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April 6, 2011

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CLERK OF SUPREME COURT
OF WISCONSIN

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Clerk of Supreme Court
Wisconsin Supreme Court
16 E. State Capitol
Madison, WI 53702-0001

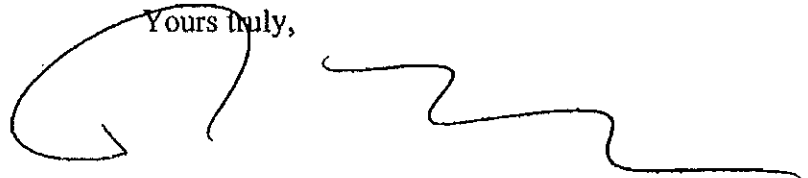
Re: State of Wisconsin v. Jeff Fitzgerald, et al.
Case No. 2011AP0613-LV

Dear Clerk:

I enclose the original and nine copies of Petitioner Douglas La Follette's motion for leave to substitute counsel and to withdraw and/or dismiss petition for leave to appeal, motion for temporary relief, and motion for relief pending appeal in the above.

By copy of this letter a copy of the same is being served by first class mail upon all parties. Thank you.

Yours truly,



Roger Sage

RS/cah
Enc.

cc: Ismael R. Ozanne (w/enc.)
Hon. Maryann Sumi (w/enc.)
Carlo Esqueda (w/enc.)
Steven C. Kilpatrick (w/enc.)
Jina L. Jonen (w/enc.)
Kurt C. Kobelt (w/enc.)

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CLERK OF SUPREME COURT
OF WISCONSIN

STATE OF WISCONSIN
SUPREME COURT

Case No. 2011AP0613-LV
(Pending Certification from Dist. IV, Court of Appeals)

STATE OF WISCONSIN ex rel. ISMAEL R. OZANNE,

Plaintiff-Respondent,

v.

JEFF FITZGERALD, SCOTT FITZGERALD,
MICHAEL ELLIS, and SCOTT SUDER,

Defendants,

DOUGLAS LA FOLLETTE,

Defendant-Petitioner-Movant.

Dane County Circuit Court Case No. 11-CV-1244

PETITIONER DOUGLAS LA FOLLETTE'S
MOTION FOR LEAVE TO SUBSTITUTE COUNSEL
AND TO WITHDRAW AND/OR DISMISS PETITION FOR LEAVE TO
APPEAL, MOTION FOR TEMPORARY RELIEF, AND MOTION FOR
RELIEF PENDING APPEAL

TO: Clerk of Supreme Court
P.O. Box 1688
Madison, WI 53701-1688

Hon. Maryann Sumi
Dane Co. Circuit Judge, Br. 2
215 S. Hamilton St.
Madison, WI 53703

Carlo Esqueda
Dane Co. Circuit Court Clerk
215 S. Hamilton St.
Madison, WI 53703

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WEAC
P.O. Box 8003
Madison, WI 53708

Secretary of State Douglas La Follette, petitioner, by Attorney Roger Sage, respectfully moves this Court pursuant to Wis. Stats. §§ 809.14(1) and 809.63 for leave to substitute counsel, and to withdraw or, in the alternative, to dismiss the petition for leave to appeal from the non-final order of the Circuit Court for Dane County, the motion for temporary relief pending disposition of the petition for leave to appeal, and the motion for relief pending appeal filed with the Court of Appeals, District 4, on March 21, 2011.

This motion is based upon the following grounds:

1. Defendant and petitioner Secretary of State Douglas La Follette (Secretary La Follette) is the duly elected Secretary of State of the State of Wisconsin.

2. On March 21, 2011, the Wisconsin Attorney General (Attorney General) filed a petition for leave to appeal from the non-final order of the Circuit Court for Dane County, a motion for temporary relief pending disposition of the petition for leave to appeal, and a motion for relief pending appeal filed with the Court of Appeals, District 4, (the petition for leave to appeal).

3. The petition for leave to appeal is in this Court pending certification by the Court of Appeals, District IV.

4. The Attorney General represents defendants Scott Fitzgerald, Jeff Fitzgerald, Scott Suder, and Michael Ellis in the circuit court and has raised objections based on personal jurisdiction on their behalf.

5. On March 29, 2011, the circuit court determined that the Department of Justice has a conflict of interest in representing Secretary La Follette due to a conflict of interest between Secretary of State Douglas La Follette and defendants Scott Fitzgerald, Jeff Fitzgerald, Scott Suder, and Michael Ellis.

6. To address the conflict, the circuit court allowed Secretary La Follette to obtain substitute counsel. Attorney Roger Sage was substituted as counsel for Secretary La Follette in the circuit court proceedings on March 29, 2011.

7. The conflict of interest existed when the petition for leave to appeal was filed on March 21, 2011. The conflict continues with respect to

the issues raised in the petition for leave to appeal.

8. The Attorney General makes arguments in the petition for leave to appeal that the discretion of the Secretary of State to designate a publication date for acts of the legislature is ministerial only and that the Secretary of State is powerless to rescind or change a designated publication date. *See* Petition For Leave to Appeal, pp. 19-20. Secretary La Follette was not consulted, did not consent and objects to the making of these arguments.

9. Secretary La Follette has a clear interest in maintaining the constitutional and statutory prerogatives of the office of the Secretary of State.

10. In the opinion of Secretary La Follette, the arguments made in the petition for leave to appeal conflict with the constitutional and statutory responsibilities, mandates, duties and prerogatives of the Office of the Secretary of State.

11. Secretary La Follette was not consulted prior to the filing of the petition for leave to appeal and did not consent to the filing of the petition for leave to appeal.

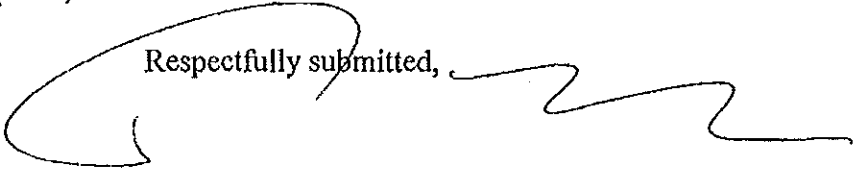
12. It is premature to consider the petition for leave to appeal because the record before this Court is incomplete. After the petition for leave to appeal was filed, the circuit court amended the temporary restraining order. An amended complaint was filed which added additional defendants. A full evidentiary hearing was held on a motion for preliminary injunction and additional orders were entered. The circuit court ordered briefs on issues relating to personal jurisdiction and legislative immunity. If this Court were to grant an interlocutory appeal on the original temporary

order, the subsequent circuit court orders and full evidentiary record would not be before this Court. Review of the original non-final order is not in the interests of justice or judicial economy. *See K.W. v. Banas*, 191 Wis.2d 354, 357, 529 N.W.2d 253, 254 (Ct.App.1995) (piecemeal appeals are not favored).

For the above reasons, Secretary La Follette moves this Court for leave to substitute counsel from the Attorney General to Attorney Roger Sage and to withdraw or, in the alternative, to dismiss the petition for leave to appeal.

Dated: April 6, 2011.

Respectfully submitted,



Roger Sage
Attorney for Secretary of State
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