

# 28

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April 12, 2011

A. John Voelker  
Acting Clerk  
Wisconsin Supreme Court  
PO Box 1688  
Madison, WI 53701-1688

by fax to: (608) 267-0980

Re: State ex rel. Ismael R. Ozanne v. Jeff Fitzgerald, et al.  
Case No. 2011AP0613-LV

State, et al. v. Dane County Circuit Court  
Case No. 2011 AP000765-W

Dear Mr. Voelker,

I represent State Representative Peter Barca who, unlike the petitioners, is actually a party to State ex rel. Ismael R. Ozanne v. Jeff Fitzgerald, et al., (Case No. 2011AP0613-LV, Dane County Circuit Court Case No. 11-CV-1244). I was in the process of preparing a Motion for Summary Dismissal of the Petitioner's action before this court when I received a copy of Ms. Lazar's letter to you in which she is essentially asking you to get the Supreme Court to "hurry it up" apparently because petitioners have thus far chosen to not file a petition to intervene in the lower court action.

In their rush to seek the intervention of this court, petitioners neglected to serve, or even notify, at least two parties to the lower court action, specifically, Representative Peter Barca and (upon information and belief) Senator Mark Miller contrary to the provision of §§ 809.80 (2) and 801.14(1) Wis. Stats. On this basis alone, petitioners' action should be summarily dismissed. Furthermore, petitioners fail to even cite, much less attempt to distinguish, this court's holding in *Petition of Heil*, 230 Wis 428, 429, 428 N.W. 42, 43 (1939) which stated:

- (1) Petitioner is not a party to the action in the circuit court and it is a well established rule that superintending control will be exercised only at the behest of a party to a proceeding in an inferior court and then for his protection to avoid expense, hardship or miscarriage of justice great enough to constitute a situation of exigency.
- (2) The claim by petitioner that the subject matter of the action so concerns the sovereign rights of the state of Wisconsin that this Court has sole and exclusive jurisdiction for the issuance of this writ for prerogative purposes cannot be sustained.

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The above passage was excerpted from the court's per curiam order which was then followed by the court's opinion where the court held:

In the memorandum it was stated that the first reason for declining to entertain the action was that petitioner was not a party to the action in the circuit court and that superintending control is exercised only at the behest of a party to a proceeding in an inferior court and then for his protection, to avoid expense, hardship, or miscarriage of justice great enough to constitute a situation of exigency. We find it necessary to make very little modification of this statement. (Ibid at 44).

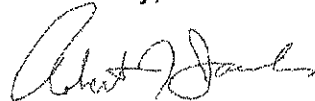
Petitioners argue they are entitled to this extraordinary relief because "Act 10 produces nearly \$30 million in savings for the state in this fiscal year..." First, petitioner neglects to mention these "savings" are realized by an effective average 7% reduction in the net salaries of tens of thousands of state employees. Second, petitioners again fail to cite the precisely contrary holding in Petition of Heil wherein the court observed:

In as much as under the principles established the circuit court has jurisdiction to proceed, the excluding jurisdiction of this court will not be exercised in doubtful cases. (230 Wis at 437, 284 N.W. at 51, citation omitted).

Mr. Voelker, I don't believe writing letters to you to get this matter heard by the Supreme Court quickly is the appropriate action to take, however I feel it necessary to respond to the petitioner's correspondence to you. I want to make it clear that there is no lawful basis for petitioner's action to throw out the circuit court's restraining order as expressed in Petition of Heil cited above. I will be filing a Response to the Department of Justice's Petition in this case in the near future. In the meantime, there is no need to rush this matter through depriving named parties in the lower action from being able to file a responsive brief, especially since they were not properly served in the present action.

Thank you for your attention to this matter.

Sincerely,



Robert Jambois  
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