

From: Peter Earle [peter@earle-law.com]
Sent: Tuesday, April 10, 2012 7:21 PM
To: Eric McLeod; Daniel Kelly
Cc: Poland, Douglas; Jackie Boynton
Subject: Preservation Notice regarding redistricting litigation

Attachments: PGE Letter 4-10-12.pdf; ATT00003.htm; COMPLAINT.pdf; ATT00004.htm; ATT00005.htm

				
PGE Letter -10-12.pdf (78 KB)	ATT00003.htm (316 B)	COMPLAINT.pdf (420 KB)	ATT00004.htm (211 B)	ATT00005.htm (2 KB)

Dear Eric and Dan: Attached please find a preservation letter and a copy of the verified complaint that had been previously filed on behalf of my clients, Voces de la Frontera and Christine Neumann-Ortiz, with the Dane County District Attorney regarding violations of Article IV, sec. 10 of the Wisconsin Constitution and the Wisconsin Open Meetings Statute. The letter is to put each of you, your respective law firms, and your clients on notice of the need to preserve relevant evidence which is described in further detail in the letter given the likelihood of litigation in the near future. It is my intent to be sure that each of you are on fair notice to preserve all potential evidence in your possession, custody and control as well as that in the possession, custody and control of your clients. Please do not hesitate to contact me about the scope of the likely issues that will be in dispute in the anticipated litigation. Thank you for your attention to this matter. Peter Earle

Δ π EXHIBIT 48
 Deponent Y. Visaka
 Date 3/11/16 Rptr. KM
 WWW.DEPOBOOK.COM

Y. Visaka
 EXHIBIT NO. 48
4/29/13 RPT:SM
 For the Record, Inc.
 (608) 833-0392

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April 10, 2012

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VIA E-MAIL (emmcleod@michaelbest.com) and (dkelly@reinhardtllaw.com) & hand delivery

Eric M. McLeod
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One South Pinckney Street, Suite 700
Madison, WI 53701-1806

Dan Kelly
Reinhart Boerner Van Deuren, SC
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Re: NOTICE OF PRESERVATION DEMAND

Dear Eric & Dan:

Please consider this letter to be a notice of my client's preservation demand as detailed below on your clients, specifically, the Wisconsin State Senate and Assembly by Scott L. Fitzgerald and Jeff Fitzgerald, respectively, as well as Scott L. Fitzgerald, Jeff Fitzgerald, their respective legislative staff members, including but not limited to Tad Ottman, and Adam Foltz, the 58 members of the Wisconsin State Assembly who signed secrecy agreements with the law firm of Michael Best & Friedrich between March 31, 2011 and June 2, 2011, the 17 members of the Wisconsin State Senate, who signed secrecy agreements with the law firm of Michael Best & Friedrich between April 6, 2011, and May 10, 2011, the legislative staff of each of the aforementioned legislators, and any other person who is employed by any of the foregoing persons or have been retained by any of the foregoing persons or the law firm of Michael Best & Friedrich in connection with the redistricting process that led to the adoption of act 43, including but not limited to Joseph Handrick, James Troupis, and Sara Troupis.

As you are aware, my clients, Voces de la Frontera and Christine Neumann-Ortiz filed a verified complaint with the District Attorney for Dane County on February 5, 2012, alleging violations of Article IV, §10 of the Wisconsin Constitution and the Wisconsin Open Meetings Statute, §§19.96 and 19.97, et seq, Wis. Stats. A copy of the verified complaint is attached and the contents are incorporated herein for purposes of the adequacy of this preservation demand. As it is likely that the subject matter alleged in the attached verified complaint will result in litigation this letter serves to put you and your clients on notice that you and they are under a duty to preserve all potentially relevant data, documents, electronically stored information (ESI), and other evidence under your respective possession, custody and control, including, but not limited to all computer hard drives, e-mail systems (both public and private), data storage devices, files, and specifically the hard drives and back up storage devices for the computers used by Tadd Ottman, Adam Foltz, and Joseph Handrick while working on the redistricting process leading to the adoption of Act 43 at Michael, Best & Friedrich. Thank you for your attention to this matter.

Sincerely,



Peter Earle

cc: Jackie Boynton
Doug Poland
Maria Lazar

**VERIFIED COMPLAINT OF VOCES DE LA FRONTERA AND
CHRISTINE NEUMANN ORTIZ ALLEGING VIOLATIONS OF ARTICLE
IV, § 10 OF THE WISCONSIN CONSTITUTION AND THE OPEN
MEETINGS STATUTE, §§ 19.96 AND 19.97, WIS.STATS.**

NOW COME the complainants, Voces de la Frontera, Inc., and Christine Neumann Ortiz, and as and for a verified complaint pursuant to Wis. Stat. §§ 19.81, et. seq., Wis. Stats., allege violations of Article IV, § 10 of the Wisconsin Constitution and the Open Meetings Law as follows:

1. That Voces de la Frontera, Inc., is a membership based organization that seeks to advance the civil rights, electoral participation and economic conditions of Wisconsin's Latino community. In light of these objectives, Voces de la Frontera filed an action on October 31, 2011, seeking to enforce the protections afforded by the Voting Rights Act of 1965, §2, to its members, as well as to the larger Latino community and all citizens in general alleging that the legislative redistricting plan adopted by the Legislature of the State of Wisconsin on July 20, 2011, and signed by the Governor on August 9, 2011, unlawfully deprives the Latino community of Milwaukee's near south side of an effective voting majority in any of the newly created assembly districts despite the fact that the Latino community is sufficiently numerous and geographically compact to allow for at least one assembly district with an effective voting majority. See *Voces de la Frontera, Inc., et al v. Michael Brennan, et al*, Case No 11-C-1011, U.S. District Court for the Eastern District of Wisconsin. As a result of deposition testimony and documents uncovered in the course of discovery in said case, Voces de la Frontera, Inc., has become aware of egregiously unlawful conduct by Scott Fitzgerald and Jeff Fitzgerald and the other individuals identified below and said unlawful conduct being subject to the exclusive enforcement procedures delineated in §19.97, Wis. Stats., the undersigned complainants

file this verified complaint. Voces de la Frontera is a not for profit corporation organized under the laws of the State of Wisconsin with its principal place of business at 1027 South 5th Street, Milwaukee, Wisconsin.

2. Christine Neumann Ortiz is an adult resident of the State of Wisconsin and is the Executive Director of Voces de la Frontera.
3. This verified complaint is made by Christine Neumann Ortiz on behalf of and in her official capacity as Executive Director of Voces de la Frontera, Inc., as well as in her individual capacity as an adult resident of the State of Wisconsin.
4. Jeff Fitzgerald is the presiding officer of the Wisconsin Assembly, said entity being a governmental body within the meaning of §§ 19.82(1) and 19.87, and his principal office is located at Room 211 West, State Capitol, Madison, Wisconsin.
5. Adam Foltz is a legislative aide to Jeff Fitzgerald and was assigned to work on the legislative redistricting process under the supervision and direction of Attorney Eric McLeod at the law offices of Michael, Best & Friedrich, LLP, One South Pinckney Street, Suite 700, Madison, Wisconsin, 54703
6. Scott Fitzgerald is the presiding officer of the Wisconsin Senate, said entity being a governmental body within the meaning of §§ 19.82(1) and 19.87, and his principal office is located at Room 211 South, State Capitol, Madison, Wisconsin.
7. Tad Ottman is a legislative aide to Scott Fitzgerald and was assigned to work on the legislative redistricting process under the supervision and direction of Attorney Eric McLeod at the law offices of Michael, Best & Friedrich, LLP, One South Pinckney Street, Suite 700, Madison, Wisconsin, 54703

8. Eric M. McLeod is an attorney and partner with the law firm of Michael, Best & Friedrich, LLP, (MBF) with an office at One South Pinckney Street, Suite 700, Madison, Wisconsin, 54703. Mr. McLeod and MBF were hired by Scott Fitzgerald to serve as attorney for the Wisconsin State Senate and by Jeff Fitzgerald to serve as attorney for the Wisconsin State Assembly in connection with matters relating to the reapportionment of the Wisconsin state legislative districts arising out of the 2010 census. Mr. McLeod was retained to represent the entire legislature as an entity at taxpayer expense. In fulfillment of this task, Mr. McLeod supervised and directed the daily work of Adam Foltz and Tad Ottman in the course of planning, drafting, negotiating, and gaining the favorable vote commitments of a majority of legislators sufficient to obtain passage of Act 43. Mr. McLeod assigned office space within the law office of Michael Best & Friedrich, LLP, which was occupied by Adam Foltz and Tad Ottman and provided desks, computer equipment, telephones, and staff support. Said office space was ten feet away from the office of Mr. McLeod. Jeff Fitzgerald and Scott Fitzgerald contracted with Mr. McLeod for the express purpose of cloaking the entire redistricting process behind a veil of secrecy within the law office of Michael, Best & Friedrich, LLP., and under a bogus assertion of attorney client privilege and attorney work product protection. Attached to this verified complaint and incorporated by reference as if fully set forth herein is Exhibit A, the Declaration of Eric M. McLeod filed with the US District Court in connection with the litigation reference in paragraph one above. Also attached to this verified complaint and incorporated by reference as if fully set forth herein are transcripts of the depositions of Adam Foltz taken in said litigation on December 21, 2011, and on

February 1, 2012, and of Tadd Ottman also taken in said litigation on December 22, 2011, and on February 2, 2012.

9. Under the direction and supervision of Mr. McLeod, Tad Ottman met with 17 Republican members of the Wisconsin State Senate and asked that each senator sign a secrecy agreement captioned "Confidentiality and Nondisclosure Related to Reapportionment." The secrecy agreement indicated that McLeod had "instructed" Mr. Ottman to meet with certain members of the Senate to discuss the reapportionment process and that said conversations were to be considered subject to the attorney client and attorney work product privileges. Each of the 17 senators signed the secrecy agreements between April 6, 2011, and May 10, 2011, and each thereby agreed not to disclose the fact and/or contents of the discussions or any draft documents within their possession related to reapportionment. The individual meetings occurred at Mr. Ottman's office at Michael, Best and Friedrich. Attached to this verified complaint as Attachment C are true and accurate copies of the 17 secrecy agreements signed by the Republican senators.
10. Under the direction and supervision of Mr. McLeod, Adam Foltz met with 58 Republican members of the Wisconsin State Assembly and asked that each representative sign a secrecy agreement captioned "Confidentiality and Nondisclosure Related to Reapportionment." The secrecy agreement indicated that McLeod had "instructed" Mr. Foltz to meet with certain members of the Assembly to discuss the reapportionment process and that said conversations were to be considered subject to the attorney client and attorney work product privileges. Each of the 58 representatives signed the secrecy agreements between March 31, 2011 and June 2, 2011, and each thereby agreed not to

disclose the fact and/or contents of the discussions or any draft documents within their possession related to reapportionment. The individual meetings occurred at Mr. Foltz's office at Michael, Best and Friedrich. Attached to this verified complaint as Attachment D are true and accurate copies of the 58 secrecy agreements signed by the Republican representatives.

11. On June 19, 2011, Adam Foltz sent a memorandum to each of the 58 Republican representatives who had signed a secrecy agreement with a map and description of their reapportioned district, including a comparison of vote totals under the old district and under the new district for Scott Walker in 2010, JB Van Hollen in 2010 and 2006, John McCain in 2008 and George Bush in 2004. The memorandum was marked "privileged and confidential" and was subject to the secrecy agreement. True and accurate copies of the e-mails and maps are attached to this verified complaint as Attachments E.
12. On June 20, 2011, Adam Foltz drafted a document captioned "General Talking Points" which he described during his sworn deposition testimony on February 1, 2012, as talking points to guide the discussion at each of the individual meetings he had with each member of the Assembly who had previously signed a secrecy agreement. The talking points memo stated that the redistricting bill was a "placeholder map" and that "if the Senate comes back in the majority, we may come back and adjust." Mr. Foltz testified at his deposition that the preceding sentence was referring to the then pending recall elections that were scheduled for August 9, 2011. The talking points memo also stated that "Public comments on this map may be different than what you hear in this room. Ignore the public comments." The talking points memo then explicitly stated that the previously signed secrecy agreement applied to the individual meeting between Mr. Foltz

and each individual Republican representative. Mr. Foltz testified that he met individually with each Republican representative at Michael Best & Friedrich between June 20, 2012, and July 7, 2012. The purpose of each individual meeting was to obtain the agreement of each Republican representative to vote in support of Act 43. A copy of the "General Talking Points" document is attached to this verified complaint as Attachment B.

13. Tad Ottman conducted similar individual meetings with each senator who had previously signed a secrecy agreement with the intent to obtain the agreement of each Republican senator to vote in support of Act 43.
14. That as a direct result of the secrecy agreements entered into amongst the Republican members of the legislature, the legislative process concerning the legislative reapportionment was conducted in secret and out of the public view and the view of other legislators at the private law offices of Michael, Best & Friedrich, LLP. As facilitated by Mr. McLeod, a secret agreement was achieved amongst a majority of legislators to vote in favor of Act 43. The individual secret meetings at the law office of Michael Best, & Friedrich described in paragraphs 12 and 13 constituted a walking quorum in violation of the Open meetings Law and Article IV, § 10 of the Wisconsin Constitution.
15. The manifest purpose of Article IV, § 10, of the Wisconsin Constitution is to prevent state legislative business from being conducted in secret except in extremely limited circumstances, none of which would apply to this case. *See State v. Fitzgerald*, 2011 WI 43, ¶¶ 13, 51, 67, 334 Wis.2d 70, 78, 91, 95 (2011).
16. The public policy behind the Wisconsin Open Meetings Law as stated in § 19.81, Wis. Stats., is as follows:

“In recognition of the fact that a representative government of the American type is dependent upon an informed electorate, it is declared to be the policy of this state that the public is entitled to the fullest and most complete information regarding the affairs of government as is compatible with the conduct of government business.”

“To implement and insure the public policy herein expressed, all meetings of all state and local governmental bodies shall be publically held in places reasonably accessible to members of the public and shall be open to all citizens at all times unless otherwise expressly provided by law.”

“In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, *it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter.*”

17. In *State v. Fitzgerald*, 2011 WI 43, ¶¶ 13, 51, 67, 334 Wis.2d 70, 78, 91, 95 (2011), the Wisconsin Supreme Court limited judicial review of legislative compliance with the Open Meetings Law to cases such as this in which the conduct of the legislature also violates Article IV, § 10 of the Wisconsin Constitution.
18. The secret agreement to plan, negotiate and vote for Act 43 was achieved through a walking quorum of individual secret meetings described in paragraphs eight through fourteen above, and as a result produced a predetermined outcome, thus rendering the publicly held meetings a mere formality. *See State ex rel Lynch v. Conta*, 71 Wis.2d 662, 687 (1976); *State ex rel Newspapers v. Showers*, 135 Wis.2d 77, 92 (1987).
19. The secret agreement to plan, negotiate and vote for Act 43 was achieved through a walking quorum of individual secret meetings described in paragraphs eight through fourteen above, did not constitute a partisan caucus within the meaning of § 19.87(3), Wis. Stats., because the secret agreements and secret meetings were directed, coordinated, and supervised by Eric McLeod, who was paid by the taxpayers and was

operating as private outside counsel representing the entire Wisconsin State Senate and Assembly.

20. All the conduct of Jeff Fitzgerald, Scott Fitzgerald, the other legislators who signed secrecy agreements and participated in secret meetings which were facilitated, coordinated and supervised by Eric McLeod, and Adam Foltz, and Tad Ottman described in paragraphs eight through nineteen above was knowing conduct within the meaning of §19.96, Wis. Stats., and as such is subject to the forfeitures described in said subchapter.
21. The blatant egregiousness of the intentional effort by Scott Fitzgerald and Jeff Fitzgerald to hide from the public the true nature of the secret redistricting process under the guise of a bogus cloak of attorney client privilege and through the individual secrecy agreements between each individual Republican legislator and the attorney hired on the pretext of representing the entire legislature at the expense of all the taxpayers of the state is so repugnant to the public policy of the State of Wisconsin as expressed in Article IV, § 10 of the Wisconsin Constitution and in §19.81, Wis. Stats, that the public interest in enforcing the state constitution and the Open Meetings Law far outweighs any interest in maintaining the validity of Act 43. Accordingly, the overwhelming interest of the taxpayers and voters of the State of Wisconsin support invalidation of Act 43 pursuant to §19.97(3), Wis. Stats.
22. This verified complaint is made to the District Attorney of Dane County, Wisconsin under §§ 19.97(1), (2), and (3), Wis. Stats., which authorize the district attorney of the county in which the violation takes place to file an action to recover the forfeiture provided in Wis. Stat. Sec. 19.96, Wis. Stats., and to void the action taken in violation of the statute and the state constitution.

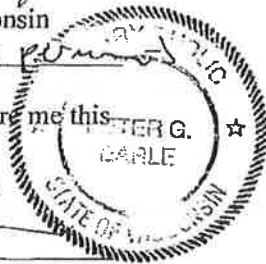
Christine Neumann Ortiz, in her individual capacity, being first duly sworn on oath deposes and says that she has read the foregoing complaint and that, based on her personal knowledge, the contents of the complaint are true.

Christine Neumann Ortiz

Notary Public, State of Wisconsin

My Commission Expires is permanent

Subscribed and sworn to before me this
5th day of February, 2012



[Signature]