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WISCONSIN INSTITUTE FOR LAW & LIBERTY,

Petitioner,

Petition for Writ of Mandamus

Case Code: 30952

Case No. 23-CV-

MADISON METROPOLITAN SCHOOL DISTRICT,

Respondent.

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**APPLICATION FOR ALTERNATIVE WRIT**

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Petitioner, Wisconsin Institute for Law & Liberty (“WILL”), by its attorney, Thomas C. Kamenick of the Wisconsin Transparency Project and Kamenick Law Office, LLC, hereby applies to this Court for the immediate issuance of an alternative writ of mandamus ordering the Respondent, Madison Metropolitan School District (“District”), to produce records in response to Petitioner’s January 31, 2022 and June 1, 2022 record requests, or to appear before this Court and show cause to the contrary. The grounds for this application are as set forth in the Petition, accompanying affidavit(s) and as follows:

1. An alternative writ of mandamus is “a mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it.” *State ex rel. Milwaukee Police Ass’n v. Jones*, 2000 WI App 146, ¶7, n. 7, 237 Wis. 2d 840, 615 N.W.2d 190 (quoting BLACK’S LAW DICTIONARY (7<sup>th</sup> Ed. 1999)).

2. Wis. Stat. § 801.02(5) permits commencement of an action by service of a writ of mandamus “if a copy of the writ is filed forthwith.”

3. “The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to be under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 *Wis. Pleading & Practice Forms*, sec. 85.37 (5<sup>th</sup> Ed. 2017).

4. Courts can issue alternative writs of mandamus immediately in open records cases. *See, e.g., Journal Sentinel, Inc. v. Milwaukee County Sheriff's Office*, 2022 WI App 44, ¶5, 404 Wis. 2d 328, 979 N.W.2d 609 (“The circuit court issued an alternative writ of mandamus, instructing MCSO to either produce the video or show cause as to why production was not required or possible.”); *ECO, Inc. v. City of Elkhorn*, 2002 WI App 302, 259 Wis. 2d 276, 655 N.W.2d 510 (court issued alternative writ on same day petition was filed); *Jones*, 2000 WI App 146, ¶7 (court issued alternative writ on same day petition was filed); *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 477 N.W.2d 608 (1991) (“The Honorable Gerald C. Nichol issued an alternative writ of mandamus directing Foust to furnish Richards with access to the prosecutor’s case file or show cause why access to the file should be denied.”); *State ex rel. Morke v. Donnelly*, 155 Wis. 2d 521, 455 N.W.2d 893 (1990) (“[T]he alternative writ of mandamus commanded that Donnelly either provide Morke with access to the requested public records or show cause for withholding the records.”).

5. This Petition and supporting Affidavit establish a prima facie case that the Respondent has failed to perform a clear duty mandated by the Open Records Law. *See Juneau County Star-Times*, 2011 WI App 150, ¶¶43-44, 337 Wis. 2d 710, 807 N.W.2d 655 (analyzing whether the authority had overcome the requester’s “prima facie” case), *aff’d*, 345 Wis. 2d 122.

6. WILL made record requests to the District on January 31, 2022 and June 1, 2022. (Lennington Aff., ¶6, Ex.; Koenen Aff., ¶3, Ex. 2.)

7. The District has not provided any records in response to the January 31 or June 1 Requests. Nor has the District provided any estimates for when the records would be provided, explained their delay, or asked for a request to be narrowed. (Lennington Aff., ¶¶7-8, Ex.; Koenen Aff., ¶¶4-5, Ex. 2.)

8. Wis. Stat. § 19.35(4) provides that “Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.”

9. “If an authority . . . delays granting access to a record or part of a record after a written request for disclosure is made, the requester may . . . bring an action for mandamus asking a court to order release of the record.” Wis. Stat. § 19.37(1)(a).

Dated this January 17, 2023.

Respectfully submitted,  
WISCONSIN TRANSPARENCY PROJECT,  
KAMENICK LAW OFFICE, LLC  
Attorney for Petitioner

Electronically Signed by Thomas C. Kamenick  
Thomas C. Kamenick, WBN 1063682  
(262) 365-7434; tom@wiopenrecords.com  
1144 Noridge Trl.  
Port Washington, WI 53074