



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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September 11, 2013

HAND-DELIVERY

The Honorable Ellen K. Berz
Circuit Court Judge, Br. 11
Dane County Courthouse
215 South Hamilton Street, Rm. 5103
Madison, WI 53703-3292

Re: *Center for Media and Democracy v. Leah Vukmir*
Case No. 13-CV-1875

Dear Judge Berz:

Enclosed for filing please find a Limited Appearance and Notice of Motion and Motion to Quash Summons in the above matter. A copy is being mailed this date to opposing counsel.

Sincerely,

Daniel P. Lennington /tmf

Daniel P. Lennington
Assistant Attorney General
State Bar #1088694

DPL:tmf

Enclosure

c: **Brendan Fischer**

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 11

DANE COUNTY

CENTER FOR MEDIA AND
DEMOCRACY,

Plaintiff,

v.

Case No. 13-CV-1875

LEAH VUKMIR,

Defendant.

**LIMITED APPEARANCE AND NOTICE OF MOTION AND
MOTION TO QUASH SUMMONS**

**Limited Notice of Appearance for the Sole Purpose of
Contesting Personal Jurisdiction**

Please take notice that Defendant State Senator Leah Vukmir makes this limited appearance in the above-captioned action by her attorneys, J.B. Van Hollen, Attorney General, and Daniel P. Lennington, Assistant Attorney General, for the sole purpose of contesting personal jurisdiction and without waiving any other defenses or arguments. Copies of documents and papers related to this Limited Appearance and Notice of Motion and Motion to Quash Summons should be delivered to the attention of Assistant Attorney General Daniel P. Lennington, 17 West Main Street, Madison, Wisconsin 53703, or by first class mail at Post Office Box 7857, Madison, Wisconsin 53707-7857.

Notice of Motion and Motion to Quash Summons

Without waiving any other defense, Senator Vukmir hereby moves this Court for an order quashing the Summons filed on June 6, 2013. Senator Vukmir relies on the following grounds in support of this motion:

1. As with any civil case, personal jurisdiction over the defendant hinges on the plaintiff's ability to serve a summons upon the defendant, which is a form of civil process. *See* Wis. Stat. § 801.04(2)(a).

2. But under the Wisconsin Constitution, no member of the Legislature may be served with civil process while in session:

Members of the legislature shall in all cases, except treason, felony and breach of the peace, be privileged from arrest; nor shall they be subject to any civil process, during the session of the legislature, nor for fifteen days next before the commencement and after the termination of each session.

Wis. Const. art. IV, § 15.

3. The rationale behind this provision of the Constitution is to prevent Members of the Legislature from being distracted by civil lawsuits and minor criminal violations. *State v. Beno*, 116 Wis. 2d 122, 138-39, 341 N.W.2d 668, 676 (1984).

4. A civil lawsuit can interfere with a Member's full participation representing her constituents, and when a legislator cannot appear because of a civil lawsuit, then "the people whom the legislator represents lose their voice in debate and vote." *Id.* (holding that a Member of the Legislature may not be served with civil process, including a subpoena, while in session).

5. A summons, such as the one issued in this case, is a form of civil process and subject to the limitations of Wis. Const. art. IV, § 15. See *Anderson v. Rountree*, 1 Pin. 115, 118-19 (1841) (interpreting common law and a predecessor statute, and explaining that “this privilege extends to arrests on judicial as well as on *mesne* process, **and to the service of a summons** as well as to an arrest.”) (emphasis added).

6. The Supreme Court of the Territory of Wisconsin, in applying the U.S. Constitution’s Speech and Debate Clause to a lawsuit in Wisconsin, explained why a liberal interpretation of this similar provision was necessary:

In order to render this provision available to the extent of its necessity, it will not do to construe the words *privilege from arrest* in a confined or literal sense. A liberal construction must be given to these words upon principle and reason. It is just as necessary for the protection of the rights of the people that their representative should be relieved from absenting himself from his public duties during the session of congress, for the purpose of defending his private suits in court, as to be exempt from imprisonment on execution. If the people elect an indebted person to represent them, this construction of the constitution must also be made to protect his rights and interests, although it may operate to the prejudice of his creditors; but the claims of the people upon his personal attendance are paramount to those of individuals, and they must submit.

Doty v. Strong, 1 Pin. 84, 87 (1840) (emphasis in original).

7. As this passage from *Doty* illustrates, although Wis. Const. art. IV, § 15 may certainly prejudice the Plaintiff in this case, the Constitution places a higher value on Senator Vukmir’s execution of her official duties without distraction or interference from civil lawsuits.

8. This provision of legislative immunity, therefore, undoubtedly applies to this case. See, e.g., *Wisconsin State Employees Union v. State of Wisconsin*, Dane County Case No. 11-CV-990 (April 19, 2011) (granting two motions to quash

subpoenas based on Wis. Const. art. IV, § 15 legislative immunity) (Albert, J.) (attached).

9. Defendant Leah Vukmir is the elected State Senator from Wisconsin's 5th Senate District.

10. The Wisconsin State Legislature went into its January 2013, Biennial Session on January 7, 2013. See 2013 Senate Joint Resolution 1 (attached).

11. The session ends on Monday, January 5, 2015. See 2013 Senate Joint Resolution 1.

12. Thus, the Legislature is now presently in its biennial session and Senator Vukmir will continue to enjoy legislative immunity during this current regular session plus fifteen days.

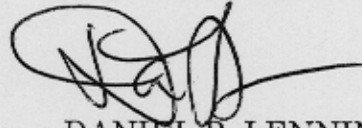
13. Because Senator Vukmir is immune from service of the Summons, the Summons must be quashed.

14. Furthermore, until Senator Vukmir is properly served during a period in which she does not enjoy legislative immunity, this Court will lack personal jurisdiction over Senator Vukmir. Wis. Stat. § 802.06(2)(a)3.

Therefore, the Summons for Senator Vukmir must be quashed based on the ground of legislative immunity from any civil process pursuant to Wis. Const. art. IV, § 15.

Dated this 11th day of September, 2013.

J.B. VAN HOLLEN
Attorney General



DANIEL P. LENNINGTON
Assistant Attorney General
State Bar #1088694

Attorneys for Defendant

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STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

DANE COUNTY

WISCONSIN STATE EMPLOYEES UNION,
AFSCME COUNCIL 24, AFL-CIO;
JAMES P. KELLEHER; TRICIA J.
BUSHNELL; ALLISON M. RITTER;
DAVID A. KOPPLIN; SEAN HEISER;
and BRIAN D. ROTHGERY,

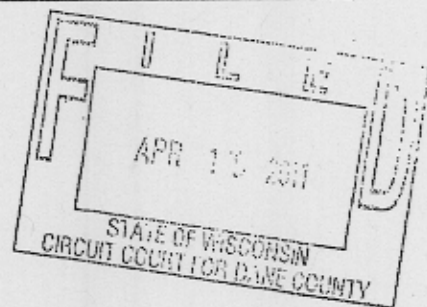
Plaintiffs,

v.

Case No. 11-CV-0990

STATE OF WISCONSIN, and MICHAEL
HUEBSCH, SECRETARY, WISCONSIN
DEPARTMENT OF ADMINISTRATION,

Defendants.



ORDER

Non-party witness Senator Scott Fitzgerald filed a motion to quash a deposition subpoena duces tecum compelling his personal appearance at the Wisconsin Department of Justice, 17 West Main Street, Madison, Wisconsin, on April 25, 2011, at 10:00 a.m., and commanding him to bring certain documents in the above action.

Based on the motion and accompanying papers, IT IS ORDERED that Senator Scott Fitzgerald's motion is GRANTED and that the Plaintiffs'-issued deposition subpoena duces tecum is QUASHED and is of no force and effect.

Dated this 19 day of April, 2011.

BY THE COURT:

THE HONORABLE JOHN C. ALBERT
Circuit Court Judge, Branch 3

APR 21 2011

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 3

DANE COUNTY

WISCONSIN STATE EMPLOYEES UNION,
AFSCME COUNCIL 24, AFL-CIO; JAMES P.
KELLEHER; TRICIA J. BUSHNELL;
ALLISON M. RITTER; DAVID A. KOPPLIN;
SEAN HEISER; and BRIAN D. ROTHGERY,

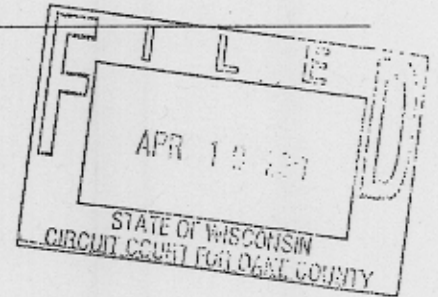
Plaintiffs,

v.

Case No. 11-CV-0990

STATE OF WISCONSIN, and MICHAEL
HUEBSCH, SECRETARY, WISCONSIN
DEPARTMENT OF ADMINISTRATION,

Defendants.



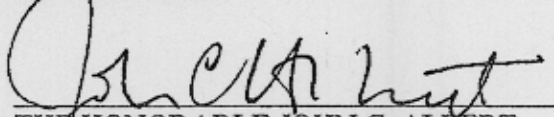
ORDER

Non-party witness Representative Jeff Fitzgerald filed a motion to quash a deposition subpoena duces tecum compelling his personal appearance at the Wisconsin Department of Justice, 17 West Main Street, Madison, Wisconsin, on April 25, 2011, at 10:00 a.m., and commanding him to bring certain documents in the above action.

Based on the motion and accompanying papers, IT IS ORDERED that Representative Jeff Fitzgerald's motion is GRANTED and that the Plaintiffs'-issued deposition subpoena duces tecum is QUASHED and is of no force and effect.

Dated this 19 day of April, 2011.

BY THE COURT:


THE HONORABLE JOHN C. ALBERT
Circuit Court Judge, Branch 3



2013 SENATE JOINT RESOLUTION 1

January 7, 2013 - Introduced by JOINT COMMITTEE ON LEGISLATIVE ORGANIZATION.

1 **Relating to:** the session schedule for the 2013-2014 biennial session period.

Analysis by the Legislative Reference Bureau

This joint resolution establishes a session schedule for the 2013-2014 biennial session of the legislature.

Proposed 2013-2014 Session Schedule at a Glance

January 7, 2013	2013 Inauguration
January 9 and 10, 2013	Floorperiod
January 15 to 17, 2013	Floorperiod
January 29 to 31, 2013	Floorperiod
February 12 to 14, 2013	Floorperiod
February 26 to March 7, 2013	Floorperiod
March 21, 2013	Bills sent to Governor
April 9 to 18, 2013	Floorperiod
May 7 to 16, 2013	Floorperiod
June 4 to 28, 2013, OR budget passage	Floorperiod
August 8, 2013	Nonbudget Bills sent to Governor
August 8, 2013 (or later)	Budget Bill sent to Governor
September 17 to 19, 2013	Floorperiod
October 8 to 17, 2013	Floorperiod
November 5 to 14, 2013	Floorperiod
December 12, 2013	Bills sent to Governor
January 14 to 23, 2014	Floorperiod
February 11 to 20, 2014	Floorperiod
March 11 to 20, 2014	Floorperiod

April 1 to 3, 2014	Last general-business Floorperiod
April 24, 2014	Bills sent to Governor
April 29 to May 1, 2014	Limited-business Floorperiod
May 8, 2014	Bills sent to Governor
May 20 and 21, 2014	Veto Review Floorperiod
May 2, 2014, to January 5, 2015	Interim, committee work
June 4, 2014	Bills sent to Governor
January 5, 2015	2015 Inauguration

1 *Resolved by the senate, the assembly concurring, That:*

2 **SECTION 1. 2013-2014 session schedule.** (1) BIENNIAL SESSION PERIOD. The
3 legislature declares that the biennial session period of the 2013 Wisconsin
4 legislature began on Monday, January 7, 2013, and that the biennial session period
5 ends at noon on Monday, January 5, 2015.

6 (1m) BUDGET DEADLINE EXTENDED. The deadline of Tuesday, January 29, 2013,
7 set by section 16.45 of the statutes for introduction of the executive budget bill or
8 bills, submittal of the state budget report, and delivery of the governor's budget
9 message, is extended to Tuesday, February 12, 2013.

10 (2) SCHEDULED FLOORPERIODS AND COMMITTEE WORK PERIODS. (a) *Unreserved*
11 *days.* Unless reserved under this subsection as a day to conduct an organizational
12 meeting or to be part of a scheduled floorperiod of the legislature, every day of the
13 biennial session period is designated as a day for committee activity and is available
14 to extend a scheduled floorperiod, convene an extraordinary session, or take senate
15 action on appointments as permitted by joint rule 81.

16 (b) *Inauguration.* Pursuant to section 13.02 (1) of the statutes, the
17 inauguration of the members of the 2013 legislature, and the organizing for business
18 of the 2 houses, commences at 2 p.m. on Monday, January 7, 2013.

1 (c) *Floorperiod.* A floorperiod commences on Wednesday, January 9, 2013, at
2 10 a.m., and ends on January 10, 2013.

3 (d) *Floorperiod.* A floorperiod commences on Tuesday, January 15, 2013, at 10
4 a.m., and, unless adjourned earlier, ends on Thursday, January 17, 2013.

5 (e) *Floorperiod.* A floorperiod commences on Tuesday, January 29, 2013, at 10
6 a.m., and, unless adjourned earlier, ends on Thursday, January 31, 2013.

7 (f) *Floorperiod.* A floorperiod commences on Tuesday, February 12, 2013, at 10
8 a.m., and, unless adjourned earlier, ends on Thursday, February 14, 2013.

9 (g) *Floorperiod.* A floorperiod commences on Tuesday, February 26, 2013, at
10 10 a.m., and, unless adjourned earlier, ends on Thursday, March 7, 2013.

11 (h) *Bills to governor.* No later than Thursday, March 21, 2013, at 4:30 p.m., the
12 chief clerk of each house shall submit to the governor for executive action thereon all
13 enrolled bills originating in the chief clerk's house and having been passed by both
14 houses, in regular, extraordinary, or special session, on or before Thursday, March
15 7, 2013.

16 (i) *Floorperiod.* A floorperiod commences on Tuesday, April 9, 2013, at 10 a.m.,
17 and, unless adjourned earlier, ends on Thursday, April 18, 2013.

18 (j) *Floorperiod.* A floorperiod commences on Tuesday, May 7, 2013, at 10 a.m.,
19 and, unless adjourned earlier, ends on Thursday, May 16, 2013.

20 (k) *Floorperiod.* A floorperiod commences on Tuesday, June 4, 2013, at 10 a.m.,
21 and, unless adjourned earlier, ends on Friday, June 28, 2013, but this floorperiod may
22 not be adjourned until the general fund executive budget bill has been passed by both
23 houses.

24 (l) *Nonbudget bills to governor.* No later than Thursday, August 8, 2013, at 4:30
25 p.m., the chief clerk of each house shall submit to the governor for executive action

1 thereon all enrolled bills, except the general fund executive budget bill, originating
2 in the chief clerk's house and having been passed by both houses, in regular,
3 extraordinary, or special session, on or before Wednesday, July 31, 2013.

4 (m) *Budget bill to governor.* No later than the later of Thursday, August 8, 2013,
5 at 4:30 p.m., or 4:30 p.m. on the 4th Thursday after the general fund executive budget
6 bill is passed by both houses in identical form, the chief clerk of each house shall
7 submit to the governor for executive action thereon any enrolled general fund
8 executive budget bill originating in the chief clerk's house and having been passed
9 by both houses, in regular, extraordinary, or special session.

10 (n) *Floorperiod.* A floorperiod commences on Tuesday, September 17, 2013, at
11 10 a.m., and, unless adjourned earlier, ends on Thursday, September 19, 2013.

12 (o) *Floorperiod.* A floorperiod commences on Tuesday, October 8, 2013, at 10
13 a.m., and, unless adjourned earlier, ends on Thursday, October 17, 2013.

14 (p) *Floorperiod.* A floorperiod commences on Tuesday, November 5, 2013, at 10
15 a.m., and, unless adjourned earlier, ends on Thursday, November 14, 2013.

16 (q) *Bills to governor.* No later than Thursday, December 12, 2013, at 4:30 p.m.,
17 the chief clerk of each house shall submit to the governor for executive action thereon
18 all enrolled bills originating in the chief clerk's house and having been passed by both
19 houses, in regular, extraordinary, or special session, on or before Thursday,
20 November 14, 2013.

21 (r) *Floorperiod.* A floorperiod commences on Tuesday, January 14, 2014, at 10
22 a.m., and, unless adjourned earlier, ends on Thursday, January 23, 2014.

23 (s) *Floorperiod.* A floorperiod commences on Tuesday, February 11, 2014, at 10
24 a.m., and, unless adjourned earlier, ends on Thursday, February 20, 2014.

1 (t) *Floorperiod.* A floorperiod commences on Tuesday, March 11, 2014, at 10
2 a.m., and, unless adjourned earlier, ends on Thursday, March 20, 2014.

3 (u) *Last general-business floorperiod.* The last general-business floorperiod
4 commences on Tuesday, April 1, 2014, at 10 a.m., and, unless adjourned earlier, ends
5 on Thursday, April 3, 2014.

6 (v) *Bills to governor.* No later than Thursday, April 24, 2014, at 4:30 p.m., the
7 chief clerk of each house shall submit to the governor for executive action thereon all
8 enrolled bills originating in the chief clerk's house and having been passed by both
9 houses, in regular, extraordinary, or special session, on or before Thursday, April 3,
10 2014.

11 (w) *Limited-business floorperiod.* A floorperiod commences on Tuesday, April
12 29, 2014, at 10 a.m., and, unless adjourned earlier, ends on Thursday, May 1, 2014,
13 which is limited to matters allowed under joint rule 81m (2) and to considering
14 resolutions offered for the purpose of extending the commendations, condolences, or
15 congratulations of the legislature to a particular person, group, or organization, or
16 of recognizing a particular event or occasion.

17 (x) *Bills to governor.* No later than Thursday, May 8, 2014, at 4:30 p.m., the chief
18 clerk of each house shall submit to the governor for executive action thereon all
19 enrolled bills originating in the chief clerk's house and having been passed by both
20 houses, in regular, extraordinary, or special session, on or before Thursday, May 1,
21 2014.

22 (y) *Veto review floorperiod.* A floorperiod, limited to matters allowed under joint
23 rule 82 (1m), commences on Tuesday, May 20, 2014, at 10 a.m., and, unless adjourned
24 earlier, ends on Wednesday, May 21, 2014.

1 (z) *Bills to governor.* No later than Wednesday, June 4, 2014, at 4:30 p.m., the
2 chief clerk of each house shall submit to the governor for executive action thereon all
3 enrolled bills originating in the chief clerk's house and having been passed by both
4 houses, in regular, extraordinary, or special session, on or before Wednesday, May 21,
5 2014.

6 (3) INTERIM PERIOD OF COMMITTEE WORK; NO FURTHER INTRODUCTIONS. Upon the
7 adjournment of the May veto review floorperiod, there shall be an interim period of
8 committee work ending on Monday, January 5, 2015. Unless the legislature is
9 convened in one or more extraordinary or special sessions, no additional 2013
10 legislation may be offered during this interim period of committee work.

11 (4) SPECIAL AND EXTRAORDINARY SESSIONS. (a) *Adjournment.* Except for
12 consideration of executive vetoes or partial vetoes, a motion adopted in each house
13 to adjourn a special or extraordinary session pursuant to this joint resolution shall
14 constitute final adjournment of the special or extraordinary session.

15 (b) *Bills to governor.* No later than 4:30 p.m. on the first Thursday occurring
16 2 full weeks after the day a bill is passed by both houses in identical form after May
17 21, 2014, in special or extraordinary session, the chief clerk of the house in which it
18 originated shall submit it to the governor for executive action thereon.

19 (c) *Veto review.* A special or extraordinary session shall reconvene upon a call
20 of a majority of the members of the joint committee on legislative organization solely
21 for the consideration of executive vetoes or partial vetoes if an enrolled bill passed
22 by both houses during the special or extraordinary session was vetoed or partially
23 vetoed.

(5) **END OF TERM.** The biennial term of the 2013 legislature ends on Monday, January 5, 2015. Pursuant to section 13.02 (1) of the statutes, the inauguration of the members of the 2015 legislature will be on Monday, January 5, 2015.

SECTION 2. Notice of 2015 session organization. Notice is hereby given that the biennial session of the 2015 legislature will hold its first meeting, pursuant to section 13.02 (1) of the statutes, on Monday, January 5, 2015, and that the meeting will begin at 2 p.m.

(END)