

# GODFREY & KAHN S.C.

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March 15, 2012

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## BY E-MAIL AND HAND DELIVERY

Eric M. McLeod  
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Madison, WI 53703

*Baldus et al. v. Brennan et al.*  
U.S. Eastern District of Wisconsin Case No. 11-CV-562

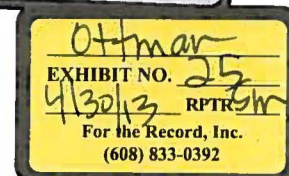
Dear Eric:

Yesterday, we received your March 13, 2012 letter, by mail. Although apparently written in response to our letter of March 8, 2012, your letter does not address two of the key concerns that we identified in our March 8th letter.

First, the March 8th letter noted that the non-produced January 20, 2011 e-mail from ALEC – which, on its face, states that it relates to redistricting and was sent to Tad Ottman personally – was released in December 2011 in response to an open records request. It was therefore in existence in December 2011 and available in Senator Fitzgerald’s office. Your letter fails to explain why that e-mail was not produced by Mr. Ottman in response to our subpoenas when, the day before Mr. Ottman was served with a subpoena, Senator Fitzgerald’s office released the very same document in response to an open records request.

Second, your reference to Mr. Ottman’s testimony that any e-mails he deleted might still be found on the LTSB’s e-mail server does not explain the apparent failure to search for and produce all responsive documents, whether on that system or any other system to which your client, his employer, and his counsel had access.

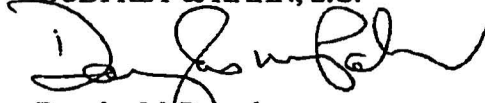
You correctly note that we did, in fact, serve a subpoena on an LTSB representative. However, although the LTSB produced some documents relating to Acts 43 and 44 and legislative redistricting, it did not produce communications involving Mr. Ottman and ALEC relating to legislative redistricting. It is undeniable that the January 20, 2011 e-mail in question (and perhaps other responsive documents) was in the possession of Sen. Fitzgerald’s office in December 2011. It is equally undeniable that neither that document nor any similar documents were produced to plaintiffs. The legislative employees cannot avoid the legal obligations to search all of the relevant files and archives where responsive documents might reasonably be found, and to produce responsive documents, by playing bait and switch with the location of and responsibility for producing responsive documents.



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The trial has been completed and the Court might rule any day. We have been attempting to obtain a satisfactory explanation from you for two weeks without a direct answer to our inquiry. Accordingly, we intend to file an appropriate motion later today that will seek to provide us with the explanation and hopefully, documents and information that we have been seeking. A decision on the merits by the Court will not affect that.

GODFREY & KAHN, S.C.



Douglas M. Poland

DMP:mem  
Enc.

cc: Maria Lazar (By Hand Delivery)  
Patrick Hodan (By Hand Delivery)  
Daniel Kelly (By Hand Delivery)  
Peter Earle (By E-mail and U.S. Mail)

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