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STATE OF WISCONSIN

IN THE CIRCUIT COURT OF WAUKESHA COUNTY

MARK J. BLOCK,

Plaintiff,

-vs-

Case No. 2024-CV-1729

JOHN DOE,

Defendant.

MOTION HEARING

Held before:

THE HONORABLE BRAD D. SCHIMEL

November 21, 2024

Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, Wisconsin

Barbara Dassow, RPR
Official Stenographic Court Reporter

APPEARANCES:

Matthew Fernholz, Esq., appeared in person on behalf of
Mark Block.

Richard Lawson, Esq., appeared in person on behalf of
Mark Block.

Erin Cook, Esq., appeared in person on behalf of
ActBlue, LLC.

Glenn Graham, Esq., appeared in person on behalf of
ActBlue, LLC.

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TRANSCRIPT OF PROCEEDINGS

THE COURT: I will call Mark Block vs John Doe, Case No. 24-CV-1729.

May I have appearances, please.

MR. FERNHOLZ: Good morning, Your Honor. Matthew Fernholz. I apologize for my delay in getting here today. Also appearing with me is Attorney Richard Lawson.

MR. LAWSON: Good morning, Your Honor.

MS. COOK: Good morning. Maggie Cook of Godfrey & Kahn. With me is -- You can introduce yourself.

MR. GRAHAM: Good morning. Glenn Graham of Kelley, Drye and Warren for nonparty ActBlue, LLC.

THE COURT: Good morning. We are here to address the motion from ActBlue to quash the subpoena, and a motion for protective order. It seems like the issue of the protective order, maybe I am wrong, it seems that might be a no-brainer that if there is going to be information relating to credit card information that ultimately is revealed that we should have a protective order on that.

MR. LAWSON: I have no problem working with

1 ActBlue as to there is e-mail addresses, there
2 are payment information, all of these things,
3 happy to work with them. One flag on that is
4 with e-mail addresses, I think there would be an
5 interest on our part to actually send e-mails to
6 those addresses to try to contact potentially
7 Mr. Cain. We can get into that. That is the
8 only thing I would flag. I am happy to work
9 around whatever privacy concerns ActBlue might
10 feel need --

11 THE COURT: I suspected that probably wasn't
12 going to be an issue that if the subpoena is able
13 to continue we can address -- we can figure that
14 out.

15 Then just kind of turning as to the subpoena
16 duces tecum itself in Mr. Block's brief in
17 opposition to the motion to quash, plaintiff has
18 now made -- they have now limited what they are
19 seeking at this time. That is outlined at page
20 10 of Document 41. So now at this time, you are
21 seeking to limit the production to e-mailed
22 receipts that ActBlue sent to Mr. Cain and
23 records of donations made with the same card as
24 those used in these transactions, that is what
25 you want to have right now? Other things if you

1 are going to come back to those you need to raise
2 them later.

3 MR. LAWSON: That is correct. The relevancy
4 of those other things, those other matters become
5 relevant depending on the course of the case.

6 THE COURT: All right. That is what I
7 expected then for arguments. The initial brief
8 from ActBlue covered the whole subpoena. There
9 was quite a bit to argue about with some of the
10 other parts of it. Right now we are looking at
11 those two requests.

12 Ms. Cook or Mr. Graham?

13 MR. GRAHAM: Yes, Your Honor. This is Glenn
14 Graham for ActBlue. With respect to two --

15 THE COURT: You are welcome to sit or stand,
16 whatever is more comfortable for you.

17 MR. GRAHAM: With respect to the two limited
18 requests and the e-mail receipts as to Mr. Cain,
19 so the e-mail address at issue with plaintiff is
20 Caincos, C-a-i-n-c-o-s at gmail.com. He already
21 has those e-mail receipts. Every time there is a
22 donation made through ActBlue platform with that
23 e-mail address, Mr. Block, the plaintiff, is in
24 receipt of those. And that is really the only
25 allegations of this case Mr. Block has that his

1 e-mail address was misused or inadvertently typed
2 with certain donations. The parties I think are
3 in agreement, there is a real Mr. Cain, a real
4 Bernard Cain residing at one of three addresses
5 likely. I know from my conversations with
6 plaintiff's counsel this morning they are trying
7 to serve him. There are other similar donation
8 addresses that he used, e-mail addresses because
9 he ran a company called Cain Companies
10 Construction. So those e-mails that are similar
11 we would not want to produce because they are not
12 relevant to the plaintiff's allegations here.
13 And also gets into the sensitive personal
14 information about somebody, a private citizen,
15 donations that are completely unrelated to the
16 allegations that Mr. Block has that his e-mail
17 address, the Caincose e-mail was misused.

18 THE COURT: What is privileged or private
19 about making a campaign contribution? Those
20 things have to be reported. People have to
21 identify who you are, where you live, your
22 employment, lots of people are unemployed or
23 retired and many of these things cited, so that
24 becomes less significant. But there are rules
25 that require those things to be disclosed. Why

1 is that privileged or private to share who the
2 individual is and what the receipt -- the receipt
3 would identify who they are, what they sent, when
4 they sent it. Why is that private?

5 MR. GRAHAM: I understand your next point.
6 I was about to address this, and I understand
7 what you are saying. That data is already
8 available on the FEC website. Plaintiff's
9 counsel can go and look for donations from Bernie
10 Cain and the addresses listed which he has listed
11 on Page 11 of his brief. One is Palm Desert,
12 California. One is Denver, Colorado. And one is
13 Santa Monica, California. Those are the only
14 addresses that ActBlue has associated with Bernie
15 Cain. He can do that now. He can search the
16 data and find any other information he wants with
17 respect to those donations. Here the burden on
18 ActBlue, the nonparty, the case law and the
19 statutes are clear that we don't need to produce
20 that information if it can be obtained from the
21 source itself. And that our position is the
22 necessary first step, which I understand from my
23 conversation with counsel this morning that maybe
24 in the process of happening but hasn't quite
25 happened yet. So we think the subpoena should be

1 quashed in its entirety. I know we are not
2 getting into the other positions, but with
3 respect to those receipts that Mr. Block already
4 has and the records are publically available as
5 you said on the FEC data, we don't have any more
6 information to give with respect to addresses.
7 That is all they need. They can go and look at
8 that data and call it as they did with one of the
9 declarations they submitted along with their
10 opposition.

11 THE COURT: So as I understand your claim,
12 Mr. Lawson -- You're handling the arguments,
13 Mr. Lawson?

14 MR. LAWSON: Correct.

15 THE COURT: As I understand your claim, you
16 have concerns that the information that has made
17 it to the FEC website is somehow inaccurate,
18 flawed or incomplete, something is wrong with it?

19 MR. LAWSON: No, Your Honor. It's a
20 question of completeness. I apologize, I don't
21 have a hard copy available. But the e-mail
22 receipts we are looking for, an example of them
23 can be found in one of the -- I believe it's
24 Exhibit 1 to or Exhibit A to Document 5. When we
25 filed our initial complaint and motion for

1 expedited discovery, we filed the two
2 declarations in support of it. One of them was
3 the declaration from our client the plaintiff
4 Mark Block. This is a gargantuan exhibit and
5 these are examples, the Exhibit A are examples of
6 the e-mail receipts that are provided. These
7 e-mail receipts contain the address to which the
8 e-mail receipt is sent, they contain information,
9 limited information about the form of payment,
10 and detailed information as to the recipient of
11 the campaign. I have not been able to find on
12 the FEC website e-mail or payment data for
13 specific donations. So the way one of the things
14 that we have been hoping to get these e-mail
15 receipts from ActBlue for is one, hopefully it's
16 a fairly tight production that it's -- these
17 documents are there, can be searched and produced
18 without too great a burden on it. Secondly, if
19 we get those e-mail addresses, ActBlue's counsel
20 is correct, we can go on to that FEC website and
21 search for donations from certain addresses. It
22 won't tell me what e-mail, if any, was associated
23 with that specific donation. It won't give me
24 any data regarding payment. As we made clear in
25 the pleadings prior to filing the lawsuit and

1 since, we have had a difficult time trying to
2 find this real Bernard Cain to determine if
3 indeed he made these donations. If we get these
4 receipts, these e-mail receipts from ActBlue, A,
5 we may have a new e-mail address that we have not
6 seen before, which we can then send an e-mail
7 saying Dear Mr. Cain, would you please contact us
8 to discuss this donation. And then also, we did
9 send a subpoena to American Express which was
10 responsible for the donations that came through
11 our client's data. We do not -- American Express
12 responded and they advised that this is
13 insufficient information. They need a few more
14 numbers of the credit card or a social security
15 number for the donor and the cardholder to be
16 able to search it.

17 THE COURT: Do you expect that ActBlue would
18 have the social security number?

19 MR. LAWSON: No. Where I was going with
20 this is if we get the e-mail receipts maybe we
21 will find donations that were done with a Master
22 Card or Visa and maybe there will be enough
23 information from there. We are still looking to
24 try to nail down, find Bernard Cain and confirm
25 that he didn't make these things and also if we

1 can find methods of payment and track those down
2 to other credit card providers, we can then maybe
3 find our John Doe in the process.

4 THE COURT: One of ActBlue's assertions is
5 that you should just subpoena Mr. Cain, so you
6 sent him letters and e-mails. And he is ignoring
7 those, which maybe that is what he feels like
8 doing or maybe -- they suggest a number of
9 reasons why he might do that. They say you
10 should just subpoena Mr. Cain and you will get
11 what you're looking for without bothering
12 ActBlue. Why not do that?

13 MR. LAWSON: We are attempting that. We
14 have tried to serve him. We have found addresses
15 in California and in Denver, Colorado. We
16 attempted service on Friday in California and no
17 one was answering. The Colorado address is our
18 working theory right now for the best address.
19 That is a condominium tower with a locked door
20 and no doorman. Our process server is having
21 trouble trying to get access into the building.
22 These are the issues that are confronting us.

23 THE COURT: You have to have somebody
24 sitting there waiting for him to come out of the
25 door. Do you know what he looks like?

1 MR. LAWSON: No. We are going to keep
2 knocking on that door. But we think that this
3 information, the receipt, the payment information
4 in particular and maybe some of the e-mail
5 information if we can send e-mails to perhaps
6 some of the e-mail service providers, we might be
7 able to find John Doe. But in addition to the
8 e-mail receipts that we are looking for helping
9 us find our John Doe, they might give us another
10 address or other another e-mail that connects us
11 to Bernard Cain to close that loop. There is
12 really two purposes. Even if the idea is that we
13 should be going to Bernard Cain for this data or
14 for most of the data, if we can get the e-mail
15 receipts, that might help us get to the real
16 Bernard Cain all that much faster.

17 THE COURT: Mr. Graham, I interrupted. I
18 did read the briefs. So I have -- I just have
19 questions I want to resolve today. We don't
20 necessarily need to go through everything. So I
21 wanted to direct that question to the other side
22 while it was burning in my brain. You may
23 continue then.

24 MR. GRAHAM: Sure, Your Honor. Just two
25 quick points in response to what plaintiff's

1 attorney said. We have the declaration of Ms.
2 Tomy (phonetic) from ActBlue. There are no other
3 addresses associated with Bernie Cain other than
4 the three that plaintiff already knows about. So
5 there is no need to search other records for
6 other addresses. But again, he's free to do that
7 on the FEC website to find other donations --
8 with respect -- physical addresses there.

9 With respect to the e-mail addresses, those
10 are probably not e-mail addresses that were
11 mistyped into the donation platform. They are
12 Bernard Cain's real e-mail addresses. They are
13 not any, you know, fictitious e-mail used by
14 plaintiff for whatever purpose. Our position is
15 there is no need for plaintiff to have that
16 information. It's totally unrelated to any
17 claim, again John Doe, that it was probably
18 Mr. Cain that somebody used Mr. Block's e-mail
19 address. It's a different e-mail address.
20 Mr. Block is only alleging a violation of his
21 privacy based on the use of one e-mail address.
22 They have all of the receipts for that e-mail
23 address.

24 THE COURT: Isn't that the whole point of
25 what Mr. Block is trying to do though is to try

1 to figure out is this a mistake on Bernard Cain's
2 part or like the documents they submitted from
3 the investigation agency, they found all of these
4 people who said I did not make \$93,000 in
5 contributions and then laughed and pointed at his
6 not fancy apartment as evidence that he wouldn't
7 have done that. I mean, Mr. Block just wants to
8 know whether Mr. Cain really did this. And maybe
9 it is just a typo. If that is the innocent
10 answer, this lawsuit might be done and we could
11 get to that end result quickly if they get that
12 information and say okay. But what is it about
13 providing those e-mails to the plaintiff in
14 response to this subpoena that is so onerous for
15 ActBlue? That has been argued -- And I know, I
16 recognize that some of that in the original brief
17 the arguments about things being onerous were
18 relating to the broader subpoena. And as to
19 that, like I said, I think there are some
20 legitimate arguments about just how expansive
21 that was. And you weren't here at the hearing
22 when the prior -- either were these counsel, it
23 was prior counsel --

24 MR. LAWSON: I was here.

25 THE COURT: They had a broader subpoena yet

1 and I said I can't authorize all of this. And so
2 I am glad to see that it's more narrow. But you
3 do in your reply brief still stick with the
4 assertion that this is unreasonably onerous
5 compared to what the plaintiff needs. Why is
6 this that hard for ActBlue to get?

7 MR. GRAHAM: ActBlue is not a party to this
8 action. They are not a defendant. The case law,
9 and I know you read the brief, the first step to
10 get the information from the interested person
11 himself or herself and here that interested
12 person is Bernard Cain. And it sounds like
13 plaintiff is close to getting that information.
14 And we submit that should happen first before
15 ActBlue is required to turn over anything.

16 THE COURT: Well, if Mr. Cain is up to no
17 good, then you wouldn't necessarily want to take
18 his word for it. I mean, the parties do this all
19 of the time, in criminal and civil cases, they
20 subpoena records from banks, internet providers,
21 other conduits of funds. This is routine. In my
22 25 years as a prosecutor, I did that tens of
23 thousands of times. There is nothing unusual
24 about seeking from third parties who aren't
25 defendants or plaintiffs in a case information

1 because isn't that kind of what ActBlue signed up
2 for when they became a conduit for this kind of
3 information that -- they are going to -- they are
4 going to be a place where people want to make
5 contributions nationwide to all sorts of
6 different campaigns, they can send it through
7 there. Didn't you sign up just like an internet
8 provider or bank or whatever, when you collect
9 and process that information, you might have to
10 respond to a subpoena. Isn't that part of the
11 deal?

12 MR. GRAHAM: Correct, Your Honor. I
13 understand that position. I just -- I think that
14 the information that plaintiff is seeking from
15 whatever he gets as a result of his investigation
16 of these other e-mail receipts is nothing more
17 than what he already has. I don't really
18 understand what plaintiff is seeking other than
19 addresses to contact Mr. Cain who is Mr. Cain aka
20 John Doe in the case. He has that information
21 already.

22 THE COURT: It might be that Act 10's answer
23 is that there is not any, excuse me, ActBlue.
24 Sorry about that. ActBlue's answer is that these
25 are the only things that we have and it turns out

1 those are the things they have already and it's a
2 dead end for the plaintiff. So that seems like
3 it's easy and I don't get why there is -- why
4 that is causing such substantial resistance to
5 sharing it.

6 MR. GRAHAM: I will have to confirm with my
7 client. The bigger picture my understanding was
8 that plaintiff intended to enforce the whole
9 subpoena still which is why we moved to quash the
10 subpoena. We had met and conferred with
11 plaintiff's counsel several times and had
12 productive conversations prior to filing the
13 motion. I think we both agree on that. We could
14 not get assurances that plaintiff would not
15 withdraw the rest of the subpoena.

16 THE COURT: I will give you an assurance
17 based on what the plaintiff said in their
18 response brief and what they told me at the
19 beginning of this hearing, I will, if I authorize
20 the subpoena to go forward at this time, it is
21 going to be on those two narrow issues that they
22 talked about. So the rest of the subpoena, that
23 is an argument for another day, if they want to
24 pursue that, they have to reinitiate that. So
25 you don't need to count on their word.

1 MR. GRAHAM: Thank you.

2 THE COURT: You know, you have argued in
3 your briefing that they can just get this from
4 Mr. Cain and maybe, I mean they have argued that
5 serving him has not turned out to be as simple as
6 it might be to serve some people. But why can't
7 a litigant take multiple attacks or approaches to
8 getting at information and sometimes it's
9 necessary to make sure that the information you
10 get is consistent from multiple sources. That is
11 kind of the investigation version of cross
12 examination, where you're just trying to verify
13 things. Why is that improper for plaintiffs to
14 want, even though yes they could potentially get
15 this from Mr. Cain and maybe from Mr. Cain it
16 would be entirely reliable, but why do they have
17 to trust Mr. Cain? Why wouldn't they just
18 reasonably want to get the data that -- I think
19 the data they get from ActBlue is -- there is
20 less relying on someone telling the truth. It's
21 just data; right? Data is data.

22 MR. GRAHAM: I understand. So Your Honor, I
23 think the two points here is the unique position
24 of ActBlue as a nonparty. And coupled with the
25 fact they have the information for the e-mail

1 address associated with plaintiff. It was
2 e-mailed to him as soon as donations come
3 through. They have all of those records. They
4 want different records. That is what they should
5 get from Mr. Cain himself. But those records
6 that they are seeking don't have anything to do
7 with plaintiff's allegations. It's not
8 plaintiff's e-mail address. It's not plaintiff's
9 -- None of this is plaintiff's Amex card or
10 information. There is no other identity issues
11 being stolen. The name Bernie Cain is associated
12 with likely the John Doe here. His name is
13 Bernard Cain who owns Cain Construction
14 Companies.

15 THE COURT: Mr. Cain made contributions
16 before or apparently has and he got e-mail
17 receipts for those and now there are over 500
18 alleged contributions he has made for which he
19 apparently didn't get a receipt because it turns
20 out to be Mr. Block's old e-mail address that got
21 the receipts. Isn't it -- It seems odd to me
22 that Mr. Cain would all of a sudden make over 500
23 contributions and no longer be getting a receipt
24 for them. Why wouldn't he be wondering about
25 that if this is legitimate?

1 MR. GRAHAM: Most of those, the vast
2 majority of those donations, are small dollar
3 recurring donations. He would see it on his
4 credit card. As far as if he was wondering why
5 he didn't get a receipt, I can't answer that. I
6 can only speculate about that, Your Honor.

7 THE COURT: So plaintiff wants to get the
8 e-mails for the other contributions Mr. Cain
9 made.

10 That is what you want, right, Mr. Lawson?

11 MR. LAWSON: Correct.

12 THE COURT: They can compare that and ask
13 this question, I think, why if you got all of
14 these other ones before and maybe those were
15 small donor or small amount donations, why isn't
16 that a legitimate question to wonder why did
17 Mr. Cain suddenly not wonder why he is not
18 getting any more receipts?

19 MR. GRAHAM: That is a good question. That
20 is for Mr. Cain. ActBlue does not have that
21 information. The other donation information that
22 you just mentioned is searchable on the FEC data
23 now. The plaintiffs can ask him those questions
24 armed with the FEC data. They don't need extra
25 receipts.

1 THE COURT: A couple of times we kind of
2 talked about why this is such an onerous burden.
3 Because I recognize that as I examined under
4 804.01(2)(a) that when I consider discovery being
5 sought from in particular a nonparty, that I need
6 to examine whether it's privileged material,
7 whether it's relevant to the parties claim or
8 defense, and then whether it's proportional to
9 the needs of the case. One of the things for me
10 to consider is whether this is in particular an
11 onerous burden and I haven't heard anything in
12 the briefing or yet this morning to suggest to me
13 this is a particularly difficult thing for
14 ActBlue to produce.

15 MR. GRAHAM: I can't speak to the rigor that
16 it would take or manpower to produce it, but the
17 statute itself also says has to be relevant to
18 any parties claim or defense and proportional to
19 the case. These other receipts are not related
20 to the e-mail address that Mr. Block claims was
21 misused. They are irrelevant to that claim. And
22 so there is no need for this information for any
23 claim or defense of the case.

24 THE COURT: Okay. I was just going through
25 a moment ago my -- what I gathered from the

1 plaintiff's briefing as to why this, and what I
2 have inferred from their complaint too, why this
3 might be relevant. I conclude based on those
4 things that I had been discussing that there is a
5 relevance to this. It may ultimately prove that
6 there is no smoke or there is no fire, that
7 plaintiffs saw some smoke but it's not a fire. I
8 don't know. But I do conclude that there is a
9 relevance to this based on the proceedings. So I
10 am going to conclude then that there is not
11 anything particularly onerous about it because I
12 still have not heard any argument to explain why
13 that would be. And then that third question
14 whether it's proportional to the needs of the
15 case. This seems to be -- This seems to be on
16 point for what plaintiff needs to get at to
17 determine whether there is a fire, whether there
18 is something wrong. And maybe it's true that
19 Mr. Cain just mistyped the e-mail address and
20 maybe he just didn't care about the receipts ever
21 and it was all insignificant to him so he didn't
22 pay attention to whether he got e-mail receipts
23 later on for 500 plus donations over a
24 three-month period. But that is at the heart of
25 what plaintiff seeks to get at to find out

1 whether there is a John Doe -- whether John Doe
2 is someone they really can identify and should be
3 considering suing over all of this. So as I look
4 at those standards under 804.01, I conclude that
5 plaintiff has met their burden to establish that
6 these aren't privileged. There is nothing
7 privileged about making political contributions
8 directly to campaigns. That is -- And there are
9 good reasons for that. We want to prevent people
10 from getting contributions from inappropriate
11 sources like a foreign national or its -- If you
12 have somebody who is a bad egg, let's take a big
13 political donor, Sam Bankman-Fried. Right now
14 nobody would want money from Sam Bankman-Fried.
15 It would stain you. I remember back in the day
16 when the former Milwaukee County Executive Tom
17 Ament, rest in peace, but when he ended his time
18 as Milwaukee County Executive he still had
19 \$400,000 in a campaign account that nobody could
20 take. No person running for any office anywhere
21 was going to want to have money from him. So
22 there are reasons why somebody might want to
23 circumvent the system and make a contribution
24 with funds that nobody wants to acknowledge they
25 received. These are all valid reasons to want to

1 look at why is Mr. Block suddenly over a
2 three-month period getting 500 some e-mails
3 saying you made another political contribution to
4 an e-mail address that he had not used in years.
5 So I conclude these things -- what they are
6 seeking is relevant. It's not privileged
7 because there is no expectation that these things
8 would be private. Now when we talk about the
9 credit card information, that is something that I
10 am going to need to -- we are going to need to
11 have a protective order built in to that to make
12 sure none of that personal information goes
13 anywhere further than what is necessary for the
14 litigants to investigate their claims. And
15 again, the proportional aspect to it I have
16 already addressed. I have not heard anything to
17 suggest that this is anything -- it's important
18 to the plaintiff and it's not anything that I
19 have heard any basis to conclude that this is
20 particularly onerous or difficult or out of the
21 ordinary for ActBlue to have to obtain.

22 You explained that, Mr. Graham, as to some
23 of these things, and you say in your briefing too
24 that, I look at page 5 of Document 47, ActBlue
25 asserts they do not possess any other address

1 information for Mr. Cain other than the three
2 addresses plaintiff already possesses. That
3 seems to be a perfectly reasonable response to
4 the subpoena and seems to be the end of it. But
5 it also strikes me that it demonstrates that
6 somebody at ActBlue already checked and
7 apparently wasn't that difficult to look it up
8 and find out we don't have any other ones. That
9 kind of undermines the onerous argument that it
10 doesn't -- it appears to be something since this
11 is all online, these are -- it's searchable and
12 it looks like it wasn't that hard to search and
13 find that out. So apparently there is already
14 part of the answer to plaintiff's subpoena. I
15 understand that there are other means for
16 plaintiff to try to get this information but
17 there is no rule in the law that says a litigant
18 cannot pursue more than one method to get
19 information. And frankly a careful litigant
20 would want to do that, would want to verify
21 things from multiple sources before they go make
22 allegations to make sure that well for -- in part
23 to make sure what they are doing is accurate,
24 that they are correct and not falsely accusing
25 someone. Also to make sure they are not being

1 deceived by someone and ultimately make sure that
2 they don't end up standing in a courtroom with
3 their pants down around their ankles because they
4 screwed up. That is normal. That is routine.
5 Corroborate things and that is -- Either
6 corroborate or refute, I guess both are
7 possibilities. I get the argument that this is
8 an assumption on plaintiff's part that the
9 donations are fraudulent. There may be an
10 element of fraud or maybe it is innocent.
11 Plaintiff has set forth enough in their complaint
12 and in support of their subpoena to demonstrate
13 that there may be something here. And at this
14 stage of the proceedings and to support issuance
15 of a subpoena even against a nonparty conduit for
16 contributions, maybe I am -- I don't mean that to
17 be -- If there is any slight by me calling
18 ActBlue that, I don't mean that as a slight. It
19 just seems to me that is what it is, maybe I am
20 wrong. But something is not right. Plaintiff
21 has set forth enough information to explain -- to
22 be suspicious over this many small contributions
23 being linked to an e-mail address and Mr. Block
24 has set forth in his complaint that this is --
25 he's personally offended by the notion that

1 anybody would suggest that he would make a
2 contribution to any democrat anywhere ever in any
3 amount. And so his reputation is at stake here.
4 He wants to set things right. Those are
5 reasonable concerns to have. Plaintiff has
6 included this investigative report that did find
7 a number of people who reported to an
8 investigator that something was wrong when it --
9 when there were many, many small contributions
10 made in their names and they said I didn't do
11 that. There is something screwy here. And
12 Mr. Block wants to find out if that is what
13 happened with him. Or maybe somebody just typed
14 the e-mail address wrong and it became a
15 recurring contribution and he can straighten that
16 out. But plaintiff doesn't have to prove at this
17 stage of proceedings that there is fraudulent
18 activity. Plaintiff needs only sufficiently
19 allege a claim that there is fraudulent activity.
20 And we are not here on a motion to dismiss the
21 complaint because that would have to come from an
22 actual party in the case. But I think it's a
23 similar analysis at this stage to determine
24 whether plaintiff has established something more
25 than just the fishing expedition that has been

1 raised as an argument. And I conclude plaintiff
2 has established that it's more than just a
3 fishing expedition, that there is at least smoke.
4 We have to find out if there is a fire. I
5 haven't heard any argument that there is any
6 personal identifying information that needs to be
7 disclosed that we can't address by way of a
8 protective order to make sure that it doesn't
9 fall into the wrong hands. No one will be able
10 to come into this Court file and find personal
11 information that they can go and abuse. And the
12 protective order will prohibit plaintiff from
13 doing anything to improperly distribute that
14 information to put any of that -- to put any
15 party at risk of having their personal
16 information, having them become a victim of
17 fraudulent activity. Plaintiff has acknowledged
18 that they accept that and will include in the
19 modified subpoena I will have them submit just so
20 it's all clear rather than us disregarding
21 sections, we can redo it with a new subpoena that
22 sets forth exactly what you are seeking at this
23 stage and along with that a protective order.

24 It's been argued this is pure conjecture and
25 as I went through, it's not just pure conjecture,

1 there is something amiss especially with these
2 other individuals that were interviewed, and
3 perhaps for Mr. Block.

4 In terms of the privilege question too, I
5 want to note as to that, personal financial and
6 identifying information is entitled to some
7 protections and confidentiality. We talk about
8 whether it's privileged. I think that the --
9 Well, I don't think. My reading of 804.01 and
10 the relevant case law to that tells me that the
11 privilege is something expressed dealing with
12 things like lawyer-client privilege,
13 doctor-patient privilege, other recognized
14 privileges under the law. This may be
15 confidential information, but it's not something
16 that implicates a privilege under Chapter 905.
17 All of a sudden -- I was sure of that a moment
18 ago but now as I say it I am doubting myself, the
19 statute dealing with privilege. Anyway, I don't
20 think that is implicated here. I do appreciate
21 that -- I get that ActBlue has felt in this that
22 they need to defend their reputation because they
23 assert there is an insinuation that ActBlue does
24 something improper and that they are the only
25 platform that does something improper. Well, if

1 it's true that someone that is collecting
2 donations on the Republican side of the aisle,
3 WinRed or whoever else does it too, okay, if
4 there is something improper happening, just
5 because everybody does it, doesn't make it okay.
6 If someone is doing something improper, they
7 should all be held accountable for that. But
8 that is kind of a side issue to this subpoena at
9 this point. Like I said, I appreciate that
10 ActBlue wanted to make these arguments to defend
11 their reputation, but I am not really at this
12 stage concerned about insinuations or
13 implications that ActBlue is doing something
14 wrong. At this stage, ActBlue is just a nonparty
15 holder of information. They are not a defendant.
16 If there is some insinuation, implication, that
17 they have done something wrong, there is going to
18 have to be more than an inclination. I
19 appreciate the feeling that they need to defend
20 themselves. I don't know that I need to address
21 -- make any kind of a ruling as to any of that
22 because this is just dealing with a subpoena
23 trying to get some data. I think I hit on all
24 of the notes that I made during arguments and
25 during reviewing the briefs.

1 Is there anything else that you believe I
2 need to address or that you think I need to have
3 clarification on, Mr. Graham?

4 MR. GRAHAM: Just the modified subpoena, is
5 my understanding correct that it will be items 1
6 and 2 on page ten in plaintiff's opposition?

7 THE COURT: That is my understanding.

8 MR. LAWSON: Yes, Your Honor.

9 THE COURT: If it turns out to be something
10 other than that, you know how to file an
11 objection. I don't know that I need an actual
12 formal order, we just need a new subpoena.

13 (Discussion held off the record between
14 Court and Clerk of Courts.)

15 MR. FERNHOLZ: Procedurally on how to handle
16 it, do you want to issue a ruling on anything
17 today, just have us issue a new subpoena and then
18 confer with counsel for ActBlue on protective
19 order? I am sure we can agree on something,
20 otherwise Waukesha County has a standard form
21 protective order we can use. Just not issue any
22 order from today's motion, reissue a new subpoena
23 and then counsel confer on a protective order.

24 THE COURT: In terms of the original request
25 for the original subpoena that was requested, I

1 guess I am kind of granting the motion to quash
2 that. But I am also ruling that as to the
3 first -- ActBlue is prevailing in part and
4 failing in part as to their motion to quash. So
5 we can -- If you want to file an order subject to
6 the 11-day rule, that is fine. Otherwise I think
7 it is sufficient, we made a record here, you can
8 just submit the new subpoena and protective order
9 and then I will -- we will subject that to the
10 11-day rule. Unless you get a stipulation up
11 front, we will subject it to the 11-day rule for
12 any objections as to form. If there are not any,
13 then I will sign it.

14 MR. FERNHOLZ: Very good. Thank you.

15 MR. LAWSON: At about a 40,000-foot level,
16 the key things that I would want to be doing to
17 follow up on the e-mail receipts would be to send
18 the e-mails to the addresses to which the e-mail
19 receipts were sent and then to use the financial
20 data to subpoena the respective financial
21 institutions that sent the card. I thought I
22 would raise that here to see if at a conception
23 level if that causes concern with ActBlue. If
24 not, I'm sure we can work out the details. I
25 wanted to make it clear that there are some

1 follow-up items that I think that are kind of
2 important to follow up on with that data we can
3 get from e-mail receipts if that makes sense.

4 THE COURT: Anything you want me to address
5 with that, Mr. Graham?

6 MR. GRAHAM: Not at this time I don't think,
7 Your Honor.

8 MR. LAWSON: We can work out the details
9 later.

10 THE COURT: Anything else today?

11 MR. FERNHOLZ: We do, Judge. We had filed
12 on November 5th, it's e-filed Document 42, a
13 motion to conduct additional discovery. We are
14 looking for relief from the limit on ten
15 depositions based on the information that the
16 private investigator located regarding numerous
17 individuals saying they did not make these
18 donations through ActBlue. We wanted Court's
19 permission for relief, 805.045 which sets a limit
20 on depositions.

21 THE COURT: That doesn't strike me as
22 anything ActBlue is concerned with.

23 MR. GRAHAM: We don't have a dog in that
24 fight, Your Honor.

25 THE COURT: There is not anybody to oppose

1 that. I think under these circumstances it is
2 reasonable. That local rule is designed to avoid
3 harassment of the parties and to avoid courts
4 just being inundated with an enormous amount --
5 some people don't properly narrow what they are
6 doing, some litigants don't. But I don't have
7 that concern for the Court and you have set forth
8 -- Thanks for reminding me. You did set forth a
9 basis that clearly there are going to be more
10 than ten individuals with whom you need to follow
11 up. So I will authorize -- I will waive that
12 restriction. Is there some cap I can put on that
13 at this point?

14 MR. LAWSON: We are in about five or six
15 depending on if you count Mr. Cain as one or two
16 with the two addresses. These are about 10 or
17 12. If you put 25, that is probably going to
18 take care of it. We could do 20 if the Court is
19 more comfortable.

20 THE COURT: I will set it at 25. If you end
21 up with more than that, we can come back and look
22 at it again. But I don't see that as creating
23 any particular harassment to any other litigant
24 or nonparty in this matter. It's not any one of
25 them being inundated with 25 deposition demands.

1 It's these are all individuals with one or maybe
2 two each. Sorry, I forgot about that.

3 Anything else?

4 MR. LAWSON: Not from plaintiffs.

5 MR. GRAHAM: Nothing further.

6 THE COURT: Thank you.

7 (Proceedings adjourned.)

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STATE OF WISCONSIN)

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COUNTY OF WAUKESHA)

I, Barbara Dassow, Court Reporter and Notary Public in and for the State of Wisconsin do hereby certify that the above proceedings were held before The Honorable Brad D. Schimel on the 21st day of November, 2024.

That the above proceedings were transcribed from my original shorthand notes taken to the best of my ability on said date and location.

Dated this 25th day of November, 2024.

Electronically filed by:

Barbara Dassow, RPR

Court Reporter/Notary Public

My commission expires: 4/16/2027