), and;

- e. Order other such relief as the Court deems appropriate.

Dated this 6th day of June, 2013.

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Brendan Fischer, SBN 1089027  
Attorney for Plaintiff

Mailing Address:  
520 University Ave Ste 260  
Madison, WI 53703  
Telephone: (608) 260-9713  
Facsimile: (608) 260-9714  
[Brendan@prwatch.org](mailto:Brendan@prwatch.org)