REVISED REDACTED VERSION

IN THE SUPREME COURT OF WISCONSIN
Case Nos. 2013AP2504 - 2508-W
Case No. 2014AP296-OA
Case Nos. 2014AP417 - 421-W

Case Nos. 2013AP2504 - 2508-W

STATE OF WISCONSIN ex rel. THREE UNNAMED PETITIONERS,
Petitioner,
v.

THE HONORABLE GREGORY A. PETERSON, John Doe Judge,
THE HONORABLE GREGORY POTTER, Chief Judge, and
FRANCIS D. SCHMITZ, Special Prosecutor
Respondents,

L.C. Nos. 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

BRIEF OF UNNAMED MOVANT NO. 3

SCHMITZ V. PETERSON ET AL.
CASE NOS. 2014AP417 – 421-W

(ADDRESSING ISSUE 14)

HANSEN REYNOLDS DICKINSON CRUEGER LLC
Timothy M. Hansen, SBN 1044430
James B. Barton, SBN 1068900
John P. Shanahan, SBN 1088868
316 N. Milwaukee St., Suite 200
Milwaukee, WI 53202

H.E. "Bud" Cummins
AR Bar No. 89010 (*pro hac vice*)
1818 N. Taylor St., Suite 301
Little Rock, AR 72207

Counsel for Unnamed Movant No. 3
in Case Nos. 2014AP417 – 421-W

[CAPTION CONTINUED ON FOLLOWING PAGE]

Case No. 2014AP296-OA

STATE OF WISCONSIN ex rel. TWO UNNAMED PETITIONERS,
Petitioner,

v.

THE Honorable GREGORY A. PETERSON, John Doe Judge, and
FRANCIS D. SCHMITZ, Special Prosecutor
Respondents,

L.C. Nos. 2012JD23, 2013JD1, 2013JD6, 2013JD9, 2013JD11

Case Nos. 2014AP417 - 421-W

STATE OF WISCONSIN ex rel. FRANCIS D. SCHMITZ, Special Prosecutor,
Petitioner,

v.

THE HONORABLE GREGORY A. PETERSON, John Doe Judge,
Respondent,

and

EIGHT UNNAMED MOVANTS,
Interested Parties.

L.C. Nos. 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions and Statutes

STATEMENT OF ISSUES FOR REVIEW

Unnamed Movant No. 3 in Case Nos. 2014AP417 – 421-W addresses the following issue as framed by the Court in its December 16, 2014 Order:

> 14. **Whether the affidavits underlying the warrants issued in the John Doe proceedings provided probable cause to believe that evidence of a criminal violation of Wis. Stat. §§ 11.27, 11.26(2)(a), 11.61(1), 939.31, and 939.05 would be found in the private dwellings and offices of the two individuals whose dwellings and offices were searched and from which their property was seized.**

The court of appeals did not address this issue. The John Doe judge answered no, when he ordered seized property returned in his January 10, 2014 order. Additionally, Unnamed Movant No. 3 addresses the threshold issue of whether John Doe judges generally, and Judge Kluka specifically, are sufficiently neutral and detached from the criminal investigations they oversee to issue valid warrants as required by the Fourth and Fourteenth Amendments.

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

This issue has state and constitutional importance. The Court should follow its usual practice, allowing oral argument and publishing its decision.

STATEMENT OF THE CASE

For the sake of efficiency, Unnamed Movant No. 3 in Case Nos. 2014AP417 – 421-W, [redacted], incorporates by reference the Statements of the Case submitted by all Unnamed Movants who are filing their respective briefs on or before February 2, 2015. In addition, [redacted] submits the following abridged statement of the case.

[redacted] is a non-profit organization that engages in issue advocacy specifically focusing on the well-being of American families. [redacted] was subpoenaed in connection with a John Doe proceeding [redacted] The Honorable Barbara A. Kluka, a reserve judge, was appointed as the John Doe judge to preside over this investigation.

On September 30, 2013, Judge Kluka issued five subpoenas to [redacted], its officers, and directors. (Joint App. 94-133.)[1] The subpoenas sought [redacted]

[1] "Joint App." refers to the unnamed movants' joint appendix.

(*Id.*) [redacted], its officers, and directors were required to respond to the subpoenas by October 29, 2013. (*Id.*)

Law enforcement officials did not wait until the subpoena return date to obtain [redacted] In addition to issuing these subpoenas, Judge Kluka also issued search warrants for the home of Unnamed Movant No. 6 and [redacted][2] as well as the home of Unnamed Movant No. 7. (Movants Nos. 6 and 7 App. at 30-33.)[3] A few days later, on October 3, 2013, law enforcement executed these search warrants during pre-dawn hours at the residences of these individuals. (Movants Nos. 6 and 7 App. at 34-38.)

During the search, investigators seized [redacted] (*Id.*) Additionally, law enforcement officials seized [redacted] (*Id.*)

[2] [redacted]

[3] "Movants Nos. 6 and 7 App." refers to the joint appendix filed by Unnamed Movants No. 6 and Unnamed Movant No. 7.

Less than thirty days after issuing these search warrants, however, Judge Kluka abruptly recused herself from the John Doe investigation. (Movants Nos. 6 and 7 App. at 148.) In her October 23, 2013 recusal order, Judge Kluka cites to [redacted] (*id.*), notwithstanding her obligation to set forth the reasons for her recusal. *See* Wis. Stat. § 757.19(5). [redacted] then moved to quash the subpoenas and also sought the return of property seized pursuant to the search warrant. Newly appointed John Doe Judge Peterson granted this motion to quash and ordered the return of this property.

ARGUMENT

(ISSUE 14)

I. THE SEARCH WARRANTS ISSUED IN THIS CASE ARE UNCONSTITUTIONAL BECAUSE THE MAGISTRATE WHO ISSUED THEM WAS NOT NEUTRAL AND DETACHED FROM THE INVESTIGATION, THE AFFIDAVITS SUPPORTING THE WARRANTS LACKED PROBABLE CAUSE, AND THE WARRANTS THEMSELVES DID NOT ADHERE TO THE PARTICULARITY REQUIREMENTS OF THE FOURTH AMENDMENT.

Despite holding in *State v. Cummings*, 199 Wis. 2d 721, 546 N.W.2d 406 (1996) that John Doe judges have the inherent authority to unilaterally issue search warrants to aid in the criminal inquests they oversee, this Court never considered whether this power runs afoul of the neutral and detached magistrate requirement of the Fourth Amendment. A good

faith basis exists to reexamine this Court's holding in *Cummings* because it violates this bedrock principle of the Fourth Amendment and conflicts with numerous decisions of the Supreme Court of the United States. *See, generally e.g., Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Lo-Ji Sales, Inc. v. New York*, 442 U.S. 319 (1979); *Connally v. Georgia*, 429 U.S. 245 (1977); *Shadwick v. City of Tampa*, 407 U.S. 345 (1972).

Moreover, the issuing magistrate in this case, Judge Kluka, [redacted] to recuse herself. This may have affected her neutrality and detachment, and hence, her ability to issue a valid warrant. *Compare* Wis. Stat. § 757.19(2) (outlining various bases for recusal) *with e.g., State v. Fremont*, 749 N.W.2d 234, 237-42 (Iowa 2008) (collecting cases holding that a judge lacks the ability to issue a warrant for many of the reasons described in Wis. Stat. § 757.19(2)).

Finally, even looking past these threshold considerations, the affidavits underlying these warrants lacked probable cause and the warrants themselves fell short of the particularity requirements mandated by the Fourth Amendment. (*See* Opening Br. of Unnamed Movant No. 6, which is adopted and incorporated by reference herein.) Accordingly, the Court should hold that the warrants issued by Judge Kluka are

unconstitutional and affirm Judge Peterson's Order to return the property that was seized pursuant to this unlawful search.

A. The Fourth Amendment's Warrant Requirement.

The Fourth Amendment prohibits unreasonable searches and seizures:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const. Amend. IV; *see also State v. Henderson*, 2001 WI 97, ¶ 17, n.4, 245 Wis. 2d 345, 629 N.W.2d 613 (stating that "Wisconsin's search and seizure provision, Article I, Section II of the state constitution, is substantively identical to the Fourth Amendment," and that interpretation of both constitutional provisions "has been consistent.") (citing *State v. Ward*, 2000 WI 3, ¶ 55, 231 Wis. 2d 723, 604 N.W.2d 517).

Relevant here, the "warrant clause [of this Amendment] provides [ ] particularized protections governing the manner in which search and arrest warrants are issued." *Henderson*, 2001 WI 97 at ¶ 19. The Supreme Court of the United States has interpreted this clause to require three things: "(1) prior

authorization by a neutral, detached magistrate; (2) a demonstration upon oath or affirmation that there is probable cause to believe that evidence sought will aid in a particular conviction for a particular offense; and (3) a particularized description of the place to be searched and items to be seized." *State v. Sveum*, 2010 WI 92, ¶ 20, 328 Wis. 2d 369, 787 N.W.2d 317 (citing *Dalia v. United States*, 441 U.S. 238, 255 (1979)) (further citations omitted).

1. The Neutral and Detached Magistrate Requirement.

The first requirement of the warrant clause is that "officers obtain prior judicial authorization for a search from a neutral, disinterested magistrate." *Henderson*, 2001 WI 97 at ¶ 19 (citing *Dalia*, 441 U.S. at 255). "The purpose of this rule 'is to interpose the impartial judgment of a judicial officer between the citizen and the police and also between the citizen and the prosecutor, so that any individual may be secure from an improper search.'" *Sveum*, 2010 WI 92 at ¶ 21 (quoting *State ex rel. White v. Simpson*, 28 Wis. 2d 590, 598, 137 N.W.2d 391 (1965)).

The neutral and detached magistrate requirement is the starting point in every review of probable cause; this threshold inquiry "protects citizens because 'the usual inferences which

reasonable men draw from evidence [are] drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Id.* (quoting *Johnson v. United States*, 333 U.S. 10, 14 (1948)).

Numerous "academic commentators have stated that the securing of a warrant from a 'neutral and detached' magistrate has evolved into the 'centerpiece,' 'cornerstone,' and 'critical protection' of the Fourth Amendment." *Fremont*, 749 N.W.2d at 238-39 (collecting articles). It has reached such a level of significance because it protects the target of a warrant from "the inherently vague concept of probable cause, the *ex parte* nature of the proceeding, and limited appellate review of probable cause determinations only for abuse of discretion." *Id.* at 237; *Sveum*, 2010 WI 92 at ¶ 25 (according "great deference to the warrant-issuing judge's determination of probable cause. . . .").

Whether a warrant-issuing magistrate is sufficiently neutral and detached from the criminal investigation has been analyzed under the separation of powers doctrine, *see Coolidge*, 403 U.S. at 450 (analyzing whether an attorney general was sufficiently detached from an investigation to be permitted to issue a search warrant), as well as under the principles of due

process, *see Connally*, 429 U.S. at 247-50 (relying on the Court's previous due process decisions in *Tumey v. Ohio*, 273 U.S. 510, 523, 531 (1927) and *Ward v. Village of Monroeville*, 409 U.S. 57, 59-60 (1972) to resolve a Fourth Amendment challenge to whether a magistrate was neutral and detached).

A magistrate lacks the requisite neutrality and detachment to issue a warrant when he or she:

(1) Is actively involved in the underlying criminal investigation, *see, e.g., Coolidge*, 403 U.S. at 450; *Lo-Ji Sales, Inc.*, 442 U.S. at 328; *Shadwick*, 407 U.S. at 350;

(2) Has any pecuniary interest in connection with the issuance of the search warrant, *see, e.g., Connally*, 429 U.S. at 249-50; or

(3) Has some demonstrable non-pecuniary interest that pervades his or her ability to balance the interests of the state and the target of the warrant, *see, e.g., State v. Burnam*, 672 P.2d 1366, 1368 (Or. App. 1983); *State v. Edman*, 915 A.2d 857, 867 (Conn. 2007); *Fremont*, 749 N.W.2d at 244.

Whether a magistrate possesses sufficient neutrality and detachment from an investigation, so as to vest him or her with authority to issue a valid warrant, is a "question of constitutional fact that [courts] review *de novo* without deference to the trial court." *State v. Jensen*, 2011 WI App 3, ¶ 95, 331 Wis. 2d 440, 794 N.W.2d 482 (citing *State v. McBride*, 187 Wis. 2d 409, 414, 523 N.W.2d 106 (Ct. App. 1994)).

2. The Probable Cause and the Particularity Requirements.

Additionally, "the officer seeking a warrant [must] demonstrate upon oath or affirmation probable cause to believe that the evidence sought will aid in a particular apprehension or conviction for a particular offense." *Henderson*, 2001 WI 97 at ¶ 19 (internal quotations omitted). The magistrate must then determine whether, "given all the facts and circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place." *Sveum*, 2010 WI 92 at ¶ 24 (quotations omitted).

Finally, the Fourth Amendment's Warrant Clause also mandates "that warrants [ ] particularly describe the place to be searched as well as the items to be seized." *Henderson*, 2001 WI 97 at ¶ 19 (quotation omitted). To satisfy this requirement, "the warrant must enable the searcher to reasonably ascertain and identify the things which are authorized to be seized." *State v. Noll*, 116 Wis. 2d 443, 450-51, 343 N.W.2d 391 (1984).

For additional legal authority and argument on these principles, [redacted] adopts and incorporates by reference the relevant portions of Unnamed Movant No. 6's Opening Brief, which asserts that the affidavits underlying the warrants lacked

probable cause and that the warrants themselves fell short of the particularity requirements of the Fourth Amendment.

B. A Good Faith Basis Exists to Reexamine *State v. Cummings* and Determine Whether the Fourth and Fourteenth Amendments Limit a John Doe Judge's Unilateral Ability to Issue Search Warrants in a John Doe Proceeding Over Which He or She Presides.

This Court held in *State v. Cummings*, 199 Wis. 2d 721, 546 N.W.2d 406 (1996) that John Doe judges have the inherent authority to issue search warrants in John Doe proceedings because "denying John Doe judges the ability to issue search warrants would seriously reduce the investigatory power of the John Doe proceeding." *Id.* at 733-35. Nowhere in its decision, however, did the Court address how the Fourth Amendment's neutral and detached requirement impacts the John Doe judge's unilateral authority to issue search warrants in connection with these proceedings. *See generally id.* Indeed, it appears that no Wisconsin court has considered the interplay between this constitutional mandate and its limitation on a John Doe judge's ability to issue search warrants while serving as the chief investigator in the same John Doe proceeding.

The dearth of case law addressing this issue is disconcerting given a John Doe judge's "extraordinary

authority" in presiding over these proceedings, *In re John Doe Proceeding*, 2003 WI 30, ¶¶ 52-54, 260 Wis. 2d 653, 660 N.W.2d 260, juxtaposed against the admittedly hazy line between that judge's role as a member of the judiciary and the investigatory power conferred upon him by operation of the John Doe statute, *State v. Washington*, 83 Wis. 2d 808, 825, 828, 266 N.W. 597 (1978) (stating that it is "neither possible nor practicable to categorize all governmental action as exclusively legislative, judicial, or executive," and conceding that the John Doe statute could be construed as "granting both judicial and quasi-executive powers to the John Doe judge.").

The *Washington* Court was explicit: a "John Doe [investigation] is, at its inception . . . an inquest for the discovery of crime in which the judge has significant powers." *Id.* at 822. Moreover, in the context of this "primarily investigative [ ] device," a John Doe investigation is not truly effective "unless both the district attorney and the magistrate are amenable to using their offices in furtherance of the investigation. . . ." *Id.* (quoting *State ex rel. Kurkierewicz v. Cannon*, 42 Wis. 2d 368, 376-77, 166 N.W.2d 255 (1969)). In other words, Wisconsin law grants the John Doe judge significant investigatory authority in conducting a John Doe proceeding to ferret out crime, even

working hand-in-hand with the State to carry out this inquest. *See id.*

Yet numerous Supreme Court decisions hold that a magistrate is not neutral and detached—and hence lacks the ability to issue a warrant—when he or she has some involvement in the investigation and/or prosecution of the person targeted by the warrant. *See generally Coolidge*, 403 U.S. at 450; *Lo-Ji Sales, Inc.*, 442 U.S. at 328; *Shadwick*, 407 U.S. at 350 (analyzing whether the record contains evidence of the issuing magistrate's "connection with any law enforcement activity or authority which would distort the independent judgment the Fourth Amendment requires.").

Thus, granting a John Doe judge the authority to unilaterally issue search warrants—when that judge also serves as chief investigator working with the state to carry out a criminal inquest—raises the specter that the judge lacks the neutrality and detachment required to issue a warrant under the Fourth Amendment. *See, e.g.*, *Coolidge*, 403 U.S. at 450 (holding that a state attorney general lacked neutrality to issue a warrant and stating that "there could hardly be a more appropriate setting than this for *a per se* rule of disqualification rather than a case-by-case evaluation of all the circumstances."); *Shadwick*, 407

U.S. at 350 ("Whatever else neutrality and detachment might entail, it is clear that they require severance and disengagement from activities of law enforcement."); *Lo-Ji Sales, Inc.*, 442 U.S. at 328 (holding that a warrant was invalid when it was "difficult to discern when [the magistrate] was acting as a 'neutral and detached' judicial officer and when he was one with the police and prosecutors in the executive seizure. . . ."); *cf. In re Murchison*, 349 U.S. 133, 137 (1955) ("A single 'judge-grand jury' is even more a part of the accusatory process than an ordinary lay grand juror [and] [h]aving been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused.")

This Court cannot cloak a John Doe judge with the quasi-executive authority to investigate crime while allowing him or her to retain the exclusively judicial authority to determine whether probable cause exists to issue a search warrant. *See United States v. U.S. Dist. Ct. for the Eastern Dist. of Mich.*, 407 U.S. 297, 317 (1972) (stating that "[t]he Fourth Amendment does not contemplate that executive officers of Government [are] neutral and detached magistrates . . . [and] those charged with this investigative and prosecutorial duty

should not be the sole judges of when to utilize constitutionally sensitive means in pursuing their tasks.")

A neutral and detached magistrate is the fulcrum that balances the interests of the accused against the interests of the state. *See Sveum*, 2010 WI 92 at ¶ 21. Conferring investigatory power on the magistrate issuing search warrants compromises the balance between these competing interests. Indeed, these powers—coupled with the judge's close, working relationship with the state, *see State ex rel. Kurkierewicz*, 42 Wis. 2d at 376-77, and the ability to order John Doe proceedings secret, *see* Wis. Stat. § 968.26(3)—lead to palpable and grave concern that the target of a warrant can be subjected to an unconstitutional search without the ability to sufficiently challenge whether the warrant was properly issued.

The Court's analysis in *Cummings* fails to acknowledge this constitutional safeguard. In fact, *no* Wisconsin case has addressed how the neutral and detached magistrate requirement impacts a John Doe judge's ability to independently make a probable cause determination while also serving as the lead investigator of the John Doe proceeding.[4]

[4] The court of appeal's recent decision in *State v. Rindfleisch*, 2014 WI App 121, --- N.W.2d ---, underscores the cursory manner in which courts have

While granting the John Doe judge this power may be convenient, "workable rules governing arrests, searches and seizures to meet the practical demands of effective criminal investigation" cannot trump such a core protection enshrined in the Constitution. *See Coolidge*, 403 U.S. at 452-54. As Justice Bradley admonished more than a century ago:

> It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

Boyd v. United States, 116 U.S. 616, 635 (1886).

To be clear, [redacted] is not suggesting that search warrants can never be issued in connection with a John Doe

---

disregarded this bedrock constitutional principle. In *Rindfleisch*, the court addressed the sufficiency of a warrant issued by a John Doe judge [redacted] *Id.* at ¶¶ 1-2. In discussing the neutral and detached requirement, the court perfunctorily concludes that the John Doe judge who issued the warrant was neutral and detached because of his distinguished career on the court of appeals. *Id.* at 25, n.4. But a judge's experience has no bearing on this inquiry; rather, the question is whether the John Doe judge has any "connection with [ ] law enforcement activity or authority which would distort the independent judgment the Fourth Amendment requires." *Shadwick*, 407 U.S. at 350.

proceeding—simply that they cannot be issued by a "single judge-grand jury," *In re Murchison*, 349 U.S. at 137, who quarterbacks the investigation to ferret out crime. *See In re John Doe Proceeding*, 2003 WI 30 at ¶¶ 52-54. Requiring that a search warrant be obtained from a *separate*, neutral and detached magistrate poses no restrictions on the investigation.

Indeed, search warrants can be issued in conjunction with grand jury proceedings, but grand juries do not determine probable cause to issue them. *See, e.g., United States v. Renzi*, Case No. 08-CR-212-TUC-DCB-(BPV), 2011 WL 7628538, *1, *8 (D. Ariz. Nov. 21, 2011) (stating that "a grand jury, while authorized to issue subpoenas, cannot authorize a search warrant.") (citing *In re Grand Jury Subpoenas Dated Dec. 10, 1987*, 926 F.2d 847, 854 (9th Cir. 1991)) (describing the distinction between grand jury subpoenas and search warrants). This is presumably why the John Doe statute makes no reference to issuing search warrants—it merely addresses the issuance of subpoenas. *See generally* Wis. Stat. § 968.26.

Accordingly, [redacted] submits that a good-faith basis exists to reexamine *Cummings* and determine whether the Fourth Amendment's Warrant Clause and the Fourteenth Amendment's Due Process Clause inhibit the ability of John

Doe judges to unilaterally issue search warrants in the John Doe proceedings over which they preside.

[redacted] recognizes that this issue is not completely framed in the Court's December 16, 2014 Order. Nonetheless, this issue is of great importance to the validity of the search warrants at issue in this case, which the Court is already considering. Indeed, Issue 14 in the Court's Order presupposes that this threshold constitutional requirement has been met. Should the Court wish to take up this matter, [redacted] is amenable to submitting supplemental briefing to resolve this discreet, yet extremely important constitutional issue, which has heretofore never been addressed by the Court.

C. Even Assuming that John Doe Judges Are Not Categorically Precluded From Issuing Search Warrants in Their Own Investigations, Judge Kluka Admitted [redacted], Which May Have Affected Her Neutrality and Detachment.

Section 757.19 of the Wisconsin Statutes sets forth the numerous bases that require a judge to recuse herself from a particular case. *See* Wis. Stat. § 757.19(2). Many of these bases of recusal also taint a judge's neutrality and detachment, which categorically precludes that judge from issuing a warrant. *Compare id.*, *with e.g.*, *Fremont*, 749 N.W.2d at 237-42 (collecting cases where a judge's pecuniary interest or personal bias

precluded that judge from issuing a valid warrant under the Fourth and Fourteenth Amendments).

Judge Kluka's recusal based on [redacted] provides *prima facie* evidence that the warrants were not issued by a neutral and detached magistrate. *See id.* Indeed, the onus falls on Judge Kluka to establish that the basis for her recusal did not affect her ability to issue the search warrants. *See* Wis. Stat. § 757.19(5) (stating that a judge must "file in writing the reasons" why she disqualified herself). But neither Judge Kluka nor the Special Prosecutor has provided any information supporting the basis for her recusal. Such a filing, however, must be included in the record. *See Washington*, 83 Wis. 2d at 824-25 ("[C]ommunications between the complainant or the prosecutor and the John Doe judge relating to the substance of the proceeding should be made part of the record.") (citations omitted).

To protect [redacted] and [redacted] constitutional rights, they are entitled to know what led Judge Kluka to recuse herself less than thirty days after issuing these search warrants. Indeed, this [redacted] may have compromised her ability to issue these search warrants at the outset. Accordingly, in the absence of any explained basis for her recusal, the warrants she

issued must be voided and the seized items immediately returned to their owners. At a minimum, however, Judge Kluka should comply with the mandates of Section 757.19(5) and furnish the reasons for her recusal.

II. ADOPTION AND INCORPORATION OF OTHER ARGUMENTS.

In addition to its argument addressing Issue 14, [redacted] adopts and incorporates by reference the following arguments:

Issues 1-5: Unnamed Movant No. 7
Issue 6: Unnamed Movant No. 1
Issue 7: Unnamed Movants Nos. 6 and 7
Issue 8: Unnamed Movant No. 1
Issue 9: Unnamed Movants Nos. 2 and 6
Issue 10: Unnamed Movants Nos. 1 and 6
Issues 11-13: Unnamed Movants Nos. 2 and 6
Issue 14: Unnamed Movants Nos. 6 and 7

[redacted] also adopts any additional arguments made by the above-referenced Unnamed movants to the extent they fall outside the ambit of the fourteen issues set forth in the Court's December 16, 2014 Order. Furthermore, [redacted] adopts any arguments presented in the briefs of Unnamed Movants 4, 5, and 8.

CONCLUSION

FOR THE FOREGOING REASONS, the Court should deem unconstitutional the warrants issued by Judge Kluka, and affirm Judge Peterson's order directing the seized items returned to their owners. The Court should also reconsider its decision in *Cummings* and address whether John Doe judges have the unilateral authority to issue search warrants in the John Doe proceedings over which they preside.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Dated: February 2nd, 2015.

HANSEN REYNOLDS DICKINSON CRUEGER LLC

By: _____

Timothy M. Hansen, SBN 1044430
E-mail: *thansen@hrdclaw.com*
James B. Barton, SBN 1068900
E-mail: *jbarton@hrdclaw.com*
John P. Shanahan, SBN 1088868
E-mail: *jshanahan@hrdclaw.com*
316 North Milwaukee St., Suite 200
Milwaukee, Wisconsin 53202
414-455-7676 Phone
414-273-8476 Facsimile

– and –

H.E. "BUD" CUMMINS
1818 N. Taylor, Suite 301
Little Rock, Arkansas 72207
Tel: 501-831-6125
Fax: 501-492-8401
bud@budcumminslaw.com
(*Pro hac vice*)

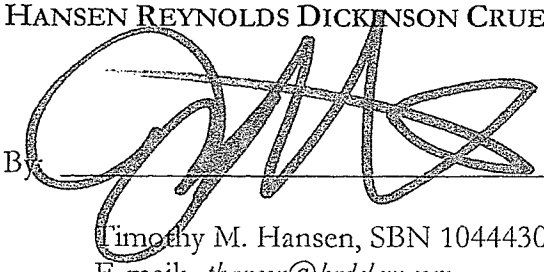
Attorneys for Unnamed Movant No. 3, in Case Nos. 2014AP417 – 421-W

CERTIFICATION FOR FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font, as modified by this Court's December 16, 2014 Order in the above-captioned matters. The length of this of the portions of this brief described in Wis. Stat. § 809.19(1)(d), (e), and (f) is 4068 words.

Dated: February 2nd, 2015.

HANSEN REYNOLDS DICKENSON CRUEGER LLC



By: _____

Timothy M. Hansen, SBN 1044430
E-mail: *thansen@hrdclaw.com*
James B. Barton, SBN 1068900
E-mail: *jbarton@hrdclaw.com*
John P. Shanahan, SBN 1088868
E-mail: *jshanahan@hrdclaw.com*
316 North Milwaukee St., Suite 200
Milwaukee, Wisconsin 53202
414-455-7676 Phone
414-273-8476 Facsimile

Attorneys for Unnamed Movant No. 3, in Case Nos. 2014AP417 – 421-W

CERTIFICATION UNDER RULE 809.19(12)

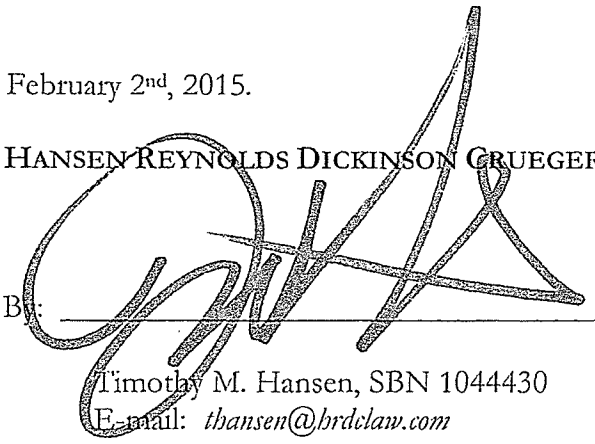
I hereby certify that:

I have submitted an electronic copy of this brief, excluding an appendix, which complies with the requirements of Wis. Stat. § 809.19(12). Electronic filing of a searchable PDF file here is pursuant to this Court' specific January 13, 2015 order governing filing in this case.

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

Dated: February 2nd, 2015.

HANSEN REYNOLDS DICKINSON CRUEGER LLC



By: _____

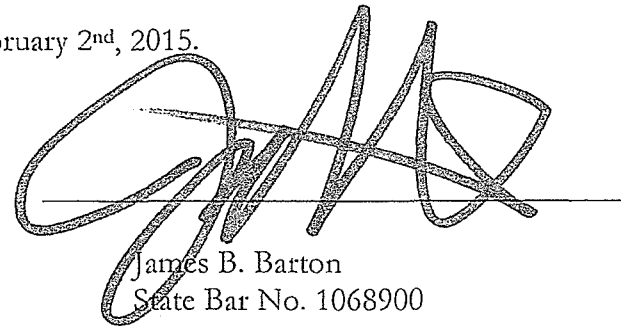
Timothy M. Hansen, SBN 1044430
E-mail: *thansen@hrdclaw.com*
James B. Barton, SBN 1068900
E-mail: *jbarton@hrdclaw.com*
John P. Shanahan, SBN 1088868
E-mail: *jshanahan@hrdclaw.com*
316 North Milwaukee St., Suite 200
Milwaukee, Wisconsin 53202
414-455-7676 Phone
414-273-8476 Facsimile

Attorneys for Unnamed Movant No. 3, in Case Nos. 2014AP417 – 421-W

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2015, pursuant to Wis. Stat. § 809.80(3)(b) and (4) and the Court's December 16, 2014 Order, the original and twenty-two (22) copies of the Brief of Unnamed Movant No. 2, as well as seventeen (17) redacted copies of the brief, were filed in the Wisconsin Supreme Court under seal, pending further order of the Court. Three (3) copies of the non-redacted brief and two copies of the redacted brief were swerved upon counsel of record via first-class mail.

Dated: February 2nd, 2015.



James B. Barton
State Bar No. 1068900