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BY MAIL & EMAIL

Mr. John Chisholm
Milwaukee County District Attorney
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Dear District Attorney Chisholm:

In our democracy, the people are sovereign; that is what Abraham Lincoln, one of the namesake honorees of the Presidents' Day holiday we celebrate today, meant when he described our nation as an experiment in "government of the people, by the people, for the people." No individual gets to serve in an elective office in defiance of the people's votes. That principle must be protected to ensure, in Lincoln's words, that American democracy "shall not perish from the earth." Yet that principle was attacked, here in Wisconsin, last December. Following the November 2020 election, ten individuals, impersonating the legally selected and authorized Presidential Electors of the state, flouted the will of the people as expressed at the ballot box and fraudulently attempted to misappropriate Wisconsin's participation in selecting the next President of the United States. As detailed below, we write to request your assistance in investigating these events, determining that they violate longstanding Wisconsin law, and helping deter others from ever attempting such a grave and brazen offense against our democracy.

Factual Background

At noon on Monday, December 14, 2020, Wisconsin's Governor welcomed a group of people to the State Capitol. Governor Evers and the nine other presidential electors pledged to then-President-Elect Joseph R. Biden, Jr., convened under the authority, and the obligation, conferred by Wis. Stat. § 7.75(1) and 3 U.S.C. § 7 after Biden won Wisconsin's statewide November 2020 election. During an open meeting broadcast live by Wisconsin Eye, the electors conducted the business prescribed by state and federal law: they elected a chairperson, cast and counted the necessary ballots, signed the necessary papers, and sent valid, official documents reflecting the lawful disposition of Wisconsin's ten electoral votes to the President of the United States Senate, the Wisconsin Secretary of State, the Archivist of the United States, and the Chief Judge of the United States District Court for the Western District of Wisconsin.¹ By these actions, the Governor and his fellow presidential electors vindicated the requirements of Wisconsin law, carried out the wishes of Wisconsin's electorate, and advanced American democracy through the lawful, peaceful transition of power that is the hallmark of our country.

While the Governor and his counterparts were convening, a separate group of individuals gathered elsewhere in the Wisconsin State Capitol. They executed a competing set of documents purporting to cast Wisconsin's ten

¹ See <https://wiseye.org/2020/12/14/wisconsins-2020-presidential-electors-meeting/> (last accessed Feb. 11, 2021).

electoral votes for a candidate who lost Wisconsin's statewide popular election and therefore had no legal entitlement to those electoral votes. They did so without advance notice, public access, or media attention. After their meeting, these individuals transmitted the fraudulent documents they had created to the President of the United States Senate, the Wisconsin Secretary of State, the Archivist of the United States, and the Chief Judge of the United States District Court for the Western District of Wisconsin. Copies of those documents, obtained from the Secretary of State's office through the Wisconsin Open Records Law, are attached to this letter as Exhibit A.

These "fraudulent electors" acted without any legal mandate whatsoever and with the intention that the false documents they produced be received as valid documentation for the purpose of inducing the United States Congress to credit the wrong candidates with having earned Wisconsin's ten electoral votes. The fraudulent electors met in a concerted effort to ensure that they would be mistaken, as a result of their deliberate forgery and fraud, for Wisconsin's legitimate presidential electors chosen by the mechanism prescribed under the United States Constitution and Wisconsin law. Through these actions, the fraudulent electors sought to undermine the November 2020 presidential election, and achieve through fraud a result that their chosen candidates had been unable to secure through a fair, free election or a bevy of meritless post-election lawsuits challenging the results of the vote.

On behalf of several Wisconsin voters and the SEIU Wisconsin Council, we write to draw your attention to the actions of these fraudulent electors. We request that your office immediately investigate the individuals responsible, with an eye toward assessing whether criminal charges are appropriate. At least two of the individuals identified reside in Milwaukee County, and their actions attempted to disenfranchise the voters of Milwaukee County, the State of Wisconsin, and the entire nation, by undermining the lawful outcome of the November election.

Relevant Provisions of Election Law

The U.S. Constitution empowers the legislature of each state to determine how that state's electoral votes will be assigned. Since statehood, Wisconsin has always assigned its electoral votes to the winner of the statewide presidential election. In accord with and reliance upon this unbroken tradition, Wisconsin voters cast their ballots in the November 3, 2020 election. The winning margin was reasonably close—within 1%—but not historically so.²

Wisconsin certified its election results on November 30, 2020, designating its ten electoral votes to President-Elect Biden and Vice President-Elect Kamala Harris. This certification came after votes were counted, double-checked, and canvassed—first at the precinct level, then at the municipal level, then at the county level, and finally statewide. All counts confirmed Biden and Harris as the winners of Wisconsin's statewide popular vote and therefore, under state law, the recipient of its ten votes in the Electoral College.

Notwithstanding the repeated confirmation of Wisconsin's results, the losing candidate and his allies continued to protest the validity of the election and finality of the result (both through a variety of legal filings and in the

² Within the past 20 years, for example, Wisconsin's 2000 and 2004 presidential elections, the 2011 and 2019 elections for justices on the Wisconsin Supreme Court, and the 2018 election for Attorney General of Wisconsin were all statewide elections decided by fewer votes than separated the winner and runner-up of Wisconsin's 2020 presidential election.

public eye). Wisconsin law makes clear that the statutory recount process is the exclusive vehicle for challenging the results of a presidential election. *See* Wis. Stat. § 9.01(11). In 2020, the losing candidate petitioned for such a recount (limited to Milwaukee and Dane Counties, per the candidate’s decision). The recount was completed, slightly expanding the margin of victory for Biden and Harris on November 29. The losing candidate sought judicial review of the recount results, and obtained expedited review both in a consolidated circuit court proceeding (as envisioned by Wis. Stat. 9.01(6)-(8)) and an expedited appeal to the Wisconsin Supreme Court. On the morning of December 14, the Supreme Court affirmed the circuit court’s wholesale rejection of the losing candidate’s recount challenge to certain ballots in Wisconsin. *Trump v. Biden*, 2020 WI 91, --- Wis. 2d ---, 951 N.W.2d 568.

By the time the electoral college—both the proper meeting and the fraudulent gathering of the fraudulent electors—convened on December 14, 2020, the outcome of the election, and the identify of Wisconsin’s ten electors, had been fully adjudicated and was no longer subject to doubt. No action by any court left the result of Wisconsin’s election in question, and no legal authority suggested the fraudulent electors might properly convene and act as they did, purporting to cast Wisconsin’s ten Electoral College votes for candidates who were not chosen by Wisconsin voters and not entitled to the state’s electoral votes under law.

Specific Acts by the Fraudulent Electors

In light of the finality of Wisconsin’s election results, there was no reasonable question at noon on December 14, 2020, about who, under Wisconsin law, were the state’s rightful presidential electors.

Nevertheless, the fraudulent electors met, improperly presuming to act as public officers and purporting to cast the State of Wisconsin’s electoral votes for candidates the people had not chosen. They purported to have the power to fill a purported vacancy in the Electoral College that they deemed to have arisen when one of the fraudulent electors failed to attend their sham meeting. (Exh. A at 2.) They falsely claimed to be “the duly elected and qualified Electors for President and Vice President of the United States of America from the State of Wisconsin.” (Exh. A at 3.) They declared that they had met “to perform the duties enjoined upon us,” even though the only obligation they had under the Wisconsin Statutes was *not to meet* given that the candidates to whom they were pledged had not won Wisconsin’s election. (Exh. A at 3.) They each signed their names to “certify” that Wisconsin’s ten electoral votes were cast for Donald J. Trump and Michael R. Pence, though they knew that was not true. (Exh. A at 4.) And they conveyed these fraudulent documents, based on false pretenses, to several federal and state officials as “Wisconsin’s Electoral Votes for President and Vice President.” (Exh. A at 1.)

Upon information and belief, each of the fraudulent electors signed six separate documents they would later hold out as genuine Certificates of the Vote from the State of Wisconsin, recording the results of their votes and bearing each fraudulent elector’s signature. Upon information and belief, they then mailed copies of these fraudulent documents to the President of the U.S. Senate, Wisconsin’s Secretary of State, the Archivist of the United States, and the Chief Judge of the U.S. District Court for the Western District of Wisconsin. In short, upon information and belief, the fraudulent electors took every possible action to pantomime the procedures prescribed in 3 U.S.C. §§ 7-11 and thereby to create the illusion that they were acting under color of law as Wisconsin’s true presidential electors, even as they cast votes contrary to the will of the voters and the designated votes required by law to reflect the election results.

In doing this, the fraudulent electors appear to have violated multiple provisions of Wisconsin’s criminal code, including but not limited to what the statutes denominate “crimes affecting the administration of government.” These include:

- **Forgery**, a Class H felony under Wis. Stat. § [943.38\(1\)](#). Any documents purporting to be Certificates of the Votes of the 2020 Electors from Wisconsin that were created by these shadow electors are fraudulent. Any accompanying documentation mailed to government officials attesting to the authenticity of such Certificates are also fraudulent under this section. The fraudulent electors forged an unauthorized Certificate of Votes of the 2020 Electors from Wisconsin (Exh. A at 3) and then sent it to the precise federal and state officials prescribed by the law for such proper certificates (Exh. A at 1).
- **Falsely assuming to act as a public officer**, a Class I felony under Wis. Stat. § [946.69\(2\)](#). The federal Electoral Count Act specifies the credentials of electors and charges the Governor with executing a certificate of ascertainment that communicates the names of the electors, by registered mail under the seal of the State, to the Archivist of the United States. *See* 3 U.S.C. § 6; *see also* Wis. Stat. § 7.70(5)(b). The fraudulent electors were not Wisconsin’s proper presidential electors and therefore did not receive such a certificate of ascertainment.³ Though they knew this, they nevertheless proceeded to undertake duties as if they had.
- **Misconduct in public office**, a Class I felony under Wis. Stat. § [946.12\(4\)](#). While the fraudulent electors were not lawful public officers, Wis. Stat. § [946.18](#) clearly states that intentionally falsifying information on a certificate or record is prohibited, whether a public officer is “legally constituted or exercising powers *as if legally constituted*.” (Emphasis added.) Here, the fraudulent electors signed the Certificate of Votes of the 2020 Electors from Wisconsin, in which they claimed they were “the duly elected and qualified Electors” who “convened and organized ... to perform the duties enjoined upon us” and purported to “certify” votes they knew were contrary to law. (Exh. A at 3.)

Further:

- In acting together to undertake this apparently unlawful activity, the fraudulent electors—and possibly also the fraudulent elector who did not attend the December 14 sham meeting—also likely engaged in **conspiracy to commit criminal acts** under Wis. Stat. § [939.31](#).
- While each individual fraudulent elector may have committed distinct acts, all—and possibly also the fraudulent elector who did not attend the December 14 sham meeting—are also liable for any crime

³ Wis. Stat. § 5.10 specifies the Presidential Electors are chosen by the statewide vote for the offices of president and vice president: “Presidential electors. Although the names of the electors do not appear on the ballot and no reference is made to them, a vote for the president and vice president named on the ballot is a vote for the electors of the candidates for whom an elector’s vote is cast. Under chs. 5 to 12, all references to the presidential election, the casting of votes and the canvassing of votes for president, or for president and vice president, mean votes for them through their pledged presidential electors.” A copy of Wisconsin’s Certificate of Ascertainment for President, Vice President, and Presidential Elections, General Election – November 3, 2020 is attached to this letter as Exhibit B; it was executed on November 30, 2020, and publicly available on the website of the Archives of the United States as of December 2, 2020.

they do not commit directly but provide counsel for, or intentionally aid and abet, under Wis. Stat. § [939.05](#), as a **party to a crime**.

- Should your office conclude that the fraudulent electors did not accomplish the unlawful goals of their actions, charges may be appropriate against them under Wis. Stat. § [939.32](#), for **attempts to commit a felony or other crime**.

Despite the variety of criminal statutes apparently violated here, the fraudulent electors committed their acts in an open manner. At least one fraudulent elector posted photos and a description of the convening on social media.⁴ Additionally, Andrew Hitt, one of the fraudulent electors, is quoted in a posted press statement acknowledging the sham meeting; notably, the press release, unlike the documents that the fraudulent electors manufactured and sent to federal and state officials, asserts that the fraudulent electors' votes would be valid only in the unlikely event that a court reversed the outcome of Wisconsin's 2020 presidential election. A copy of the press release is attached to this letter as Exhibit D.

We respectfully request that your office promptly investigate the apparent felonious acts described here, and assess the propriety of bringing criminal charges against some or all of the fraudulent electors. What is most important is that the unbridled and unlawful attacks perpetrated this past fall against the fundamental precepts of American democracy, both here in Wisconsin and more broadly, never recur.

We will also be notifying the Wisconsin Elections Commission and the Wisconsin Office of Lawyer Regulation, because the fraudulent electors' actions may also, separate and apart from any criminal violations, warrant civil proceedings.

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,

A handwritten signature in black ink, appearing to read "Jeffrey A. Mandell".

Jeffrey A. Mandell

A handwritten signature in black ink, appearing to read "Mel Barnes".

Mel Barnes

LAW FORWARD

Counsel for SEIU Wisconsin State Council, Dorothy Wilder, Angela Russell, Lisa Jacobson, Benjamin Watson, Linda Groves, Mary Blasberg, Lelah Huntley, and Musa Ramez

⁴ See Bill Feenan Facebook post dated December 15, 2020, 5:32am, available at <https://www.facebook.com/bill.feehan/posts/10218234915164307> (last accessed Feb. 10, 2021). A printout of this Facebook post is attached here as Exhibit C.