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10-06-2023Anna Maria Hodges  
Clerk of Circuit Court  
2023CV007607  
Honorable Glenn H  
Branch 34

10-12-23

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STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

ERIK FANNING,

and

DANA McCORMICK,

Plaintiffs,

v.

THE CITY OF WAUWATOSA  
7725 West North Avenue  
Wauwatosa, WI 53213,

and

DENNIS MCBRIDE in his individual and official  
capacity as mayor of the City of  
Wauwatosa  
7725 West North Avenue  
Wauwatosa, WI 53213,

Respondents.

Case No. 23 CV  
Case Type: 30701

Received by

OCT 12 2023

City Clerk's Office

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**SUMMONS**

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**THE STATE OF WISCONSIN**

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as the term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is **Milwaukee County Clerk of Circuit Court, 901 North 9<sup>th</sup> Street, Milwaukee, WI 53201**, and to Kathryn L. Knowlton, Plaintiffs' attorney, whose address is **P.O. Box 37, Stone Lake, WI 54876**. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated: October 6, 2023

Respectfully submitted,  
*Electronically signed by*  
*Kathryn L. Knowlton*  
Kathryn L. Knowlton (SBN: 1032814)  
Knowlton Law Group, LLC  
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STATE OF WISCONSIN

CIRCUIT COURT

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ERIK FANNING,  


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DANA McCORMICK,  


Case No. 23 CV

Case Type: 30701

Plaintiffs,

v.

THE CITY OF WAUWATOSA  
7725 West North Avenue  
Wauwatosa, WI 53213,

and

DENNIS MCBRIDE in his individual and official  
capacity as mayor of the City of  
Wauwatosa  
7725 West North Avenue  
Wauwatosa, WI 53213,Respondents.  

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**COMPLAINT**

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**NOW COME** Plaintiffs, Erik Fanning and Dana McCormick, (collectively, "Plaintiffs")  
by and through their counsel, Attorney Kathryn Knowlton, and hereby allege as follows:

**INTRODUCTION**

1. The dispute in this case involves whether the mayor of a city issued an order in violation

of the laws of Wisconsin - an order that impacts every person in the City, and any of those who may be temporarily in, or passing through the City of Wauwatosa in October, 2020.

2. Plaintiffs contend that Mr. McBride violated the law by issuing on October 7, 2020, a Proclamation of Emergency and ordered a curfew in contravention of Wis. Stats. §§ 323.14, and 323.11 as Mr. McBride did not follow statutorily required procedures when propagating and implementing his order, and the City enforced and maintains the illegal order. Plaintiffs experienced harm as a consequence.

3. When such actions in violation of statute are taken by the government (or, in this case, a rogue government actor), and particularly under the guise of an “emergency,” they also egregiously violate the constitutional protections of free speech and assembly, and subject citizens to unlawful arrest, search and seizure, and subsequent violations of privacy. And when this type of abuse of power is taken unilaterally and in violation of procedural rules, it significantly undermines democratic ideals and foundational trust necessary to the continued effectiveness and order in government.

4. On October 7, 2020, City of Wauwatosa Mayor, Dennis McBride, unilaterally issued a “Proclamation of Emergency” when no emergency conditions existed in the city of Wauwatosa and illegally ordered a curfew, severely and unconstitutionally restricting citizen assembly and speech. He did this knowingly and deliberately without sanction of, or even informing the actual lawful governing body, that is, the Wauwatosa Common Council of his actions.

5. Mr. McBride instead illegally and purposefully hijacked the power and authority of Wis. Stat. §323.11. This action threw the City into chaos, causing injuries, illegal ticketing and arrests, unconstitutional searches and seizures, immeasurable detrimental economic impact for the City,



and has irreparably damaged the faith and confidence of citizens in law enforcement and government.

6. During the summer months of 2020, Mr. McBride, as mayor, secretly met with select and unelected officials to organize and amass a militarized presence in form and structure, ready to invade suburban streets with urban assault vehicles, riot gear and heavy weapons in Wauwatosa.

7. Mr. McBride claims this extreme preparation was necessary in the wake of the tragic degeneration of peaceful protests in other places in the country and state, as far away as Portland, Oregon and as near as Racine/Kenosha which all had different circumstances than that which existed in Wauwatosa in October 2020. Such analogies in attempt to defend violations of statute are at best, inaccurate on their face, and at worst, exploitative of irrational fear, reinforced by a global pandemic, and demonstrative of open racism. The circumstances activating actual “riots” and the sparks that ignited them, are critically and demonstratively distinguishable from the factual reality of Wauwatosa in the summer and into October, 2020. This is demonstrated by the uninterrupted regular meetings and conduct of business by the City and its Common Council.

8. Mr. McBride explicitly testified that the Common Council was deliberately left out of the process in blatant violation of the statute, because “they could not be trusted”; and that “loose lips sink ships.” In the ultimate act of hubris, Mr. McBride substituted his solitary judgment for the statutorily required Common Council authority and sanction.

9. And, remarkably, the City maintains the curfew tickets issued in amounts of \$1,321.00 despite the statutory limit of \$200.00 for each ticket in contravention of Wis. Stat. §328.23 and pursuant to this illegal proclamation.

10. Plaintiffs are among those who received illegally issued tickets, were improperly

arrested and unconstitutionally targeted in violation of their constitutional rights to free speech and assembly as a result of Mr. McBride's illegal Proclamation of Emergency and curfew order.

11. Consequently, Plaintiffs assert this action against the mayor, in his official capacity.

Plaintiffs also assert this action against the City, which knowingly implemented and maintained the proclamation, curfew order, and its subsequent consequences.

12. Plaintiffs ask the Court to issue a declaratory judgment that the mayor and the City violated Wis Stats. §323.14, and §323.11 in issuing and enforcing the illegal order, and violated Article I, Sections 3 and 4 of the Wisconsin Constitution. Plaintiffs further ask the Court to immediately issue an order requiring the City to dismiss all municipal tickets issued as a result of the illegal curfew order, and to expunge all records of same. Plaintiffs also seek liquidated damages, compensatory damages, punitive damages, and attorneys' fees.

13. When a municipality takes an action directly prohibited by the Wisconsin Statutes, it acts beyond the scope of its authority and usurps the role of the Legislature, undermining its exclusive province in the constitutional separate of powers. *See Wisconsin Carry, Inc. v. City of Madison*, 2017WI 19, ¶ 21, 373 Wis. 2d 543, 892 N.W.2d 233 ("A municipality is merely a department of the state, and the state may withhold, grant, or withdraw power and privileges as it sees fit.") (citation omitted).

### **PARTIES**

14. Plaintiff Erik Fanning is a resident of Wauwatosa who was unlawfully arrested and ticketed for curfew violation on October 8, 2020. Since being unlawfully arrested and ticketed, he has been reluctant to interact with law enforcement and has lost confidence in government and its process.

15. Plaintiff Dana McCormick is a resident of Wauwatosa who was arrested and ticketed for

curfew violation on October 10, 2020. Since being unlawfully arrested and ticketed, she has been reluctant to interact with law enforcement and has lost confidence in government and its process.

16. Respondent Dennis McBride is the Mayor of the City of Wauwatosa. Respondent McBride maintains his office at 7725 West North Avenue, Wauwatosa, WI 53213. Upon information and belief, Respondent McBride (possibly acting in concert with others) proclaimed a state of emergency pursuant to Wis. Stat. 323.11 and ordered and directed the enforcement of the unlawful curfew throughout the City of Wauwatosa on October 7, 2020. He directed and oversaw the operation of this illegal order.

17. Respondent City of Wauwatosa is a municipality organized under the laws of Wisconsin, located in Milwaukee County, Wisconsin. Its seat of government is City Hall, located at 7725 West North Avenue, Wauwatosa, WI 53213. Upon information and belief, the City caused the implementation of the unlawful curfew order and illegally enforced it. The City of Wauwatosa maintains the unlawfully issued tickets and other enforcement records which have been and continue to be used and distributed by and between law enforcement agencies, and in response to public records requests.

### **JURISDICTION AND VENUE**

18. This is an action for declaratory and injunctive relief under Wis. Stat. §§ 806.04 and 813.01, and for damages under Wis. Stat. §895.46.

19. Venue in this Court is proper pursuant to Wis. Stat § 801.50(2).

### **STATEMENT OF FACTS**

20. At all times relevant to this action, Respondent Dennis McBride, was Mayor of the City of Wauwatosa.



21. At all times relevant to this action, the Governing Body of Wauwatosa was the seventeen member Common Council duly elected by its citizens.

22. On September 30, 2020, Respondent Dennis McBride, as mayor of the City of Wauwatosa, signed a Proclamation of Emergency, containing a curfew order which prohibited “pedestrian and vehicular traffic on Wauwatosa streets” starting at 7pm on October 7, 2020.

23. There were two (2) Wauwatosa government meetings on September 30, 2020: a regular meeting of the Historic Preservation Committee, and a special meeting of the Police and Fire Commission.

24. There were two (2) Wauwatosa government meetings on October 1, 2020: a regular meeting of the Equity and Inclusion Committee, and a regular meeting of the Design Review Committee.

25. There were three (3) Wauwatosa government meetings on October 5, 2020: a regular meeting of the Board of Public Debt, a regular meeting of the Board of Public Works, and a regular meeting of the Government Affairs Committee Ad Hoc Committee on Issues Related to Policing and Racial Equity.

26. There were two (2) Wauwatosa government meetings on October 6, 2020: a regular meeting of the Committee of the Whole, and a regular, full Common Council meeting.

27. In the late afternoon of October 7, 2020, Respondent McBride publicly announced the Emergency Proclamation, both on video and written publication.

28. Prior to October 7, 2020, Respondent McBride did not notify or seek approval of the Wauwatosa’s Common Council of his/their decision to declare an emergency and order a curfew as he was statutorily required to.



29. The Wauwatosa Common Council, as governing body of Wauwatosa, did not pass any formal ordinance or resolution authorizing the declaration of emergency for October 7, 2020.

30. Respondent McBride, and/or other City officials who were involved, did, however, notify certain unidentified “staff” and others prior to, and in order to enforce the curfew order.

31. The unlawful order was enforced by the Wauwatosa Police Department, and included mutual aid partners from throughout the state and country, including the Federal Bureau of Investigation and the United States Marshall Service, as well as the National Guard.

32. The City of Wauwatosa treats all records derived from the unlawful order as public records accessible to the public through Open Records requests, as well as available through all regularly maintained law enforcement agency and municipal ordinance records.

33. Plaintiffs and other similarly situated persons still contend with financial and reputational repercussions as a result of the illegal order and the on-going prosecution of tickets and law enforcement records, which will continue indefinitely absent a court order.

34. Respondent McBride’s illegal order resulted in harm to the Plaintiffs, and has significantly chilled the civil engagement of Plaintiffs both in speech and assembly, and those similarly situated.

### **CAUSES OF ACTION**

#### **COUNT I – DECLARATORY JUDGMENT AND INJUNCTION VIOLATION OF WISCONSIN STATUTES §§323.11, 323.14 ALL PLAINTIFFS v. ALL DEFENDANTS**

35. Plaintiffs hereby incorporate and allege all other paragraphs of this complaint as it is fully set forth herein.

36. Wisconsin Statute §323.11 empowers and authorizes a local “governing body” to declare an emergency.

37. The governing body in Wauwatosa, Wisconsin is the Common Council.<sup>1</sup>

38. The chief executive officer in Wauwatosa, Wisconsin, is the mayor.

39. Wisconsin Statute §323.14 allows the “chief executive officer or acting chief executive officer of any local unit of government” to invoke the authority of §323.11 conditionally, if, and only “If, *because of the emergency conditions, the governing body of the local unit of government is unable to meet promptly...*”. Wis. Stat. §323.14 (emphasis added).

40. No emergency conditions existed that prohibited the governing body from meeting at any time prior to the unilateral power grab by Respondent McBride.

41. This violation of Wis. Stat. §323.11 resulted in an improper emergency declaration and curfew order, enacted illegally through purposefully improper invocation of Wis. Stat. §323.14. Wis. Stats. §§323.11, 323.14.

42. This case presents a bona fide controversy between adverse parties over whether Mr. McBride’s invocation of §323.14 was improper, resulting in an illegal declaration and curfew order in violation of §323.11.

43. Plaintiffs are therefore entitled to a declaration that Mr. McBride’s declaration and curfew order violates §323.14, and §323.11 and an injunction requiring Respondent City to immediately dismiss and expunge any enforcement records of the illegal declaration and curfew order. Plaintiffs are also entitled to an injunction prohibiting Respondents from disclosing the contents of any records resulting from the illegal declaration and curfew order still in possession of the City and its agents, and requiring expungement of same.

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<sup>1</sup> “The Common Council consists of 17 members and is the governing body elected by the residents of Wauwatosa.” <https://www.wauwatosa.net/government/common-council#:~:text=The%20Common%20Council%20consists%20of,and%20represents%20the%20entire%20community>.

**COUNT II – DAMAGES**  
**VIOLATION OF WIS. STATS. §§323.11 and 323.14.**  
**ALL PLAINTIFFS v. ALL DEFENDANTS**

44. Plaintiffs hereby incorporate and allege all other paragraphs of this complaint as it is fully set forth herein.

45. Plaintiffs Fanning and McCormick were ticketed and arrested on the basis of an illegal order and claim damages as liquidated, punitive and attorneys' fees pursuant to Wis. Stat. §895.46.

46. Plaintiffs Fanning and McCormick are therefore entitled to compensatory and punitive damages as a result of these violations, as well as attorney's fees and costs.

**COUNT III – DECLARATORY JUDGMENT AND INJUNCTION**  
**VIOLATION OF ARTICLE I, SECTIONS 3 & 4 OF THE WISCONSIN**  
**CONSTITUTION**  
**ALL PLAINTIFFS v. ALL DEFENDANTS**

47. Plaintiffs hereby incorporate and allege all other paragraphs of this complaint as it is fully set forth herein.

48. Article I, Section 3 of the Wisconsin Constitution states, in relevant part, "Every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right, and no laws shall be passed to restrain or abridge the liberty of speech or of the press." Wis. Const. art. I, § 3.

49. Article I, Section 4 of the Wisconsin Constitution states, "The right of the people peaceably to assemble, to consult for the common good, and to petition the government, or any department thereof, shall never be abridged." Wis. Const. art. I, § 4.83.

50. Article I, Sections 3 and 4 of the Wisconsin Constitution "guarantee the same freedom of speech and right of assembly and petition as do the First and Fourteenth amendments



of the United States constitution.” *Bd. of Regents-UW Sys.v. Decker* , 2014 WI 68, ¶ 43, n.19 (quoting *Lawson v. Hous. Auth. of City of Milwaukee*, 270 Wis. 269, 274 (1955)).

51. Any governmental restriction on speech and assembly must be narrowly tailored to achieve a substantial government interest and must leave open alternatives for communication and petitioning of redress. Draconian restrictions such as a curfew, must be used sparingly and with informed thoughtfulness and respect. When severely infringing on such basic, foundational principles of our country and governance, it is vital that proper procedural safeguards are secure and implemented. Such basic accountability is required to keep fear and power equally in check. One person’s arrogance and paternalistic ego cannot be allowed to usurp a duly elected body’s statutory authority. That is a hallmark of democracy; our distinction from dictatorship.

52. Safety is a public necessity, and can justify government enforcement of extreme measures, including such things as curfews. But neither Mr. McBride, nor the City of Wauwatosa demonstrate any safety concern that kept the governing body from meeting and enacting a proclamation by proper procedure. Indeed, the facts show the stark reality that the Common Council was regularly meeting, with no interference or safety concern (outside of remedial pandemic safety measures – which still allowed for, and even enhanced the ability of councils all over the country to meet).

53. The Plaintiffs and the public at large continue to be harmed by the looming shadow of illegal authoritarian over-reach, financial and reputational impairment, and hesitancy to re-engage in protected civic activities.

54. The Plaintiffs are therefore entitled to a declaration that the proclamation and curfew order of October 7, 2020 violates Article I, Sections 3 and 4 of the Wisconsin Constitution.



Plaintiffs are also entitled to an injunction requiring Respondents to immediately dismiss any and all tickets issued in consequence of the illegal order, and expunge all records of same.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs request the following relief:

- A. A declaration that Respondents violated Wis. Stats. §§323.14 and 323.11 by improperly ignoring the statutorily authorized governing body of Wauwatosa in declaring an emergency and ordering enforcement of a curfew.
- B. A declaration that Respondents violated Article I, Sections 3 and 4 of the Wisconsin Constitution by violating Wis. Stats. §§323.14 and 323.11.
- C. An injunction ordering Respondents to dismiss all tickets issued in consequence of the illegal order and expunge all records of same.
- D. Damages pursuant to Wis. Stat. §895.46, and including liquidated, compensatory, and punitive damages.
- E. Pre- and post-judgment interest as provided by law.
- F. Reasonable attorney's fees and litigation costs, as provided by law.
- G. Any other relief that this Court deems just and proper.

### **DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury.

Dated: October 6, 2023

Respectfully submitted,  
*Electronically signed by*  
*Kathryn L. Knowlton*  
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