



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

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October 18, 2007

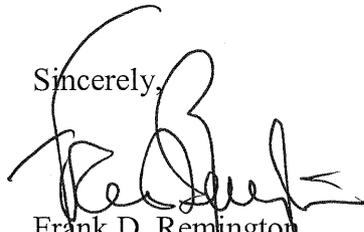
The Honorable William Eich  
840 Farwell Drive  
Madison, Wisconsin 53704

Re: State of Wisconsin v. Amgen, Inc., et al.  
Case No. 04-CV-1709

Dear Judge Eich:

Enclosed you will find Plaintiff's Motion and Brief in Support of Its Motion to Quash Defendants' Notice of Deposition of Wisconsin Legislature's Fiscal Bureau Budget Analysts Marlia Moore, Rachel Carabel, and Amie Goldman.

Sincerely,



Frank D. Remington  
Assistant Attorney General

FDR:gdt

Enclosures

c: All Counsel of Record by LexisNexis File & Serve (w/enclosures)  
Ann Ford, Chambers of the Honorable Richard Niess (w/enclosures)

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

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NOTICE OF MOTION AND MOTION TO QUASH  
DEFENDANTS' NOTICE OF DEPOSITION OF  
WISCONSIN LEGISLATURE'S FISCAL BUREAU BUDGET ANALYSTS  
MARLIA MOORE, RACHEL CARABELL, AND AMIE GOLDMAN

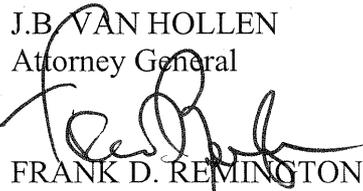
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PLEASE TAKE NOTICE, that on a date and time to be set by the Court, the Plaintiff State of Wisconsin, by Frank D. Remington, Assistant Attorney General, will move the court pursuant to Wis. Stat § 804.01(3)1 and Article IV, Section 15 of the Wisconsin Constitution, for an order prohibiting the deposition of the Wisconsin Legislature's Fiscal Bureau analyst Marlia Moore, and former analysts Amie Goldman and Rachel Carabell.

The grounds for this motion are set forth in Plaintiff's accompanying brief.

Dated this 18th day of October, 2007.

J.B. VAN HOLLEN  
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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 04-CV-1709

AMGEN INC., et. al.,

Defendants.

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PLAINTIFF'S BRIEF IN SUPPORT OF ITS MOTION TO QUASH  
DEFENDANTS' NOTICE OF DEPOSITION OF  
WISCONSIN LEGISLATURE'S FISCAL BUREAU BUDGET ANALYSTS  
MARLIA MOORE, RACHEL CARABELL, AND AMIE GOLDMAN

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On October 5, 2007, the Defendants requested the Plaintiff to produce for deposition two former and one current fiscal bureau analysts. A date was tentatively selected for these depositions. The Plaintiff sought to place limitations on the matters to be inquired of in these depositions. The parties were not able to reach an agreement.

The Defendants are not allowed to depose these individuals, past and present employees of the Wisconsin Legislature's Fiscal Bureau. For the reasons more particularly stated below, the Plaintiff respectfully requests that an order be issued precluding the Defendants from deposing the staff of the Legislature's Fiscal Bureau.

I. THE LEGISLATIVE FISCAL BUREAU IS AN AGENCY OF THE STATE LEGISLATURE.

The Wisconsin Blue Book describes function and purpose of the Legislative Fiscal Bureau as the following:

**Agency Responsibility:** The Legislative Fiscal Bureau develops fiscal information for the legislature, and its services must be impartial and nonpartisan. One of the bureau's principal duties is to staff the Joint Committee on Finance and assist its members. As part of this responsibility, the bureau studies the state budget and its long-range implications, reviews state revenues and expenditures and suggests alternatives to the committee and the legislature. In addition, the bureau provides information on all other bills before the joint committee and analyzes agency requests for new positions and appropriation supplements outside of the budget process.

The bureau provides fiscal information to any legislative committee or legislator upon request. On its own initiative, or at legislative direction, the bureau may conduct studies of any financial issue affecting the state. To aid the bureau in performing its duties, the director or designated employees are granted access, with or without notice, to all state departments and to any records maintained by the agencies relating to their expenditures, revenues, operations and structure.

**Organization:** The Joint Committee on Legislative Organization is the policy-making body for the Legislative Fiscal Bureau, and it selects the bureau's director. The director is assisted by an assistant director and program supervisors responsible for broadly defined subject areas of government budgeting and fiscal operations. The director and all bureau staff are chosen outside the classified service.

(State of Wisconsin Blue Book 2005-2006, 298.)

The Staff working within the Legislature's Fiscal Bureau directly, or indirectly through the Director, report to the co-chairs of the Legislature's Joint Committee on Legislative Organizations. Fiscal Bureau employees staff the Joint Committee on Finance. And, as described in the Wisconsin Blue Book, these employees, in particular and this Bureau, serve the Wisconsin Legislature and its members in discharging their elected and legislative function.

## II. ARTICLE IV, SECTION 16 OF THE WISCONSIN CONSTITUTION PROHIBITS THE DEFENDANTS FROM SUBPOENAING LEGISLATIVE STAFF

By issuing process under Wis. Stat. 804.05, the Defendants seek to use the power of civil process to compel these staff members to testify about work done by them within the scope of their employment at the Fiscal Bureau. "When the powers of the branches

overlap, one branch is prohibited from unduly burdening or substantially interfering with the other.” *Flynn v. Department of Administration*, 216 Wis.2d 521, 545, ¶38, 576 N.W.2d 245 (1998). More importantly, Article IV, Section 16 of the Wisconsin Constitution exempts legislators and their aides from civil process. *See State v. Beno*, 116 Wis.2d 122, 341 N.W.2d 668 (1984).

The *Beno* case is directly on point. These three witnesses are protected by the Legislative Privilege as described and discussed by the Supreme Court in its lengthy opinion in the *Beno* case. Fiscal Bureau staff perform their duties to assist the Legislature and individual legislators. To the extent these putative witnesses drafted policy and budget papers for the Bureau on matters concerning the State budget, they did so within the Bureau’s core function to assist the Wisconsin Legislature and its members.

The Defendants are precluded from issuing process to compel the attendance of a witness if a member of the Legislature invokes the legislative privilege. By this motion, the Legislature’s Fiscal Bureau invokes that privilege and requests this court recognize the legislative privilege invoked by these three individuals from testifying in this case and respectfully requests this Court grant Plaintiff’s motion for a protective order.

### III. TESTIMONY FROM PERSONS INVOLVED IN LEGISLATIVE PROCESS ARE INADMISSIBLE AND THEREFORE IRRELEVANT

Even if these three employees of the Legislature’s Fiscal Bureau did not invoke their legislative privilege from testifying, the common law in Wisconsin prohibits using their testimony to bolster Defendants’ argument on “legislative intent” or Defendants’ relentless pursuit of “government knowledge.” The law in this regard is well settled.

What the framer of an act meant by the language used cannot be shown by testimony. *Northern Trust Co. Case, supra; Casper v. Kalt-Zimmers Mfg. Co.* 159 Wis. 517, 520, 149 N. W. 754, 150 N.W. 1101; *Robinson v.*

*Krenn*, 236 Wis. 21, 294 N. W. 40. Much less can it be shown by mere statements by the framer or anyone else. The meaning of a legislative act must be determined from what it says – not by what the framer of the act intended to say or what he thought he was saying. The question always is what did the legislature mean, not what the framer meant, and that meaning must be drawn from the language used in the act in view of the purpose of the legislature as expressed in its act or facts of which the court can take judicial notice.

*Moorman Mfg. Co. v. Industrial Comm.* 241 Wis. 200, 208, 5 N. W. 29 743 (1942).

In light of the law stated above, it is certain that there is no evidentiary purpose to be served by compelling legislative aides to testify to actions or documents prepared to assist the Legislature consider and pass the State's budget. The Defendants are free to quote from and use any of the multitude of documents generated around this process. Plaintiff has given the Defendants all of the relevant documents possessed by the Legislature's Fiscal Bureau. Additionally, the Defendants subsequently served upon the Bureau a second request, this time under the Public Records law, and for a second time the Bureau provided Defendants with documents relevant to their request.

Presently, what Defendants are not allowed to do is issue process to a legislative aide to inquire about a particular legislative enactment. Moreover, the Defendants are not allowed to inquire of these persons as to why or why not one legislative alternative or another was or was not accepted by the Wisconsin Legislature. Engaging in the pursuit of this testimony is prohibited under Wisconsin law and it has no relevance or evidentiary value.

#### IV. CONCLUSION

It may seem innocuous to compel a lone legislative analyst to testify about her work for the Legislature's Fiscal Bureau. But the precedent is momentous. Presumably the Defendants are aware of the fact that a legislator cannot testify as to what the intent of

the legislature was in the passage of a particular statute or bill. *Wisconsin Southern Gas Co. v. Public Serv. Comm.*, 57 Wis.2d 643, 652, 205 N.W.2d 403 (1973). Neither can these analysts.

The Defendants cannot do indirectly what they cannot do directly. Defendants cannot subpoena a State Senator or a Representative to inquire about their intent or to opine about the intent of the legislature in passing a particular budget. The Defendants should not be allowed through the back door by deposing the people who aided these legislators and the legislature in the discharge of their and its legislative function. The law in Wisconsin is clear. No person can testify as to what the intent of the legislature was in the passage of a particular statute, *State v. Consolidated Freightways Corp.*, 72 Wis.2d 727, 738, 242 N.W.2d 192 (1976). Defendants should not be allowed to depose present and former legislative aides and the Plaintiff respectfully requests this Court grant Plaintiff's motion for a protective order.

Dated this 18th day of October, 2007.

J.B. VAN HOLLEN  
Attorney General



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