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June 8, 2011

VIA HAND DELIVERY

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

Re: State of Wisconsin v. Circuit Court for Dane County, et al.  
Appeal No.: 2011AP765-W

Dear Mr. Voelker:

Enclosed please find an original and ten copies of a Motion Requesting Judicial Notice and Motion to File Supplemental Brief filed by Respondent Mark Miller in the above-referenced matter. Please file the documents in accordance with your usual procedure, date-stamp the extra copy and return it to the messenger.

I certify by copy of this letter and enclosures, copies of the same have been served on all counsel of record this date.

Thank you for your attention to this matter. Please contact me with any questions or concerns.

Very truly yours,

CULLEN WESTON PINES & BACH LLP



Lester A. Pines

A. John Voelker  
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Cullen Weston Pines & Bach LLP

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LAP:hkb

Enclosures

cc: Mark Miller (via U.S. mail)  
Deputy Attorney General Kevin St. John (via U.S. mail)  
AAG Maria S. Lazar (via U.S. mail)  
AAG Steven C. Kilpatrick (via U.S. mail)  
District Attorney Ismael R. Ozanne (via U.S. mail)  
Robert J. Jambois (via U.S. mail)  
Roger A. Sage (via U.S. mail)  
Marie A. Stanton (via U.S. mail)  
Dean A. Strang (via U.S. mail)  
Eric M. McLeod (via U.S. mail)  
Michael P. Screnock (via U.S. mail)  
Joseph Louis Olson (via U.S. mail)  
Jina Jonen (via U.S. mail)  
Kurt Kobelt (via U.S. 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,  
Secretary of the Wisconsin Department of Administration,

Petitioners,  
v.

CIRCUIT COURT OF DANE COUNTY,  
THE HONORABLE MARYANN SUMI, Presiding,

ISMAEL R. OZANNE,  
District Attorney for Dane County,

and

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,

Respondents.

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MOTION REQUESTING JUDICIAL NOTICE AND  
MOTION TO FILE SUPPLEMENTAL BRIEF  
BY RESPONDENT MARK MILLER

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Respondent Mark Miller, by Cullen Weston Pines & Bach LLP,  
hereby moves the Court to take judicial notice of the State of Wisconsin  
Senate Journal entry of March 9, 2011, and the State of Wisconsin

Assembly Journal entry of March 9, 2011, and moves to file a supplemental brief in the above-captioned case, based on the following grounds:

1. During the oral argument on June 6, 2011, Justice Roggensack made reference to Wis. Stat. §19.85(6), and asked several questions regarding the applicability of that statute to the Open Meeting Law complaint at issue in the circuit court proceedings underlying the above-captioned case.

2. Wis. Stat. §19.85(6) provides:

Notwithstanding the requirements of s. 19.83 and the requirements of this section, a governmental body which is a formally constituted subunit of a parent governmental body may conduct a meeting without public notice as required by this section during a lawful meeting of the parent governmental body, during a recess in such meeting or immediately after such meeting for the purpose of discussing or acting upon a matter which was the subject of that meeting of the parent governmental body. The presiding officer of the parent governmental body shall publicly announce the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

3. The Journal entries of March 9, 2011, for the Wisconsin Senate and the Wisconsin Assembly are relevant to a determination of whether Wis. Stat. §19.85(6) applies to this case.

4. The Senate and Assembly Journals are the official record of proceedings of the Senate and Assembly, respectively, and the Supreme Court may take judicial notice of them. *Milwaukee County v. State, Labor and Industry Review Com'n*, 113 Wis.2d 199, 205, 335 N.W.2d 412 (Ct. App. 1983).

5. A review of the Senate and Assembly Journal entries for March 9, 2011 is relevant to determining the applicability of §19.85(6) to the meeting at issue in this case. Copies of the Journal entries are attached to this motion for the Court's convenience as Exhibits A and B.


6. The question of the applicability of Wis. Stat. §19.85(6) to the Open Meeting Law complaint at issue in the circuit court proceedings underlying the above-captioned case raises substantial new issues of fact and law that have never been briefed or considered by the parties, including whether the Joint Conference Committee for Special Session Assembly Bill 8 was a "formally constituted subunit" of the Senate, the Assembly, or both; whether the "parent governmental body" was in recess when the Conference Committee met; and whether the presiding officer of the parent governmental body publicly announced the time, place and subject matter of the meeting of the subunit in advance at the meeting of the parent body.

7. In the event that this court decides that it will reach the merits of the Petition for Supervisory Writ and the underlying dispute regarding the violation of the Open Meeting Law, Respondent Miller requests that he be given the opportunity to file a supplemental brief on the applicability of Wis. Stat. §19.85(6).

Dated this 8th day of June, 2011.

Respectfully submitted,

CULLEN WESTON PINES & BACH LLP

By:   
Lester A. Pines, SBN 1016543  
Susan M. Crawford, SBN 1030716  
Attorneys for Mark Miller

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# STATE OF WISCONSIN

# Senate Journal

## January 2011 Special Session

11:08 A.M.

WEDNESDAY, March 9, 2011

The Senate met.

The Senate was called to order by President Ellis.

### CALL OF ROLL

The roll was called, disclosing the presence of a quorum.

Pursuant to Senate Rule 15, the official attendance for session was:

Senators Cowles, Darling, Ellis, S. Fitzgerald, Galloway, Grothman, Harsdorf, Hopper, Kapanke, Kedzie, Lazich, Leibham, Moulton, Olsen, Schultz, Vukmir, Wanggaard and Zipperer – 18.

Absent – Senators Carpenter, S. Coggs, T. Cullen, Erpenbach, Hansen, Holperin, Jauch, C. Larson, Lassa, Miller, Risser, Taylor, Vinehout and Wirch – 14.

Absent with Leave – Senator Lasee – 1.

The Senate stood for a moment of silence.

The Senate remained standing and Senator Olsen led the Senate in the pledge of allegiance to the flag of the United States of America.

### CONSIDERATION OF MOTIONS, RESOLUTIONS, AND JOINT RESOLUTIONS NOT REQUIRING A THIRD READING

Senator S. Fitzgerald, with unanimous consent, asked that Senate Resolutions 4 through 17 be withdrawn from the committee on Senate Organization and taken up at this time, and that the Clerk dispense with the readings.

#### Senate Resolution 4

Relating to: imposing penalties and costs on Senator Tim Carpenter for being absent without leave.

#### Senate Resolution 5

Relating to: imposing penalties and costs on Senator Spencer Coggs for being absent without leave.

#### Senate Resolution 6

Relating to: imposing penalties and costs on Senator Tim Cullen for being absent without leave.

#### Senate Resolution 7

Relating to: imposing penalties and costs on Senator Jon Erpenbach for being absent without leave.

#### Senate Resolution 8

Relating to: imposing penalties and costs on Senator Dave Hansen for being absent without leave.

#### Senate Resolution 9

Relating to: imposing penalties and costs on Senator Jim Holperin for being absent without leave.

#### Senate Resolution 10

Relating to: imposing penalties and costs on Senator Robert Jauch for being absent without leave.

#### Senate Resolution 11

Relating to: imposing penalties and costs on Senator Julie Lassa for being absent without leave.

#### Senate Resolution 12

Relating to: imposing penalties and costs on Senator Chris Larson for being absent without leave.

#### Senate Resolution 13

Relating to: imposing penalties and costs on Senator Mark Miller for being absent without leave.

#### Senate Resolution 14

Relating to: imposing penalties and costs on Senator Fred Risser for being absent without leave.

#### Senate Resolution 15

Relating to: imposing penalties and costs on Senator Lena Taylor for being absent without leave.

#### Senate Resolution 16

Relating to: imposing penalties and costs on Senator Kathleen Vinehout for being absent without leave.

#### Senate Resolution 17

Relating to: imposing penalties and costs on Senator Robert Wirch for being absent without leave.

Senator Fitzgerald, with unanimous consent, asked that Senate Amendments to Senate Resolutions 4 through 17, and Senate Resolutions 4 through 17 be taken up en masse.

The question was: Shall Senate Amendment 1 to Senate Resolution 4, Senate Resolution 4, Senate Amendment 1 to Senate Resolution 5, Senate Resolution 5, Senate Amendment 1 to Senate Resolution 6, Senate Resolution 6, Senate Amendment 1 to Senate Resolution 7, Senate Resolution 7, Senate Amendment 1 to Senate Resolution 8, Senate Resolution 8, Senate Amendment 1 to Senate Resolution 9, Senate Resolution 9, Senate Amendment 1 to Senate Resolution 10, Senate Resolution 10, Senate Amendment 1 to Senate Resolution 11, Senate Resolution 11, Senate Amendment 1 to Senate Resolution 12, Senate Resolution 12, Senate Amendment 1 to Senate Resolution 13,

Senate Resolution 13, Senate Amendment 1 to Senate Resolution 14, Senate Resolution 14, Senate Amendment 1 to Senate Resolution 15, Senate Resolution 15, Senate Amendment 1 to Senate Resolution 16, Senate Resolution 16, Senate Amendment 1 to Senate Resolution 17 and Senate Resolution 17 be adopted?

The ayes and noes were demanded and the vote was: ayes, 18; noes, 0; absent or not voting, 15; as follows:

Ayes - Senators Cowles, Darling, Ellis, S. Fitzgerald, Galloway, Grothman, Harsdorf, Hopper, Kapanke, Kedzie, Lazich, Leibham, Moulton, Olsen, Schultz, Vukmir, Wanggaard and Zipperer - 18.

Noes - None.

Absent or not voting - Senators Carpenter, S. Coggs, T. Cullen, Erpenbach, Hansen, Holperin, Jauch, C. Larson, Lasee, Lassa, Miller, Risser, Taylor, Vinehout and Wirch - 15.

Adopted.

Senator S. Fitzgerald, with unanimous consent, asked that the Senate recess.

11:14 A.M.

RECESS

2:14 P.M.

The Senate reconvened.

President Ellis in the chair.

ADJOURNMENT

Senator S. Fitzgerald, with unanimous consent, asked that the January 2011 Special Session of the Senate adjourn until Thursday, March 10, 2011 at 11:00 A.M.

2:15 P.M.

Adjourned.

JANUARY 2011 SPECIAL SESSION

4:03 P.M.

The Senate met.

The Senate was called to order by President Ellis.

President Ellis noted that the convening of special session was changed from 11:00 A.M. Thursday, March 10, 2011 to 4:00 P.M. today.

CALL OF ROLL

The roll was called, disclosing the presence of a quorum.

Pursuant to Senate Rule 15, the official attendance for session was:

Senators Cowles, Darling, Ellis, S. Fitzgerald, Galloway, Grothman, Harsdorf, Hopper, Kapanke, Kedzie, Lasee, Lazich, Leibham, Moulton, Olsen, Schultz, Vukmir, Wanggaard and Zipperer - 19.

Absent - Senators Carpenter, S. Coggs, T. Cullen, Erpenbach, Hansen, Holperin, Jauch, C. Larson, Lassa, Miller, Risser, Taylor, Vinehout and Wirch - 14.

Senator Fitzgerald, with unanimous consent, addressed the Senate:

"Mr. President, with unanimous consent, I would like to provide some remarks for the Journal. The Assembly passed January 2011 Special Session Assembly Bill 11, as amended by Assembly Amendments 1 and 105 on February 22, 2011. The Senate received January 2011 Special Session Assembly Bill 11 on February 25, 2011 and advanced the bill without further amendment to the question of concurrence. The Senate similarly advanced January 2011 Special Session Senate Bill 11 to the question of passage, except that the Senate Bill was not amended to be identical to the Assembly Bill, in that the Senate Bill lacks the equivalent of Assembly Amendment 105. The two houses have different positions. However, the Senate is prevented from further establishing its position due to the lack of the special quorum required under Article 8, Section 8 of the Wisconsin Constitution. It is time to move this process forward."

President Ellis, with unanimous consent, requests a committee of Conference on January 2011 Special Session Assembly Bill 11 and appoints Senators S. Fitzgerald, Miller and Ellis as conferees on the part of the Senate.

Senator S. Fitzgerald, with unanimous consent, asked that the Senate's actions on the appointments to the committee of Conference on January 2011 Special Session Assembly Bill 11 be immediately messaged to the Assembly.

Messaged.

President Ellis, with unanimous consent, asked that the Senate recess pending the call of the Chair.

4:06 P.M.

RECESS

MESSAGE FROM THE ASSEMBLY

By Patrick E. Fuller, chief clerk.

Mr. President:

Pursuant to Joint Rule 3 (1)(a), the Assembly agrees to a committee of conference on January 2011 Special Session Assembly Bill 11, and hereby notifies the Senate that the following Representatives have been appointed as conferees on the part of the Assembly: Speaker Jeff Fitzgerald, Representative Scott Suder and Representative Peter Barca

REPORT OF COMMITTEES

COMMITTEE OF CONFERENCE ON JANUARY 2011 SPECIAL SESSION ASSEMBLY BILL 11

The members of the Committee of Conference on January 2011 Special Session Assembly Bill 11 report and recommend That, by the adoption of this report:

1. Prior senate action. The senate recedes from its position.

2. Prior assembly action. The assembly recedes from its position.

3. Final action on 2009 Assembly Bill 75. The senate and assembly adopt and concur in January 2011 Special Session Assembly Bill 11 as shown by Conference Substitute



Amendment 1 (LRBs0087/1) to that bill, which is attached to and made a part of this report.

REP. JEFF FITZGERALD      SEN. SCOTT FITZGERALD  
REP. SCOTT SUDER          SEN. MICHAEL G. ELLIS

Conference substitute amendment 1 to Assembly Bill 11 offered by Committee of Conference on January 2011 Special Session Assembly Bill 11.

6:14 P.M.

The Senate reconvened.

President Ellis in the chair.

### CALL OF ROLL

The roll was called, disclosing the presence of a quorum.

Senators Cowles, Darling, Ellis, S. Fitzgerald, Galloway, Grothman, Harsdorf, Hopper, Kapanke, Kedzie, Lasee, Lazich, Leibham, Moulton, Olsen, Schultz, Vukmir, Wanggaard and Zipperer - 19.

Absent - Senators Carpenter, S. Coggs, T. Cullen, Erpenbach, Hansen, Holperin, Jauch, C. Larson, Lassa, Miller, Risser, Taylor, Vinehout and Wirch - 14.

### REPORT OF COMMITTEES

#### Assembly Bill 11, January 2011 Special Session

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.

The question was: Shall the Committee of Conference report on Assembly Bill 11, January 2011 Special Session (Conference Substitute Amendment 1) be adopted?

The ayes and noes were required and the vote was: ayes, 18; noes, 1; absent or not voting, 14; as follows:

Ayes - Senators Cowles, Darling, Ellis, S. Fitzgerald, Galloway, Grothman, Harsdorf, Hopper, Kapanke, Kedzie, Lasee, Lazich, Leibham, Moulton, Olsen, Vukmir, Wanggaard and Zipperer - 18.

Noes - Senator Schultz - 1.

Absent or not voting - Senators Carpenter, S. Coggs, T. Cullen, Erpenbach, Hansen, Holperin, Jauch, C. Larson, Lassa, Miller, Risser, Taylor, Vinehout and Wirch - 14.

Adopted.

Senator S. Fitzgerald, with unanimous consent, asked that all of our action and Assembly Bill, January 2011 Special Session be immediately messaged to the Assembly:

Assembly Bill 11, January 2011 Special Session

Messaged.

### ADJOURNMENT

Senator S. Fitzgerald, with unanimous consent, asked that the January 2011 Special Session of the Senate adjourn until the call of the Chair.

6:22 P.M.

Adjourned.



# STATE OF WISCONSIN Assembly Journal

## January 2011 Special Session

2:02 P.M.

WEDNESDAY, March 9, 2011

The Assembly met in the Assembly Chamber located in the State Capitol.

Representative Petersen in the chair.

The Assembly dispensed with the call of the roll.

### MESSAGE FROM THE SENATE

From: Robert J. Marchant, Senate Chief Clerk.

Mr. Speaker:

I am directed to inform you that

Pursuant to Joint Rule 3, the Senate requests a Committee of Conference on January 2011 Special Session Assembly Bill 11 and hereby notifies the Assembly that the following Senators have been appointed as conferees on the part of the Senate: Senator Fitzgerald, Senator Miller and Senator Ellis.

### SPEAKER'S COMMUNICATIONS

March 9, 2011

Patrick Fuller  
Assembly Chief Clerk  
17 West Main Street, Suite 401  
Madison, WI 53703

Dear Chief Clerk Fuller:

Pursuant to the Senate Message of March 9, 2011, and Joint Rule 3 (1) (a), I hereby appoint to a Committee of Conference on January 2011 Special Session Assembly Bill 11, myself, Representative Scott Suder and Representative Peter Barca.

Sincerely,  
*JEFF FITZGERALD*  
Assembly Speaker

### ADJOURNMENT

Representative Suder moved that the Assembly stand adjourned until 10:01 A.M. on Thursday, March 10.

The question was: Shall the Assembly stand adjourned?

Motion carried.

The Assembly stood adjourned.

2:03 P.M.

