

SUPREME COURT OF WISCONSIN

Case No. 2025AP647-OA

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ATTORNEY GENERAL JOSH KAUL,

*Petitioner,*

v.

ELON MUSK and AMERICA PAC,

*Respondents,*

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**AMICUS BRIEF IN SUPPORT OF THE ATTORNEY GENERAL'S  
EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

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“There is no reason defendant should be permitted openly, notoriously,  
and flagrantly to violate our valid laws enacted for benefit of our  
people. The state would be weak indeed if it were powerless to prevent  
it.”

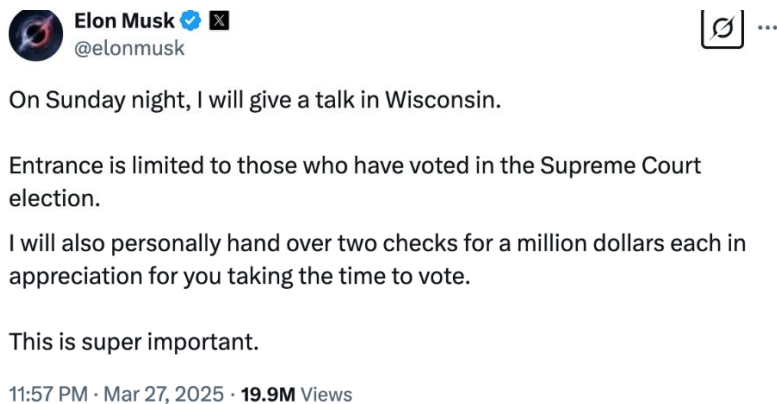
*State v. J. C. Penney Co.*, 48 Wis. 2d 125, 155, 179 N.W.2d 641 (1970)

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## INTRODUCTION

Over the past several days—and particularly over the past 72 hours—Defendants-Respondents Elon Musk and America PAC have taken a series of actions, in concert, that implicate Wisconsin’s statute prohibiting election bribery, Wis. Stat. § 12.11. The scale of these violations is unprecedented: Musk and America PAC are dangling millions of dollars in front of Wisconsin voters:



And they mean it. Just Friday, America PAC issued a million dollar check to a Wisconsin voter:



<sup>1</sup> Screenshot from video, available at <https://perma.cc/9TZ6-LQD5>.

Unless enjoined, Musk and America PAC's ongoing misconduct threatens irreparable harm, as outlined in the Attorney General's filings. The circuit court declined to act in the face of this imminent danger. This Court should step in immediately to enjoin the unlawful conduct.

### **INTEREST OF *AMICI CURIAE***

*Amici* Deborah J. Patel, Paul V. Gagliardi, Mary Lang Sollinger, and Lester A. Pines are Wisconsin voters, each of whom has invested their own time, money, and reputations in next week's statewide election for Justice of the Wisconsin Supreme Court. These *amici* acted in reliance on the axiomatic premise that the election would be free and fair. Musk and America PAC's actions work to undermine that premise.

*Amici* also include numerous signatories to a letter sent earlier this week to the Wisconsin Attorney General and Milwaukee County District Attorney. That letter, attached as Exhibit A, expressed concern about the legality of actions by Musk and America PAC and urged prosecutorial authorities to investigate. Actions by Musk and America PAC since the letter have exponentially increased those concerns. The signatories include *amicus* Wisconsin Democracy Campaign, a nonprofit, good-government organization that advocates for campaign finance reform and pro-democracy policies. The signatories also include Mark

Becker, Tracy Ann Mangold, Heath Mayo, Steve Michek, Richard Painter, and Joe Walsh, former elected and appointed officials who served in state and federal positions as members of the Republican Party.

All *amici* share an interest in ensuring that elections are administered lawfully, without improper interference, and that the results reflect the will of the voters.

### STATEMENT OF FACTS

On March 20, 2025, Defendant America PAC posted a petition to its website, titled “Petition in Opposition to Activist Judges” (the “Petition”).<sup>2</sup> The Petition reads:

Judges should interpret laws as written, not rewrite them to fit their personal or political agendas. By signing below, I’m rejecting the actions of the activist judges who impose their own views and demanding a judiciary that respects its role – interpreting, not legislating.

*Id.* After the website went live, Musk broadcast the Petition on the social media platform X (formerly known as Twitter).<sup>3</sup>

The Petition offers \$100 to each registered Wisconsin voter who signs the Petition and a \$100 per signature incentive to refer other

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<sup>2</sup> *Petition in Opposition to Activist Judges*, America PAC, <https://petition.theamericapac.org/> (last visited Mar. 27, 2025).

<sup>3</sup> DogeDesigner (@cb\_doge), X (Mar. 25, 2025) (retweeted by @elonmusk), available at [https://x.com/cb\\_doge/status/1904405508338913577](https://x.com/cb_doge/status/1904405508338913577).

registered Wisconsin voters to sign.<sup>4</sup> There is no limit on how many bonus referral payments a Wisconsin registered voter may receive.<sup>5</sup> The deal expires at 11:59 p.m. on Election Day, April 1, 2025.<sup>6</sup>

On March 27, 2025, America PAC tweeted from its X account that a voter from Green Bay had become the “first \$1 Million spokesperson for signing our Petition In Opposition to Activist Judges.”<sup>7</sup> Musk retweeted the post, using the word “our” to describe himself and America PAC: “[e]xciting to announce *our* first million-dollar award for supporting *our* petition against activist judges in Wisconsin” and that the “next million dollar award will be announced in two days.”<sup>8</sup>

Late at night on March 27, 2025, Musk announced on his personal X account that he intends to speak in Wisconsin on March 30, 2025, an event open only to “those who have voted in the Supreme Court election,” and at which he will “personally hand over two checks for a million dollars each in appreciation for you taking the time to vote.”<sup>9</sup> Within

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<sup>4</sup> *Petition in Opposition to Activist Judges*, America PAC, <https://petition.theamericapac.org/> (last visited Mar. 27, 2025).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> <https://perma.cc/2XE8-8DUA>.

<sup>8</sup> <https://perma.cc/2XE8-8DUA> (emphasis added).

<sup>9</sup> <https://perma.cc/KVS9-R25G>.

hours of Musk’s post, America PAC posted a video and message from its “\$1 Million spokesperson for signing [their] Petition in Opposition to Activist Judges.”<sup>10</sup> The spokesperson’s quoted message is followed by a link to: “SIGN: petition.theamericapac.org.” In the video message the spokesperson stated, in part, “Elon, thank you.”<sup>11</sup>

On March 28, Musk deleted his late-night post promising checks for voters and tweeted to “clarify” his earlier post about the Sunday event in Wisconsin.<sup>12</sup> According to this tweet, “entrance is limited to those who have signed the petition in opposition to activist judges.”<sup>13</sup> The tweet reiterated that Musk would “hand over checks for a million dollars to 2 people to be spokesmen for the petition.”<sup>14</sup>

To attend the event, individuals must register in advance. The online registration form indicates that the event will take place in Green Bay at 6:30 pm Central Time today—Sunday, March 30, 2025.<sup>15</sup> Under

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<sup>10</sup> <https://perma.cc/KVS9-R25G>;  
<https://app.box.com/file/1817215835523?s=mbrkqrufyqddu16rx7h5lifr1rf5k711>.

<sup>11</sup> *See id.*

<sup>12</sup> Elon Musk (@elonmusk), X, Mar. 28, 2025,  
<https://x.com/elonmusk/status/1905673297439666486?s=46&t=28YhNUzNq8DfIRBSQtWHrA> (last visited Mar. 29, 2025).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Town Hall with Elon Musk*, America PAC, <https://townhall.theamericapac.org/> (last visited March 29, 2025).

the heading “Criteria to attend,” the form echoes Musk’s March 28 tweet: “Entrance is limited to those who have signed the petition in opposition to activist judges.”<sup>16</sup> The form then includes a series of mandatory fields, which must be completed before the form can be electronically submitted.<sup>17</sup> Those fields include name, email address, cell phone number, and “how do you plan to vote.”<sup>18</sup> The last field has a drop-down menu, which provides the following options: “Already voted; Early vote; Absentee ballot; Vote on Election Day.”<sup>19</sup>

## ARGUMENT

### **I. The Attorney General’s papers satisfy the standard for temporary injunctive relief under Wisconsin law.**

The Attorney General’s motion and accompanying papers are meritorious and show an entitlement to immediate temporary injunctive relief. The elements that Wisconsin law requires for such relief are satisfied here. *See, e.g., Milwaukee Deputy Sheriffs’ Ass’n v. Milwaukee Cnty.*, 2016 WI App 56, ¶20, 370 Wis. 2d 644, 883 N.W.2d 154 (movant must make four showings to obtain a temporary injunction: “(1) the movant is likely to suffer irreparable harm if a temporary injunction is

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* (The asterisks identify the field as mandatory.)

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



not issued; (2) the movant has no other adequate remedy at law; (3) a temporary injunction is necessary to preserve the status quo; and (4) the movant has a reasonable probability of success on the merits”); *accord* Wis. Stat. § 813.02. All elements are established here.

**II. Musk and America PAC have engaged in a civil conspiracy to violate Wisconsin election laws.**

A conspiracy exists when actions “show some agreement, explicit or otherwise, between the alleged conspirators on the common end sought and some cooperation toward the attainment of that end.” *Thomas ex rel. Gramling v. Mallett*, 2005 WI 129, ¶168, 285 Wis. 2d 236, 701 N.W.2d 523. Here those facts exist, as detailed above. Musk has repeatedly published the initial payment-through-petition scheme from America PAC, which has already made at least one \$1,000,000 payment from that scheme. And then, yesterday morning, Musk published an offer to pay two additional Wisconsin voters \$1,000,000 at his planned event tomorrow. All of these acts were taken in concert, and all of them constitute election bribery.

Election bribery is a Class I felony under Wisconsin law. Wis. Stat. §§ 12.11, 12.60(1)(a). The election bribery statute is violated when someone “lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or

immunity to, or for, any elector, or to or for any other person, in order to induce any elector to:

1. Go to or refrain from going to the polls.
2. Vote or refrain from voting.
3. Vote or refrain from voting for or against a particular person.
4. Vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.”

Wis. Stat. § 12.11(1m)(a). Musk’s March 27 tweet (reprinted above) constitutes a clear inducement to electors to “[v]ote or refrain from voting.” Entrance to his event this Sunday was initially limited to those who “have voted in the Supreme Court election.” Even now, under Musk’s later communication, entrance is limited to those who signed America PAC’s petition, which itself is limited to registered voters. And the mandatory registration requires each attendee to identify how they will vote. Therefore, even if Musk’s March 28 tweet cured the blatant illegality of the offer in his March 27 tweet—which it does not—the registration form makes clear that this event, and the potential windfall it offers attendees, is still an overt inducement to vote. The chance to receive such a windfall is clearly a “thing of value” within the meaning of the statute.

Musk and America PAC’s actions also violate a second Wisconsin statute that prohibits threats to Wisconsin’s elections. “No person may

personally or through an agent, by any act compel, induce, or prevail upon an elector either to vote or refrain from voting at any election for or against a particular candidate or referendum.” Wis. Stat. § 12.09(3). This has already occurred. Musk and America PAC have acted to induce Wisconsinites to vote by dangling \$1,000,000 payments in front of those who “have voted” or those who tell America PAC how they will vote.

Some may suggest that Musk’s March 28 tweet “clarifying” the initial announcement of his March 30 event is exculpatory. They would be wrong. Neither Musk nor America PAC has taken any act to withdraw from their civil conspiracy to violate Wisconsin election law. *See, e.g., Coopman v. State Farm Fire & Cas. Co.*, 179 Wis. 2d 548, 558, 508 N.W.2d 610 (Ct. App. 1993) (holding Wisconsin law on withdrawal from criminal conspiracy applies in context of civil conspiracy). And the continued requirement for anyone who wishes to attend the Musk rally—and thereby have an opportunity to receive one of the two \$1,000,000 payments being offered—to tell America PAC how they will vote underscores that these payments always were, and continue to be, an inducement for Wisconsin voters to cast ballots. That is a violation of Wisconsin law. Wis. Stat. § 12.11(1m)(a)2.

### **III. Traditional legal remedies are inadequate here.**

Wisconsin courts have long recognized the special status of elections that are free from unlawful pecuniary disruption:

When our elections to fill public offices cease to express the free, intelligent and unbiased judgment and choice of the electors; when they shall be controlled or materially influenced by pecuniary offers made by the candidates, whether to the electors, or to the municipality (which is but the aggregation of the electors)—a most vital condition of free government will be disregarded. The tendency might be, in such case, to banish from the public service all who will not pay for the privilege of being employed therein, and to fill it with less scrupulous, and therefore less trustworthy and less deserving men. Elections by the people might thus cease to express the free and unbiased judgment and will of the people, but might be controlled by mercenary considerations, either public or private, or both, and would thus speedily and justly fall into public contempt.

So far as we are advised, no judicial tribunal has given any countenance whatever to any practice or act which tends in that direction, but the courts have steadily held that popular elections must be kept free from any taint of corruption, and from all improper or unlawful influences whatever. We have no disposition to depart from this line of adjudication. On the contrary, were the opposite doctrine asserted in any of the cases, we should not follow them. We would not hold that a man may buy a public office, especially a most important and responsible judicial office, just as he would buy a horse at auction, that is, by offering to pay more for it than any other person is willing to pay. We can never give the sanction of this court to a doctrine so pernicious.

*State ex rel. Newell v. Purdy*, 36 Wis. 213, 224–25 (1874). It necessarily follows that where a civil conspiracy threatens to corrupt an election, the judiciary is called upon to act. That is precisely the case here. Yet, both the circuit court and the court of appeals have declined to entertain the merits of the Attorney General's motion.

Wisconsin's pending election is under threat from a series of election crimes committed by Musk and America PAC. Absent

immediate judicial intervention, there will be no way to remedy the prejudice. Once an election “comes and goes, there can be no do-over and no redress.” *League of Women Voters of N.C.*, 769 F.3d at 247; *see also Common Cause Ind. v. Lawson*, 327 F. Supp. 3d 1139, 1153–54 (S.D. Ind. 2018) (finding “no adequate remedy at law” when an individual’s right to vote is violated, because “an individual cannot vote after an election has passed”).

In related contexts, courts have recognized how monetary damages cannot compensate for harm to the right to vote. *See Common Cause Ind.*, 327 F. Supp. 3d at 1154; *Democratic Nat’l Comm. v. Bostelmann*, 451 F. Supp. 3d 952, 969 (W.D. Wis. 2020) (“[I]nfringement on a citizens’ [sic] constitutional right to vote cannot be redressed by money damages, and therefore traditional legal remedies [are] inadequate[.]” (citing *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006))); *People First of Ala. v. Merrill*, 491 F. Supp. 3d 1176, 1180 (N.D. Ala. 2020) (“Because no monetary sum could compensate for this injury [abridgment of the right to vote], legal remedies are inadequate.”).

#### **IV. Immediate injunctive relief is in the public interest and would maintain the status quo.**

Granting the Attorney General’s motion for immediate injunctive relief will serve the public interest. *See Village of Hobart v. Brown Cnty.*,

2007 WI App 250, ¶24, 305 Wis. 2d 263, 742 N.W.2d 907 (public interest is an equitable consideration in whether to grant an injunction); *see also Forest Cnty. v. Goode*, 219 Wis. 2d 654, 684, 579 N.W.2d 715 (1998) (same). As this Court has recognized, Wisconsin’s “free government” hinges on elections fairly administered, inspiring public confidence, and therefore necessarily untainted by the actions of Musk and America PAC. *Purdy*, 36 Wis. at 224. Free government and fair elections are a Wisconsin tradition, and they are by definition the status quo. Musk and America PAC’s scheme to subvert those interests should be enjoined.

In all, granting the Attorney General’s request for immediate relief will advance, and is necessary to, the public interest in the lawful administration of elections.

### CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to grant the Attorney General’s request for immediate temporary injunctive relief.

Dated March 30, 2025

Electronically Signed by: s/Scott B. Thompson

STATE DEMOCRACY  
DEFENDERS FUND

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## CERTIFICATIONS

### Certification of Form and Length

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b) and (c) for a brief produced with proportional serif font. According to Microsoft Word, this brief contains 2,465 words.

### Certification of Filing/Service

A copy of this certificate, with both the Motion for Leave to File an *Amicus Curiae* Brief and the foregoing brief, has been filed electronically with the Court. Copies have also been sent via email to all counsel to whom the Court of Appeals distributed its decision and order yesterday afternoon in 2025AP646.

Dated: March 30, 2025

Electronically signed by: s/Scott B. Thompson

Scott B. Thompson (SBN 1098161)

LAW FORWARD

222 West Washington Avenue

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Madison, WI 53703

sthompson@lawforward.org



# Exhibit A



***CONFIDENTIAL TREATMENT REQUESTED***

March 27, 2024

VIA E-MAIL

Attorney General Josh Kaul  
Wisconsin Department of Justice  
17 West Main Street  
Madison, WI 53703  
kauljl@doj.state.wi.us

Milwaukee County District Attorney Kent Lovern  
821 W. State St.  
Room 405  
Milwaukee, WI 53233  
kent.lovern@da.wi.gov

Re: America PAC Petition

Dear Attorney General Kaul and District Attorney Lovern:

We write to the Wisconsin Department of Justice's Criminal Litigation Unit (the "***Unit***") and the Milwaukee County District Attorney's Public Integrity Unit (the "***PIU***") to request an immediate investigation of America PAC's offer of \$100 to Wisconsin registered voters for signing a petition in opposition to "activist judges." We ask you to review whether offering voters \$100 in exchange for signing a petition constitutes a violation of Wisconsin law, specifically Wisconsin's strict prohibition on election bribery. We also request your review of the \$1 million "awards" that have recently been announced to determine whether it complies with the state's lottery law. Below we highlight the risks associated with influencing potentially thousands of Wisconsin citizens in the days leading up to the April 1, 2025 election.

***Factual Background***

America PAC (the “**PAC**”) is a federally registered independent-expenditure committee founded by Elon Musk.<sup>1</sup> The PAC has filed two independent expenditure reports with the Wisconsin Ethics Commission as an unregistered express advocacy organization for its activity related to the April 1, 2025 Wisconsin Supreme Court election.<sup>2</sup> The independent expenditure reports disclose over \$8 million in express advocacy communication expenditures either supporting Brad Schimel or opposing his opponent, Susan Crawford, in the Wisconsin Supreme Court election.<sup>3</sup> The PAC has not disclosed any other Wisconsin activity related to any other election or race.

On March 20, 2025, the PAC posted a petition<sup>4</sup> to its website, titled “Petition in Opposition to Activist Judges” (the “**Petition**”). It reads:

Judges should interpret laws as written, not rewrite them to fit their personal or political agendas. By signing below, I’m rejecting the actions of the activist judges who impose their own views and demanding a judiciary that respects its role—interpreting, not legislating.

The Petition includes both terms of service and a privacy policy, the latter of which asserts that “Personal Identifying Information” collected via the website “will only be used to support the PAC’s activities, and it will not be shared with any advertisers, political organizations, or third parties not directly affiliated with America PAC.”<sup>5</sup> After the website went live, Mr. Musk broadcast the petition on the social media platform X (formerly known as Twitter)—a platform that he owns.<sup>6</sup>

Anyone may sign the Petition, but America PAC offers registered Wisconsin voters an added incentive in the form of a \$100 cash payment for signing. Additionally, any registered Wisconsin voter may refer the Petition to other registered Wisconsin voters through a unique web address and receive an additional \$100 cash payment for each

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<sup>1</sup> *Form 1 Statement of Organization*, Federal Election Commission (Mar. 25, 2025), <https://docquery.fec.gov/cgi-bin/forms/C00879510/1835649/>; America (@America), X (2024), x.com/America.

<sup>2</sup> America PAC, State of Wisconsin CF-7, available at <https://cfis.wi.gov/Public/Registration.aspx?page=FiledReports> (Committee ID: 1200151).

<sup>3</sup> *Id.*

<sup>4</sup> *Petition in Opposition to Activist Judges*, America, <https://petition.theamericapac.org/> (last visited Mar. 27, 2025).

<sup>5</sup> *America PAC Privacy Notice*, <https://theamericapac.org/privacy-policy> (last visited Mar. 25, 2025).

<sup>6</sup> DogeDesigner (@cb\_doge), X (Mar. 25, 2025) (retweeted by @elonmusk), [https://x.com/cb\\_doge/status/1904405508338913577](https://x.com/cb_doge/status/1904405508338913577).

referral.<sup>7</sup> There is no apparent limit on how many bonus-referral payments a Wisconsin registered voter may receive. The deal expires at 11:59 p.m. on Election Day, April 1, 2025.

The Petition also involves an “award” of \$1 Million to at least some signers, although the details are somewhat vague. On March 27, the PAC tweeted from its X account that a voter from Green Bay had become the “first \$1 Million spokesperson for signing our Petition In Opposition To Activist Judges.”<sup>8</sup> Musk retweeted the post and added that it was “[e]xciting to announce our first million dollar award for supporting our petition against activist judges in Wisconsin” and that the “next million dollar award will be announced in two days.”<sup>9</sup> The Petition page itself makes no mention of this award.<sup>10</sup> Newsweek also reported that, in 2024 litigation concerning a similar scheme in Pennsylvania, attorneys for America PAC represented that “the million-dollar awards were not random, but were given to people deemed suitable ‘spokespeople’ for the PAC’s messaging.”<sup>11</sup> It is unclear whether this Petition follows a similar design.

### ***Relevant Wisconsin Law***

Election bribery is a Class I felony under Wisconsin law. Wis. Stat. §§ 12.11, 12.60(1)(a). The election bribery statute reads, in relevant part:

(1m) Any person who does any of the following violates this chapter:

(a) Offers, gives, lends or promises to give or lend, or endeavors to procure, anything of value, or any office or employment or any privilege or immunity to, or for, any elector, or to or for any other person, in order to induce any elector to:

1. Go to or refrain from going to the polls.
2. Vote or refrain from voting.
3. Vote or refrain from voting for or against a particular person.
4. Vote or refrain from voting for or against a particular referendum; or on account of any elector having done any of the above.

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<sup>7</sup> *Petition in Opposition to Activist Judges*, America, <https://petition.theamericapac.org/> (last visited Mar. 27, 2025).

<sup>8</sup> America (@America), X (Mar. 26, 2025), <https://perma.cc/T68B-5YPN>

<sup>9</sup> Elon Musk (@elonmusk), X (Mar. 26, 2025), <https://perma.cc/YB35-KWFY>

<sup>10</sup> *Petition in Opposition to Activist Judges*, America, <https://petition.theamericapac.org/> (last visited Mar. 27, 2025).

<sup>11</sup> Theo Burman, *Elon Musk Announces First \$1M Petition Winner: How to Enter* (Mar. 27, 2025), <https://www.newsweek.com/elon-musk-petition-winner-wisconsin-judge-2051244>

(b) Receives, agrees or contracts to receive or accept any money, gift, loan, valuable consideration, office or employment personally or for any other person, in consideration that the person or any elector will, so act or has so acted.

(c) Advances, pays or causes to be paid any money to or for the use of any person with the intent that such money or any part thereof will be used to bribe electors at any election.

Wis. Stat. § 12.11(1m).

The statute defines “anything of value” to include “any amount of money, or any object which has utility independent of any political message it contains and the value of which exceeds \$1.” Wis. Stat. § 12.11(1).

District Attorneys have the authority to prosecute violations of Wisconsin’s election bribery statute pursuant to Wis. Stat. §§ 11.1401(2), 12.60(4), and 978.05(1), (2). District Attorneys and the Attorney General have concurrent authority to compel compliance with Wis. Stat. ch. 12:

Whenever a violation of the laws regulating the conduct of elections or election campaigns . . . occurs or is proposed to occur, the attorney general or the district attorney of the county where the violation occurs or is proposed to occur may sue for injunctive relief, a writ of mandamus or prohibition, or other such legal or equitable relief as may be appropriate to compel compliance with the law.

Wis. Stat. § 5.07.

### ***The Petition and Wisconsin’s Election Bribery Statute***

We request your review of whether the Petition constitutes a violation of Wis. Stat. § 12.11(1m) paragraphs (a)1., 2., and/or 3. The Petition offers and promises something of value—cash payments in excess of the \$1 threshold—to registered Wisconsin voters, in what (several indicators suggest) appears to be an inducement to register and vote. The cash payments are available only to registered Wisconsin voters. In Wisconsin, voters may register to vote at their municipal clerk’s office until March 28, 2025, or at their respective polling places on Election Day, April 1, 2025.<sup>12</sup> The Petition’s offer, which expires on April 1, creates a financial incentive for eligible Wisconsin voters to register to vote. Since registering to vote is a necessary condition

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<sup>12</sup> *Deadlines for the April 1, 2025, Spring Election*, MyVote Wisconsin, <https://myvote.wi.gov/en-us/Voter-Deadlines> (last visited Mar. 25, 2025).

for voting, there is reason to investigate whether this offer constitutes a form of vote inducement, prohibited by Wisconsin law.

Additionally, there is reason to investigate whether the purpose of these payments is not only to convince voters to register to vote, but also to induce those same voters to go to the polls and vote for the favored candidate of the payors.<sup>13</sup> To be sure, the Petition does not explicitly ask voters to agree to vote or not vote, nor does it expressly advocate for voting for or against a particular person. Yet, the facts and circumstances surrounding this petition may support a finding that the offer of \$100 constitutes advocacy in favor of one candidate in the ongoing campaign to become Wisconsin's next Supreme Court justice.

The Petition asks voters to endorse two actions:

- (1) “rejecting the actions of activist judges”; and
- (2) “demanding a judiciary that respects its role – interpreting, not legislating.”

Both actions echo the campaign materials and communications that the PAC and its allies have been actively distributing as part of the current Supreme Court campaign. The “activist” language from the Petition mirrors a common talking point, echoed in X posts<sup>14</sup> and press releases<sup>15</sup> supportive of one of the candidates—Judge Brad Schimel.

A recent event hosted by Mr. Musk underscores the nexus between the Petition and the PAC's advocacy for Judge Schimel's candidacy. On March 22, less than 48 hours after the Petition went live, Mr. Musk hosted Judge Schimel for a public conversation on his social media platform. Mr. Musk described this conversation as “addressing *judicial activism* broadly and the Wisconsin Supreme Court election specifically with Brad Schimel.”<sup>16</sup> At least some of those who signed the Petition received a text message encouraging them to listen to the conversation:

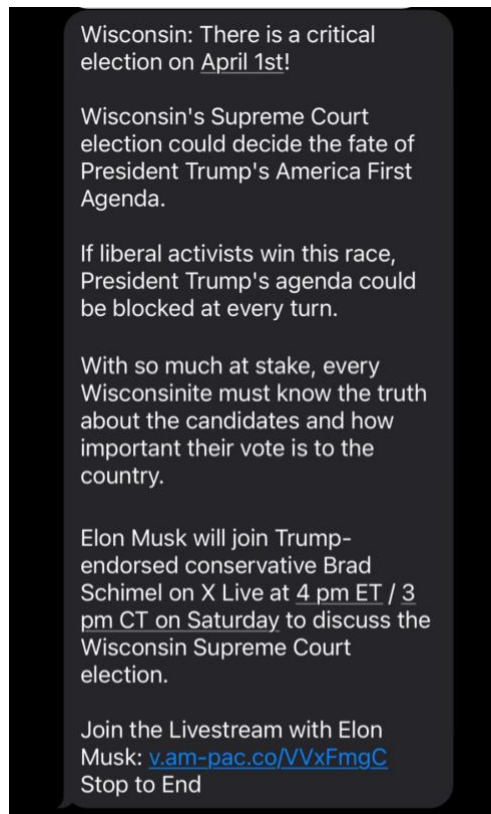
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<sup>13</sup> The statute uses the legal term “electors,” by which it refers to voters. *See, e.g.*, Wis. Stat. § 6.02(1).

<sup>14</sup> *See, e.g.*, Team Schimel (@TeamSchimel), X (Feb. 10, 2025), <https://perma.cc/N9WQ-5WNS>; Katherine Hamilton (@thekat\_hamilton), X (Mar. 19, 2025), <https://perma.cc/5S7C-3W3V>.

<sup>15</sup> *See, e.g.*, *Schimel campaign: Wins Supreme Court debate*, WisPolitics (Mar. 12, 2025), <https://perma.cc/6YUN-W9JC>; *Crawford's Hypocrisy on Extreme Partisanship Reaches New Heights*, WisGOP (Jan. 21, 2025), <https://perma.cc/E4D2-TDMM>.

<sup>16</sup> Elon Musk (@elonmusk), X (Mar. 22, 2025) (retweeted by @elonmusk), <https://perma.cc/2CFJ-GSDB> (emphasis added).



Notably, the text also includes a link to what appears to be the PAC's website. During the conversation, Mr. Musk promoted Judge Schimel's candidacy. He explained:

[T]he reason I'm bringing this to people's attention is because this really has implications for Wisconsin, but for the whole country. So that's why I'm really urging - please anyone, if you have any friends, family in Wisconsin, send them a note and ask them to vote early for, um, Justice Schimel, and, um, because this, actually, this election is gonna affect everyone in the United States, so, um, reach out to your friends and family in Wisconsin, um, you know, educate them as to the importance of this race. It might not seem important, but it's actually really important, and it could decide the fate of the country. So, it's a big deal, and that's why I'm, you know, taking everyone's time to endorse Justice Schimel, and because - it's a big deal.<sup>17</sup>

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<sup>17</sup> See Musk-Schimel-Johnson Twitter Space Audio, 10:59-11:42, March 24, 2025, available at <https://app.box.com/s/eknyyo62geambcztnehu2etl1jdujncr>.



In closing the conversation, Mr. Musk reiterated, “Once again, everyone get your friends and family – text them, call them, and tell them to vote for Justice Schimel this week. Early vote, let’s go.”<sup>18</sup>

Accordingly, the circumstances surrounding the Petition require an immediate investigation into whether the Petition is an inducement for voters to take specific actions with respect to voting.

### ***The Petition and Wisconsin’s Gambling Laws***

The State of Wisconsin has, for over a century, heavily regulated gambling, games of chance, and lotteries.<sup>19</sup> Indeed, Wisconsin’s broad prohibitions against gambling and related games of chance are a matter of state constitutional concern.<sup>20</sup> In general, gambling is prohibited in Wisconsin, private lotteries included.<sup>21</sup> Conducting a private lottery—“an enterprise wherein for a consideration the participants are given an opportunity to win a prize”—is a crime.<sup>22</sup> Wisconsin law defines “consideration” broadly as “anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant.”<sup>23</sup> The constitution and related statutes identify only a narrow set of activities which do not constitute “consideration” for lottery and other gambling purposes.<sup>24</sup> Petition signatures to support a political message are not among them.<sup>25</sup>

The Wisconsin Legislature has entrusted enforcement responsibility over the aforementioned regulations to the Attorney General and the District Attorneys of Wisconsin. Wis. Stat. §§ 165.50, 560.40. The Attorney General is specifically entrusted with “devising programs to control crime statewide . . . [including] commercial gambling,” Wis. Stat. § 165.70 (3), while, “[d]istrict attorneys . . . shall cooperate and assist the personnel” of the Wisconsin Department of Justice in that endeavor, Wis. Stat. § 165.70(4). And both are entrusted to recover the prize money

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<sup>18</sup> *Id.* 29:56-30:10.

<sup>19</sup> STATE OF WIS. LEGIS. REFERENCE BUREAU, THE EVOLUTION OF LEGALIZED GAMBLING IN WIS. (2000), available at <https://perma.cc/F48Y-JEDX>. Wisconsin Const. art. IV, § 24 was last amended the year preceding the publication of this research bulletin.

<sup>20</sup> Wis. Const. art. IV, § 24.

<sup>21</sup> *Id.*; Wis. Stat. § 945.02; *but see* Wis. Stat. ch. 565.

<sup>22</sup> Wis. Stats. §§ 945.01(5)(a), 02(3).

<sup>23</sup> Wis. Stat. § 945.01(5)(b)(1).

<sup>24</sup> Wis. Const. art. IV, § 24; Wis. Stat. § 945.01(5)(b)(2).

<sup>25</sup> *See Id.* Notably, the data provided through petitions to political campaigns and related PACs is highly valuable in the electoral context. *See* Dan Patterson, *How Your Personal Data is Exploited to Win Elections and Influence Policy*, CNET (Sept. 10, 2020), available at <https://www.cnet.com/news/politics/how-your-personal-data-is-exploited-to-win-elections-and-influence-policy/>.



distributed by an illegal lottery.<sup>26</sup> Given the constitutional significance of the prohibition against gambling, and the statewide nature of the facts at issue, an immediate investigation is appropriate to determine whether America PAC's selection of million-dollar award winners from among petition signors constitutes an illegal lottery.

### ***Conclusion***

We urge your office to immediately investigate the PAC and its Petition to determine whether the PAC has violated Wisconsin's election bribery prohibition and/or relevant gambling laws. We further urge your office to take all necessary action to prevent any illegal activity from improperly influencing Wisconsin voters.

If there is any additional information that we, or our clients, can provide to your office about this matter, please do not hesitate to contact us.

Sincerely,

Mark Becker, *Former Chair, Brown County GOP; Radio Host of the Rational Revolution*

Tracy Ann Mangold, *Former GOP Wisconsin 8th Congressional District Secretary*

Heath Mayo, *Founder, Principles First*

Steve Michek, *Republican, Former Sheriff, Iowa County, Wisconsin*

Richard Painter, *Former Associate Counsel to the President and chief White House ethics lawyer for President George W. Bush*

Craig J. Peterson, *Wisconsin Republican Political Strategist*

Joe Walsh, *Board Member, State Democracy Defenders Fund; Former Republican Member of U.S. House of Representatives, Illinois 8th District, 2011-13*

Electronically Signed By: Scott B. Thompson, SBN 1098161

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<sup>26</sup> Wis. Stat. § 945.10