RECEIVED
01-22-2013
CLERK OF COURT OF APPEALS
OF WISCONSIN

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
Appeal No. 2012-AP-002067

Madison Teachers, Inc., Peggy Coyne,
Public Employees Local 61, AFL-CIO
and John Weigman

Plaintiffs-Respondents,

v.

Scott Walker, James R. Scott, Judith
Neumann, and Rodney G. Pasch,

Defendants-Appellants.

On Appeal from the Circuit Court for Dane County
The Honorable Juan B. Colas Presiding
Circuit Court Case No. 2011-CV-003774

REPLY BRIEF OF DEFENDANTS-APPELLANTS

J.B. VAN HOLLEN,
Attorney General
Kevin M. St. John
Deputy Attorney General
Steven P. Means
Executive Assistant Attorney
General
Steven C. Kilpatrick
Assistant Attorney General
WI Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
Phone: 608.266.1792
Counsel for all Defendants-Appellants

MICHAEL BEST &
FRIEDRICH LLP
Joseph Louis Olson
Michael P. Screnock
Post Office Box 1806
Madison, WI 53701-1806
Phone: 608.257.3501
Co-Counsel for Defendant-Appellant, Scott Walker

TABLE OF CONTENTS

ARGUMENT 1

I. MERA DOES NOT VIOLATE PLAINTIFFS' RIGHT OF ASSOCIATION 1

A. Collective Bargaining Is Not A Protected Activity 1

B. MERA Does Not Burden or Otherwise Penalize the Exercise of Plaintiffs' Associational Rights 6

1. MERA's Requirement that Collectively Bargained Wage Increases Exceeding the CPI be Ratified by Referendum Is Not Triggered by Protected Activity 7

2. MERA Does Not Financially Penalize Employees for Joining a Union 7

a. The Prohibition on Fair Share Agreements is not a Penalty...................................... 8

b. Plaintiffs have no Right to Payroll Deductions 9

c. The Annual Certification Provisions are not a Penalty.................................... 10

3. Plaintiffs' Cumulative Effect Theory is Unworkable 11

C. MERA Survives Rational Basis Review........ 11

II. PLAINTIFFS' EQUAL PROTECTION CLAIM FAILS 12

III. WIS. STAT. § 62.623 DOES NOT VIOLATE THE HOME RULE AMENDMENT. 12

A. Section 62.623 Is Uniform; Therefore, It Does Not Violate The Home Rule Amendment 12

TABLE OF CONTENTS

Page

1. Home Rule Authority Is Bounded By Uniform Enactments Of The Legislature 13

2. *Van Gilder, Thompson* And *West Allis* Have Not Been Overruled 14

3. *Roberson v. Milwaukee County* Is Not Distinguishable 16

B. Section 62.623 Is A Matter Of Statewide Concern 16

CONCLUSION 17

TABLE OF AUTHORITIES

Cases **Page(s)**

Arkansas State Highway Employees Local 1315 v. Kell,
628 F.2d 1099 (8th Cir. 1980) 9

Board of Regents v. Wisconsin Personnel Comm'n,
103 Wis. 2d 545, 309 N.W.2d 366 (Ct. App. 1981) 5

Cook v. Cook,
208 Wis. 2d 166, 560 N.W.2d 246 (1997) 5

Dept. of Admin. v. Wis. Employment Relations Comm'n,
90 Wis. 2d 426, 280 N.W.2d 150 (1979) 5

Doepke-Kline v. Labor & Indus. Review Comm'n,
2005 WI App 209, 287 Wis.2d 337, 704 N.W.2d 605 .... 14, 15

Indianapolis Educ. Ass'n v. Lewallen,
72 L.R.R.M. 2071 (7th Cir. 1969) 5

Johnson Controls, Inc. v. Employers Ins. of Wausau,
2003 WI 108, 264 Wis.2d 60, 665 N.W.2d 257 14

Knox v. Service Employees Int'l Union,
132 S. Ct. 2277 (2012) 8

Lawson v. Housing Authority,
270 Wis. 269, 70 N.W.2d 605 (1955) 6

Minnesota State Bd. for Community Colleges v. Knight,
465 U.S. 271 (1984) 4

Regan v. Taxation With Representation of Washington,
461 U.S. 540 (1983) 10

TABLE OF AUTHORITIES

Page

Roberson v. Milwaukee County,
2011 WI App 50, 332 Wis.2d 787, 798 N.W.2d 256 16

Roberts v. United States Jaycees,
468 U.S. 609 (1984) 1

Sauk County v. Gumz,
2003 WI App 165, 266 Wis.2d 758, 669 N.W.2d 509 10

SCEA v. Campbell,
883 F.2d 1251 (4th Cir. 1989) 9, 10

Smith v. Arkansas State Highway Employees,
441 U.S. 463 (1979) 4, 5

State ex rel. Michalek v. LeGrand,
77 Wis. 2d 520, 253 N.W.2d 505 (1974) 14, 15

State v. Annala,
168 Wis. 2d 453, 484 N.W.2d 138 (1992) 12

Thompson v. Kenosha County,
64 Wis. 2d 673, 221 N.W.2d 845 (1974) 13, 14

Toledo Area AFL-CIO Council v. Pizza,
154 F.3d 307 (6th Cir. 1998) 9

Van Gilder v. Madison,
222 Wis. 58, 267 N.W.2d 25 (1936) 13, 14

West Allis v. Milwaukee County,
39 Wis. 2d 356, 159 N.W.2d 36 (1968) 13, 14

Winston-Salem/Forsyth County Unit of N.C. Ass'n of Educ. v. Phillips,
381 F. Supp. 644 (M.D.N.C. 1974) 3, 4, 5

Ysursa v. Pocatello Educ. Ass'n.,
555 U.S. 353 (2009) 13, 14

TABLE OF AUTHORITIES

Page

STATUTES

Wis. Stat. § 62.623 .... 12, 16

Wis. Stat. § 111.70(1)(a) 4

Wis. Stat. § 111.70(1)(b) 3

Wis. Stat. §§ 111.70(4)(d)1 .... 3, 8, 9

Wis. Stat. § 11.70(4)(d)2.a 3

OTHER AUTHORITIES

C. Silverman, Legal Comment, *Municipal Home Rule*,
The Municipality, 241 (July 2009 14

ARGUMENT

I. MERA DOES NOT VIOLATE PLAINTIFFS' RIGHT OF ASSOCIATION.

A. Collective Bargaining Is Not A Protected Activity.

To state an associational claim, Plaintiffs must demonstrate that MERA infringes their "right to associate for the purpose of engaging in those activities protected by the First Amendment – speech, assembly, petition for the redress of grievances…." *Roberts v. United States Jaycees*, 468 U.S. 609, 618 (1984). Plaintiffs' claim fails because MERA does not prevent any employee or group of employees from associating, speaking or petitioning their government or from choosing a representative to speak and petition on their behalf. And, nothing in MERA prevents the government, in its discretion, from listening to employee speech and petitions and considering them when setting policy.

In an effort to manufacture a claim Plaintiffs attempt to conflate their constitutional right to associate with a claim that collective bargaining (or at least some undefined level of collective bargaining) is guaranteed by the state or federal constitutions. Below, Plaintiffs articulated this as the right to "associate for the purpose of participating in collective

bargaining." (App. 262.) Defendants explained that such a claim was necessarily premised on the idea that there is a constitutional right to collective bargaining but that courts have made clear that no such constitutional right exists. (Brief, pp. 12-21).

In Response, Plaintiffs rely on loose language in an effort to recast their claim. They use the words "represented" and "collective bargaining unit" in such a way as to imply that "represented" means "union membership" and that "collective bargaining unit" means "union." From there, Plaintiffs claim MERA "heavily penalizes" them for exercising their right to "associate in a bargaining unit and select a single agent to represent them…" at the bargaining table. (Response, p. 16).

It appears the obvious must be stated. A union and a "collective bargaining unit" are not the same thing. A union is a group of employees who voluntarily associate for the purpose of advocating on employment issues. A collective bargaining unit, however, is an involuntary grouping together of employees the government determines have enough common characteristics "as to be appropriate for the purpose

of collective bargaining." Wis. Stat. §§ 111.70(1)(b) & (4)(d)2.a.

Likewise, "represented" does not mean an employee is a member of a union. Instead, in the context of collective bargaining, it means that the employee is a member of a collective bargaining unit that has certified an exclusive bargaining agent pursuant to the statutory process. Wis. Stat. §§ 111.70(4)(d)1. Indeed, if a bargaining agent is elected every employee in the bargaining unit is represented whether they want representation or not. *Id.*

Properly understanding these terms makes clear that Plaintiffs' claim is nothing more than an attempt to constitutionalize public sector collective bargaining. This attempt fails because it is based on a fundamental misunderstanding of what public employee collective bargaining is.

Public sector collective bargaining is not an exercise of the employees' right to associate, speak or petition. Instead, it is a legislative choice to share decision-making authority over public employment policy with employee representatives. *Winston-Salem/Forsyth County Unit of N.C. Ass'n of Educ. v. Phillips*, 381 F. Supp. 644, 648 (M.D.N.C.

1974). Mechanically, that decision-making authority is shared via the self-imposed obligation to bargain with the employees' certified bargaining agent "in good faith, with the intention of reaching an agreement." Wis. Stat. § 111.70(1)(a). How much decision-making authority to share (if any), and with whom, are legislative choices. *Phillips*, 381 F. Supp. at 648 ("[t]he actual decision of how to accommodate the public employees in the decision-making process…is a legislative decision"); *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271, 288 (1984)(government is free to "choose its advisers").

The Supreme Court has clearly marked the line between constitutionally protected activities and the statutorily granted privilege of collective bargaining:

> The public employee surely can associate and speak freely and petition openly, and he is protected by the First Amendment from retaliation from doing so. But the First Amendment does not impose any affirmative obligation on the government to listen, to respond or, in this context, to recognize the association and bargain with it.

Smith v. Arkansas State Highway Employees, 441 U.S. 463, 465 (1979).

Accordingly, it is not surprising that no party (or non-party) has been able to identify a single case holding public

employees have a constitutional right to compel their governmental employer to bargain with them or their agent. Instead, such claims have been uniformly rejected. *See, Dept. of Admin. v. Wis. Employment Relations Comm'n,* 90 Wis.2d 426, 430, 280 N.W.2d 150 (1979); *Board of Regents v. Wisconsin Personnel Comm'n,* 103 Wis.2d 545, 556, 309 N.W.2d 366 (Ct. App. 1981); *Smith*, 441 U.S. at 465; *Indianapolis Educ. Ass'n v. Lewallen*, 72 L.R.R.M. 2071, 2072 (7th Cir. 1969); *Phillips*, 381 F. Supp. at 648.

That Plaintiffs understand their claim must fail is demonstrated by their plea that this Court find greater rights in the Wisconsin Constitution than courts have recognized in the federal constitution. (Response, pp. 20-21). However, the constitutional status of public employee collective bargaining not an open question and this Court is bound by the answer. *Dept. of Admin.,* 90 Wis.2d at 430 ("There is no constitutional right of state employees to bargain collectively"); *Cook v. Cook*, 208 Wis.2d 166, 560 N.W.2d 246 (1997)("The supreme court is the only state court with the power to overrule … previous supreme court case.")

B. **<u>MERA Does Not Burden or Otherwise Penalize the Exercise of Plaintiffs' Associational Rights</u>.**

Faced with the reality that there is no actual infringement of their associational rights, Plaintiffs ask this Court to apply the holding of *Lawson v. Housing Authority*, 270 Wis. 269, 70 N.W.2d 605 (1955) and find MERA is an unconstitutional penalty on the exercise of their associational rights. Defendants discussed the various reasons that *Lawson* has no application to this case at length in their opening brief. (Brief, pp. 26-30). Plaintiffs ignore that analysis.

As Plaintiffs note, *Lawson* (in its broadest reading) holds that, "Even when citizens have no constitutional right to a legislatively-conferred benefit, they cannot be required as a condition of receiving that benefit to surrender constitutional rights …". (Response, p. 22).

Lawson does not apply here. As explained above nothing in Act 10 requires Plaintiffs to surrender any constitutional rights in order gain the statutory benefit of collective bargaining. Further, a review of the challenged sections demonstrates that none of MERA's provisions penalize anyone for exercising their associational rights.

1. MERA's Requirement that Collectively Bargained Wage Increases Exceeding the CPI be Ratified by Referendum Is Not Triggered by Protected Activity.

Plaintiffs claim that requiring referendum approval of base wage increases above the CPI penalizes employees for joining a union. This is incorrect. Under MERA employees who choose to join a union are treated exactly the same as employees who do not. Unionized and non-unionized employees without a certified bargaining agent may receive wage increases exceeding the CPI without the need for a referendum. Likewise, unionized and non-unionized employees who are represented by an exclusive bargaining agent must have bargained for pay increases that exceed CPI approved by the citizenry.

2. MERA Does Not Financially Penalize Employees for Joining a Union.

Plaintiffs claim that MERA's prohibition on fair-share agreements and payroll dues deductions and the requirement that unions stand, and pay, for annual recertification elections

financially penalizes employees for joining a union. This is incorrect.[1]

a. The Prohibition on Fair Share Agreements is not a Penalty.

Plaintiffs claim the prohibition on forcing non-union employees in the collective bargaining unit to pay dues penalizes unions that also serve as certified bargaining agents. Plaintiffs argue that because the union must "bear the full cost of representing the entire bargaining unit – which may include employees who are not union members" those employees who do join must bear the cost of those employees who do not join. (Response, pp. 28-30).

Plaintiffs argument ignores the fact that fair-share fees are not constitutionally required; rather, the Supreme Court has seriously questioned whether they are permissible. *See e.g. Knox v. Service Employees Int'l Union*, 132 S. Ct. 2277, 2289-91 (2012).

Additionally, Plaintiffs have never explained or quantified the supposed additional costs of bargaining for non-union employees. Fair-share fees are calculated by

---

[1] Notably, Plaintiffs have chosen to simply ignore the relevant U.S. Supreme Court precedent that establishes that Plaintiffs do not have any First Amendment right to payroll dues deductions or to compel non-members to pay fair-share fees. (Brief, §§ III. A. & B.)

dividing the cost of bargaining by the number of employees in the unit. The total cost of bargaining is not dependent on the number of non-unionized versus unionized employees.

Indeed, MERA does not impose any obligations on the bargaining agent vis-a-vis non-union employees. Section 111.70(4)(d)(1) states that a certified bargaining agent is the representative of the entire unit for bargaining purposes. *Id.* But MERA does not contain any requirement that certified agents meet with non-union members or take their ideas or concerns into account. Instead, the deal struck by the agent is forced upon them whether they want it or not.

b. Plaintiffs have no Right to Payroll Deductions

Plaintiffs claim that the ban on payroll deductions is an effort to weaken unions' effectiveness. This is an argument that has been repeatedly rejected. *See Ysursa*, 555 U.S. at 359-60; *Toledo Area AFL-CIO Council v. Pizza*, 154 F.3d 307, 322 (6th Cir. 1998); *SCEA v. Campbell*, 883 F.2d 1251, 1257 (4th Cir. 1989); *Arkansas State Highway Employees Local 1315 v. Kell*, 628 F.2d 1099, 1102-04 (8th Cir. 1980). The Constitution does not require the government to subsidize unions' or their members' First Amendment

activity. *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 549 (1983)("a legislature's decision not to subsidize the exercise of a fundamental right does not infringe the right…"). While the "loss of payroll deductions may economically burden the [union] and thereby impair its effectiveness, such a burden is not constitutionally impermissible." *SCEA*, 883 F.2d at1256.

c. The Annual Certification Provisions are not a Penalty

Plaintiffs also claim that the requirement that they stand for and pay the costs of an annual certification election is a financial penalty for engaging in protected activity. It is not. The outcome of a certification election has no bearing on whether an employee has or can join a union or whether the union may petition the government on behalf of it is members. Likewise, a failure to garner a majority does not dissolve the union. Instead, the election determines only who, if anyone, is granted the unique power to compel the governmental employer to bargain with it while simultaneously barring all others from even attempting to bargain. That the entity who seeks this preferred status is required to pay for the costs of the election is not novel. *Sauk*

County v. Gumz, 2003 WI App 165, ¶ 49, 266 Wis.2d 758, 669 N.W.2d 509.

3. Plaintiffs' Cumulative Effect Theory is Unworkable.

Tacitly acknowledging that none of the forgoing provisions actually burden their associational rights, Plaintiffs' argue that the cumulative effect of MERA's provisions constitute an impermissible burden on their associational rights. (Response, p. 25) Plaintiffs, however, leave the parameters of this theory wholly undefined. Following their logic to its natural endpoint, any limitation on what subjects can be bargained or the right of a union to be the certified bargaining agent would be an impermissible constraint. This cannot be right. Certification mechanisms and prohibited subjects of bargaining have been hallmarks of collective bargaining since its inception.

C. MERA Survives Rational Basis Review.

Plaintiffs have failed to articulate a cognizable First Amendment claim; thus, MERA need only survive rational basis reveiw. *Ysursa*, 555 U.S. at 359. Plaintiffs have conceded that MERA survives. (Response, p. 39; App. 263).

II. PLAINTIFFS' EQUAL PROTECTION CLAIM FAILS.

Plaintiffs argue that strict scrutiny should apply based on their belief that MERA interferes with the exercise of their associational rights. (Response, p. 44; App. 152-153.) Because MERA does not, Plaintiffs' equal protection claim is subject only to rational basis review. *State v. Annala*, 168 Wis.2d 453, 468, 484 N.W.2d 138 (1992). Plaintiffs have conceded that MERA survives that standard. (Response, p. 39; App. 263).

III. WIS. STAT. § 62.623 DOES NOT VIOLATE THE HOME RULE AMENDMENT.

Wisconsin Stat. § 62.623 does not violate the Home Rule Amendment for two reasons: (1) it is part of an act that uniformly affects every city and village,[2] and (2) public employee pensions are a matter of statewide concern.

A. Section 62.623 Is Uniform; Therefore, It Does Not Violate The Home Rule Amendment.

It is settled law that uniform laws do not violate the Home Rule Amendment. Plaintiffs argue, however, that a law must be both uniform and a matter of statewide concern

[2] Plaintiffs have not contested that section 62.623 is part of a uniform regulation. *See* Brief, pp. 44-45.

to survive. This is an incorrect statement of the law, and in order to accept it, this Court would have to dramatically expand the breadth of Home Rule authority, find that the Wisconsin Supreme Court overruled settled Home Rule jurisprudence *sub silentio* and ignore a recent decision of this Court. This Court should not take such drastic action.

1. Home Rule Authority Is Bounded By Uniform Enactments Of The Legislature.

Plaintiffs contend that the Legislature is forever barred from regulating local affairs. This is not the law. The Home Rule Amendment:

> clearly contemplates legislative regulation of municipal affairs, and there was no intention on the part of the people in adopting the home-rule amendment to create a state within a state, an *imperium in imperio.*

Van Gilder v. Madison, 222 Wis. 58, 81, 267 N.W.2d 25 (1936). Instead, the only limitation on legislative regulation of local affairs is that such regulation must "affect[] with uniformity every city." *Id.* at 80-81, 84.

The Supreme Court has been consistent on this point. *See Thompson v. Kenosha County*, 64 Wis.2d 673, 686, 221 N.W.2d 845 (1974)("statutes affecting the right of cities and villages to determine their own affairs must affect all cities and villages uniformly."); *West Allis v. Milwaukee County*, 39

Wis. 2d 356, 366, 159 N.W.2d 36 (1968)("If, however, the matter enacted by the legislature is primarily of local concern, a municipality can escape the strictures of the legislative enactment unless the enactment applies with uniformity to every city and village."); *see also* C. Silverman, Legal Comment, *Municipal Home Rule*, The Municipality, at 241 (July 2009) ("Finally, if the legislature elects to deal with the local affairs and government of a city or village, its act is subordinate to a charter ordinance unless the legislature's act uniformly affects every city or village across the state.").

2. *Van Gilder*, *Thompson* And *West Allis* Have Not Been Overruled.

Plaintiffs claim that *State ex rel. Michalek v. LeGrand*, 77 Wis.2d 520, 253 N.W.2d 505 (1974) overturned the operative langue of *Van Gilder*, *Thompson* and *West Allis*– *sub silentio*.[3] However, *Michalek* is not in discord with the other cases. *See Doepke-Kline v. Labor & Indus. Review Comm'n,* 2005 WI App 209, ¶ 19, 287 Wis.2d 337, 704

---

[3] As Plaintiffs note, five of the seven members of the *Michalek* Court were on the *West Allis* Court. It is not likely that five justices would overturn a case they decided only six years earlier without comment. *Johnson Controls, Inc. v. Employers Ins. of Wausau*, 2003 WI 108, 264 Wis.2d 60, 116, 665 N.W.2d 257 ("A court's decision to depart from precedent is not to be made casually. It must be explained carefully and fully to insure that the court is not acting in an arbitrary or capricious manner.")

N.W.2d 605 ("When supreme court decisions appear to conflict, [lower courts] are to harmonize them if [possible]…").

Michalek did not discuss uniformity at any point in its analysis because uniformity was irrelevant to the case. *Michalek* involved a challenge to the constitutionality of a city ordinance – not a statute. A landlord claimed the ordinance was preempted by several statutes. The Court clarified that the preemption analysis would have to include an analysis of whether the matter was of statewide concern or local concern under the Home Rule Amendment. The Court found that the ordinance was a matter of local concern; however, the Court did not strike down the state statutes. Instead, it held that the ordinance and the statutes did not conflict. *Id.* at 530. Thus, a uniformity analysis was not necessary.

Because the *Michalek* did not discuss uniformity, the court's language includes an implied modifier. For example, *Michalek* states: "As to an area solely or paramountly in the constitutionally protected areas of 'local affairs and government,' the state legislature's delegation of authority to legislate is unnecessary and its preemption or ban on local

legislative action would be unconstitutional." Adding the implied "unless future legislation affects every city or village with uniformity" brings the cases into harmony.

3. *Roberson* v. *Milwaukee County* Is Not Distinguishable.

This Court recently explained that uniformity is dispositive of whether a statute violates a municipality's Home Rule powers. *Roberson v. Milwaukee County*, 2011 WI App 50, ¶ 21, 332 Wis.2d 787, 798 N.W.2d 256 ("if a legislative enactment uniformly affects every county, then it is a matter of statewide concern.").

That *Roberson* dealt with a county's statutory home rule authority is no distinction. Rather, this Court reached this result because it "is consistent with our supreme court's interpretation of similar constitutional language." *Id.* at ¶¶ 14-15 (citing *Thompson*).

B. Section 62.623 Is A Matter Of Statewide Concern.

As explained in Defendants' opening brief, public employee benefits are a matter of statewide concern. Plaintiffs claim that state law regarding employee benefits may only operate to increase benefits. They claim state laws that reduce benefits are void as interfering with matters of

local concern while statutes increasing benefits are allowable as matters of statewide concern. Such a conclusion is prohibited by both logic and commonsense.[4]

CONCLUSION

This Court should reverse the Circuit Court.

Dated this 14th day of January, 2013.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General

By:_________________________________
Kevin M. St. John, SBN 1054815
Deputy Attorney General
Steven P. Means, SBN 1011355
Executive Assistant Attorney General
Steven C. Kilpatrick, SBN 1025452
Assistant Attorney General
Wisconsin Department of Justice
Post Office Box 7857
Madison, WI 53707-7857
Phone: 608.266.1792
Counsel for All Defendants

MICHAEL BEST & FRIEDRICH LLP
Joseph Louis Olson, SBN 1046162
Michael P. Screnock, SBN 1055271
One South Pinckney Street, Suite 700
Post Office Box 1806
Madison, WI 53701-1806
Phone: 608.257.3501
Co-Counsel for Defendant,
Governor Scott Walker

[4] Plaintiffs repeat the constitutional impairment arguments they made below. Defendants addressed those arguments in their opening brief.

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a reply brief produced with a proportional serif font. The length of this brief is 2,996 words.

Dated: January 14, 2013

____
Steven C. Kilpatrick

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: January 14, 2013

____
Steven C. Kilpatrick