

STATE OF WISCONSIN

CIRCUIT COURT

DANE COUNTY

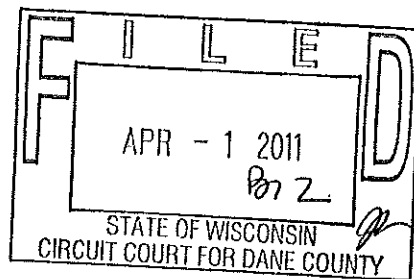
STATE OF WISCONSIN *ex rel.*
ISMAEL R. OZANNE

Plaintiff,

vs.

Case No: 11CV1244

JEFF FITZGERALD,
SCOTT FITZGERALD,
MICHAEL ELLIS,
SCOTT SUDER,
MARK MILLER, PETER BARCA,
DOUGLAS LAFOLLETTE,
JOINT COMMITTEE OF CONFERENCE,
WISCONSIN STATE SENATE and
WISCONSIN STATE ASSEMBLY,



Defendants.

**STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
REGARDING THE CURRENT STATUS OF
2011 WISCONSIN ACT 10**

NOW COMES plaintiff State of Wisconsin, by its attorney, Ismael R. Ozanne, District Attorney, and for its proposed findings of fact and conclusions of law regarding the attempted publication of 2011 Wisconsin Act 10, submits the following:

FINDINGS OF FACT

1. On March 11, 2011, the Governor of the State of Wisconsin, Scott Walker, advised the members of the Senate, the Assembly and the Legislative Reference Bureau (hereinafter the LRB) that 2011 Wisconsin Act 10 had been enacted on that date March 11, 2011.

2. On March 14, 2011, the Honorable Douglas La Follette, Secretary of State for the State of Wisconsin advised the LRB by phone message that the publication day for 2011 Wisconsin Act 10 would be March 25, 2011.

3. On March 15, 2011, the LRB received written confirmation electronically from the Secretary of State confirming the March 25, 2011 publication date.

4. As a result, the LRB prepared a one-page bill document indicating the date of enactment of March 11, 2011 and the date of publication being March 25, 2011, for 2011 Wisconsin Act 10.

5. On March 16, 2011, this law suit was filed. A hearing on the request for a Temporary Restraining Order (TRO) was held on March 18, 2011. The Court entered a TRO enjoining the Secretary of State, Douglas La Follette from taking any further steps to implement 2011 Wisconsin Act 10.

6. After the ruling of the court the LRB received a phone call from the office of the Secretary of State indicating they are rescinding the March 25 publication date for 2011 Wisconsin Act 10 indefinitely. Stating further the Act should not be made public until LRB hears further from the Secretary of State.

7. On Monday, March 21, 2011, Michael Barman, a Lead Program Assistant at the LRB, received a letter authored by the Secretary of State Douglas La Follette advising the LRB this Court granted a motion for a TRO and as a result he rescinded his instructions to set March 25, 2011, as the publication date for 2011 Wisconsin Act 10. La Follette further instructed the LRB to remove all reference to March 25, 2011, as the publication date and not to proceed with publication until they receive a new publication

date from him. Secretary of State La Follette attached a copy of the TRO to his March 18th correspondence.

8. Michael Barman advised LRB Chief of Staff Steven Miller and Deputy Chief of Staff Cathlene Hanaman of the letter and the TRO received from the Secretary of State.

9. LRB Chief Steven Miller, Deputy Chief Cathlene Hanaman and Lead Program Assistant Michael Barman all had actual knowledge of the terms of this Court's temporary restraining order issued on March 18, 2011.

10. The date of publication was then removed from the Act which had been posted on the LRB website after receiving the notice from the Secretary of State. The publication date was removed on March 24, 2011.

11. On Friday, March 25, 2011, shortly after 8:30 a.m. Deputy Chief Cathlene Hanaman received a message from Senate Chief Clerk Rob Marchant advising that Senator Scott Fitzgerald wished to meet with LRB Chief Steven Miller. Hanaman advises Chief Miller of the request for a meeting and the time is set for 9:30 a.m. The LRB was not advised as to the purpose of the meeting in advance.

12. At approximately 9:30 a.m. in the conference room at the LRB Senator Scott Fitzgerald, Rob Marchant, Steven Miller and Cathlene Hanaman met to discuss publication of 2011 Wisconsin Act 10. They were eventually joined by Staff Attorney Jeff Kuesel.

13. The meeting lasted approximately 45 to 60 minutes. A discussion of the statutes and whether the LRB had independent authority to "publish" Wisconsin Act 10 occurred. As a result, the LRB decided to take steps to "publish" Wisconsin Act 10 at the

direction of Senator Fitzgerald and in consideration of the statutory review undertaken. The decision to take steps to “publish” 2011 Wisconsin Act 10 was made with knowledge that there was a TRO was in place directing the Secretary of State to take no steps in implementing the bill and that further implementation of the Act had been enjoined by the Dane County Circuit Court.

14. Near the conclusion of the meeting Senator Fitzgerald offered to put his request to “publish” in writing and suggested that if Chief Miller had any further concerns he should consult with Mr. Kevin St. John at the Attorney General’s Office. Kevin St. John is the Deputy Attorney General for the State of Wisconsin. Mr. Miller attempted to reach Deputy Attorney General St. John shortly before the noon hour but was unable to do so. Miller left a voice mail message for Deputy St. John. At approximately 1:00 p.m. Deputy Attorney General St. John returned Chief Miller’s call. During the call they discussed publication of 2011 Wisconsin Act 10. The call lasted four to five minutes. At some point, Chief Miller asked Senator Fitzgerald to put his request in writing.

15. After the meeting, a discussion was held by members of the LRB as to how to best advise what should go on the first page of the bill since the Secretary of State rescinded the publication date. The result of this discussion was to designate an obelisk footnote (aka the dagger footnote) at the bottom of page one of the bill. The obelisk was designed to alert readers that the Secretary of State had been enjoined by the Dane County Circuit Court from publishing 2011 Wisconsin Act 10 until further order of the court.

16. Drafting of the obelisk footnote was completed before 1:00 p.m. Between 1 PM and 3 PM that afternoon Senator Fitzgerald submitted in writing his request to the LRB that they publish 2011 Wisconsin Act 10 (Exhibit 21).

17. Sometime between 3:00 and 3:30 p.m. the LRB implemented their publication procedures for 2011 Wisconsin Act 10. Program Assistant Barman inserted the dagger footnote, the March 25, 2011 publication date and executed the computer program for distribution of the bill and subsequent electronic posting of 2011 Wisconsin Act 10. The Act was forwarded to the Legislative Technical Services Bureau (LTSB), the Department of Administration (DOA) for printing, and the Secretary of State. Chief Miller left for the day at 4:15 PM March 25, 2011.

18. As of the date of this hearing, the Secretary of State has not posted notice of 2011 Wisconsin Act 10 in the official state newspaper, the Wisconsin State Journal, in accordance with §14.38 (10)(c) Stats.

CONCLUSIONS OF LAW

19. Insofar as the statutory regime to publish an Act of the Wisconsin Legislature is concerned, the LRB is a party “identified in interest” with the Secretary of State within the meaning of *Dalton v. Meister*, 84 Wis.2d 303, 311-12, 267 N.W.2d 326 (1978).

20. The LRB was legally bound to the terms of this Court’s March 18, 2011, temporary restraining order.

21. The Court concludes that Secretary of State La Follette, lawfully rescinded the previously denominated date of publication, March 25, 2011 in order to comply with this Court's temporary restraining order.

22. The LRB was without lawful authority to independently reinsert or establish the date of publication.

23. The actions taken by LRB on March 25, 2011, in respect to 2011 Wisconsin Act 10 are null and void.

24. Equity empowers this Court to return the parties to the *status quo* as it existed on March 18, 2011, when this Court issued its temporary restraining order.

25. To remediate its violation of the temporary restraining order, this Court has the authority to order LRB to do each of the following:

- A. Delete the March 25, 2011 date as the date of publication on 2011 Wisconsin Act 10;
- B. Remove from its website the electronic posting of 2011 Wisconsin Act 10;
- C. Issue written notices to the Legislative Technical Services Bureau, the Department of Administration and the Secretary of State advising each of the steps taken to rescind the previous actions taken on March 25, 2011, and that these steps were taken pursuant to this Order; and
- D. Take any other steps deemed necessary and appropriate to effectuate the purpose and intent of this Court's order.

26. Since all of the required steps, in the required sequence of steps in process of publication were not completed, and since the actions taken by the LRB are null and void, 2011 Wisconsin Act 10 has not been published within the meaning of Wis. Stat. §§13.92(1)(b)4., 14.38, 35.095(1)(b), 35.095(3)(b), 985.04 and 991.11, it is therefore not in effect.

Dated at Madison, Wisconsin, this 1st day of April, 2011.



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