

# Wisconsin Supreme Court and Court of Appeals Case Access

## State v. Circuit Court for Dane County

### Appeal Number 2011AP000765 - W

**CONSOLIDATED** - [List of Consolidated Cases](#)  
Supreme Court

#### CASE HISTORY

Status	Court	Filing Date	Anticipated Due Date	Activity
OCCD	SC	07-05-2012		Cites
		822 N.W.2d 67		
		Comment: 818 N.W.2d 850 withdrawn by publisher		
OCCD	SC	07-05-2012		Cites
		342 Wis. 2d 396		
OCCD	SC	07-05-2012		Public Domain Citation
		Comment: PDC No: 2012 WI 82		
OCCD	SC	02-29-2012		Motion for Miscellaneous Relief
		Filed By: Ismael Ozanne		
		Submit Date: 2-29-2012		
		Decision: (O) Other		
		Decision Date: 7-5-2012		
		IT IS ORDERED that the motion to the court for a rehearing in the instant case without Justice Gableman's participation has not received four votes and is, therefore, not granted. Justice Michael J. Gableman did not participate in this decision. Justice David T. Prosser, Justice Patience Drake Roggensack and Justice Annette K. Ziegler write separately. Chief Justice Shirley S. Abrahamson writes separately. Justice Ann Walsh Bradley and Justice N. Patrick Crooks join the writing of Chief Justice Shirley S. Abrahamson.		
		Motion Response		
		Filed By: Maria Lazar		
		Submit Date: 3-12-2012		
		Comment: Motion for Leave to File Supplemental Memorandum of Law Regarding Motion for Recusal of Justice Gableman and for Relief from Judgment & DA's Supplemental Memorandum of Law in Support of His Motion for Recusal by Justice Gableman and his Motion for Relief from Judgment and Affidavit of Ozanne		
OCCD	SC	12-30-2011		Motion for Miscellaneous Relief
		Filed By: Ismael Ozanne		
		Submit Date: 12-30-2011		
		Decision: (O) Other		
		Decision Date: 7-5-2012		
		IT IS ORDERED that the motion to the court for a rehearing in the instant case without Justice		

Gableman's participation has not received four votes and is, therefore, not granted. Justice Michael J. Gableman did not participate in this decision. Justice David T. Prosser, Justice Patience Drake Roggensack and Justice Annette K. Ziegler write separately. Chief Justice Shirley S. Abrahamson writes separately. Justice Ann Walsh Bradley and Justice N. Patrick Crooks join the writing of Chief Justice Shirley S. Abrahamson.

Comment: Motion for Relief from Judgment and DA's Combined Memorandum of Law in Support of his Motion for Recusal by Justice M. Gableman and Motion for Relief from Judgment. - Affidavit of Ozanne

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OCCD SC 12-30-2011 Motion for Miscellaneous Relief

Filed By: Ismael Ozanne

Submit Date: 12-30-2011

Decision: (D) Deny

Decision Date: 1-20-2012

ORD that the motion to Justice Michael J. Gableman individually is hereby denied.

Comment: Motion for Recusal of Justice Michael Gableman - Affidavit of Ismael R. Ozanne - DA's Combined Memorandum of Law in Support of his Motion for Recusal by Justice M. Gableman and Motion for Relief from Judgment.

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OCCD SC 07-22-2011 Remittitur

Comment: T/J

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OCCD SC 06-14-2011 Cites

334 Wis. 2d 70

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OCCD SC 06-14-2011 Cites

798 N.W.2d 436

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OCCD SC 06-14-2011 [Opinion/Decision](#)

Judge Panel: Abrahamson, Bradley, Crooks, Prosser, Roggensack, Ziegler, Gableman

Opinion: Miscellaneous Order

Decision: Other Pages: 9

Abrahamson, Shirley S. Wrote Concur/Dissent Opinion 19 pages.

Crooks, N. Patrick Wrote Concur/Dissent Opinion 19 pages.

Prosser, David T. Jr. Wrote Concurring Opinion 18 pages.

Order Text: ORD that the certification and motions for temporary relief in Case No. 11AP613-LV are denied.

FRO that the petition for original jurisdiction in Case No. 11AP765-W is granted, and all motions to dismiss and for supplemental briefing are denied.

FRO that all orders and judgments of the Dane County Circuit Court in Case No. 11CV1244 are vacated and declared to be void ab initio.

FRO that we have concluded that in enacting the Act, the legislature did not employ a process that violated Article IV, Section 10 of the Wisconsin Constitution, which provides in relevant part: "The doors of each house shall be kept open except when the public welfare shall require secrecy". The doors of the senate and assembly were kept open to the press and members of the public during the enactment of the Act. The doors of the senate parlor, where the joint committee on conference met, were open to the press and members of the public. WisconsinEye broadcast the proceedings live. Access was not denied. There is no constitutional requirement that the legislature provide access to as many members of the public as wish to attend meetings of the legislature or meetings of legislative committees.

Shirley S. Abrahamson, C.J., Ann Walsh Bradley and N. Patrick Crooks, J.J., concur in part and dissent in part from this order.

Ann Walsh Bradley and N. Patrick Crooks, J.J., join concur/dissent writing of C.J. Abrahamson.

Shirley S. Abrahamson, C.J., and Ann Walsh Bradley, J., join concur/dissent writing of N. Patrick Crooks.

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OCCD SC	06-14-2011	Public Domain Citation
Comment: PDC No: 2011 WI 43		

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OCCD SC	06-14-2011	Consolidated Case
Comment: [2011AP000613, 2011AP000765]		

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OCCD SC	06-08-2011	Motion for Miscellaneous Relief
Filed By: Lester Pines		
Submit Date: 6-8-2011		
Decision: (D) Deny		
Decision Date: 6-14-2011		
See SC Order of 6/14/11		
Comment: Motion to File Supplemental Brief 6/8/11 Rec'd Amended Motion to File Supplemental Brief		

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OCCD SC	06-08-2011	Motion to Take Judicial Notice
Filed By: Lester Pines		
Submit Date: 6-8-2011		
Decision: (O) Other		
Decision Date: 6-14-2011		
See SC Order of 6/14/11		
Motion Response		
Filed By: Ismael Ozanne		
Submit Date: 6-9-2011		
Comment: 6/8/11 Rec'd Amended Motion		

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OCCD SC	06-06-2011	Oral Argument
Comment: Kevin St. John for State of Wisconsin and State of Wisconsin ex rel. Michael D. Huebsch; Marie A. Stanton for Dane County Circuit Court, Hon. MaryAnn Sumi presiding, Ismael Ozanne for Dane County District Attorney Ismael Ozanne, Robert J. Jambois for Peter Barca, Lester A. Pines for Mark Miller and Roger Sage for Douglas LaFollette		

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OCCD SC	06-02-2011	Court Order
ORD that the oral argument scheduled for June 6, 2011, shall pertain to both Case No. 2011AP765-W and Case No. 2011AP613-LV (L.C. #2011CV1244).		
FRO the following parties are allotted oral arg. as scheduled, in the following sequence:		
State of Wisconsin and State of Wisconsin ex rel. Michael D. Huebsch: 50 mins; Dane County Circuit Court, Hon. MaryAnn Sumi, presiding: 15 mins; Dane County District Attorney, Ismael R. Ozanne: 15 mins; Peter Barca: 10 mins; Mark Miller: 10 mins; Douglas LaFollette: 10 mins; and State of Wisconsin and State of Wisconsin ex rel. Michael D. Huebsch: 10 mins rebuttal.FRO the mtn of Dane Co Cir Crt, Hon. MaryAnn Sumi pres., to supp the rec in Case No. 11AP765-W with the findings of fact, conclusions of law, memo decision and judgment of May 26, 2011, entered in State ex rel. Ozanne v. Fitzgerald, Dane Co Cir Crt Case No. 11CV1244, is granted. FRO the above named parties file by 5:00 pm on June 3, 2011, letter memo addressing the effect of the circuit courts May 26, 2011, findings, conclusions, decision and judgment on Case No. 2011AP613-LV (L.C. #2011CV1244) and Case No. 2011AP765-W, including: (1) whether an appeal is an available remedy and to whom; (2) whether the circuit courts May 26, 2011, judgment is final for purposes of appeal; (3) whether this courts exercise of original jurisdiction may include the appellate power to review a circuit court judgment absent the filing of an appeal; (4) whether any of the circuit courts findings of fact are clearly erroneous; and (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. FRO the parties shall be prepared to address during oa the above issues, as well as this courts jurisdiction, the underlying issues, and the substantive merits in both Case No. 2011AP613-LV (L.C. #2011CV1244) and Case No. 2011AP765-W.

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OCCD SC      06-01-2011      Motion to Dismiss  
Filed By: Ismael Ozanne  
Submit Date: 6-1-2011  
Decision: (D) Deny  
Decision Date: 6-14-2011  
See SC Order of 6/14/11  
Comment: District Atty's. Motion to Dismiss Petition for Supervisory Writ and Motion to Deny Petition for Leave to Appeal.

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OCCD SC      06-01-2011      Motion to Dismiss  
Filed By: Lester Pines  
Submit Date: 6-1-2011  
Decision: (D) Deny  
Decision Date: 6-14-2011  
See SC Order of 6/14/11  
Comment: Joint Motion to Dismiss on Grounds of Mootness by Respondents Barca and Miller

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OCCD SC      05-27-2011      Response  
Comment: petitioners single response to 5/18 filing per 5/4/11 CTO From Atty. K. St. John and Eric M. McLeod

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OCCD SC      05-26-2011      Motion for Miscellaneous Relief  
Filed By: Dean Strang  
Submit Date: 5-26-2011  
Decision: (G) Grant  
Decision Date: 6-2-2011  
ORD that the oral argument scheduled for June 6, 2011, shall pertain to both Case No. 2011AP765-W and Case No. 2011AP613-LV (L.C. #2011CV1244).  
FRO the following parties are allotted oral arg. as scheduled, in the following sequence:  
State of Wisconsin and State of Wisconsin ex rel. Michael D. Huebsch: 50 mins; Dane County Circuit Court, Hon. MaryAnn Sumi, presiding: 15 mins; Dane County District Attorney, Ismael R. Ozanne: 15 mins; Peter Barca: 10 mins; Mark Miller: 10 mins; Douglas LaFollette: 10 mins; and State of Wisconsin and State of Wisconsin ex rel. Michael D. Huebsch: 10 mins rebuttal.FRO the mtn of Dane Co Cir Crt, Hon. MaryAnn Sumi pres., to supp the rec in Case No. 11AP765-W with the findings of fact, conclusions of law, memo decision and judgment of May 26, 2011, entered in State ex rel. Ozanne v. Fitzgerald, Dane Co Cir Crt Case No. 11CV1244, is granted. FRO the above named parties file by 5:00 pm on June 3, 2011, letter memo addressing the effect of the circuit courts May 26, 2011, findings, conclusions, decision and judgment on Case No. 2011AP613-LV (L.C. #2011CV1244) and Case No. 2011AP765-W, including: (1) whether an appeal is an available remedy and to whom; (2) whether the circuit courts May 26, 2011, judgment is final for purposes of appeal; (3) whether this courts exercise of original jurisdiction may include the appellate power to review a circuit court judgment absent the filing of an appeal; (4) whether any of the circuit courts findings of fact are clearly erroneous; and (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. FRO the parties shall be prepared to address during oa the above issues, as well as this courts jurisdiction, the underlying issues, and the substantive merits in both Case No. 2011AP613-LV (L.C. #2011CV1244) and Case No. 2011AP765-W.

Comment: Respondent's Motion to Supplement the Record

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OCCD	SC	05-18-2011	Motion to File Amicus/Non-Party Brief
Filed By: Jina Jonen Submit Date: 5-18-2011 Decision: (G) Grant Decision Date: 5-24-2011 ORD that the motion is granted and the brief is accepted for filing. Comment: WEAC, AFSCME District Council 40, AFSCME DC 24, AFT-WISCONSIN, AFSCME DC48, SEIU Healthcare Wisconsin and the Wisconsin State AFL-CIO			

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OCCD	SC	05-18-2011	Response
Comment: Dane County et al response w/ supp memo to 5/4/11 CTO			

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OCCD	SC	05-16-2011	Certificate of Service
Comment: Affidavit of Service by Atty. Eric McLeod			

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OCCD	SC	05-05-2011	Attorney Change
Comment: Notice of Appearance on behalf of Hon. Maryann Sumi			

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OCCD	SC	05-04-2011	Court Order
ORD that the resp., Circ. Crt for Dane Co., et al., shall each file a response to the petition for supervisory writ and for imm. temp. relief, with a supp. memo, on the issue of whether this court should accept juris. over the writ and on the merits of the substantive issues raised in the writ, on or before 5/18/2011. The response and supp. memo combined may not exceed 50 pages mono or 11,000 words proportional font is used. In lieu of such a response, a resp. may file a letter stating that he, she or it does not intend to file a response, but that the petition is not thereby admitted. See Wis. Stat. (Rule) 809.51(2).FRO that the pet. shall file a single reply to the responses on or before 5/27/11. The reply and supporting memo combined may not exceed 50 pages monospaced or 11,000 words proportional. The reply and supp. memo shall not incorporate by ref. any portion of the writ; instead, any material in that doc. upon which there is reliance should be restated in the reply.FRO that in add. to addressing the issues raised in the writ, the responses and reply shall address: (1) whether the writ should be dismissed because pet. are not parties to the underlying action in the circ. crt., see In re Pet. of Heil, 230 Wis. 428, 284 N.W. 42 (1938-39); (2) whether the writ should be recast as a petition for orig. action publici juris, see WI Prof. Police Assn v. Lightbourn, 2001 WI 59, 243 Wis. 2d 512, 627 N.W.2d 807, and if recast, whether the parties should be realigned; (3) whether all resp. have been served with the writ; (4) whether any of the resp. intend to raise any issues or obj. regarding serv. of the writ, incl. immunity; (5) whether the DOJ represents J. Fitzgerald, S. Fitzgerald, M. Ellis, S. Suder, the Joint Comm. on Conf., the WI Senate, and/or the WI Assembly, as it does in the circ. crt; and (6) whether the Circ. Crt for Dane Co. is rep. by coun. and, if so, by whom. FRO that it is the court's intent to hold oral arg. on 6/6/2011 at 9:45.			

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OCCD	SC	04-13-2011	Attorney Change
Comment: AG's Potter, Weber and Rice removed from case per letter from AG Rice			

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OCCD	SC	04-08-2011	Fee Paid
Comment: Receipt No: 11R 000904			

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OCCD SC 04-07-2011 Motion for Stay

Filed By: Maria Lazar  
Submit Date: 4-7-2011  
Decision: (O) Other  
Decision Date: 6-14-2011  
See 6/14/11 SC Order

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OCCD SC 04-07-2011 Petition for Supervisory Writ

Filed By: Maria Lazar  
Submit Date: 4-7-2011  
Decision: (G) Grant  
Decision Date: 6-14-2011  
See 6/14/11 SC Order  
Comment: 3 Separate volumes for appendices

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