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June 3, 2011

**HAND DELIVERED**

Clerk of the Supreme Court  
110 East Main Street, Suite 215  
P.O. Box 1688  
Madison, WI 53701-1688

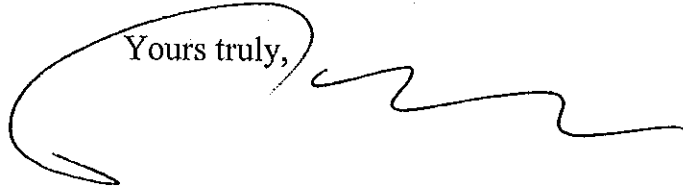
**Re: State of Wisconsin and State Ex Rel. Michael D. Huebsch – Circuit  
Court for Dane County, et al.  
Case No. 2011AP765-W**

**Ismael R Ozanne – Jeff Fitzgerald, et al.  
Case No. 2011AP0613-LV**

Dear Clerk:

Attached please find Secretary of State Douglas LaFollette's response addressing the effect of the circuit court's May 26, 2011 findings, conclusions, decision and judgment on the issues raised the by the Supreme Court.

Yours truly,



Roger Sage

RS/cah  
Enc.

11 JUN -3 PM 4:29  
DANE COUNTY  
DISTRICT ATTORNEY

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cc: Attorney Jina Jonen (via mail and e-mail)  
Attorney Robert Jambois (via mail and e-mail)  
Attorney Lester Pines (via mail and e-mail)  
Attorney Susan M. Crawford (via mail and e-mail)  
Attorney Tamara Packard (via mail and e-mail)  
Attorney Marie Stanton (via mail and e-mail)  
Attorney Dean Strang (via mail and e-mail)  
Attorney Eric McLeod (via mail and e-mail)  
Attorney Joseph Louis Olson (via mail and e-mail)  
Attorney Michael P. Srenock (via mail and e-mail)  
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Attorney Ismael R. Ozanne (via mail and e-mail)  
Attorney Kurt Kobelt (via mail and e-mail)

STATE OF WISCONSIN  
SUPREME COURT

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Case No. 2011AP765-W

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STATE OF WISCONSIN and  
STATE EX REL. MICHAEL D. HUEBSCH,

Petitioners,

v.

CIRCUIT COURT FOR DANE COUNTY,  
THE HONORABLE MARYANN SUMI,  
ISMAIL R. OZANNE, JEFF FITZGERALD,  
SCOTT FITZGERALD, MICHAEL ELLIS,  
SCOTT SUDER, MARK MILLER,  
PETER BARCA, DOUGLAS LA FOLLETTE,  
JOINT COMMITTEE ON CONFERENCE,  
WISCONSIN STATE SENATE, and  
WISCONSIN STATE ASSEMBLY,

DANE COUNTY  
DISTRICT ATTORNEY

11 JUN -3 PM 4:29

Respondents.

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

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DOUGLAS LA FOLLETTE'S RESPONSE ADDRESSING  
THE EFFECT OF THE CIRCUIT COURT'S MAY 26, 2011  
FINDINGS, CONCLUSIONS, DECISION AND  
JUDGMENT

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1. **Whether an appeal is an available remedy and to whom.**

Secretary of State Douglas LaFollette (Secretary LaFollette) is a proper party to this action and the remedy of

an appeal is available to Secretary LaFollette. Secretary LaFollette has not yet determined whether it is in the interest of the office of the Secretary of State to pursue an appeal.

This question goes more directly to the claim of privilege raised by some of the defendant members of the legislature who have chosen to assert their privilege from civil process as provided in Art. IV, §15 of the Wisconsin Constitution.

Care must be taken to distinguish the privilege claim as opposed to the personal or subject matter jurisdiction of the court to decide this case and the right of appeal.

There is no question that should the defendant members of the legislature who have asserted privilege from civil process decide that it is in their best interest to appeal the decision of the trial court, they may do so by waiving their privilege claim. Although these defendants have not waived their claim of privilege at this time, they have discretion to waive their privilege claim at any time in order to pursue an appeal.

Accordingly, an appeal remedy is available to all of the defendants in this case.

**2. Whether the circuit court's May 26, 2011 judgment is final for purposes of appeal.**

The circuit court's decision meets the requirements for finality under Wis. Stat. § 806.04, the Wisconsin Declaratory Judgments act, which provides that the circuit court has the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. Wis. Stat. § 806.04(1). Such declarations have the force and effect of a final judgment, subject to the provisions of Wis. Stat. § 808.03(1). Wis. Stat. § 806.04(1).

The decision disposes of the entire matter in litigation as to one or more of the parties, namely Secretary LaFollette, among others. Forfeitures are being pursued as against certain of the legislative defendants but no further relief is being sought as against Secretary LaFollette. The decision is therefore final and appealable as of right. Wis. Stat. § 808.03(1).

**3. Whether this court's exercise of original jurisdiction may include the appellate power to review a circuit court judgment absent the filing of an appeal.**

The Supreme Court has original jurisdiction of cases which involve no elements of prerogative or sovereignty but

because of their public importance make a remedy in circuit court entirely lacking or absolutely inadequate. *In Re Heil*, 230 Wis. 428, 284 N.W. 42, 47-48 (1939).

There is no reason to bypass the appellate process in this case. The remedies afforded by the Wisconsin Open Meetings Law, which include legal or equitable relief, mandamus, injunction or declaratory judgment, are adequate in this case. Wis. Stat. § 19.97(2). One of the statutory remedies for violation of the statute is to void governmental actions taken in violation of the Wisconsin Open Meetings Law. Wis. Stat. § 19.97(3). The circuit court, in the exercise of its discretion, chose one of the available remedies afforded under the Wisconsin Open Meetings Law.

As discussed above, the circuit court decision is appealable as of right to the Court of Appeals. As also discussed above, an appeal remedy is available to all of the defendants in this case. There is no compelling reason for the Supreme Court to exercise original jurisdiction, where, as here, a circuit court has applied a plainly statutory remedy.

Moreover, the factual record before the Supreme Court is inadequate since circuit court trial exhibits, among other documents and evidence which would normally be a part of

an appellate record, are not before the Supreme Court. The appellate process is preferable to the exercise of original jurisdiction since the entire circuit court record is available for review, rather than the limited record before the Supreme Court at this time.

**4. Whether any of the circuit court's findings of fact are clearly erroneous.**

Secretary LaFollette does not contend that any of the circuit court's findings are clearly erroneous.

**5. Whether any facts beyond those found by the circuit court, material to the determination of the issues in Case No. 2011AP613-LV (L.C. #2011CV1244) and Case No. 2011AP765-W, are in dispute.**

Secretary LaFollette disputes the following factual, or mixed factual and legal assertions, made in the record before the Supreme Court and Court of Appeals.

A. The Wisconsin Legislative Reference Bureau published 2011 Wisconsin Act 10, also known as 2011 Special Session Assembly Bill 11, on March 25, 2011.<sup>1</sup>

B. 2011 Wisconsin Act 10, also known as 2011 Special Session Assembly Bill 11, became effective on March 26, 2011.<sup>2</sup>

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<sup>1</sup> Motion for Leave to Withdraw Petition for Leave to Appeal, to Withdraw Petition for Temporary Relief, and to Withdraw Motion for Relief Pending Appeal, dated March 28, 2011 ("Motion for Leave to Withdraw"), page 3.

C. That not only is the law in force, but it was effective March 26, 2011.<sup>3</sup>

D. That by the time the Dane County DA commended this action against Secretary LaFollette and moved for a TRO, he had already performed his statutory duty to designate a date of publication for Act 10.<sup>4</sup>

E. That even if the Secretary of State did not set a date of publication (or could rescind a date), Act 10 is still law with an effective date of March 26, 2011.<sup>5</sup>

F. From the moment the date of enactment occurred because of the Governor's approval, Act 10 was going to be published no later than March 25, 2011, and thus take effect no later than March 26, 2011.<sup>6</sup>

G. Because 2011 Wisconsin Act 10 was published by the LRB on March 25, 2011, and became effective on March 26, 2011, the issue of whether Secretary La Follette could be enjoined from publishing 2011 Wisconsin Act 10 (even if he also had authority to publish 2011 Wisconsin Act

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<sup>2</sup> Motion for Leave to Withdraw, page 3

<sup>3</sup> Motion for Leave to Withdraw, page 9

<sup>4</sup> Motion for Leave to Withdraw, page 11

<sup>5</sup> Motion for Leave to Withdraw, page 12

<sup>6</sup> Motion for Leave to Withdraw, page 15

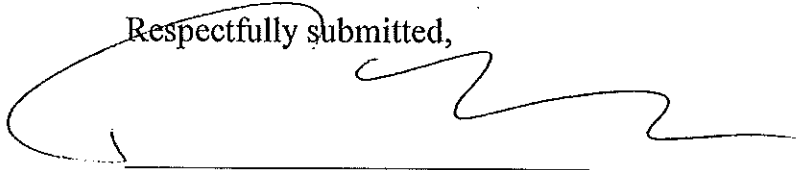


10) has become purely academic and its resolution will have no practical effect on the underlying controversy.<sup>7</sup>

H. On March 25, 2011, LRB published Act 10 pursuant to its duty under Wis. Stat. § 35.095(3)(a). This completed the process by which Act 10 became effective or “in force” pursuant to Wis. Const. art. IV, § 17(2) and, pursuant to Wis. Stat. § 991.11, Act 10 became effective on March 26, 2011.<sup>8</sup>

Dated: June 3, 2011.

Respectfully submitted,



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<sup>7</sup> Motion for Leave to Withdraw, pages 16-17

<sup>8</sup> Petition for Supervisory Writ Pursuant to Wis. Stat. § 809.71 and for Immediate Temporary Relief Pursuant to Wis. Stat. § 809.52, page 26