



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 22, 2011

The Honorable Maryann Sumi
Circuit Court Judge, Br. 2
Dane County Courthouse
215 South Hamilton Street, Rm. 7105
Madison, WI 53703-3291

Re: *State ex rel. Ismael R. Ozanne v. Jeff Fitzgerald, et al.*
Case No. 11-CV-1244 (Dane County)

11 SEP 23 AM 11:56
 DAN COUNTY
 CLERK OF COURT

Dear Judge Sumi:

On May 9, 2011, two motions to dismiss this action were filed with the Court (on behalf of the four original, legislator defendants and on behalf of the Joint Committee of Conference, the State Senate, and State Assembly). On May 26, 2011, this Court issued an Order in which, *inter alia*, this Court retained jurisdiction over the prosecution of the four original legislator defendants for alleged violations of the Open Meetings Law. That Order was vacated and declared void *ab initio* by the State Supreme Court on June 14, 2011. *State ex rel. Ozanne v. Fitzgerald*, 2011 WI 43, ¶ 10, 334 Wis. 2d 70, 798 N.W.2d 436. That Supreme Court Order further held that “in enacting [2011 Wisconsin Act 10], the legislature did not employ a process that violated Article VI, Section 10 of the Wisconsin Constitution.” *Id.*, ¶ 11.

Moreover, the Supreme Court Order further held that “[i]n the posting of notice that was done, the legislature relied on its interpretation of its own rules of proceeding.” *Id.*, ¶ 13. Additionally, in his concurrence, Justice Prosser took issue with the now-vacated Findings of Fact that the four original legislator defendants had violated the Open Meetings Law. *See id.*, ¶¶ 52-63. Justice Prosser stated that the Senate Majority Leader, one of the four, original legislator defendants, relied upon the Senate Clerk who had relied upon Senate Rule 93(2) for the method and timing of the posting of the meeting of the Joint Committee of Conference. *Id.*, ¶ 53.

Accordingly, based upon this reliance, we contend that the district attorney will not be able to establish that the four original, legislator defendants knowingly violated the Open Meetings Law—a prerequisite for individual penalties—if indeed there even was a violation of that law. Thus, given the State Supreme Court’s Order and the pending motions to dismiss, we further believe that there is no basis for the continued prosecution of this alleged Open Meetings

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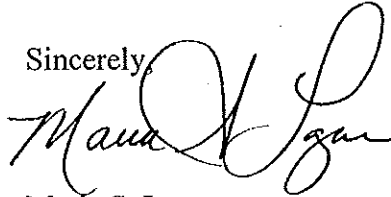
Law violation, and this case should be dismissed in its entirety as to *all* defendants, with prejudice.

Moreover, the time in which to serve the four, original legislator defendants, per Wis. Stat. § 801.02(2), has long since passed. Thus, the amended complaint may no longer even be served upon those four legislator defendants.

Accordingly, we respectfully request that the Court dismiss this matter—and *all* defendants—in its entirety. In the alternative, we request a hearing date on the two pending motions to dismiss.

Thank you very much for your consideration of this matter.

Sincerely,



Maria S. Lazar
Assistant Attorney General

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