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February 1, 2016

Brad D. Schimel, Attorney General
 State of Wisconsin
 17 W. Main Street
 Madison, Wisconsin 53703

HAND DELIVERED

Re: *State ex rel. Three Unnamed Petitioners v. Peterson*, Nos. 13AP2504-W
et seq.
State ex rel. Two Unnamed Petitioners v. Peterson, Nos. 14AP296-OA
et seq.
State ex rel. Schmitz v. Peterson, Nos. 14AP417-W *et seq.*

Dear General Schimel:

Although I write expressly only for two of them, Unnamed Movants Nos. 2 and 7, all eight unnamed movants remain involuntary participants in proceedings that appear destined for a petition for a writ of certiorari in the United States Supreme Court. As matters stand, that appeal to the United States Supreme Court will be pursued in the name of, and on the purported authority of, the State of Wisconsin. Should the United States Supreme Court grant certiorari, its later decision on the merits will have not just statewide effect, but necessarily will establish nationwide precedent. Yet that appeal is the pursuit of at most three county officials, the District Attorneys of Dane, Iowa, and Milwaukee Counties. More, the actual lawyers who propose to speak for the State of Wisconsin as a sovereign in the nation's highest federal court are from a large, private law firm headquartered in Pittsburgh, Pennsylvania.

In a separate filing today in the Wisconsin Supreme Court, the eight unnamed movants have explained to the state supreme court that a statute bars a county district attorney, and certainly an out-of-state private corporate interest, from appealing under mantle of the State of Wisconsin. WIS. STAT. § 165.25(1). By law, appeals on behalf of the State of Wisconsin are the province of the state's highest



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legal official, the Wisconsin Attorney General, and with two explicit exceptions not relevant here, only the Attorney General. The statute is clear. When the Attorney General is unable, by reason of conflict of interest or otherwise, to discharge his exclusive duty under § 165.25(1), Wisconsin law allows the Governor to appoint counsel to discharge the Attorney General's duties in that regard. WIS. STAT. § 14.11(2). There is no other alternative. To my knowledge, no party properly has invoked § 14.11(2) and the Governor has not exercised his power under that statute.

I write to you only because the Attorney General, not a private party, is the first officer who properly should raise and defend the statutory structure that §§ 165.25(1) and 14.11(2) establish. Just as the people of the State of Wisconsin have a right to expect their top legal officer to decide when the State of Wisconsin will appeal and on what, so too they have a right to expect that he or she will not allow others to usurp that statewide role and that he or she will defend the sovereign integrity of the State of Wisconsin itself. The State of Wisconsin's law should be offered for statewide or national development on appeal in the judgment of the top elected legal official, not in the judgment of one county official (or, for that matter, a subordinate Assistant District Attorney in one county) or in the judgment of one Pittsburgh law firm.

If a county district attorney and his Pittsburgh law firm are allowed here to appeal to the United States Supreme Court under the banner of the State of Wisconsin, claiming its sovereign dignity, then it is not clear how your office ever would foreclose any of hundreds of Assistant District Attorneys around the state, or thousands of private law firms around the world, from doing the same in the future. Whether from Ladysmith or Sparta or Elkhorn or Milwaukee, one Assistant District Attorney does not and cannot decide when the State of Wisconsin will appeal and what it will argue. Or, while thousands of Wisconsinites might well cheer in the short term if the in-house law department of a large corporation arrogated the role of speaking for the State of Wisconsin on appeal, and thousands of other Wisconsinites might cheer temporarily if the ACLU did the same, neither would be tolerable under Wisconsin law. As I understand your public office, as Attorney General for the State of Wisconsin, defending your office's structural role and the unified appellate interests of the State of Wisconsin is your job in the first instance. I ask that you exercise your authority under WIS. STAT. § 165.25(1) or, if unable, seek



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the one delegation of that power that Wisconsin law allows under WIS. STAT. § 14.11(2). I ask also that you defend those statutes and your office itself from usurpation by others not entrusted with speaking for the State of Wisconsin in appellate courts.

Sincerely,

STRANGBRADLEY LLC

Dean A. Strang

Counsel for Unnamed Movant No. 7

DAS:tlp

c: Hon. Patience Drake Roggensack (under seal initially)
Hon. Shirley S. Abrahamson (under seal initially)
Hon. David T. Prosser (under seal initially)
Hon. Annette K. Ziegler (under seal initially)
Hon. Michael J. Gableman (under seal initially)
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