

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

ERIC O'KEEFE, and  
WISCONSIN CLUB FOR GROWTH, INC.,

Plaintiffs,

v.

FRANCIS SCHMITZ, in his official and  
personal capacities,  
JOHN CHISHOLM, in his official and  
personal capacities,  
BRUCE LANDGRAF, in his official and  
personal capacities,  
DAVID ROBLES, in his official and  
personal capacities,  
DEAN NICKEL, in his official and  
personal capacities,  
GREGORY PETERSON, in his official  
capacity,

Defendants.

Case No. 2:14-cv-00139-RTR

**DEFENDANT FRANCIS SCHMITZ'S SUPPLEMENTAL OPPOSITION TO  
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Defendant Francis Schmitz respectfully submits this supplemental response in opposition to Plaintiffs' Motion for Preliminary Injunction. As an initial matter, and as was first raised in Defendants' Joint Response in Opposition to Plaintiffs' Motion for Preliminary Injunction (D.'s Mem. at 2, n. 2), Plaintiffs have not moved to enjoin any conduct by Mr. Schmitz. P.'s Mot. at 1 ("Plaintiffs . . . move this Court . . . to enter an order enjoining Defendants Chisholm, Landgraf, Robles, and Nickel ('Defendants') . . ."). For this reason alone, any injunctive relief Plaintiffs

now seek against Mr. Schmitz should be denied.<sup>1</sup> Even if the Plaintiffs properly moved to enjoin Mr. Schmitz's conduct with regard to the John Doe proceedings, their motion should be denied for the reasons set forth below and in Defendants' opening brief.

### **PROCEDURAL BACKGROUND**

As discussed in Defendants' Joint Response in Opposition to Plaintiffs' Motion for Preliminary Injunction (Dkt. No. 48) and Defendants' Motion to Stay (Dkt. No. 35), and as further discussed by Mr. Schmitz's counsel during the Court's Scheduling Conference on March 13, 2014, Mr. Schmitz was prejudiced by the confidential nature of the John Doe proceedings, insofar as state court orders and Wisconsin Statute § 12.13(5) limited Mr. Schmitz's ability to make an evidentiary showing as to why Plaintiffs' Motion for Preliminary Injunction should be denied. Those constraints have since been lightened, albeit not entirely removed. First, on March 22, 2014, Judge Gregory Peterson issued an Order for Qualified Use and Dissemination of John Doe Materials (All Proceedings) which authorized Mr. Schmitz to "use the information, transcripts, documents and other materials gathered in [the John Doe proceedings] for all purposes related to the defense of the lawsuit in case no. 14CV00139." Schmitz Dec., Ex. A. Second, the Government Accountability Board ("GAB") has since authorized Mr. Schmitz, who is under contract with the GAB and therefore subject to Wisconsin Statute § 12.13(5), to attach to this filing the affidavits that have been executed as part of the John Doe proceedings. Schmitz Dec. at ¶ 28. The GAB has also authorized Mr. Schmitz to cite and quote from documents that either the Plaintiffs or the other Defendants have filed in this matter. *Id.* at ¶¶ 26, 28.

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<sup>1</sup> Nevertheless, Mr. Schmitz still has an interest in having the other defendants (for whom injunctive relief has been sought) to assist him in the investigation.

### SUPPLEMENTAL FACTUAL BACKGROUND

On September 5, 2012, Judge Barbara Kluka authorized the commencement of a new John Doe proceeding in Milwaukee County “[b]ased upon the sworn testimony of Investigator Robert Stelter of the Milwaukee County District Attorney’s Office, and the Affidavit of Robert Stelter dated August 10, 2012.” Chisholm Mot. to Dismiss, Leib Dec., Ex. O. Mr. Stelter’s affidavit states that “[t]he purposes and goals of this John Doe investigation would be to”:

- a. Determine the nature and extent of an agreement or understanding related to the solicitation by Scott Walker, gubernatorial candidate, and Friends of Scott Walker (FOSW), the personal campaign committee of Scott Walker in the 2011 and 2012 recall elections, for contributions to organizations regulated by Title 26 U.S.C. 501(c)(4) contrary to Wisconsin Stats sec. 11.10(4), 11.26, 11.27 and 11.61(1)(b);
- b. Determine whether the circumstances under which the solicitation and use of said campaign contributions were to circumvent the provisions of Wisconsin Stats sec. 11.26 and 11.27(1) by individuals and others identified above, for a criminal purpose in order to avoid the requirements of Wisconsin Stats. sec. 11.06(1) and 11.27(1).

Schmitz Dec., Ex. B at 1-2. Mr. Stelter’s affidavit provides “background” on certain individuals associated with both Friends of Scott Walker and Wisconsin Club for Growth:

R.J. Johnson was a paid advisor to the Friends of Scott Walker and was also involved with the Wisconsin Club for Growth (WiCFG), an organization under Title 26 U.S.C. 501(c)(4).

...

... Kate Doner was a fundraiser with Doner Fundraising working on behalf of FOSW in conjunction with the Wisconsin Club for Growth in 2011 and 2012.

...

... Kelly Rindfleisch is presently employed by an independent company performing work for the Friends of Scott Walker. Rindfleisch was actively involved in coordinating fundraising by Scott Walker on behalf of the WiCFG organization.

*Id.* at 5. Supporting exhibits are attached to Mr. Stelter’s affidavit, which include and establish the following:

- [*Id.* at ¶ 12; Exhibit 2] An April 28, 2011, email from Kate Doner to R.J. Johnson that states: “*As the Governor discussed . . . he wants all the issue advocacy efforts run thru one group to ensure correct messaging. We had some past problems with multiple groups doing work on ‘behalf’ of Gov. Walker and it caused some issues. In Wisconsin, a 501(c)(4) is the legal vehicle that runs the media/outreach/GOTV campaign. The Governor is encouraging all to invest in the Wisconsin Club for Growth. Wisconsin Club for Growth can accept Corporate and Personal donations without limitations and no donors disclosure.*” (emphasis added)
- [*Id.* at ¶¶ 13-15; Exhibit 3] A June 20, 2011, email from Kelly Rindfleisch to Scott Walker that forwards an itinerary for a fundraising trip that provides background on donors Scott Walker was scheduled to meet. Among the talking points related to these scheduled meetings are the following: “Stress that donations to WiCFG are not disclosed and can accept corporate donations without limits”; and “Let them know that you can accept corporate contributions and it is not reported.” The talking points also encourage Scott Walker to request contributions for “your 501c4.”
- [*Id.* at ¶ 19; Exhibit 9] A September 7, 2011, email from Kate Doner to Scott Walker, R.J. Johnson, Keith Gilkes and Kelly Rindfleisch, containing “*quick thoughts on raising money for Walker’s possible recall efforts.*” In regard to “CFG” (Club for Growth), these thoughts were suggested: “Take Koch’s money”; “Get on a plane to Vegas and sit down with Sheldon Adelson. Ask for \$1m now.”; “Corporations. Go heavy after them to give.”; “Create a new c4.” (emphasis added)
- [*Id.* at ¶ 20; Exhibit 10] A March 20, 2012, email from Kate Doner’s associate to Scott Walker relating to a scheduled meeting with an individual donor. The email advised Scott Walker that “[t]his meeting is for WiCFG Funds” and noted, “THE ASK: contribute \$100k to WiCFG.”
- [*Id.* at ¶ 21; Exhibit 11] A March 30, 2012, email to Scott Walker in which the unidentified email sender writes, “I’ll find out about party limits but make sure he gives to WiCFG.”

On December 10, 2012, Mr. Stelter executed a second affidavit with regard to the new John Doe proceeding, entitled “Affidavit in Support of a Request for Search Warrants and Subpoenas.” Schmitz Dec., Ex. C. Mr. Stelter’s affidavit contains a “Summary of Probable Cause”:

During 2011 and 2012, R.J. Johnson, Governor Scott Walker, Keith Gilkes,<sup>2</sup> and others, conspired to use WiCFG to coordinate political activity in response to recall elections against Wisconsin state senators, as well as Governor Walker. . . . Because WiCFG is a social welfare organization organized under Title 2 U.S.C. 501(c)(4); it can involve itself in limited political activity, provided that “supporting or opposing candidates” does not become the organization’s primary purpose. Corporations could lawfully contribute to the “501(c)(4) organization so long as the expenditures were not coordinated or made with the cooperation, consultation or at the request of a candidate or political party. However, during 2011 and 2012, WiCFG became the means for coordinating political campaign activities of the 501(c)(4) organization with personal political campaign committee of Governor Walker, in particular coordinating activities of FOSW with WiCFG with respect to the recall of Governor Scott Walker. Contributions were personally solicited by Governor Scott Walker to WiCFG, a “501(c)(4)” organization in order to circumvent the reporting and contributions provisions of Wisconsin Stats. secs. 11.10(4), 11.06(1), and 11.27(1) that would constitute a violation of Wisconsin Stats. Sec. 11.26, 11.27 and 11.61(1)(b). The contributions to WiCFG solicited by Governor Walker in opposition to his recall provided donors with a means to support Governor Walker through anonymous contributions and corporate contributions to WiCFG without any contribution limits.

*Id.* at ¶¶ 21-22 (formatting omitted; footnotes added). Supporting exhibits are attached to Mr. Stelter’s affidavit, which Mr. Stelter summarizes under the subheading “Facts Establishing Probable Cause.” These exhibits include and establish the following:

- [*Id.* at ¶ 40; Exhibit 29] In 2011, Wisconsin Club for Growth sponsored ads supporting Scott Walker.
- [*Id.* at ¶ 32; Exhibit 22] A June 1, 2011, email from Kelly Rindfleisch to Scott Walker containing “talking points” for a scheduled meeting with a donor: “Would he give \$250k for your 501c4. Let him know that you can accept corporate contributions and it is not reported.”

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<sup>2</sup> Mr. Stelter provides the following background on Keith Gilkes: “Keith Gilkes was the campaign manager for Scott Walker when he ran for Governor of the State of Wisconsin in 2010. Gilkes then served as Chief of Staff to Governor Scott Walker from January 3, 2011 to about the end of September 2011. He then served as a campaign advisor to the Friends of Scott Walker in 2011 through the recall campaign in June 2012.” *Id.* at 14.

- [Id. at ¶ 39; Exhibit 28] An August 18, 2011, email from Keith Gilkes to Scott Walker with “suggested remarks by RJ” for a “Donor Call”: “*Our efforts were run by Wisconsin Club for Growth and operatives R.J. Johnson and Deb Jordahl,<sup>3</sup> who coordinated spending through 12 different groups. Most spending by other groups was directly funded by grants from the club.*” The email also reflects that “Wisconsin Club for Growth raised 12 million dollars and ran a soup to nuts campaign.” (emphasis added)
- [Id. at ¶¶ 46, 67-68; Exhibits 35, 36, 62-64] A December 19, 2011 email indicating Scott Walker was to be a participant in a conference call on December 22, 2011, that was arranged by James Buchen of Wisconsin Manufacturers and Commerce (“WMC”). The purpose of the conference call was to discuss the pending recall elections. Bank records from WiCFG reflect that WMC was the recipient of over \$2.5 million dollars in 2012 from WiCFG. As summarized by Mr. Stelter, “WMC and WMC Issue Mobilization Council Inc. subsequently produced and aired advertisements promoting Governor Scott Walker and criticizing Mayor Tom Barrett, who was subsequently the Democratic candidate opposing Scott Walker during the gubernatorial recall campaign.”
- [Id. at ¶ 51; Exhibits 42, 100] A February 23, 2012, itinerary of Scott Walker that reflects a conference call with David Hanna. On February 27, 2012, the WiCFG bank account reflected a wire transfer of \$50,000 from the account of the David William Hanna Trust.
- [Id. at ¶¶ 53, 55; Exhibits 44, 100] A March 7, 2012, email from Kate Doner to Scott Walker advising him regarding “meetings to make happen while in Sea Island . . . . Paul Singer: Grab him.” On May 8, 2012, \$250,000 was deposited into the WiCFG account via wire transfer from the account of Paul Singer.
- [Id. at ¶¶ 54, 56; Exhibits 45, 47] A March 10, 2012, email Scott Walker sent to Kate Doner stating that “Bruce and Suzie Kovner said they want to give more.” On March 22, 2012, the WiCFG bank account reflected a deposit of \$50,000 from the account of Bruce Kovner. The memo line of the check reflects the check is for “501c4-Walker.”
- [Id. at ¶¶ 52, 56; Exhibits 44, 47] A March 10, 2012, itinerary that indicates Scott Walker met with Barry Maclean, the CEO of the Maclean-Fogg Company. On May 17, 2012, the WiCFG bank account reflects a deposit of \$100,000 from the Maclean-Fogg Company.
- [Id. at ¶¶ 52, 56; Exhibits 44, 47] A March 10, 2012, itinerary that indicates Scott Walker met with Michael Sullivan of SAC Capital Advisers. On April 13, 2012, the WiCFG bank account reflects a \$1,000,000 deposit from the account of Stephen Cohen, the founder and manager of SAC Capitol Advisors.

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<sup>3</sup> Mr. Stelter provides the following background on Deborah Jordahl: “Deborah Jordahl worked with R.J. Johnson with respect to Wisconsin Club for Growth (WiCFG) . . . . Jordahl was a paid employee of WiCFG . . . and a signatory to the WiCFG bank account.” *Id.* at ¶ 15, Ex. 3-4.

- [*Id.* at ¶ 61; Exhibits 53, 55] A March 30, 2012 email that indicates Scott Walker was meeting with Donald Trump. WiCFG bank records reflect a \$15,000 contribution from Donald Trump on April 3, 2012.
- [*Id.* at ¶ 63; Exhibits 56, 57] An April 10, 2012, Jennifer Bannister sent an e-mail to Governor Walker regarding a phone call with Ken Langone which she asked “How did the phone call with Langone go this morning?” WiCFG bank records reflect that on April 10, 2012, Mr. Langone made a \$15,000 contribution to WiCFG.
- [*Id.* at ¶ 64; Exhibits 58, 59] An April 17, 2012, email to Scott Walker advising him to ask Larry Nichols, Chairman of Devon Energy, to contribute “\$250k *in support of your recall.*” (emphasis in the original) WiCFG bank records reflect a \$50,000 contribution from Devon Energy on May 3, 2012.
- [*Id.* at ¶¶ 65, 66; Exhibits 60, 61] An April 20, 2012, email to Scott Walker, among others, providing a briefing for a meeting on that day facilitated by Eric O’Keefe with Keith Colburn and Richard Colburn. Scott Walker was to attend the meeting for the solicitation of \$100,000 “in support of the recall.” On April 27, 2012, the WiCFG bank account reflects a deposit of \$25,000 from the account of “K. Colburn.” On May 7, 2012, the WiCFG bank account reflects a deposit of \$50,000 from the account of Richard Colburn.
- [*Id.* at ¶ 69; Exhibit 66] A January 6, 2012 email from Nonbox (a media production company) to R.J. Johnson, Deborah Jordahl and Keith Gilkes. Attached was a preliminary ad for review. In reference to this email, among others, Mr. Stelter summarized as follows: “R.J. Johnson was involved in the recall campaign not only in conjunction with the activities of WiCFG, but as a paid advisor to FOSW. He provided guidance and approval for ads; he was also involved in FOSW campaign strategy.”
- [*Id.* at ¶ 69; Exhibit 67] A February 29, 2012, email from Scott Walker containing a script. R.J. Johnson advised Governor Walker that they could talk about it at “Pro-video” and “we’ll make it all work.”
- [*Id.* at ¶ 77; Exhibit 74.2] Bank records indicate that Citizens for a Strong America (CFSA) was the recipient of at least \$1.52 million dollars in 2012 from WiCFG. Mr. Stelter summarizes that “Jordahl and R.J. Johnson were involved with the activities of CFSA that functioned as a conduit for funded activities of other organizations in support of Governor Walker against the recall.”

Based on these and the other attached exhibits, Mr. Stelter concluded the following:

... Governor Walker solicited donations to WiCFG ... providing donors with a means to support Governor Walker through anonymous contributions and corporate contributions to WiCFG without any contribution limits. The solicitation of contributions ... to a “501(c)(4)” organization to circumvent the reporting and

contributions provisions of Wisconsin Stats. secs. 11.10(4), 11.06(1), and 11.27(1) constituted a violation of Wisconsin Stats. Sec. 11.26, 11.27 and 11.61(1)(b). The coordination of political campaign activities of WiCFG with FOSW by operation of Wisconsin Stats. sc. 11.10(4), would impute all WiCFG contributions to FOSW.

*Id.* at ¶ 76.

On June 20, 2013, the Government Accountability Board (GAB) issued a “Resolution Authorization Investigation” that was based on the two affidavits executed by Mr. Stelter, as described above, and that concluded the following:

Those materials contain information that a number of individuals who worked for, or were agents of, Friends of Scott Walker (“FOSW”) . . . cooperated and coordinated with various organizations, including Wisconsin Club for Growth and WMC Issues Mobilization Council, in obtaining contributions and making disbursements for the purchase of television, radio, and print advertising, as well as GOTV efforts, by those organizations in support of Governor Scott Walker and Republican state senators or opposed to Democratic candidates, all of whom were subject to recall elections in 2011 and 2012. The activity engaged in allegedly included Governor Walker personally asking a number of donors to make contributions to the Wisconsin Club for Growth and the involvement of individuals connected with FOSW . . . in the shaping of messages to be contained in television, radio and print advertising purchased by that organization, as well as GOTV efforts.

Chisholm Supp. Opp., Leib Dec., Ex. A at 2. The GAB also described the purpose of the investigation:

The investigation’s purpose is to learn if there is probable cause to believe that Governor Scott Walker, FOSW . . . Wisconsin Club for Growth . . . and other individuals, organizations, and corporations named in the John Doe materials, specifically those individuals, organizations, or corporations identified in the Affidavit in Support of a Request for Search Warrants and Subpoenas incorporated herein as if stated in full, violated §§ 11.05, 11.06, 11.10, 11.24, 11.25, 11.26, 11.27, 11.36 and 11.38, Wis. Stats, including criminal violations of Chapter 11.

*Id.* The GAB specifically authorized “the issuance of subpoenas to any organization or corporation named in the John Doe materials, its agents and employees, and to any committee or individual named in the John Doe materials, specifically those individuals, organizations, or corporations identified in the Affidavit in Support of a Request for Search Warrants and Subpoenas incorporated herein as if stated in full . . . .” *Id.* The GAB’s resolution was “approved by the five members of the State of Wisconsin Accountability Board.” *Id.*

Between July 22 and August 21, 2013, the District Attorneys for the Counties of Columbia, Dane, Dodge and Iowa petitioned for the commencement of a John Doe investigation in their respective counties. Chisholm Mot. to Dismiss, Leib Dec., Ex. B-E. Each of these petitions was supported by an affidavit executed by the respective County’s District Attorney, which “incorporate[d] by reference” the August 10 and December 10, 2012, affidavits executed by Mr. Stelter, as described above. Chisholm Mot. to Dismiss, Leib Dec., Ex. B-E.

The search warrants subsequently issued in the John Doe Proceedings were supported by a September 28, 2014, “Affidavit in Support of a Request for Search Warrants” that was executed by Dean Nickel and which “incorporate[d] by reference the [Mr. Stelter] affidavits and corresponding exhibits dated December 10, 2012.” Schmitz Dec., Ex. D. Mr. Nickel’s affidavit provides a summary of the additional exhibits attached to it in support:

R.J. Johnson was directly involved with operations of the Friends of Scott Walker (FOSW) campaign, as well as Wisconsin Club for Growth . . . essentially coordinating the campaign activities of both entities . . . . As a gubernatorial recall candidate, Scott Walker raised funds for his personal campaign committee (FOSW) and simultaneously personally raised funds for WiCFG which was also involved in political activity to his benefit . . . . During 2011 and 2012, WiCFG became the means for coordinating the political activities of WiCFG with other 501(c)(4) organizations and the personal political campaign committee of Governor Walker . . . . As a consequence by operation of Wisconsin Stats. secs. 11.6 and 11.10(4), FOSW and the respective campaigns were subject to the

same restrictions on the receipt of contributions as FOSW and were required to report contributions made to WiCFG, but did not.

*Id.* at ¶ 10. With regard to R.J. Johnson and Deborah Jordahl, Mr. Nickel provided the following background:

R.J. Johnson and Deborah Jordahl are principals in Coalition Partners as well as Johnson / Jordahl Strategic Communications . . . . R.J. Johnson identifies as his clients . . . .Wisconsin Club for Growth . . . . R.J. Johnson was paid by FOSW. According to public campaign finance information, in 2011 R.J. Johnson received \$60,000 and in 2012 he received \$20,000. A review of subpoenaed bank records reflects \$80,000 in payments from FOSW to R.J. Johnson and Associates from April 2011 to July 2012. During substantially the same time frame, R.J. Johnson and Associates were paid \$20,237 by WiCFG from February 2011 to June 2012. R.J. Johnson and Associates were also paid \$816,258 by Nonbox. R.J. Johnson directed activities of Wisconsin Club for Growth (WiCFG), Citizens for a Strong America (CFSA), and Friends of Scott Walker (FOSW), and through WiCFG and CFSA, provided funding for other 501(c)(4) organizations . . . that ran ads supporting Governor Scott Walker, criticizing his opponent, or were involved in activities assisting Republican senate recall elections. Coalition Partners was paid \$631,147.56 by Nonbox, an advertising agency that placed political ads on behalf of FOSW and other organizations, from February 2011 to June 2012 . . . .<sup>4</sup> All the checks issued by WiCFG were signed by Deborah Jordahl.

*Id.* at ¶¶ 11-13, 15. The exhibits supporting Mr. Nickel's affidavit establish and include the following:

- [*Id.* at ¶ 27, n. 32; Exhibits 7.2, 7.3]: WiCFG bank records reflect that Gogebic Taconite LLC donated \$700,000 to WiCFG in 2011-2012. As Mr. Nickel states, "After the recall elections, special legislation was approved in 2013 expediting the mining permit and approval process for Gogebic Taconite. Recently special legislation was also introduced benefiting Gogebic Taconite by closing access to publicly available forest at the proposed mining site in Northern Wisconsin. The legislation was supported by Governor Walker as well as WiCFG."
- [*Id.* at ¶ 43; Exhibits 21.1, 21.2] Ten Capitol Inc. created ads for WMC supporting Scott Walker during the recall. Consistent with a commission for ad placement, R.J. Johnson and Associates received \$50,000 from Ten Capitol on June 22, 2012.

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<sup>4</sup> Mr. Nickel reports that WiCFG paid Nonbox \$368,200 for working as its media buyer. *Id.* at 22.

WMC-IMC bank records reflect wire transfers in April and May 2012 to Ten Capitol totaling \$3,355,000. As Mr. Nickel summarizes, “Coinciding with the wire transfers to Ten Capitol, WMC-IMC received payments from WiCFG; for example, on May 4, 2012, WMC-IMC deposited \$1,000,000 from WiCFG; on May 7, 2012 WMC-IMC wired \$1,000,000 to Ten Capitol. On April 24, 2012, WMC-IMC wired \$712,000 to Ten Capitol; on April 25, 2012 it received \$1,000,000 from WiCFG.”

- [*Id.* at ¶ 45; Exhibit 22] An April 10, 2012, email from Nonbox, an advertising agency, to R.J. Johnson regarding media produced for Scott Walker’s recall campaign. Attached to that email is a listing of ads produced, under the title “Client: Scott Walker for Governor.”

On September 30, 2013, Robert Stelter executed a new affidavit entitled “Affidavit in Support of a Request for Subpoenas.” Schmitz Dec., Ex. E. Mr. Stelter “incorporate[d] by reference” his two previous affidavits, described above. *Id.* With regard to his request for a subpoena for documents directed at Wisconsin Club for Growth and individuals associated with it, including Mr. O’Keefe, Mr. Nickel “submit[ted] that [he] believe[d] these [subpoenaed] records will produce information relevant to this investigation . . . based upon the information detailed in the Affidavit of Dean Nickel dated September 28, 2013.” *Id.* The requested subpoenas were issued by Judge Kluka on the same day and served on Plaintiffs on October 3, 2013. Chisholm Mot. to Dismiss, Leib Dec., Ex. T; O’Keefe Dec. at ¶ 41.

On February 24, 2014, after granting Plaintiffs’ Motion to Quash the subpoenas, Judge Peterson entered an Order in which he observed that “if my decision [granting the motion to quash] is upheld, the ultimate and inevitable consequence will be to terminate the John Doe investigation.” Chisholm Mot. to Dismiss, Leib Dec., Ex. I at 2. The Order further stated that “the State shall not examine any material secured from any source by legal process such as subpoena or search warrant.” *Id.* On March 22, 2014, Judge Gregory Peterson entered an Order for Qualified Use and Dissemination of John Doe Materials (All Proceedings) which authorized Defendants to use the information, transcripts, documents and other materials (“John Doe

Material”) gathered in the John Doe proceedings for purposes related to the defense of the above-captioned lawsuit. Schmitz Dec., Ex. A.

### **SUPPLEMENTAL ARGUMENT**

The above supplemental facts further demonstrate why (1) Plaintiffs are not likely to succeed on the merits, (2) Plaintiffs will not suffer irreparable harm if the injunction is not granted, and (3) the effect of granting the injunction will greatly harm the “public interest.” *See, e.g., Meridian Mut. Ins. Co. v. Meridian Ins. Group, Inc.*, 128 F.3d 1111, 1114 (7th Cir. 1997).

#### **I. Plaintiffs Are Not Likely to Succeed on the Merits**

##### **A. The John Doe Proceedings Are Not Based on Bad Faith**

Plaintiffs claim that, “[o]n the merits, Defendants’ actions can only be regarded as an unlawful bad-faith abuse of law-enforcement proceedings intended as retaliation for Plaintiffs’ political activism.” P.’s Mem. at 30. In support of this claim, Plaintiffs appear to suggest that the Government Accountability Board (“GAB”) should have been provided an opportunity to conduct an investigation and assess whether there was sufficient evidence for the John Doe proceedings to commence in Columbia, Dane, Dodge and Iowa Counties, after Wisconsin Attorney General J.B. Van Hollen declined to assist “citing potential conflicts of interest.” P.’s Mem. at 19-20. Plaintiffs, in particular, suggest that the GAB was the proper authority to determine whether those John Doe Proceedings could commence on a good-faith basis: “Indeed, potential campaign-finance violations had been referred to the GAB in other high-profile cases to avoid possible conflicts and the appearance of impropriety, as well as to allow the GAB to exercise its discretion in interpreting and administering the state’s campaign-finance law.” *Id.* at 19.

Contrary to Plaintiffs' claims, the GAB *did* determine there was a good-faith basis to commence John Doe proceedings in Columbia, Dane, Dodge and Iowa Counties. Indeed, the GAB was apprised of the evidence – namely, the facts and exhibits contained in Mr. Stelter's affidavits of August 10 and December 10, 2012 – underlying the John Doe Proceedings as early as June 2013 and *authorized* an investigation identical to the one commenced in Milwaukee, Iowa, Dane, Columbia and Dodge Counties:

Those materials contain information that a number of individuals who worked for, or were agents of, Friends of Scott Walker ("FOSW") . . . cooperated and coordinated with various organizations, including Wisconsin Club for Growth . . . in obtaining contributions and making disbursements for the purchase of television, radio, and print advertising, as well as GOTV efforts, by those organizations in support of Governor Scott Walker and Republican state senators or opposed to Democratic candidates, all of whom were subject to recall elections in 2011 and 2012. The activity engaged in allegedly included Governor Walker personally asking a number of donors to make contributions to the Wisconsin Club for Growth and the involvement of individuals connected with FOSW . . . in the shaping of messages to be contained in television, radio and print advertising purchased by that organization, as well as GOTV efforts. . . . The investigation's purpose is to learn if there is probable cause to believe that Governor Scott Walker, FOSW . . . Wisconsin Club for Growth . . . and other individuals, organizations, and corporations named in the John Doe materials, specifically those individuals, organizations, or corporations identified in the Affidavit in Support of a Request for Search Warrants and Subpoenas incorporated herein as if stated in full, violated §§ 11.05, 11.06, 11.10, 11.24, 11.25, 11.26, 11.27, 11.36 and 11.38, Wis. Stats, including criminal violations of Chapter 11.

Chisholm Supp. Opp., Leib Dec., Ex. A (formatting omitted). The fact that the non-partisan<sup>5</sup> GAB resolved that there was a good-faith basis to commence such an investigation, based on the

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<sup>5</sup> All members of the GAB must be former judges. Wis. Stat. § 15.60. The names of potential board members are put forward by a candidate committee, consisting of one court of appeals judge from each of the four districts. Wis Stat. §§ 5.052, 15.60(2). All members of the board are nominated by the Governor. Members of the board must, by statute, be confirmed by a two-thirds vote of the state Senate—a provision designed to ensure bipartisan consensus of the board

very same affidavits justifying the commencement of the John Doe Proceedings, refutes Plaintiffs' claims that the John Doe Proceedings are an "unlawful bad-faith abuse of law-enforcement proceedings." Indeed, the GAB's resolution was *unanimous*. *Id.*

Similarly, the special prosecutor appointed to the John Doe Proceedings, Mr. Schmitz, cannot be said to be acting in bad faith because he wanted to retaliate against Plaintiffs for their political views and positions. First, even before he was appointed special prosecutor, Mr. Schmitz was contacted by a senior staff member of the GAB and asked if he might be interested in working on the John Doe proceedings, subject of the above-captioned lawsuit, and serving as a special prosecutor. Schmitz Dec. at ¶ 6. After further discussions with the GAB and others, he accepted the offer. *Id.* In itself, the fact that the GAB, not any of the other Defendants, first contacted Mr. Schmitz to act as special prosecutor establishes that his involvement was not rooted in bad faith or motivated by retaliatory animus. Indeed, Mr. Schmitz uses an office at the GAB in Madison, Wisconsin, to help him fulfill his duties as the special prosecutor. Schmitz Dec. at ¶ 9.

Moreover, even before he was appointed special prosecutor, the GAB appointed Mr. Schmitz as a special investigator for the GAB upon the execution of a Wisconsin Government Accountability Board Agreement for Special Investigator 2013-2014 ("Agreement"). Schmitz Dec. at ¶ 7. Pursuant to the Agreement, Mr. Schmitz was to investigate matters referred to him by the GAB for appropriate action for determination of whether violations of Wisconsin's state campaign finance statutes ("Chapter 11") or other laws administered by the GAB have occurred. *Id.* The GAB thereafter directed Mr. Schmitz to investigate the conduct of various persons and organizations, with regard to coordination of their political advocacy, including expenditures,

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members actually chosen. Wis. Stat. 15.07(1)(a). Both the Board and the staff must be non-partisan. Wis Stats. §§ 5.505(2m)(d)-(e), 15.60(4)-(8).

with political candidates, their agents and their personal campaign committees. *Id.* Plaintiffs cannot claim that the GAB's decision to employ Mr. Schmitz to investigate the same conduct investigated in the John Doe Proceedings was in any way based on bad faith or that Mr. Schmitz was simply "assigned as a pretext to cure the impropriety of the partisan District Attorney's office pursuing the matter." O'Keefe Dec. at ¶ 47.

Nor can Plaintiffs claim that Mr. Schmitz is motivated by retaliatory animus based on his own political views. Not only is Mr. Schmitz a former member of the Republican Party, he voted for Governor Scott Walker in Wisconsin's 2012 gubernatorial recall election.<sup>6</sup> Schmitz Dec. at ¶¶ 11-12. During the recall campaign, while still employed by the U.S. Department of Justice as an Assistant U.S. Attorney, he was involved in assisting law enforcement to investigate potential threats against Governor Scott Walker. Schmitz Dec. at ¶¶ 4, 13. Passage of 2011 Wisconsin Act 10, also known as the Wisconsin Budget Repair Bill, did not affect his employee rights or benefits because he was a federal employee, not a state employee; in addition, Mr. Schmitz generally supported the Governor's efforts to balance the State budget. Schmitz Dec. at ¶ 14. Prior to his contractual relationship with the GAB (August 17, 2013) and his appointment as special prosecutor (August 23, 2013), he did not have any involvement with, or knowledge of, Eric O'Keefe or the Wisconsin Club for Growth or any of the other conservative groups he is allegedly retaliating against. Schmitz Dec. at ¶ 15. Prior to being contacted by the GAB in late July 2013, he did not have any involvement with any John Doe Proceedings and did not speak to any of the other Defendants regarding any John Doe Proceedings. Schmitz Dec. at ¶ 16. He has not been aware at any time of any retaliatory motive that underlies the commencement and continuation of any John Doe proceedings. Schmitz Dec. at ¶ 17. Nothing

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<sup>6</sup> Mr. Schmitz is not a current member of a political party and does not currently maintain an affiliation with any political organization. Schmitz Dec. at ¶ 10.

Mr. Schmitz has observed, heard or read since becoming involved in this investigation would allow him to conclude that this investigation was motivated or based upon anything but reliable information which provides a basis to conclude that a violation of Wisconsin law may have occurred. Schmitz Dec. at ¶ 18. He would never be part of an investigation that was conducted for a retaliatory purpose as such an investigation would be improper and unethical. *Id.* Nor does he harbor any ill will towards the Plaintiffs, or others whose conduct or actions are being investigated, for their political views or for the political positions they have taken. Schmitz Dec. at ¶ 19. Contrary to Plaintiffs' suggestions (O'Keefe Dec. at ¶ 40), in his role as a special prosecutor, while Mr. Schmitz has sought input and counsel from others involved in the investigation, he has made the final decisions on what actions to take and the content of pleadings and other filings. Schmitz Dec. at ¶ 20.

In short, Plaintiffs do not and cannot establish that Mr. Schmitz had any retaliatory animus, or is aware of any retaliatory animus, with regard to the John Doe Proceedings.

**B. The John Doe Proceedings Are Based on a Valid Legal Theory and Facts Demonstrating a Reasonable Belief a Crime Occurred**

Not only does the GAB's unanimous resolution establish that the John Doe Proceedings were commenced on a good-faith basis, it also demonstrates that the legal theories underlying the John Doe proceedings are supported by valid interpretations of Wisconsin's campaign finance laws. Indeed, the GAB's resolution specifically concludes that "[c]oordination with a candidate or candidate committee transforms . . . purportedly independent disbursements and even true 'issue ads' into in-kind or monetary contributions to a candidate." *Id.* at 1 (citing Op.El.Bd. 00-2 and *Wisconsin Coalition of Voter Participation v. SEB*, 231 Wis.2d 670 (Wis. Ct. App. 1999)). In addition, the Director and General Counsel of the GAB, Kevin Kennedy, recently reaffirmed

that the type of coordinated activity the John Doe proceedings is targeting is, indeed, “subject to campaign regulation because the coordination results in political contribution”:

The G.A.B., and previously the [State Election Board], has routinely provided advisory opinions consistent with the State’s application of Wisconsin law regarding coordination of expenditures and its treatment as contributions . . . . Pursuant to 2007 Wisconsin Act 1, [formal opinion El.Bd.Op. 00-2] was reviewed and specifically reaffirmed by the G.A.B. in a public meeting on March 26, 2008. Pages 8-13 of the opinion include a detailed analysis of Wisconsin law regarding a candidate’s coordination with issue advocacy groups and *the opinion concludes that such coordination constitutes conduct that is subject to campaign finance regulation because the coordination results in political contribution.*

Chisholm Mot. to Dismiss, Leib Ex. A at ¶ 10. (emphasis added; formatting omitted) The legal theory of coordination underlying the investigation is consistent with the GAB’s interpretation of Wisconsin’s campaign finance laws, including Wisconsin Adm. Code § 1.42; in addition, it comports with the U.S. Supreme Court’s decisions in *Buckley v. Valeo*, 424 U.S. 1 (1976), and *Citizens United v. FEC*, 558 U.S. 310 (2010). *Id.* at ¶¶ 10-11. The affidavits underlying the GAB’s resolution and the John Doe Proceedings contain voluminous facts demonstrating a reasonable belief a crime occurred with regard to such coordination; they contradict, in particular, Mr. O’Keefe’s claim that “none of WCFG’s issue advocacy or donations [were] related to Walker’s campaign efforts.” O’Keefe Dec. at ¶ 56.

Scott Walker, his agents and his personal campaign committee discussed fundraising for possible gubernatorial recall efforts, and planning to use the Wisconsin Club for Growth in regard to that fundraising, as early as September 7, 2011.<sup>7</sup> Individual and corporate donors were thereafter directed<sup>8</sup> by Scott Walker to contribute large sums of money to Wisconsin Club for

<sup>7</sup> See, e.g., Schmitz Dec., Ex. B at ¶ 19, Exhibit 9; see also *supra* p. 4.

<sup>8</sup> See, e.g., Schmitz Dec., Ex. B at ¶¶ 13-15, 19-21, Exhibits 3, 9-11; Schmitz Dec., Ex. C at ¶¶ 32, 51-53, 55-56, 61, 63-66, Exhibits 22, 42, 44, 45, 47, 53, 55-61, 100; see also *supra* pp. 4-7.

Growth, which is the organization Scott Walker was reported to “want[] all the issue advocacy efforts run thru . . . to *ensure correct messaging*” because, in the past, there were “problems with multiple groups doing work on ‘behalf’ of Gov. Walker and it caused some issues.”<sup>9</sup> (emphasis added) Scott Walker was also reported as “encouraging all to invest in the Wisconsin Club for Growth” because it could “accept Corporate and Personal donations without limitations and no donors disclosure.”<sup>10</sup> In light of the many donations that were made as a direct result of Scott Walker’s requests in late 2011 and 2012, during his recall campaign, Mr. O’Keefe’s assertion that “none of WCFG’s . . . donations related to Walker’s campaign efforts” cannot withstand scrutiny. O’Keefe Dec. at ¶ 56.

The large individual and corporate donations Scott Walker directed to Wisconsin Club for Growth were then used by Scott Walker’s agents – notably, R.J. Johnson<sup>11</sup> and Deborah Jordahl – to fund and shape the advocacy conducted by Wisconsin Club for Growth as well as fund and shape the advocacy of other organizations.<sup>12</sup> Indeed, as reflected in an August 8, 2011, email from Keith Gilkes to Scott Walker with “suggested remarks by RJ” for a “Donor Call,” it is clear the Wisconsin Club for Growth was well versed in coordinating expenditures and running campaigns from “soup to nuts” with regard to Wisconsin’s recall elections:

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These facts belie Mr. O’Keefe’s claim that “WCFG’s fundraising success . . . was largely dependent on my efforts and the fundraising vendors I introduced to WCFG.” P.’s Mem. at 30.

<sup>9</sup> Schmitz Dec., Ex. B at ¶ 12, Exhibit 2; *see also supra* pp. 2-3.

<sup>10</sup> Schmitz Dec., Ex. B at ¶ 12, Exhibit 2; *see also supra* page 2-3. Wisconsin’s base contribution limitation for gubernatorial candidates is limited to \$10,000. Wis. Stat. § 11.26(1)(a).

<sup>11</sup> Mr. O’Keefe concedes that, “[d]uring 2012, I was aware that Johnson was playing a consulting role with ‘Friends of Scott Walker’ (‘FOSW’), the official recall committee and campaign committee of Governor Walker.” O’Keefe Dec. at ¶ 35. However, Mr. O’Keefe does not acknowledge the extent of R.J. Johnson’s activity with regard to the coordination of Friends of Scott Walker and Wisconsin Club for Growth.

<sup>12</sup> *See, e.g.*, Schmitz Dec., Ex. C at ¶¶ 39, 69, 77, Exhibits 28, 66-67, 74.2; Schmitz Dec., Ex. D at ¶ 43, Exhibits 21.1, 21.2; *see also supra* pp. 5-10.

Our efforts were run by Wisconsin Club for Growth and operatives R.J. Johnson and Deb Jordahl,<sup>13</sup> who coordinated spending through 12 different groups. Most spending by other groups was directly funded by grants from the club.”<sup>14</sup>

(Footnotes added.) For instance, bank records reflect that Wisconsin Manufacturers and Commerce (“WMC”) received over \$2.5 million dollars from Wisconsin Club for Growth during Scott Walker’s recall campaign in 2012 – with all the checks having been signed by Ms. Jordahl.<sup>15</sup> Those payments closely coincided with WMC’s payments to Ten Capitol, an advertising agency, which “produced and aired advertisements promoting Governor Scott Walker and criticizing Mayor Tom Barrett, who was subsequently the Democratic candidate opposing Scott Walker during the gubernatorial recall campaign.”<sup>16</sup> In light of these payments, Plaintiffs’ claim that “none of WCFG’s . . . donations related to Walker’s campaign efforts” (O’Keefe Dec. at ¶ 56) is false, as is the claim that Wisconsin Club for Growth “was not donating funds to other groups for express advocacy or issue advocacy related to Walker’s . . . recall efforts.” O’Keefe Dec. at ¶ 35.

Clearly, such coordinated expenditures made by Wisconsin Club for Growth should have been reported as an in-kind contribution to Scott Walker, as the GAB has long advised; because they were not, Wisconsin’s base contribution limits were circumvented. This investigation is not narrowly focused, as Plaintiffs appear to believe, on “WCFG [running] afoul of disclosure laws by failing to report the source of advocacy”; rather, it is about a candidate and his personal campaign committee failing to disclose the funding of such coordinated advocacy. Contrary to

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<sup>13</sup> Mr. Stelter provides the following background on Deborah Jordahl: “Deborah Jordahl worked with R.J. Johnson with respect to Wisconsin Club for Growth (WiCFG) . . . Jordahl was a paid employee of WiCFG . . . and a signatory to the WiCFG bank account.” *Id.* at ¶ 15, Ex. 3-4.

<sup>14</sup> *See, e.g.*, Schmitz Dec., Ex. C at ¶ 39, Exhibit 28.

<sup>15</sup> *See, e.g.*, Schmitz Dec., Ex. C at ¶¶ 46, 67-68, Exhibits 35-36, 62-64.

<sup>16</sup> Schmitz Dec., Ex. D at ¶ 43, Exhibits 21.1, 21.2. Mr. O’Keefe concedes that WMC ran a Scott Walker advertisement in 2012. O’Keefe Dec. at ¶ 33.

Plaintiffs' glib pronouncement, the John Doe investigation and its "coordination theory" is simply not based "on funding provided by WCFG to other organizations." O'Keefe Dec. at ¶ 55. Plaintiffs' claims that the evidence "fails to make any connection whatever to a campaign organization" and is "unsupported by evidence of unlawful coordination" cannot be sustained in light of the above facts. *Id.* at ¶¶ 56, 60.

That such circumvention is illegal is certainly well known to Wisconsin's politicians and political community. This past week, for instance, a recording was released in which Wisconsin state Senator Mike Ellis discusses setting up an illegal political action committee to attack his challenger. Russell Dec., Ex. 1. The video has been reported as follows:

A secretly recorded video produced by a conservative activist shows Senate President Mike Ellis talking about creating and raising money for a committee to run negative ads against his Democratic opponent — which would be illegal for a candidate to do in Wisconsin. In the video, the Neenah Republican describes having friends contribute to an independent campaign committee run by Republican fundraiser Judi Rhodes to air attack ads against his Democratic opponent, Rep. Penny Bernard Schaber. "I am putting together my own Super PAC," Ellis said. "I'm raising the money, but she will manufacture the crap." "I told Judi if I raise \$500,000, then you attack her. I don't want to attack her," he goes on to say. "I want somebody else to attack.

Russell Dec., Ex. 1. As a result of the recording's release, Senator Ellis dropped out of his bid for re-election. Russell Dec., Ex. 2. Adopting Plaintiffs' legal theories would permit Wisconsin politicians to circumvent Wisconsin's campaign finance laws in a similar manner.

Nor does the Supreme Court, contrary to Plaintiffs' arguments, prohibit the State from investigating the circumvention of campaign finance regulations by virtue of undisclosed, coordinated expenditures. Rather, the Supreme Court's recent decision, *McCutcheon v. FEC*, No. 12-536 (Sup. Ct. April 2, 2014), reaffirms that Plaintiffs' legal theory permitting such circumvention would entirely undermine the purpose of base contribution limits ("the danger of

actual *quid pro quo* arrangements” and “the impact of the appearance of corruption”) and the purpose of disclosure requirements (“deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity”). Slip Op. at 20, 35. Indeed, the dangers of *quid pro quo* arrangements and the potential for corruption, if Plaintiffs’ permissive legal theory were put into practice, are readily apparent. For instance, bank records reflect that Gogebic Taconite LLC donated \$700,000 to Wisconsin Club for Growth in 2011 and 2012.<sup>17</sup> Following the recall, as Mr. Nickel observed, “special legislation was approved in 2013 expediting the mining permit and approval process for Gogebic Taconite . . . [t]he legislation was supported by Governor Walker as well as WiCFG.”<sup>18</sup> Because Wisconsin Club for Growth’s fundraising and expenditures were being coordinated with Scott Walker’s agents at the time of Gogebic’s donation, there is certainly an appearance of corruption in light of the resulting legislation from which it benefited. Due to such coordinated expenditures, Mr. O’Keefe’s claim that “the public at all relevant times had the benefit of ‘transparent campaign financing’” does not ring true. O’Keefe Dec. at ¶ 58.

The Ninth Circuit, moreover, has recently observed that the Supreme Court upholds provisions that treat coordinated expenditures as in-kind contributions and that a State may enforce such provisions:

[T]he Supreme Court has long upheld provisions which designate coordinated expenditures as indirect contributions. *See Colorado II*, 533 U.S. at 464–65, 121 S.Ct. 2351; *Buckley*, 424 U.S. at 46 & n. 53, 96 S.Ct. 612. If a PAC were making expenditures that were coordinated with a political party, then such expenditures could be deemed contributions to a political party. And those contributions would be subject to whatever limitations that are still valid under *McConnell*. If New Mexico believes that there is improper

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<sup>17</sup> Schmitz Dec., Ex. D at ¶ 27, n. 32, Exhibits 7.2, 7.3.

<sup>18</sup> Schmitz Dec., Ex. D at ¶ 27, n. 32.

coordination between a PAC and a state or local political party, then it could bring an enforcement action.

*Rep. Party of New Mexico v. King*, 741 F.3d 1089, 1103 (9th Cir. 2013). Wisconsin courts have long held similarly. *Wisconsin Coal. for Voter Participation, Inc. v. State Elections Bd.*, 605 N.W.2d 654, 659 (Wis. Ct. App. 1999) (“contributions to a candidate’s campaign must be reported *whether or not* they constitute express advocacy”). Simply put, it is constitutional to enforce base contribution limits and disclosure requirements and to investigate the illegal circumvention of those limits and requirements, as is the case here. Plaintiffs, accordingly, are unlikely to succeed on the merits.

## **II. Plaintiffs Will Not Suffer Irreparable Harm**

On February 24, 2014, after granting Plaintiffs’ Motion to Quash the subpoenas, Judge Peterson entered an Order in which he observed that “if my decision [granting the motion to quash] is upheld, the ultimate and inevitable consequence will be to terminate the John Doe investigation.” Chisholm Mot. to Dismiss, Leib Dec., Ex. I at 2. The Order further stated that “the State shall not examine any material secured from any source by legal process such as subpoena or search warrant.” Chisholm Mot. to Dismiss, Leib Dec., Ex. I at 2. Thus, even if the injunction is not granted, the investigation of the Plaintiffs remain halted pending the appeal of Judge Peterson’s order granting Plaintiffs’ Motion to Quash in Wisconsin state court. Mr. Schmitz has complied with this Order.<sup>19</sup> Schmitz Dec. at ¶ 21.

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<sup>19</sup> On March 22, 2014, Judge Gregory Peterson entered an Order for Qualified Use and Dissemination of John Doe Materials (All Proceedings) which authorized Defendants to use the information, transcripts, documents and other materials (“John Doe Material”) gathered in the John Doe proceedings for purposes related to the defense of the above-captioned lawsuit. Schmitz Dec., Ex. A. Pursuant to this Order, Mr. Schmitz is only using the “John Doe Material” for purposes related to the defense of the above-captioned lawsuit. Schmitz Dec. at ¶ 21.

### III. An Injunction Is Not in the Public's Interest

Enjoining an investigation based on Plaintiff's legal theory would throw into question the validity of GAB's interpretation and administration of Wisconsin's campaign finance laws, as reflected in El.Bd.Op. 00-2, and would penalize those who relied on the GAB's opinion while benefiting those who flouted it. As GAB's Director and General Counsel recently averred:

The G.A.B . . . . has routinely provided advisory opinions consistent with the State's application of Wisconsin law regarding coordination of expenditures and its treatment as contributions. In fact, throughout the recall elections in 2011 and 2012, the G.A.B. provided such advisory opinions regarding coordination. The G.A.B. has also provided advisory opinions to persons involved in the 2014 election campaigns. Those that already received advisory opinions presumably conformed their conduct to the advice and would now be at a significant competitive disadvantage to others who may not consider themselves subject to the same rules.

Chisholm Mot. to Dismiss, Leib Dec., Ex. A at ¶ 10. In effect, by "call[ing the G.A.B.'s] advice into question," an injunction would "creat[e] great difficulties administering the campaign finance law . . . [when c]larity is particularly necessary, during this election year." *Id.*

Moreover, the inability to enforce Wisconsin law in regard to such coordinated expenditures would mean a candidate could solicit huge sums of money from both individual and corporate donors, direct those funds to a 501(c)(4) organization and then direct the expenditure of those funds to benefit the candidate's campaign. The GAB's Director and General Counsel avers the negative impact of such activity on the public would be "profound":

[It] would result in candidate's direct control over millions of dollars of undisclosed corporate and individual contributions without limitation on the amounts accepted. A candidate could operate secret committees and direct them to run overwhelming and negative advertising, while the candidate remains above the fray and the public would not know the true source of the contributions or expenditures. The public would have no way of knowing who actually was supporting the candidate and to what extent. This would undermine Wisconsin's system of campaign finance regulation. The impact of this circumvention of

contribution limits raises the same significant concerns about actual corruption or the appearance of corruption upon which the United States Supreme Court upheld contribution limits in *Buckley v. Valeo*, 424 U.S. 1, 25 (1976). Without campaign finance disclosure and disclaimers identifying the actual sponsors of campaign advertisement, the public would have no way of tracking whether a donation resulted in favorable treatment by the elected candidate.

*Id.* at 10-11. While Wisconsin Club for Growth and Mr. O’Keefe believe “transparent campaign financing” (O’Keefe Dec. at ¶ 58) results when political ads it or its organization fund air, the facts underlying the John Doe investigation establish that the public does not know the true source of the funds. Enjoining the investigation of immense, unreported in-kind contributions to a candidate and his personal campaign finance committee – through such coordinated activity – will deprive the public of the critical information with which they make an informed decision on election day.

#### IV. CONCLUSION

WHEREFORE, Defendants respectfully request this Court deny Plaintiffs’ Motion for Preliminary Injunction.

Dated: April 15, 2014.

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