



OFFICE OF THE CORPORATION COUNSEL

March 11, 2011

HAND DELIVERED

Carlo Esqueda, Clerk of Court
Dane County Courthouse
215 S. Hamilton St., Room 1000
Madison, Wisconsin 53703

Re: *Dane County v. State of Wisconsin*

Dear Judge Foust:

Enclosed please find Plaintiff's Notice and Motion for *Ex Parte* Restraining Order, Complaint for Declaratory and Injunctive Relief, Notice and Motion for a Temporary Restraining Order and Preliminary Injunction, and Brief in Support of Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction. Copies of same will be served on all parties.

Sincerely,

Marcia MacKenzie
Dane County Corporation Counsel

Enclosures

cc: Kathleen Falk
Scott McDonell
Shannon Maier
Douglas LaFollette, Secretary of State
Senator Michael G. Ellis
Senator Scott L. Fitzgerald
Representative Jeff Fitzgerald
Representative Scott Suder

Corporation Counsel
Marcia MacKenzie

Assistant Corporation Counsels
Eve M. Dorman
David R. Gault
Shawna L. Guinn
Kristi A. Gullen
Dyann L. Hafner
Leslie A. Hamilton
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Mary M. Kasparek
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Child Support Agency

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Clare Altschuler
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Nadia Noboa-Clehade
Maureen A. Plunkett
H. Arleen Wolek
Jerre L. Ziebelman

DANE COUNTY)
 210 Martin Luther King, Jr. Blvd.)
 Madison, Wisconsin 53703)
 and)
 COUNTY EXECUTIVE Kathleen Falk,)
 In her personal capacity;)
 and)
 COUNTY BOARD CHAIR Scott McDonell,)
 And in his personal capacity;)
 and)
 Shannon Maier)
 4409 White Aspen Road)
 Madison, Wisconsin 53704)

CASE NO. 2011 _____

Plaintiffs,

CASE TYPE:
Preliminary Injunctive relief

v.

STATE OF WISCONSIN)
 and)
 SECRETARY OF STATE)
 DOUGLAS LAFOLLETTE;)
 and)
 SENATOR Michael G. Ellis)
 and)
 SENATOR Scott L. Fitzgerald)
 and)
 REPRESENTATIVE Jeff Fitzgerald)
 and)
 REPRESENTATIVE Scott Suder,)

CASE CODE
30704

Defendants.

PLAINTIFF'S NOTICE AND MOTION FOR *EX PARTE* RESTRAINING ORDER

PLEASE TAKE NOTICE that Plaintiffs move the Court pursuant to Wis. Stat. §813.015 for an *ex parte* temporary restraining order enjoining Defendants from publishing the Conference Committee substitute amendment - SS SB-11/AB-11 until such time as the parties appear before

the Court to determine whether a temporary injunction should be issued in the above-captioned matter.

The grounds for this motion are that publication of the bill will create a statute that will immediately cause irreparable harm to Plaintiffs because of certain fiscal portions of the bill that become effective upon publication. These grounds are more fully set forth in the memorandum of law accompanying the Motion for Temporary Injunctive Relief, which is filed with the Court concurrent with this motion.

Dated this 11th day of March, 2011.

Respectfully submitted,



Marcia MacKenzie
Corporation Counsel
State Bar. No. 1020725
Dane County Corporation Counsel
City-County Building, Room 419
Madison, Wisconsin 53703
(608) 266-4355

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH

COUNTY OF DANE

DANE COUNTY)
210 Martin Luther King, Jr. Blvd.)
Madison, Wisconsin 53703)
and)
COUNTY EXECUTIVE Kathleen Falk,)
In her personal capacity;)
and)
COUNTY BOARD CHAIR Scott McDonell,)
And in his personal capacity;)
and)
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Plaintiffs, by their attorneys, allege the following in support of their
Complaint for Declaratory and Injunctive Relief:

1. Plaintiff Kathleen M. Falk is the acting County Executive of Dane County, whose office is located at Room 421, City-County Building, Madison, Wisconsin 53703. As County Executive, Plaintiff Falk is the chief executive officer of the County, and is obligated to coordinate and direct all administrative and management functions of the county government including, but not limited to, the management of the county's employees. Plaintiff Falk is a citizen of Dane County.

2. Plaintiff Scott McDonell is chairman of the Board of Supervisors for Dane County, whose office is located at Room 106D, 210 Martin Luther King, Jr. Blvd., Madison, Wisconsin 53703. As chairman, Plaintiff McDonnell oversees the Board of Supervisors of Dane County which has the general authority to represent Dane County and manage the business and concerns of the County. Plaintiff McDonell is a citizen of Dane County.

3. Plaintiff Shannon Maier is an employee and citizen of Dane County, and is a member of a public section union. Plaintiff Maier resides at 4409 White Aspen Road, Madison, Wisconsin 53704.

4. Defendant Douglas La Follette is the Secretary of State for the State of Wisconsin. As Secretary of State, Defendant La Follette is charged with scheduling the publication of any new laws.

5. Defendant Jeff Fitzgerald is the chief presiding officer of the Wisconsin Assembly, and his principal office is located at Room 211 West, State Capitol, Madison, Wisconsin 53708.

6. Defendant Scott Fitzgerald is the chief presiding officer of the Wisconsin Senate, and his principal office is located at Room 211 South, State Capitol, P.O. Box 7882, Madison, Wisconsin 53708.

7. Defendant Mike Ellis is a Wisconsin State Senator representing the 19th Senate District whose principal office is located in Room 220 South, State Capitol, P.O. Box 7882, Madison, Wisconsin 53708. Defendant Ellis is the President of the Wisconsin Senate.

8. Defendant Scott Suder is a Wisconsin State Assemblyman who represents the 69th Assembly District and whose principal office is located in Room 215 West, State Capitol, P.O. Box 8953, Madison, Wisconsin 53708. Defendant Suder is the Assembly Majority Leader.

9. On January 3, 2011, Governor Scott Walker declared that the State of Wisconsin was in an economic emergency, and issued Executive Order No. 1 which required the Wisconsin Legislature to convene in special session. The sole purpose of the special session was to “consider and act upon legislation” related to the following:

1. Creation of an authority, to be known as the Wisconsin Economic Development Corporation, and making appropriations;
2. All income and franchise tax credit for small businesses;
3. Income and franchise tax exemptions for new businesses, providing an exemption from emergency rule procedures, and granting rule-making authority;
4. Adopting federal law as it relates to health savings accounts for state income and franchise tax purposes and providing a penalty;
5. Requiring a supermajority for passage of tax increase legislation;
6. The authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement or threshold as a term or condition of a license issued by

the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; and venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state; exemptions from water quality certification and wetland mitigation requirements for certain nonfederal wetlands that are less than two acres in size; requirements for wind energy systems, providing an exemption from emergency rule procedures, and granting rule-making authority; and

7. Limiting noneconomic damages awarded in actions against long-term care providers; actions against manufacturers, distributors, sellers, and promoters of certain products; confidentiality of health care services reviews; use as evidence of information regarding health care providers; reporting of quality indicators identifying individual hospitals; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; criminal abuse and neglect of patients and residents; evidence of lay and expert witnesses; damages for frivolous claims; and punitive damage awards.

10. On January 13, 2011, Governor Walker amended and supplemented his previous order related to the special session of the Wisconsin Legislature, and issued Executive Order No. 4. The order stated:

1. In addition to considering the legislation previously specified, the Legislature shall consider and act upon legislation relating to increasing the amount of the credits under the economic development tax credit program; and
2. The tenth paragraph of Executive Order #1, which set forth matters to be considered and acted upon by the Legislature, shall be amended to state as follows:
 6. The authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state; requirements for wind energy systems; an exemption from water quality standards for wetlands and from certain other regulatory provisions concerning water quality and surface water use that apply to a wetland area in Brown County; review of certain changes to shoreland, wetland, and floodplain zoning ordinances that apply to a wetland

area in Brown County; providing an exemption from emergency rule procedures; and granting rule-making authority.

11. On February 11, 2011, Governor Walker issued Executive Order No. 14. It stated:

1. In addition to considering the legislation previously specific in Executive Orders # 1 and # 4, the Legislature shall consider and act upon legislation relating to the Budget Repair Bill.

12. The Budget Repair Bill which was made public on February 11, 2011 was an assortment of different legislation encompassing both fiscal and non-fiscal items in its subject matter.

13. Governor Scott Walker, Defendants Scott Fitzgerald and Jeff Fitzgerald claimed that the specific legislative provisions within the Budget Repair Bill were all fiscal in nature and, therefore, it was appropriate to consider the Budget Repair Bill during the special session to address Wisconsin's purported economic emergency.

14. In the early morning of February 25, 2011, the Wisconsin State Assembly passed Assembly Bill 11, otherwise known as the Budget Repair Bill by a 51-17 vote.

15. The Wisconsin Constitution requires the presence of 3/5 of members of either the Assembly or Senate as quorum in order to pass any bill which would have a fiscal impact on the State of Wisconsin. Wisconsin Constitution Article VIII, § 8.

16. A vote on the Senate version of the Budget Repair Bill, Senate Bill 11, did not occur between February 17, 2011 to March 9, 2011 because there was not a quorum present in the Senate.

17. On March 9, 2010 Defendants Scott Fitzgerald and Jeff Fitzgerald received a memo from Bob Lang, Director of the Legislative Fiscal Bureau with the subject heading

“Modification to SS SB 11/AB 11.” Attached to the memo was a 38 page long document summarizing the modifications made to SS SB 11/AB 11. The attachment identifies provisions in the modified bill having fiscal effect.

17. On March 9, 2011, Defendants Scott Fitzgerald and Jeff Fitzgerald presided over a meeting of the Joint Committee of Conference on the January 2011 Special Session Assembly Bill 11 at the Senate Parlor, State Capitol, Dane County, Wisconsin.

18. The purpose of the Joint Committee of Conference meeting was to introduce an amended version of the Assembly Bill 11 (hereinafter “Conference Substitute Bill”) which purported to strip the bill of any fiscal impacts on the State of Wisconsin.

19. By asserting the fiscal items had been stripped from Assembly Bill 11, Defendants Scott Fitzgerald and Jeff Fitzgerald sought to avoid the 3/5 Wisconsin Senator quorum required by the Wisconsin Constitution Article VIII, § 8.

20. Despite Defendants Scott Fitzgerald and Jeff Fitzgerald’s assertions to the contrary, the Conference Substitute Bill contains substantive fiscal items which will have a serious and detrimental impact on the citizens of Dane County, potentially changing the eligibility for medical assistance. Defendants Scott Fitzgerald and Jeff Fitzgerald advanced the Conference Substitute Bill as a non-fiscal bill despite having been provided the document from the Legislative Reference Bureau clearly identifying fiscal items and despite clear language in the Conference Substitute Bill identifying provisions as being fiscal items.

21. The bill also severely limits public employees’ rights to collective bargain with employers.

22. The Joint Committee of Conference Meeting was conducted in violation of Wis. Stat. §§ 19.81, 19.82, 19.84 and 19.96. Specifically, Defendants Scott Fitzgerald and Jeff Fitzgerald did not provide sufficient notice prior to the meeting and held the meeting at a place which was not reasonably accessible to the public.

23. Defendants Scott Fitzgerald, Jeff Fitzgerald, Mike Ellis and Scott Suder voted in favor of passing the Conference Substitute Bill. Representative Peter Barca voted against the Conference Substitute Bill, and warned the Defendants of the Open Meeting violations. At the meeting Representative Peter Barca was never informed what specifically had been removed from the Conference Substitute Bill (Wisconsin Eye, March 9, 2011) The Joint Committee immediately sent the Conference Substitute Bill to the Wisconsin Senate, where it passed by a measure of 18 to 1 minutes after 6:00 p.m.

24. The Conference Substitute Bill then advanced to the Wisconsin Assembly, where it passed 53 to 42 on March 10, 2010.

25. Governor Scott Walker has promised to sign the Conference Substitute Bill into law as soon as possible.

26. Under the Wisconsin Constitution, “no law shall be in force until published.” Wis. Art. IV. § 17. Defendant Douglas La Follette’s duties include the publication of any newly enacted law.

27. On March 10, 2011 Representative Peter Barca filed a verified complaint with the Wisconsin Attorney General as well as the Dane County District Attorney’s Office alleging that the Joint Conference Committee Meeting was in violation of open meetings laws, but no such decision as to whether the complaint will be filed in circuit court has been made.

28. On March 10, 2011 Plaintiff Kathleen Falk also filed a verified complaint with the Wisconsin Attorney General as well as the Dane County District Attorney's Office alleging that the Joint Conference Committee Meeting was in violation of open meetings laws, but no such decision as to whether the complaint will be filed in circuit court has been made.

**COUNT I :
DECLARATORY RELIEF**

29. Paragraphs 1 through 28 are incorporated herein as if set forth in full.

30. The purpose of this action is to declare the Conference Substitute Bill, in violation of Wis. Art. VIII, § 8 in that the bill contains substantive fiscal items within it, and the Wisconsin Senate did not have the required quorum of 3/5ths of its members to vote on the bill.

31. The interests of the Plaintiffs and the Defendants are adverse, and the Plaintiffs have a protectable interest in maintaining the rights of public employees to collectively bargain with their employer.

32. The issue of the constitutionality of the Wisconsin Senate vote on the Conference Substitute Bill is ripe for judicial determination.

33. Plaintiffs respectfully request that the Court declare that the March 9, 2011 Wisconsin vote be declared unconstitutional, and that such legislation be void.

**COUNT II :
INJUNCTIVE RELIEF**

34. Paragraphs 1 through 33 are incorporated herein as if set forth in full.

35. Defendants actions are in excess of the Wisconsin Legislature's constitutional and jurisdictional authority.

36. Plaintiffs have no adequate remedy at law and will suffer irreparable harm as a result of Defendants' actions.

37. The enactment of the Conference Substitute Bill by the Wisconsin State Senate is in clear violation of Wisconsin's open meetings laws and will result in confusion and uncertainty to the Plaintiffs, the citizens of Dane County as well as to the employees of Dane County who stand to lose substantive rights as a result of an unconstitutional legislative act. In addition to the loss of collective bargaining rights for those citizens who are public employees and the unconstitutional imposition of health care and pension fund costs, certain citizens stand to lose medical assistance under a provision unconstitutionally included in the Conference Substitute Bill.

38. Plaintiffs Falk, McDonnell and Maier shall suffer further harm from Defendants' actions by jeopardizing the employee/employer relationship within Dane County Government.

39. A temporary injunction restraining Defendant LaFollette from publishing the Conference Substitute Bill until the Court can determine the legality of the Conference Committee meeting is necessary to preserve the status quo *pendente lite*.

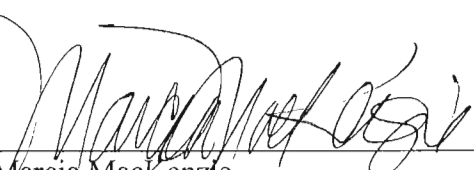
WHEREFORE, Plaintiffs requests the following relief:

- A. Injunctive relief restraining Defendant Douglas La Follette from publishing the Conference Substitute Bill once Governor Scott Walker signs the bill.
- B. Declaratory relief declaring the Conference Substitute Bill unconstitutional.

- C. Declaratory relief declaring the Conference Substitute Bill to be in violation of Wis. Stats. § 13.093(2).
- D. Such further relief as the Court deems just and appropriate.

Dated this 11th day of March, 2011.

DANE COUNTY CORPORATION COUNSEL

By: 

Marcia MacKenzie
State Bar No. 1020725
Dane County Corporation Counsel
City-County Building, Room 419
210 Martin Luther King, Jr. Blvd.
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DANE COUNTY)
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 STATE OF WISCONSIN)
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CASE NO. 2011_____

CASE TYPE:
Preliminary Injunctive relief

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**PLAINTIFF'S NOTICE AND MOTION FOR A TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION**

PLEASE TAKE NOTICE that Plaintiffs move the Court pursuant to Wis. Stat. §813.02

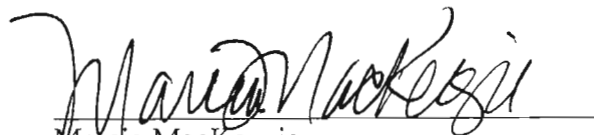
for:

1. A temporary restraining order enjoining Defendants from publishing the Conference Committee substitute amendment - SS SB-11/AB-11.
2. An order directing Defendants to appear before the Court at a time to be fixed by the Court and to show cause, if there be any, why a temporary injunction should not be issued.
3. A preliminary injunction keeping the temporary restraining order requested above in place pending final adjudication of this case on the merits.
4. Any additional relief the Court deems appropriate.

The grounds for this motion, as more fully set forth in the accompanying memorandum of law, are that Plaintiff is likely to prevail on the merits given the affidavits and legal authority in support of its motion; that an injunction is necessary to preserve the *status quo* and prevent harm to the Plaintiffs, the County, its employees, citizens and taxpayers, and that Plaintiffs would be irreparably harmed and lack an adequate remedy at law.

Dated this 11th day of March, 2011.

Respectfully submitted,



Marcia MacKenzie
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 COUNTY EXECUTIVE Kathleen Falk in her)
 personal capacity;)
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Plaintiffs,)

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STATE OF WISCONSIN)
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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR A TEMPORARY
 RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

Plaintiffs, by Marcia MacKenzie, Dane County Corporation Counsel, respectfully submit the following brief in support of their motion for a temporary restraining order and preliminary injunction.

INTRODUCTION

The Governor's Budget Repair Bill (SS SB 11/AB11) is one of the most controversial bills to be considered by Wisconsin's legislature in recent history. The Republicans in the legislature, unable to obtain the required 20 person quorum necessary to pass the bill, despite mounting public opposition, and in violation of Wisconsin's constitution and laws, repackaged the bill and declared it to be "non-fiscal." They passed the repackaged bill – which contained 137 of the original 144 pages -- in violation of the requirements of the Wisconsin Constitution and other laws, using procedural maneuvers that have already been legally challenged and will likely to result in additional lawsuits. The bill will have numerous negative effects, and the Plaintiffs seek a temporary injunction so that those negative effects can do no harm until it is certain that the bill's passage will survive the legal challenges.

Plaintiffs can readily demonstrate that they are likely to prevail on the merits given the facts and legal authority in support of their motion. They can also prove that an injunction is necessary to preserve the *status quo* and prevent harm to the Plaintiffs and the citizens of Dane County. The plaintiffs also lack an adequate remedy at law, since a permanent injunction cannot be obtained timely enough to prevent the significant abridgment of Plaintiffs' rights.

PERTINENT FACTS

Wisconsin has been in the grip of a dispute over the provisions currently contained in Conference Committee Substitute Amendment to SS SB-11/AB-11 since February 11, 2011,

when Governor Scott Walker unveiled his Budget Repair Bill as 2011 Senate Bill 11 and the identically worded 2011 Assembly Bill 11.

Governor Walker Introduces “Budget Repair Bill”

At the time the original bill was introduced and until March 9, 2011, Governor Walker repeatedly stated that the *entire* bill was a “fiscal repair” bill that had to be passed intact to repair the state’s deficit. See,

http://www.wisgov.state.wi.us/journal_media_detail.asp?locid=177&prid=5635 (Governor press release stating that “Collective Bargaining is a Fiscal Issue;”)

http://walker.wi.gov/journal_media_detail.asp?prid=5682&locid=177, dated March 10, 2011

(“In Wisconsin, we have a better approach to tackling our \$3.6 billion deficit . . .”); Collective Bargaining Has a Fiscal Impact, Parts 1 through 4, dated February 21, 2011, February 22, 2011, March 7, 2011 and March 8, 2011 found on Governor’s Office website,

http://www.transition.wi.gov/journal_media_detail.asp?locid=177&prid=5635,

http://www.transition.wi.gov/journal_media_detail.asp?locid=177&prid=5633,

http://walker.wi.gov/journal_media_detail.asp?prid=5671&locid=177

http://walker.wi.gov/journal_media_detail.asp?prid=5675&locid=177 (Governor asserts

government waste brought about through collective bargaining as part of the larger state budget picture); <http://www.news.wisc.edu/18960>, (Governor ties collective bargaining to saving

resulting in increased employee benefit contributions – asserting collectively, these changes will result in savings of approximately \$30 million in the remaining few months of the current fiscal year).

Public Opposition To The Bill Increases

Democratic legislators, public and private sector unions and members of the public immediately argued that the bill was designed to destroy public employees' unions, among other things. The Governor denied this assertion, insisting repeatedly that the bill was necessary only because the state was "broke."

Senate Majority Leader Scott Fitzgerald and Assembly Leader Jeff Fitzgerald also continued to claim that the budget repair bill was designed to address "debt" and was not designed to destroy public employees' unions. See, <https://illinoisreview.typepad.com/illinoisreview/2011/02/cotto-interviews-wisconsin-senate> <http://www.npr.org/2011/02/21/133932040>, S. Fitzgerald interview with Steve Inskeep 2/21/2011; <http://www.thedailypage.com/isthmus/article.php?article=32430>.

On February 15, 2011 the Wisconsin Legislature's Joint Finance Committee began holding a public hearing on the Governor's Budget Repair Bill. Those hearings went through the night and into the next day, as hundreds of citizens protested and registered to testify.

On February 16, 2011 the Joint Finance Committee abruptly halted the public hearings on the Governor's Budget Repair Bill. Hundreds of Wisconsin citizens had properly registered to speak before the Joint Finance Committee, had even maintained their position in line for as long as a full day, only to be denied the opportunity to speak by the Joint Finance Committee. The Committee then voted 12-4 to pass the bill to both houses of the Legislature.

The public responded with continuing, sometimes massive, demonstrations at the Capitol and in cities throughout Wisconsin and other states. There was even international interest in the exercise in democracy demonstrated by the people of Wisconsin at the State Capitol.

*Final Passage Of The Bill Is Impeded By The "Wisconsin Fourteen"
And A Majority of The Public Turns Against The Governor*

For fiscal measures, a quorum consists of three fifths of all elected members of the house. See section 8 of article VIII, Wisconsin Constitution. On February 17, 2011, when it became apparent that the Senate intended to cut off all public debate and force a vote on the bill, fourteen Democratic State Senators left the state in an effort to filibuster the bill and prevent its passage. During the period of February 17, 2011 and continuing through March 10, 2011 the Senate leadership engaged in various efforts to force the Democratic Caucus to return to Wisconsin. These acts included withholding the paychecks of such Senators unless they personally showed up to collect their checks; finding the Senators in contempt of the Senate; sending law enforcement officers to the homes of the Senators; and issuing fines against the Senators.

In the State Assembly, the Assembly Chair abruptly cut off debate on the bill in the early morning hours of February 25, 2011, and moved it to a quick vote. The vote was conducted electronically and was completed in less than a minute. The voting period was so abrupt and so short that 28 members of the Assembly did not even have the opportunity to vote. The Governor's Budget Repair Bill passed the assembly on a vote of 51-17.

As the public became increasingly aware of the deleterious effects of the bill on the public and the political motives underlying it, public opinion polls turned against the Governor and Republican legislature. www.jsonline.com/news/statepolitics/117472988.html; www.wpri.org/polls/March2011/poll0311.html; www.huffingtonpost.com/.../wisconsin-governor-walker-dire-consequences_n_826865.html; www.wisconsinreporter.com/new-poll-shows-wisconsinites-split-on-walkers-budget-proposal As of March 8, 2011 official recall

efforts are underway against eight Republican Senators. See

http://voices.washingtonpost.com/plum-line/2011/03/breaking_wisconsin_dems_throw.html

The Governor and Republican legislators were losing in the forum of public opinion and the possibility of their recall increased as each day passed. The “Wisconsin 14” were drawing increasing national attention, and stated they would not return absent a compromise to satisfy the concerns expressed by the majority of the public.

The Republican Legislators Devise Illegal Procedures And Violate Open Meetings Laws.

On March 9, 2011, the Governor and legislators abruptly announced that the bill, contrary to their own statements, was *not* a fiscal measure. Later on that same date, Representative Jeff Fitzgerald and Senator Scott Fitzgerald presided over a meeting of the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11, held at 6:00 p.m. at the Senate Parlor, State Capitol, Dane County, Wisconsin.

The Fitzgeralds called the Committee of Conference without obtaining fiscal estimates required by Wis. Stat. § 13.093 (2)(a), which provides that any bill that makes an appropriation *or* increases or decreases existing appropriations or state or general local government fiscal liability or revenues *must* receive a fiscal estimate prior to committee action or prior to a floor vote if the bill is not referred to committee.

Executive budget bills, such as the bill in question, which contain a provision affecting a public retirement fund or provide a tax exemption must have those provision analyzed by the joint survey committee. Wis. Stat. § 13.093(2)(b). The legislative-defendants did not obtain any such analysis.

A floor period of the Senate had not been called or publicly noticed and public notice of the meeting was not given 24 hours in advance of the meeting. The Defendants have failed to state any good cause why 24 hours' notice was impossible or impractical, as required by Wis. Stat. § 19.84 (3).

The public notice of the meeting did not set forth the time, date, place and subject matter of the meeting in such form as was reasonably likely to apprise members of the public and the news media thereof as required by Wis. Stat. § 19.84(2). Similarly, the legislator-defendants did not publish any notice informing the public that the Senate would take a vote to pass the bill that day.

The Capitol was locked before the meeting and that citizens who wished to attend the meeting could not enter the building to attend the meeting, as required by Wis. Stat. §§ 19.81(2), 19.82(3), and 19.96. Finally, the meeting was held in the Senate Parlor, which is a small room with very limited space for the public, and was not reasonably accessible to members of the public or all citizens, as required by Wis. Stat. §§ 19.81(2) and 19.82(3).

Representative Barca, the only Democrat who attended (and the lone negative vote), did not receive notice of the meeting until 4:20 p.m. on March 9, 2010 (Affidavit of Barca filed in Verified Complaint to District Attorney Ozanne) (Exhibit B)

The meeting was supposedly a meeting of a "Joint Committee of Conference," even though the Senate had not previously voted on or passed either Assembly Bill 11 or the companion Senate Bill. The meeting of Committee of Conference was attended by two Senators and three Representatives, four of whom are among the defendants in this matter (hereinafter "legislator-defendants"). Special Session Assembly Bill 11 ("Bill") was

passed at the meeting, by vote of the legislator-defendants. The Bill contains 137 pages of the original 144.

Joint Rule 3 of the Wisconsin Legislature, a Committee of Conference "consisting of 3 members from each house may be requested by either house" in "all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house." Joint Rule 3(1).

Joint Rule 3 of the Wisconsin Legislature also prescribes the procedures that must be followed if a Committee of Conference meets. The rule *requires* that the Committee of Conference "shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house." Joint Rule 3(1)(a). This did not occur.

Joint Rule 3 also provides that "when the committee of conference has reached agreement, the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate." Joint Rule 3(1)(b). Representative Peter Barca, the Assembly Minority Leader and member of the Committee on Conference, gave no indication of any agreement with the report of that Committee, as he was barely allowed to speak. Finally, "approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the joint resolution in the form and with the changes proposed by the report." Joint Rule 3(1)(c).

Senate Rule 20 provides that members of the Conference on Committee shall be

appointed by the President of the Senate. There is no record of this having been done – only a statement that the “Senate appoints Fitzgerald, Ellis and Miller as conferences on its part.” Legislative comments to Assembly Bill 11 dated 03-09-11.

The Assembly Passes The Bill

On March 10, 2011 the Assembly considered the Bill modified by the Conference Committee and, after a reported mere two hours, closed the debate and passed the measure on a vote of 53-42. The Governor has stated he will sign the bill as soon as possible. Assemblyman Jon Richards of Milwaukee reiterated that the bill, as amended, remains a fiscal bill and that it did not pass the Senate with the 20 members necessary to legally move a fiscal bill.

ARGUMENT

The legislator-defendants have violated the Wisconsin Constitution, Wisconsin’s open meetings laws, Chapter 13 of the Wisconsin Statutes and the Senate’s own rules in order to pass a bill that seriously abridges the collective bargaining rights of many of the citizens of this state and puts the health care benefits of many other citizens at risk, among many other things. Plaintiffs seek injunctive relief that will maintain the status quo until these and other plaintiffs can be heard in the courts as to whether the constitutional requirement of a quorum of three fifths of the Senate was violated and whether the public has had adequate notice and opportunity to be heard.

I. THE PLAINTIFFS ARE ENTITLED TO TEMPORARY INJUNCTIVE RELIEF

A. Applicable Law.

Before issuing a temporary injunction, a circuit court must determine whether the movant has demonstrated the following: (1) a reasonable probability of ultimate success on the merits;

(2) that an injunction is necessary to preserve the *status quo*; and (3) a lack of adequate remedy at law or irreparable injury. *Werner v. A. L. Grootemaat & Sons, Inc.*, 80 Wis.2d 513, 520, 259 N.W.2d 310, 313 - 314 (1977).

Suffering an irreparable harm or lacking an adequate remedy are essentially the same. *Pure Milk Prods. Co-op v. National Farmers Org.*, 90 Wis.2d 781, 800, 280 N.W.2d 691, 700 (1979). An injury is irreparable if the legal remedy will not be adequate. *Id.* at 800. Further, the requirement of irreparable harm can be met by showing that, without a temporary injunction, the requested relief would be rendered futile. *Werner*, 80 Wis. 2d at 520.

8 B. There Is a Reasonable Probability That Plaintiffs Will Succeed on the Merits.

To succeed on the merits, Plaintiffs must demonstrate that the legislator-defendants: (1) violated the quorum requirement for voting on fiscal matters contained in Wisconsin's Constitution; *or* (2) violated open meetings laws, *or* (3) violated other laws required to advance a bill; *or* (4) violated Senate Joint Rule 3 in creating the Conference Committee that allowed the bill to go to a final vote. Any one of these findings would void the bill and require that it return to the legislature. Plaintiffs can succeed on the merits of all four.

1. *The bill passed by the State Senate lacked the quorum required by the Wisconsin Constitution, Wisconsin Statutes and the Rules of the Senate.*

The Wisconsin Constitution, Article VIII, § 8 provides:

Vote on fiscal bills; quorum. Section 8. On the passage in either house of the legislature of any law which imposes, continues or renews a tax, or creates a debt or charge, or makes, continues or renews an appropriation of public or trust money, or releases, discharges or commutes a claim or demand of the state, the question shall be taken by yeas and nays, which shall be duly entered on the journal; and three-fifths of all the members elected to such house *shall in all such cases be required to constitute a quorum therein.* (emphasis supplied)

Moreover, Joint Rule 11 (2) adopted by the Wisconsin State Senate provides that:

Three-fifths of the members elected is the quorum necessary for passage or concurrence in either house of any “fiscal bill” under section 8 of article VIII of the constitution. A “fiscal bill” is any bill which:

- (a) Imposes, continues, or renews a tax.
- (b) Creates a debt or charge.
- (c) Makes, continues, or renews an appropriation of public or trust money.
- (d) Releases, discharges, or commutes a claim or demand of the state.

There is no dispute that there were only 19 members present at the time the Senate voted on the Bill. This is insufficient to meet the three-fifths requirement of the Wisconsin Constitution and the rules of the Senate to constitute a quorum. The 19 members could only vote if the bill contained *no* fiscal provisions as identified in the Constitution and the rules. The bill voted on by the 19 members of the Wisconsin Senate on Wednesday, March 9, 2011 contains numerous fiscal provisions which required a 20-member quorum.

The facts demonstrate that the Governor and the legislator-defendants repeatedly argued that the entire Budget Repair bill, especially the provisions relating to collective bargaining rights, was a fiscal bill. Very few provisions were removed from the bill – the revised Bill contains 137 pages of the original 144. This begs the question – how can the same measures become non-fiscal by removal of *any* of its provisions, much less leaving the bill largely intact. This question alone demonstrates that Plaintiffs have a reasonable probability of success on the merits.

In addition, the 2010-11 Bill contains the following fiscal provisions:

Page 29, Sec.88 at lines 19-23, prohibits municipal employers from offering health care coverage to employees if employer pays more than identified percentages.

Page 31, Sec. 98 at lines 21-22, *changes an appropriation* for the earned income tax credit.

Page 31, Sec 99, pg. 32 at lines 20-24, pg 33 lines 5-6, 9, 15-16 authorizes rules that modify, restrict, or eliminate eligibility or reduces income levels for eligibility, under the Federal Medical Assistance Program.

Page 33, at lines 17-25 authorizes Wisconsin to apply for a Federal Medical Assistance waiver.

Page 58, Sec. 171 at lines 2-7 prohibits local governments from establishing pension plans that do not require employees to pay half of all actuarially required contributions.

Page 58, Sec. 173 at lines 21-24, excludes certain property from inclusion in a *TIF taxation district*.

Page 59, Sec. 176 at lines 23-24, *changes an individual income tax credit* to an income tax deduction.

Page 131 Sec. 9208, lines 10-11 lapse of \$2,011,200 *to the general fund* from the appropriation account of the department of children and families.

Pages 131 Sec. 9219, line 21 lapse of \$37,000 *to the general fund* relating to employer fringe benefit accounts.

Pages 132 Sec. 9221, line 4, lapse of \$4,500,000 *to the general fund* from department of health services.

Pages 132 Sec. 9227, line 12, lapse of \$3,100,000 *to the general fund* from the community aids appropriation.

Pages 132 Sec. 9227, lines 15-20, *decreasing appropriation* by \$37,000,000 supplementing federal earned income tax credit payments.

Pages 132 Sec. 9227, line 24, *decreasing appropriation* to the joint committee on finance by \$4,590,000.

Page 133 Sec. 9230, lines 8-11, ensuring an amount equal to \$717,700 from the general purpose appropriations is *lapsed from certain appropriation accounts* or is *subtracted from expenditure estimates* for any other type of appropriations, or both.

Page 133 Sec. 9245, lines 19-23 ensuring that from the general purpose revenue appropriations an amount equal to \$37,000,000 to the judicial branch is *lapsed from sum certain appropriation accounts*.

Pages 133-134, Sec. 9255, lines 6-9 (pg 134), lapse *to the general fund* an amount equal to \$27,891,400 from unencumbered balances of general purpose revenue and program revenue.

134-135, Sec 9315, lines 9-18 (pg 135) regarding payment of employee required contributions under the Wisconsin Retirement System.

The Bill, which had purportedly been stripped of all fiscal effect, had undergone review by the entity responsible for determining the fiscal impact – that review demonstrated that it had numerous such effects.

The Wisconsin Legislative Fiscal Bureau (“LFB”) has confirmed the fiscal items in the bill. On March 9, 2011, Bob Land, the Director of the LFB, sent a 33-page memo to Senator Scott Fitzgerald and Representative Jeff Fitzgerald summarizing the modifications to SS SB11/AB/11 requested by the Fitzgeralds. (*See* <http://legis.wisconsin.gov/JR1AB11-CA1.pdf>) The report identifies the general fund *fiscal effects* for 2010-11. The LFB memo identified 2010-11 revenues of \$27,891,400 from increases in employee health and retirement contributions; appropriations totaling -\$7,690,400 from the Family Care Aging and Disability Resource Centers and the Joint Finance Supplemental Appropriation; and lapses or transfers of \$1,908,600 from increases in employee health and retirement contributions from the Legislature, Courts and Governor, for a total effect on the General Fund Balance of \$37,490,400.

The law and facts stated above demonstrate that Defendants Scott Fitzgerald and Jeff Fitzgerald were the recipients of the analysis by the Legislative Fiscal Bureau, nonetheless, they moved the Bill forward and allowed voting to occur without the constitutionally required quorum for fiscal bills.

2. *The action is void because the legislative-defendants advanced it without fiscal estimates that are required by statute.*

Wis. Stat. § 13.093 (2)(a), provides that any bill which makes an appropriation *or* increases or decreases existing appropriations or state or general local government fiscal liability or revenues *must receive a fiscal estimate prior to committee action or prior to a floor vote* if the bill is not referred to committee. There was no committee action on 2010-11 Conference Committee Substitute Amendment. Moreover, as stated by the Legislative Fiscal Bureau, the Bill has an effect on the General Fund Balance of \$37,490,400 and has a dramatic effect on state and local government fiscal liability. The Bill should not have been advanced because there was no fiscal estimate.

Wis. Stat. § 13.093(2)(b), further provides that executive budget bills containing a provision affecting a public retirement fund or providing a tax exemption must have those provision analyzed by the joint survey committee. The Bill contains provisions affecting public retirement funds, yet Defendants Scott Fitzgerald and Jeff Fitzgerald opted to ignore the mandates Wis. Stat. § 13.093(2)(b).

Tellingly, as an indication of the lengths these legislative-defendants were willing to go to in order to advance the Bill, if the required fiscal estimates had been obtained, it would have been clear that the Conference Substitute Bill had numerous fiscal impacts -- and that it could legally have advanced to a vote without the three fifths majority.

3. *Assuming arguendo that the Court determines that the matters taken up by the State Senate were non-fiscal in nature, the vote taken by the Senate remains unlawful.*

Under Article V, Section 4 of the Wisconsin Constitution, the governor of Wisconsin has the power to “to convene the legislature on *extraordinary* sessions...”(emphasis added). Concomitantly, the Wisconsin Legislature is required to meet at “the seat of the government at

such time as shall be provided by law, unless convened by the governor in special session.” Wis. Cons. Art. IV, § 11.

On or about January 3, 2011, Governor Walker issued an executive order convening a special session of the Wisconsin Legislature beginning at 10:00 a.m. on January 4, 2011. Wis. Exec. Order No. 1 (2011). To justify the special session, Governor Walker declared “the State of Wisconsin is in an economic emergency.” *Id.* The purpose of the special session was to “solely” consider and act upon legislation relating to the following:

1. Creation of an authority, to be known as the Wisconsin Economic Development Corporation, and making appropriations;
2. All income and franchise tax credit for small businesses;
3. Income and franchise tax exemptions for new businesses, providing an exemption from emergency rule procedures, and granting rule-making authority;
4. Adopting federal law as it relates to health savings accounts for state income and franchise tax purposes and providing a penalty;
5. Requiring a supermajority for passage of tax increase legislation;
6. The authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; and venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state; exemptions from water quality certification and wetland mitigation requirements for certain nonfederal wetlands that are less than two acres in size; requirements for wind energy systems, providing an exemption from emergency rule procedures, and granting rule-making authority; and
7. Limiting noneconomic damages awarded in actions against long-term care providers; actions against manufacturers, distributors, sellers, and promoters of certain products; confidentiality of health care services reviews; use as evidence of information regarding health care providers; reporting of quality indicators identifying individual hospitals; homicide or injury by negligent handling of a dangerous weapon, explosives, or fire; criminal abuse of individuals at risk; criminal abuse and neglect of patients and residents;

evidence of lay and expert witnesses; damages for frivolous claims; and punitive damage awards.

Id.

On January 13, 2011, Governor Walker amended and supplemented his previous order related to the special session of the Wisconsin Legislature. Wis. Exec. Order No. 4 (2011). The order stated:

1. In addition to considering the legislation previously specified, the Legislature shall consider and act upon legislation relating to increasing the amount of the credits under the economic development tax credit program; and
 1. The tenth paragraph of Executive Order #1, which set forth matters to be considered and acted upon by the Legislature, shall be amended to state as follows:

The authority of a state agency to promulgate rules interpreting the provisions of a statute enforced or administered by the agency and to implement or enforce any standard, requirement, or threshold as a term or condition of a license issued by the state agency; gubernatorial approval of proposed administrative rules; economic impact analyses of proposed rules and emergency rules; venue in a declaratory judgment action seeking judicial review of the validity of an administrative rule and in an action in which the sole defendant is the state; requirements for wind energy systems; an exemption from water quality standards for wetlands and from certain other regulatory provisions concerning water quality and surface water use that apply to a wetland area in Brown County; review of certain changes to shoreland, wetland, and floodplain zoning ordinances that apply to a wetland area in Brown County; providing an exemption from emergency rule procedures; and granting rule-making authority.

Id.

On February 11, 2011, Governor Walker once again amended the purpose of the special session by stating:

1. In addition to considering the legislation previously specific in Executive Orders # 1 and # 4, the Legislature shall consider and act upon legislation relating to the Budget Repair Bill.

Wis. Exec. Ord. No. 14 (2011).

Governor Walker justified all three executive orders in by claiming an “economic emergency.” Wis. Exec. Order. No. 1. Accordingly, the legislation referred to in each order contained at least one undisputed fiscal issue. *See* Wis. Exec. Ord. Nos. 1, 4, 14.

If it is determined that the Bill is not fiscal in nature, then the Legislature impermissibly considered and voted on the Bill in the special session, because the Governor’s authority to convene the Legislature in special session is limited to “extraordinary occasions” and the Governor has claimed the presence of an “extraordinary occasion” by citing an “economic emergency.” By stripping provisions from the Budget Repair Bill and putting them forward as a non-fiscal bill, the Legislature had no authority to consider the measure since it would have no impact on addressing the “economic emergency” purported to be present.

4. *The legislator-defendants violated Wisconsin’s open meetings laws.*

It is indisputable that the policy of this state in regard to open meetings is that the public is entitled to the “fullest and most complete information” regarding the actions of its government. Wis. Stat. § 19.81(1). There is a presumption that meetings of governmental bodies must be held in open session. *State ex rel, Newspapers vs. Showers*, 135 Wis. 2d 77, 97, 398 N.W.2d 154 (1987). The acts of the Republican leadership and legislature are completely contrary to this well established legislative policy.

A meeting of the Joint Legislative Conference Committee was taken on Wednesday night, March 9, 2011 at six p.m. The Committee voted in the Bill. Notice was given *less than* two (2) hours before the meeting. Representative Peter Barca, the only Democrat who attended (and the lone negative vote), did not receive notice of the meeting until 4:20 p.m on March 9, 2010 (Affidavit of Barca filed in Verified Complaint to District Attorney Ozanne) (Exhibit B).

Wis. Stat. § 19.84 (3) requires that public notice of a meeting must be given 24 hours in advance of the meeting unless there is good cause such that notice was impossible or impractical, in which case two hour notice is sufficient. The public was not given 24 hour notice, or even two hour notice. In fact, the legislator-defendants did not publish any notice *at all* informing the public that the Senate would take a vote to pass the bill that day. Nor had a floor period of the Senate been called or publicly noticed. The legislator-defendants have not stated good cause for the late notice.

Wis. Stat. § 19.84(2) requires public notice of a meeting set forth the time, date, place and subject matter of the meeting in such form as is reasonably likely to apprise members of the public and the news media . The notice provided is inadequate. (Exhibit A)

Wis. Stat. §§19.81(2) and 19.82(3) require that the meeting be reasonably accessible to members of the public and all citizens. Instead of the Senate Chamber, the meeting was held in the Senate Parlor, which is a small, inaccessible room with very limited space for the public.

Legislator-defendants do not dispute these violations. Incredibly, in an attempt to avoid providing notice to the public regarding this most controversial legislation, which is of great public interest, contrary to established policy, they assert that the open meetings law simply does not apply. But the legislature's Joint Rule 3 prescribes only how and when such matters may be considered before a Joint Legislative Conference Committee, it does not supplant the requirements of the open meetings law.

Joint Rule 3 of the Wisconsin Legislature, a Committee of Conference "consisting of 3 members from each house may be requested by either house" in "all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house." Joint Rule 3(1). There was no Senate

bill, therefore no disagreement existed when the bill was sent to Committee of Conference.

Joint Rule 3 of the Wisconsin Legislature also prescribes the procedures that must be followed if a Committee of Conference meets. The rule *requires* that the Committee of Conference "shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house." Joint Rule 3(1)(a). This did not occur.

Joint Rule 3 also provides that "when the committee of conference has reached agreement the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate." Joint Rule 3(1)(b). Representative Peter Barca, the Assembly Minority Leader and member of the Committee on Conference, gave no indication of any agreement with the report of that Committee, as he was barely allowed to speak. In a sworn complaint to District Attorney Ozanne regarding the open records issue, Assembly Minority Leader Barca concludes at paragraphs # 7- 13 that Joint Rule #3 was not complied with and therefore the proceeding was not exempt from the Open Meetings Law. This likely provides another basis that the exception to the normal notice provisions does not apply.

In addition, Senate Rule 20 provides that members of the Conference on Committee shall be appointed by the President of the Senate. There is no record of this having been done – only a statement that the "Senate appoints Fitzgerald, Ellis and Miller as conferences on its part." Legislative comments to Assembly Bill 11 dated 03-09-11.

Minority Leader Barca, the City of Madison and the County of Dane have all filed Verified Complaints with either the Attorney General of Wisconsin, the Dane County District Attorney or both, seeking to address the Open Meetings violations alleged above. Statutes provide that as part of the remedy available the relief sought may include “such other legal or equitable relief, but not limited to mandamus injunction or declaratory judgment...” (Sec. 19.97(2) and “any action taken at a meeting of governmental body held in violation of this subchapter is voidable...” Sec. 19.97(3)

C. Defendants Must Be Enjoined to Prevent Irreparable Harm to Plaintiffs.

Plaintiffs are seeking a temporary injunction which would enjoin the Defendants from publishing the Bill, thereby preventing it from becoming effective in the State of Wisconsin and Dane County until the numerous legal challenges can be litigated. During the litigation period, irreparable harm would occur to Plaintiffs. The bill authorizes rules that modify, restrict, or eliminate eligibility or reduce income levels for eligibility, under the Federal Medical Assistance Program for County residents. If the Bill becomes effective, rules could be enacted unilaterally and immediately without legislative oversight. Such enactment could deprive needy County citizens of access to health care benefits. Individuals so deprived could be unnecessarily financially stressed by medical debt, and could even be evicted for failure to pay rent or lose their homes due to debt driven foreclosure. Affected individuals would likely turn to the County for help, using County programs that are already strained – perhaps taking benefits from other needy individuals. This strain on the County programs and its effects on other citizens could not be reversed after the litigation period. Any resources expended would be difficult and costly to recover, if they are recoverable at all from the needy families who qualify for benefits.

Additionally, all non-represented Dane County employees, including Plaintiffs Falk and McDonell and the County's Department Heads and managers will be immediately affected. This means that the county would have to somehow find a way to alter its electronic payroll system to treat two classes of employees differently. To do so would consume inordinate amounts of staff time, which would unduly and unnecessarily disturb the operations of the county. Efforts would be wasted if the legislature's action is reversed and lost staff time cannot be recovered. In addition, programming time would likely delay paychecks for all county employees and at the very least require costly reprogramming. It would also require that the pay of affected individuals be reduced immediately, which would have perhaps unnecessary adverse effects on many public employees not felt by their represented peers.

D. An Injunction is Necessary to Preserve the Status Quo.

The bill's provisions regarding changes in health benefits could upset the status quo for county citizens represented by Plaintiffs by depriving them of access to health care benefits for what could be a temporary time period, during which individuals unnecessarily financially stressed by medical debt turn to the County for help, requiring help from County programs that are already strained and taking benefits from other needy individuals. None of this is necessary if the status quo is maintained until the legal issues are decided.

Plaintiffs and the citizens they represent currently work for Dane County, where labor and management have negotiated labor agreements that will not be immediately affected. However, all non-represented Dane County employees, including Plaintiffs Falk and McDonell and the County's Department Heads and managers will be immediately affected. This means that the county would have to somehow find a way to alter its electronic payroll system to treat two classes of employees differently. To do so would consume inordinate amounts of staff time,

which would unduly and unnecessarily disturb the operations of the county. Depending on its complexity, the length of time to reprogram could delay paychecks for all county employees and at the very least require costly reprogramming.

The Bill also requires that the pay of affected individuals be reduced immediately, which would have perhaps unnecessary adverse effects on many public employees not felt by their represented peers. If the lawsuits challenging the passage of the bill are successful, this would all have to be undone. This is an unnecessary burden on County staff and finances, which can be avoided if the status quo is maintained.

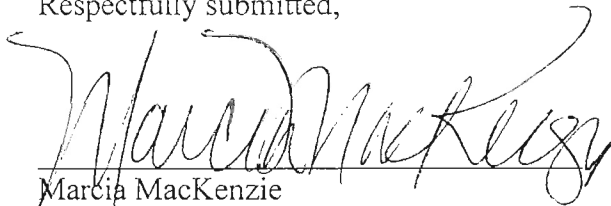
CONCLUSION

For the reasons set forth above, Dane County respectfully requests that the Court issue a temporary injunction prohibiting Defendants from publishing the Conference Substitute Bill once signed by Governor Walker.

For the same reasons, Dane County respectfully requests that the Court issue a temporary restraining order enjoining the Secretary of State from publishing the Bill.

Dated this 11th day of March, 2011.

Respectfully submitted,



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Assistant Corporation Counsel
State Bar No. 1037944

EXECUTIVE SESSION

Committee of Conference on January 2011 Special Session Assembly Bill 11

The committee will hold an executive session on the following items at the time specified below:

Wednesday, March 9, 2011
6:00 PM
Senate Parlor
State Capitol

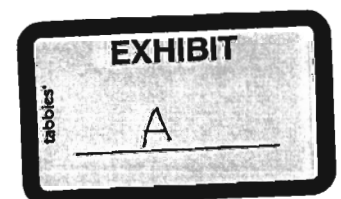
January 2011 Special Session Assembly Bill 11

Relating to: state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

Seating for the public and legislative staff will be limited. Access for the public will be available by contacting the Sergeant-at-Arms staff outside the 2nd floor entrance of the Senate Chamber 30 minutes prior to the start of the meeting.

Senator Scott Fitzgerald
Senate Chair

Representative Jeff Fitzgerald
Assembly Chair



VERIFIED OPEN MEETINGS LAW COMPLAINT

Now comes the complainant, Peter Barca, pursuant to Wis. Stat. §§ 19.96 and 19.97, being first duly sworn on oath alleges and complains:

1. That I am an adult resident of the State of Wisconsin and am the elected Representative of the 64th Assembly District.
2. That I make this affidavit on my own personal knowledge.
3. That my principal office is located at Room 201 West, State Capitol, Madison, WI, 53708.
4. That Jeff Fitzgerald, whose principal office is located at Room 211 West, State Capitol, Madison, WI 53708, is on the day of March 10, 2011, chief presiding officer of the Wisconsin Assembly, and that the Wisconsin Assembly is a governmental body within the meaning of Wis. Stat. §§ 19.82(1) and 19.87;
5. That Scott Fitzgerald, whose principal office is located at Room 211 South, State Capitol, P.O. Box 7882, Madison, Wisconsin, 53707-7882, is on the day of March 10, 2011, chief presiding officer of the Wisconsin Senate, and that the Wisconsin Senate is a governmental body within the meaning of Wis. Stat. §§ 19.82(1) and 19.87;
6. That Representative Jeff Fitzgerald and Senator Scott Fitzgerald presided over a meeting of the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11 at 6:00 p.m. on the 9th day of March 1, 2011, at the Senate Parlor, State Capitol, Dane County, Wisconsin;



7. That the meeting of Conference Committee was attended by 2 Senators and 3 Representatives, and that I was the sole Democratic member of the Legislature in attendance;

8. That the members of the Senate voted on and passed Special Session Assembly Bill 11 at the meeting, even though the Senate had not previously voted on or passed Assembly Bill 11 or the companion Senate Bill; a floor period of the Senate had not been called or publicly noticed; and the meeting was announced to the public and members of the legislature as a meeting of the Joint Committee of Conference.

9. That under Joint Rule 3 of the Wisconsin Legislature, a Committee of Conference "consisting of 3 members from each house may be requested by either house" in "all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or joint resolution passed by the other house." Joint Rule 3(1).

10. That under Joint Rule 3 of the Wisconsin Legislature, the Committee of Conference "shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house." Joint Rule 3(1)(a).

11. That under Joint Rule 3 of the Wisconsin Legislature, "when the committee of conference has reached agreement the report shall be first presented, if a senate bill or joint resolution, to the assembly and, if an assembly bill or joint resolution, to the senate." Joint Rule 3(1)(b).

12. That under Joint Rule 3 of the Wisconsin Legislature, "approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the joint resolution in the form and with the changes proposed by the report."

13. That the meeting of "the Joint Committee of Conference on January 2011 Special Session Assembly Bill 11" convened at 6:00 p.m. on the 9th day of March 1, 2011, was not conducted in compliance with Joint Rule 3, and is not exempt from the requirements of the Open Meetings Law, as mandated by Wis. Stat. §§ 19.87 and 19.87(2);

14. That the public notice for the meeting was misleading and insufficient to apprise the public and the news media that the majority of the Senate would take a vote to pass the bill, which had not previously passed the Senate;

15. That the public notice of the meeting did not set forth the time, date, place and subject matter of the meeting in such form as was reasonably likely to apprise members of the public and the news media thereof in violation of Wis. Stat. § 19.84(2);

16. That I did not receive notice of the meeting until 4:20 p.m. on March 9, 2010;

17. That the public notice of the meeting was not given 24 hours in advance of the meeting and no good cause existed such that notice of 24 hours was impossible or impractical, in violation of Wis. Stat. § 19.84 (3);

18. That even if good cause existed, public notice of the meeting was given less than two hours before the meeting, in violation of Wis. Stat. § 19.84 (4);

19. That there has been an extremely high level of public interest in Special Session Assembly Bill 11;

20. That the meeting was held in the Senate Parlor, which is a small room with very limited space for the public, and was not reasonably accessible to members of the public or all citizens, in violation of Wis. Stat. §§19.81(2) and 19.82(3);

21. That the Capitol was locked before the meeting and that citizens who wished to attend the meeting could not enter the building to attend the meeting, in violation of Wis. Stat. §§ 19.81(2), 19.82(3), and 19.96;

22. That, after the meeting convened, I repeatedly objected to the meeting on grounds that it violated the Open Meetings Law, and my objection was overruled or ignored by Senator Scott Fitzgerald;

23. That Scott Fitzgerald, Jeff Fitzgerald, and all other participants knowingly attended the meeting held in violation of the Open Meetings law and are thereby subject to the penalties prescribed in Wis. Stat. § 19.96;

24. That declaratory and injunctive relief are necessary under Wis. Stat. § 19.97(2) to avoid irreparable injury to the public;

25. That the action taken in the meeting should be ordered void under Wis. Stat. § 19.97(3);

26. That the following documentary evidence of said acts or omissions is attached to this complaint:

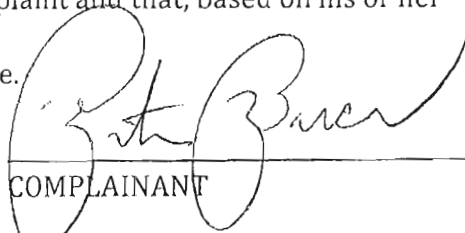
- a. Meeting Notice
- b. Joint Rule 3
- c. Senate Rule 93
- d. Email of Notice to Legislators

27. That this complaint is made to the District Attorney for Dane County under the provisions of Wis. Stat. § 19.97, and that the district attorney may bring an action to recover the forfeiture provided in Wis. Stat. § 19.96 and to petition for declaratory and injunctive relief pursuant to Wis. Stat. §19.96(2).

WHEREFORE, complainant prays that the District Attorney for County, Wisconsin, timely institute an action against Scott Fitzgerald and Jeff Fitzgerald to recover the forfeiture provided in Wis. Stat. § 19.96, and to obtain declaratory and injunctive relief pursuant to Wis. Stat. § 19.96(2) together with reasonable costs and disbursements as provided by law.

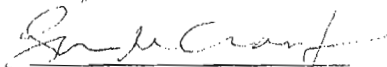
STATE OF WISCONSIN)
) ss.
COUNTY OF)

Peter Barca, being first duly sworn on oath deposes and says that he is the above-named complainant, that he has read the foregoing complaint and that, based on his or her knowledge, the contents of the complaint are true.



COMPLAINANT

Subscribed and sworn to before me
this 10th day of March, 2011.



Notary Public, State of Wisconsin

My Commission: 5th Dec 2010

McGuire, Thaddeus

From: Renk, Jeff
Sent: Wednesday, March 09, 2011 4:18 PM
Subject: Committee of Conference on January 2011 Special Session Assembly Bill 11 meeting at 6:00 P.M. on Wednesday, March 9, 2011
Attachments: Conference Notice - AB11JR1.doc

Jeffrey Renk
Assistant Chief Clerk
Wisconsin Senate
Room B20 Southeast, State Capitol
(608) 266-2517
jeff.renk@legis.wisconsin.gov

EXECUTIVE SESSION

Committee of Conference on January 2011 Special Session Assembly Bill 11

The committee will hold an executive session on the following items at the time specified below:

Wednesday, March 9, 2011

6:00 PM

Senate Parlor

State Capitol

January 2011 Special Session Assembly Bill 11

Relating to: state finances, collective bargaining for public employees, compensation and fringe benefits of public employees, the state civil service system, the Medical Assistance program, sale of certain facilities, granting bonding authority, and making an appropriation.

By Committee on Assembly Organization, by request of Governor Scott Walker.

Seating for the public and legislative staff will be limited. Access for the public will be available by contacting the Sergeant-at-Arms staff outside the 2nd floor entrance of the Senate Chamber 30 minutes prior to the start of the meeting.

Senator Scott Fitzgerald
Senate Chair

Representative Jeff Fitzgerald
Assembly Chair

Joint Rule 3**Joint Rule 3****Joint Rule 3 . Committee of conference.****Joint Rule 3****Joint Rule 3 (1)**

(1) In all cases of disagreement between the senate and assembly on amendments, adopted by either house to a bill or **joint** resolution passed by the other house, a committee of conference consisting of 3 members from each house may be requested by either house, and the other house shall appoint a similar committee. At least one member from each house shall be a member of the minority party.

Joint Rule 3**Joint Rule 3 (1) (a)**

(a) The usual manner of procedure is as follows: If a bill of one house has been amended and passed by the other house, and has been returned to the house of origin and the house of origin has refused to concur in an amendment, the house of origin may appoint a committee of conference and notify the other house, which shall appoint a committee of conference unless it votes to recede from its amendment. Such committees shall be appointed as provided in the rules of each house. The **joint** committee shall meet and state to each other, orally or in writing, the reasons of their respective houses for or against the disagreement, and confer thereon, and shall report to their respective houses any agreement they arrive at by the vote of at least a majority of the members of the committee representing each house.

Joint Rule 3**Joint Rule 3 (1) (b)**

(b) When the committee of conference has reached agreement the report shall be first presented, if a senate bill or **joint** resolution, to the assembly and, if an assembly bill or **joint** resolution, to the senate. The vote by each house to approve the conference report constitutes final action on the proposal and may not be reconsidered.

Joint Rule 3**Joint Rule 3 (1) (c)**

(c) Approval of the conference report by a roll call vote in each house sufficient to constitute final passage of the proposal shall be final passage of the bill or final adoption and concurrence in the **joint** resolution in the form and with the changes proposed by the report.

Joint Rule 3

Joint Rule 3 (1) (d)

(d) If the committee of conference is unable to agree, another committee of conference consisting of new members may be appointed as provided in the rules of each house and may proceed to further consideration of the proposal.

Joint Rule 3

Joint Rule 3 (2)

(2) A committee of conference shall meet on the call of either cochairperson.

Joint Rule 3 3

Joint Rule 3 (3)

(3) A report of a committee of conference may not be amended and may not be divided.

[(1) and (2) am. 1987 SJR-48]

[(1) rn.am. 2001-AJR-15]

[(2) and (3) cr. 2001 AJR-15]

Senate Rule 93

Senate Rule 93. Special or extraordinary sessions. Unless otherwise provided by the senate for a specific special or extraordinary session, the rules of the senate adopted for the biennial session, with the following modifications, apply to each special session called by the governor and to each extraordinary session called by the senate and assembly organization committees or called by a joint resolution approved by both houses:

Senate Rule 93 (1)

(1) Except as provided in sub. (1d), a proposal or amendment may not be considered unless it accomplishes the special purposes for which the special session was convened or the business specified in the action authorizing the extraordinary session. Notwithstanding rule 46 (6), any proposal that is adversely and finally disposed of for the biennial session may be revived by specific inclusion in the action authorizing an extraordinary session, provided that the proposal had not failed a vote of concurrence or passage in the senate. Any proposal revived under this subsection is considered to be at the same stage of the proceedings as it had attained upon being adversely and finally disposed of.

Senate Rule 93 (1d)

(1d) Resolutions offering commendations, congratulations, or condolences, memorializing congress or an individual, or affecting senate or legislative rules or proceedings are declared not to be within the meaning of the term "business" under the constitutional provision limiting the matters to be considered during special sessions to those enumerated in the governor's call for a special session. All such matters may be considered during any extraordinary session.

Senate Rule 93 (1p)

(1p) A senate proposal may not be considered unless it is recommended to be introduced, offered, or considered by the committee on senate organization, the senate committee on finance, the joint committee on finance, the joint committee on legislative organization, or by the joint committee on employment relations.

Senate Rule 93 (2)

(2) A notice of a committee meeting is not required other than posting on the legislative bulletin board, and a bulletin of committee hearings may not be published.

Senate Rule 93 (3)

(3) The daily calendar is in effect immediately upon posting on the legislative bulletin boards. The calendar need not be distributed.

Senate Rule 93 (4)

(4) Any point of order shall be decided within one hour.

Senate Rule 93 (5)

(5) A motion may not be entertained to postpone action to a day or time certain.

Senate Rule 93 (6)

(6) Any motion to advance a proposal and any motion to message a proposal to the assembly may be adopted by a majority of those present and voting.

[cr. 1983 S.Res. 4]

[(intro.) am. 1989 S.Res. 3]

[(1) and (3) am. 1995 S.Res. 2]

[(1) to (3) and (5) am. 2001 S.Res. 2]

[(intro.), (1), (1p) and (6) am. 2003 S.Res. 3]

[(1d) (from rule 33 (3)) am. 2003 S.Res. 3]

[(intro.), (1), (1d), (1p) and (2) am. 2005 S.Res. 2]

(7) **BILL.** A proposed change of law originating in either house, requiring passage by one house and concurrence of the other house of the legislature and approval of the governor, or passage notwithstanding the objections of the governor by a two-thirds vote in each house, or that becomes law without the signature of the governor, before becoming effective.

(8) **CALENDAR.** The agenda for any legislative day.

(9) **CALL OF THE HOUSE.** A procedure for requiring the attendance of absent members.

(10) **CERTIFICATE OR "CITATION".** A formal legislative document of commendation, congratulations, or condolences.

(11) **CHAIR.** The position that the presiding officer fills.

(12) **CHIEF CLERK.** The officer elected to perform and direct the clerical and personnel functions of a house.

(13) **COMMITTEE CHAIRPERSON.** The head of a committee.

(14) **COMMITTEE EXECUTIVE ACTION.** The action of a committee on any proposal.

(14m) **COMMITTEE OF CONFERENCE.** A committee of representatives to the assembly and of senators, appointed to resolve differences on a specific proposal.

(15) **COMMITTEE OF THE WHOLE.** The membership of one house organized in committee for the discussion of a specific matter.

(16) **CONCURRENCE.** The action by which one house agrees to a proposal or action of the other house.

(18) **CONTESTED SEAT.** A district in which 2 or more persons claim the right to represent the district.

(20) **CURRENT MEMBERSHIP.** The members of one of the houses omitting those who have resigned, have been removed, or have died.

(22) **DILATORY.** To delay.

(23) **DIVISION OF THE QUESTION.** To break a question into 2 or more separate propositions.

(24) **ELECTED MEMBERSHIP.** The members of one of the houses, certified as elected in the last general election, including those who have subsequently resigned, have been removed, or have died.

(25) **ENGROSSED PROPOSAL.** A proposal incorporating all adopted amendments and all approved technical corrections in the house of origin, whether or not it is reproduced as engrossed.

(26) **ENROLLED PROPOSAL.** A proposal that was passed, or adopted, and concurred in, incorporating any amendments and corrections that were approved by both houses.

(27) **EXPUNGE.** To remove material from the record and thus undo some action.

(27m) **EXTRAORDINARY SESSION.** The convening of the legislature by the assembly and senate committees on organization or by petition or joint resolution of the legislature to accomplish the business specified in the action calling the session. When used to continue a floor period of the regular session for a limited purpose, the extraordinary session is referred to as an extended session.