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, and
GREGORY PETERSON, in his official capacity,

Defendants.

Civil Case No. _____

COMPLAINT

JURY TRIAL DEMANDED

Now Come the above-named plaintiffs, Eric O'Keefe ("O'Keefe") and Wisconsin Club for Growth, Inc., ("WCFG") (collectively, "Plaintiffs"), by and through their attorneys, and make their Complaint against Defendants Francis Schmitz ("Schmitz"), John Chisholm ("Chisholm"), Bruce Landgraf ("Landgraf"), David Robles ("Robles"), and Dean Nickel ("Nickel"), in their respective official and personal capacities (collectively, "Defendants"), and against Gregory

Peterson ("Peterson"), in his official capacity only.[1] This action arises under the First and Fourteenth Amendments to the United States Constitution, the Civil Rights Act of 1871 (42 U.S.C. § 1983), and the doctrine recognized in *Ex Parte Young*, 209 U.S. 123 (1908). Plaintiffs allege and state as follows:

NATURE OF THE ACTION

1. Since May 2010, the Milwaukee County District Attorney's Office, led by Defendant Chisholm, has been using the unique power granted to prosecutors under Wisconsin's "John Doe" statute to engage in a continuous campaign of harassment and intimidation of conservative individuals and organizations. This campaign was politically motivated from the beginning, has involved at least six separate John Doe proceedings, and has most recently expanded into a consolidated five-county proceeding under Defendant Schmitz as special prosecutor, with the continued aid of the other Defendants. The current targets include virtually every conservative social welfare organization in Wisconsin and persons affiliated with them. The goals are to sideline these groups and individuals and prevent them from publishing political speech during the 2014 legislative session and campaign period, during which Scott Walker will run for re-election as Wisconsin's governor and to discredit conservative politicians and candidates in the State of Wisconsin by virtue of the unlawful investigation. These targets include Plaintiffs Eric O'Keefe and WCFG, individuals affiliated with them, and other conservative affiliated individuals and organizations.

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[1] The defined term "Defendants," as used in this Complaint, does not include Gregory Peterson, who is named only in the official capacity of his office and is referred to separately in allegations involving the official capacity of his office.

2. The result of Defendants' actions is a substantial chilling effect on political speech and association in Wisconsin, including Plaintiffs'. Groups that have spoken politically in the past are now unable to speak effectively or at all. Their fundraising efforts are hobbled, their resources are wasted on legal defense, and they do not exercise their First Amendment rights of speech and association for fear of being swept into the investigation and for fear of prosecution under unconstitutionally overbroad and vague legal theories.

3. These extraordinary circumstances call for extraordinary action from the federal judiciary. Federal courts, including the United States Supreme Court, have affirmed the principle that "investigations, whether on a federal or state level, are capable of encroaching upon the constitutional liberties of individuals" and that "[i]t is particularly important that the exercise of the power of compulsory process be carefully circumscribed when the investigative process tends to impinge upon such highly sensitive areas as freedom of speech or press, freedom of political association, and freedom of communication of ideas . . . ." *Sweezy v. New Hampshire by Wyman*, 354 U.S. 234, 245 (1957). The Court should reaffirm these principles and issue preliminary and permanent injunctions ending the investigation and award damages to O'Keefe and WCFG in an amount to be determined at trial.

JURISDICTION AND VENUE

4. This action arises under the First and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the doctrine recognized in *Ex Parte Young*, 209 U.S. 123 (1908). Jurisdiction of the Court is conferred by 28 U.S.C. §§ 1331, 1343(a)(3) and (4).

5. The United States District Court for the Eastern District of Wisconsin is a proper federal venue for this action because all the defendants are residents of Wisconsin pursuant to 28

U.S.C. § 1391(b)(1). In addition, pursuant to Section 1391(b)(2), a substantial part of the events or omissions giving rise to the claim occurred in Milwaukee County. Venue in the Milwaukee Division is appropriate because the events in question have their "greatest nexus" to the counties in that division. *See In re General Order Regarding Assignment of Cases to the United States District Judge Designated to Hold Court in Green Bay, Wisconsin* (E.D. Wis. Jan. 1, 2005).

PARTIES

6. Plaintiff Eric O'Keefe is an individual who resides at his permanent address in Iowa County, Wisconsin. O'Keefe is a veteran volunteer political activist with local and national activities, and he engages in First Amendment-protected political speech and associational activities in Wisconsin and nationwide, including through several independent organizations. O'Keefe is a director of WCFG, which is among the many targets of the investigation.

7. Plaintiff WCFG is a 501(c)(4) social welfare organization that promotes free-market ideas and policies. It does this through public communications and its expressive associations with other groups promoting conservative policies. All of its public communications constitute "issue" advocacy—that is, none expressly urge the election or defeat of any candidate for office—and WCFG only associates and donates money to other groups that similarly engage in issue advocacy.

8. Defendants have coordinated with local authorities to open a John Doe proceeding in Iowa County targeting O'Keefe and have joined it with parallel John Doe proceedings in counties across Wisconsin. The initial judicial appointment documents for the John Doe investigation in Iowa County, where O'Keefe resides, state that the target is "ESO," apparently referencing O'Keefe. Defendants have also coordinated with local authorities to open a John Doe proceeding targeting WCFG. Defendants' investigation, carried out in part through

these proceedings, violates Plaintiffs' rights under the First and Fourteenth Amendments to the U.S. Constitution.

9. On information and belief, Defendant Francis Schmitz is an individual who resides at his permanent address in Waukesha County, Wisconsin. Schmitz has been appointed special prosecutor in the current phase of the investigation and in each of the current John Doe proceedings. Schmitz was appointed on petition of Defendant Chisholm and others, and he acts in concert with the other Defendants in perpetrating the unlawful investigation at issue in this case. At all times material to this Complaint, Schmitz was and is acting under color of law.

10. On information and belief, Defendant John Chisholm is an individual who resides at his permanent address in Milwaukee County, Wisconsin, and is the District Attorney of that county. In Wisconsin, District Attorney is a partisan position, and Chisholm ran for his post as a Democratic Party candidate and has strong ties with members of that Party in Milwaukee, including with Mayor Tom Barrett, who ran for governor twice against Scott Walker. At all times material to this Complaint, Chisholm was and is acting under color of law.

11. On information and belief, Defendant Bruce Landgraf is an individual who resides at his permanent address in Milwaukee County, Wisconsin, and is employed as an Assistant District Attorney in the Milwaukee County Attorney's Office. On information and belief, Landgraf prosecutes cases for that Office's Public Integrity Unit and has been the principal member of that Office in charge of the investigation. Most recently, Landgraf has been involved in communications alongside Defendant Schmitz with others involved in the proceedings and has been held out has being part of the investigative and prosecutorial team. At all times material to this Complaint, Landgraf was and is acting under color of law.

12. On information and belief, David Robles is an individual who resides at his permanent address in Milwaukee County and is employed as an Assistant District Attorney in the Milwaukee County Attorney's Office. As a member of that Office's Public Integrity Unit, Robles has been heavily involved in the investigation, attending in-person meetings between the Special Prosecutor and other parties. He has been held out as part of the investigative and prosecutorial team. At all times material to this Complaint, Robles was and is acting under color of law.

13. On information and belief, Dean Nickel is an individual who resides at his permanent address in Dane County, Wisconsin. On information and belief, Nickel is a contract investigator with GAB and was appointed or selected as an investigator by Defendant Chisholm and has been acting in concert with the Defendants or as an agent of the Milwaukee County Attorney's Office in perpetrating the investigation. Defendant Dean Nickel worked under Peggy Lautenschlager, the former Attorney General of Wisconsin from 2003 to 2007 and member of the Democratic Party, as head of the Wisconsin Department of Justice Public Integrity Unit and did not remain in that high-level position after her tenure ended. At all times material to this Complaint, Nickel was and is acting under color of law.

14. On information and belief, Gregory Peterson is an individual who resides at his permanent address in Eau Claire County, Wisconsin, and is a retired Appeals Court Judge. Peterson has been appointed as John Doe "Judge" and is responsible for administering the most recent John Doe proceeding in this investigation. In this role, Peterson is not, in fact, acting in a judicial capacity. Peterson is a Defendant in this matter in his official capacity only, and Plaintiffs are not seeking money damages from him. An injunction against Peterson is necessary

to provide Plaintiffs adequate relief in this lawsuit, including relief from the Secrecy Order. At all times material to this Complaint, Peterson was and is acting under color of law.

FACTS

I. Background

15. The investigation at issue in this Complaint is taking place against the backdrop of the most tumultuous political events in Wisconsin in generations—perhaps in history.

16. On November 2, 2010, candidates of the Republican Party won control of all branches of the Wisconsin government for the first time since 1998.

17. Contributing to this success was the growing influence of conservative independent social welfare organizations, including the organizations that have been targeted in the John Doe investigations. These social welfare organizations published political speech, in media, including television and radio, on issues related to their organizational purposes. Around the time of the 2010 Wisconsin gubernatorial race, independent interest groups spent, according to the best estimates, a combined $37.4 million, largely for communications criticizing positions taken by the candidates.

18. Many with left-leaning views have opposed the involvement of independent interest groups like WCFG in election speech. This opposition escalated considerably after the Supreme Court decided *Citizens United v. Federal Election Commission*, 558 U.S. 310, in January 2010, which struck down regulations barring corporations from making independent express advocacy expenditures in elections as violative of the First Amendment. The Court explained that the "right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it," and that the "First Amendment has its fullest and most urgent application to speech uttered

during a campaign for political office." 558 U.S. at 339 (internal quotation marks omitted). Demonstrating the consternation surrounding that decision among many affiliated with the Democratic Party, the President of the United States chastised members of the Supreme Court in attendance at that year's State of the Union Address over the decision. This tactic was unprecedented, as observers noted at the time.

19. Around this time, left-leaning advocates began to theorize and propose that campaign finance theories such as "coordination" could be redefined and diverted from their traditional scope to undermine *Citizens United* and offer an alternative route to preventing independent organizations from participating in elections. Another campaign finance concept recommended for redefinition was the distinction between "issue" advocacy and "express" advocacy. Left-leaning advocates have also spent considerable time and efforts theorizing of ways to expose the names of donors to social welfare organizations in order to allow them to become the targets of reprisals. This has led to scandals including those in the federal government, as IRS agents have been accused of illegally leaking the names of Republican and conservative donors around the 2012 presidential election.

20. In March 2010, in the wake of *Citizens United*, GAB adopted new rules expanding the meaning of "express" advocacy to include forms of political speech that had long been considered "issue" advocacy. Plaintiff O'Keefe, WCFG, and a liberal organization called One Wisconsin Now sued in the United States District Court for the Western District of Wisconsin to block these rules, and several other lawsuits were filed, including in state court. Within days, upon the advice of the Wisconsin Department of Justice, GAB agreed to a settlement, recognizing that it had overstepped its legitimate authority and violated the First Amendment. The settlement process became complicated when the court determined that

prudential doctrines, such as *Pullman* abstention, should prevent the settlement from being finalized, but GAB adopted an emergency rule and has stated that it will not enforce the March 2010 rules. The John Doe Judge recognized that concession in his ruling quashing Defendants' subpoenas.

21. At the same time, the left wing of the political spectrum has continued to build up a substantial independent expenditure machinery in Wisconsin and nationwide, which rivals and, in fact, surpasses the competing conservative groups like WCFG. By the 2011 and 2012 recall races at issue in this case, these left-leaning organizations were able to outraise and outspend conservative groups in most of the relevant campaigns, and this system has allowed union money to flow freely to support Democratic Party candidates and causes in these recall elections.

22. Until his election as Governor in 2010, Scott Walker was the County Executive of Milwaukee County. On April 24, 2009, Walker declared his candidacy for Governor of Wisconsin.

A. Walker Proposes, and the Legislature Passes, the Budget Repair Bill Against Unusually Heated Opposition

23. During his 2010 campaign, Walker emphasized the need to reduce taxes and the size of the Wisconsin government to stimulate a dismal state economy. He criticized the 2009-2011 state budget as being too large given the economic situation and pledged to diminish it if elected. On September 14, 2010, Walker won the Republican primary, and he was elected Governor on November 2, 2010. He took the oath of office on January 3, 2011.

24. By early February, Walker's new administration had projected a budget shortfall in 2013 of $3.6 billion and also determined that a budget repair bill to resolve a $137 million shortfall for the year ending June 30, 2011, was necessary. Among the critical problems

identified in the state budget were costs related to public employees' pensions and health care plans. Much of the cost was the result of contracts with public sector unions.

25. The Walker administration proposed a bill ("Budget Repair Bill") to remove the ability of public sector unions to bargain collectively over pensions and health care. The bill also proposed to limit pay raises to the rate of inflation.

26. The response to this proposal was immediate and aggressive. Thousands of protestors demonstrated in and around the capitol building in Madison.

27. The events gained extensive press coverage, and images of the demonstrations were broadcast in homes nationwide. Advocacy groups across the political spectrum recognized this controversy as an opportunity to participate in a public debate about the proper role of unions generally, the proper role of public sector unions in particular, and the proper role of government. The airwaves in Wisconsin became flooded with advertisements for and against Walker's budget plan, and money came from across Wisconsin and the nation. For the budget battle alone—which involved no elections—opponents of the Walker budget spent an estimated $1.8 million and supporters spent $1.7 million. The organizations that are now being targeted in the John Doe investigation published many issue advertisements during this time about the need for public sector labor law reform.

28. For many opponents, Walker's plan was more than a political debate and quickly became personal and vindictive. For example, the website DemocraticUnderground.com maintained a list of contributors to Scott Walker for the purpose of boycotting their businesses and otherwise harming them economically. On March 3, police discovered 41 rounds of 22-caliber rifle ammunition outside the Wisconsin state capitol, and ammunition was also discovered inside a city and county government building in downtown Madison. Protestors

convened at Scott Walker's private residence in eastern Wisconsin, where his family was residing, and also targeted private residences of legislators at various times.

29. Around this time, a liberal blogger posing as David Koch called Scott Walker to entice him into making statements suggesting coordination of publicity efforts. On March 7, the Democratic Party of Wisconsin seized on this opportunity to file a complaint with GAB, alleging campaign coordination despite there being no legal basis for the complaint.

30. Around February 17, Senate Minority Leader Mark Miller led fourteen Senate Democrats—in fact, every Democratic Party-affiliated member in that body—in absconding from Wisconsin. Their whereabouts were unknown for days before they were discovered to be hiding in Illinois. The purpose of their effort was to prevent the twenty-member quorum necessary under Wisconsin law to pass spending measures and thereby stall Walker's budget plan.

31. On February 25, following sixty hours of debate, the Wisconsin Assembly, which had the requisite quorum, passed Walker's Budget Repair Bill.

32. The Bill was sent to the Senate, which still lacked the quorum necessary to pass a spending bill. The Republicans thus stripped the spending provisions from the Bill and passed the remaining measures, which included the measures related to collective bargaining. Protests engulfed the capitol once again.

33. On March 10, the Assembly passed the Senate version.

34. On March 11, Scott Walker signed the Bill, which became 2011 Wisconsin Act 10.

B. Political Hostilities Escalate Further After the Budget Repair Bill's Passage

35. The passage of the Budget Repair Bill turned out to be only the beginning of a political war in Wisconsin, as opponents continued to stretch the bounds of legality and civility in their campaign to defeat the Act and, later, Scott Walker.

36. Legal challenges to the Bill came early and often. On March 11, the day it was signed, Dane County Executive Kathleen Falk filed a lawsuit against the state, arguing that it was unconstitutionally passed. Dane County District Attorney Ismael Ozanne filed a similar lawsuit on March 16.

37. Wisconsin's Secretary of State, Doug La Follette of the Democratic Party, refused to publish the Budget Repair Bill, to try to thwart its becoming law. The Legislative Reference Bureau was thus forced to bypass the Secretary of State's office and officially published the law on March 25.

38. On March 25, AFL-CIO Laborers Local 236 and Firefighters Local 311 filed a lawsuit, and on June 15, 2011, all public unions in Wisconsin joined to file a lawsuit in federal court alleging violations of Equal Protection and the First Amendment.

39. On March 18, 2011, Dane County Judge Maryann Sumi granted a temporary restraining order against the Budget Repair Bill. Subsequently, the Wisconsin Supreme Court reversed this decision, finding that it violated separation of powers and Wisconsin precedent.

40. Lawsuits, however, were not the only tactic tried. Wisconsin State Employees Union, AFSCME Council 24, began circulating letters to businesses in southeast Wisconsin, demanding that they support "workers' rights" by placing a sign in their windows: "Failure to do so will leave us no choice but [to] do a public boycott of your business. And sorry, neutral means 'no' to those who would work for the largest employer in the area and are union members."

Similar threats occurred across the state. Among the many businesses targeted for boycotts were some that took no position on the Walker budget.

41. On April 1, 2011, a woman from Cross Plains was charged with two felonies for threatening to kill fifteen Republican state senators who voted for the Budget Repair Bill. She emailed them that opponents of the legislation were planning "to assault you by arriving at your house and putting a nice little bullet in your head." By this time, the Republican caucus in the legislature had received at least a dozen credible specific death threats.

42. Demonstrations continued as before the Budget Repair Bill's passage. We Are Wisconsin ("WAA") a prominent left-wing social welfare organization that rivaled or surpassed WCFG in spending at all relevant times, sponsored demonstrations in home communities of Republican senators. Protestors began living in tents around the capitol in a complex they called "Walkerville." When the Wisconsin State Assembly met to pass the 2012 fiscal year budget, an onlooker screaming "you're F-A-S-C-I-S-T!" had to be physically apprehended. Other onlookers chained themselves to the railing.

43. Political tensions reached the highest offices in Wisconsin, demonstrating that no institution was immune from partisan feeling. On June 27, Supreme Court Justice Ann Walsh Bradley filed a complaint claiming that fellow Justice David Prosser had placed her in a chokehold several weeks before. Other justices claimed that Bradley was the aggressor. These events occurred as the Court was ruling on the legality of the Budget Repair Bill. The event spawned two investigations, neither of which resulted in charges.

C. The Result of Political Hostilities Is Unprecedented Recall Elections

44. Legislative recall campaigns were commenced for every member of the Wisconsin Senate who was legally eligible for a recall at the time, some being commenced even

before the Budget Repair Bill's passage. Republican Senators were targeted for their support of the Budget Repair Bill. Democratic Senators were targeted for their opposition of the Budget Repair Bill, including their departure from the state to thwart legitimate democratic process. These efforts resulted in actual recall elections for nine Senators. The scope of this recall effort exceeded any precedent in United States history. The elections were held on July 19, August 9, and August 16.

45. Advertisements engulfed the Wisconsin airwaves around the time of the recall elections and the Supreme Court race. Total independent spending around the time of the state Supreme Court race was estimated to exceed $4.5 million, with WCFG being a top spending organization around the time of the primary in that race. Around the time of the 2011 Senate recall elections, the best estimates show that total spending reached a record $44 million, with $34.6 million being spent by independent advocacy groups. According to Wisconsin Democracy Campaign, Left-leaning WAW led independent groups in spending, followed by WCFG, left-leaning Greater Wisconsin Committee and Citizens for a Strong America.

46. Democrats held all their seats in the recall races, and Republicans lost two of six seats but retained control of the Senate.

47. On November 15, 2011, the Walker recall effort commenced. On November 19, the Committee to Recall Scott Walker organized an event that was advertised as being "in coordination with We Are Wisconsin, United Wisconsin, and the [Democratic Party of Wisconsin]." Organizers hoped to obtain 600,000 to 700,000 signatures on the recall petition, which would, under Wisconsin law, trigger a recall election.

48. Once again, the turn of events resulted in a deluge of political advertisements from groups and official campaigns trying to influence the public narrative. Both liberal and

conservative organizations participated, raising money from individuals, corporations, and unions. Unions were especially important contributors, contributing millions through activist groups such as WAW. It was typical on both sides for groups to donate to like-minded groups. It was also typical for personnel to be shared between groups and donors, especially unions. For example, Marty Beil, a board member of WAW was also the Executive Director of the Wisconsin State Employees Union, the Wisconsin Chapter of AFSCME. Kristen Krowell, the Executive Director of WAW was also a founding director of Wisconsin Progress, which has ties to Planned Parenthood, Fair Wisconsin, and Wisconsin Progress PAC. Phil Neuenfedlt, treasurer of WAW, was also President of Wisconsin State AFL-CIO. Under Wisconsin law, contribution limitations do not apply during the signature-gathering phase of a recall election, and GAB issued a ruling confirming this principle also applied to the Walker recall effort.

49. In March 2012, GAB announced that more than 900,000 valid signatures had been collected to recall Governor Walker. On March 30, GAB voted in favor of a recall election over Walker campaign objections that possibly hundreds of the signatures were invalid.

50. Also on March 30, Milwaukee Mayor Tom Barrett announced that he would again run against Scott Walker in the governor's race. This began a primary election cycle that Barrett won on May 8, and in connection with which unions made record expenditures.

51. The recall election between Walker and Barrett occurred on June 5, 2012, and Walker won by a greater margin than he defeated Barrett in 2010. Also on June 5, lieutenant governor Keefisch won her recall election, as did two incumbent Senators. One Republican won an open seat race on this day as well. One Republican Senator was narrowly recalled, resulting in a temporary swing of power in that body in favor of the Democratic Party. But in the November

2012 general election, Republicans gained two Senate seats, reclaiming control. And Republicans retained the 60-39 edge in the Assembly earned in the 2010 Republican sweep.

52. According to Wisconsin Democracy Campaign of independent spending surrounding the 2012 recall election shows that a record $81 million was spent around the time of these elections. Independent groups spent $36.5 million.

53. Walker and Republican lawmakers had thus been victorious, not only the in budget battle, but also in the recall race. However, efforts to attack them politically continued.

II. The "John Doe" Investigation

54. Of the many efforts to attack Governor Walker tried by his opponents, none proved so persistent as the investigation conducted continuously for nearly four years by the Milwaukee County District Attorney's office under the guidance of John Chisholm, Bruce Landgraf, and David Robles. Begun on pretextual grounds in 2010, the investigation grew into an ongoing audit of the Walker campaigns, allowing prosecutors an inside track to scrutinize actions of Walker staffers as they were taken, despite that they were unrelated to the original purported purpose of the investigation. It also allowed the Milwaukee District Attorney's office to influence public opinion through leaks of selective information meant to embarrass Walker and his campaign. The investigation became a rallying cry for Democratic Party members and candidates and a central issue in the Walker recall right up until the election.

55. After Walker's 2012 recall victory, the investigation was expanded again as more John Doe proceedings were begun and then consolidated into another phase of the investigation with an even broader scope: all independent advocacy by conservative groups in Wisconsin and even outside Wisconsin.

A. The Milwaukee County Attorney's Office, Which Has Initiated and Conducted the Investigation, Is Biased Against Walker and the Budget Repair Bill

56. The investigation originated in the Milwaukee County Attorney's Office (sometimes, "the Office" or the "DA's Office") and was conducted almost entirely by investigators and attorneys in that Office.

57. The leader of the Office was at all relevant times and is District Attorney John Chisholm, who won that seat as a Democratic Party candidate and has been supported by unions in previous campaigns, including in the most recent race to hold his DA position, during which he received support from, among others, the AFL-CIO. Chisholm also is a donor to Democratic Party candidates and, as of April 2012, had given $2,200 exclusively to Democratic and liberal candidates, making him one of the top donors in the Milwaukee County Attorney's Office.

58. Altogether, as of April 2012, employees in Chisholm's office had donated to Democratic over Republican candidates by roughly a 4 to 1 ratio.

59. During the 2011-2012 campaign to recall Scott Walker, at least 43 (and possibly as many as 70) employees within Chisholm's office signed the recall petition, including at least one Deputy District Attorney, 19 Assistant District Attorneys, and members of the District Attorney's Public Integrity Unit.

60. Chisholm has close ties with Democratic Party members around Wisconsin and in Milwaukee, including Mayor Tom Barrett. In 2008, just days before Democrat Tom Barrett ran for reelection as Mayor of Milwaukee, Chisholm appeared in a two-and-a-half minute clip that began and ended with the official Barrett-for-Mayor reelection screen. In the clip, Chisholm praised Barrett's record on crime, education, and city development. Upon information and belief, Chisholm provided other forms of support for Barrett and received similar support both publicly and privately in their respective campaigns.

61. Like many public sector employment divisions, assistant district attorneys in Wisconsin are represented by a union, which was affected by the passage of the Budget Repair Bill in much the same way as the other public sector unions. Thus, assistant district attorneys, like many other public sector employees had a direct, personal stake in the debates over the Budget Repair Bill. Among other things, the Budget Repair Bill resulted in their having to contribute more to their health care and pension plans, resulting in a direct financial loss to them from the Bill. Unlike many public sector unions, which have had a difficult time recertifying after the Budget Repair Bill went into effect, the assistant district attorneys union recertified again in November 2013.

B. The Investigation Began on Pretextual Grounds and Had a Political Motive From the Beginning

62. Under Wis. Stat. § 968.26, a prosecutor may commence a special investigation, commonly known as a "John Doe" investigation, by filing a complaint with a judge and alleging that there is reason to believe that a crime has been committed. The judge in this matter, often called a "John Doe judge," does not act on behalf of the court but serves essentially as a grand jury of one. Once a district attorney requests a judge to convene a John Doe proceeding, the judge *must* convene the proceeding and *must* issue subpoenas and *must* examine *any* witnesses the district attorney identifies. This gives a district attorney extraordinary ability to obtain subpoena power over private parties as part of an investigation.

63. Wisconsin law also allows a judge to impose a secrecy order over witnesses in a John Doe proceeding. In this respect, a John Doe proceeding differs from normal practice before a federal grand jury, where a secrecy order binds jurors and prosecutors but typically not witnesses. According to common practice in John Doe proceedings, prosecutors who ask for

secrecy orders almost inevitably receive them. Secrecy orders were imposed in all John Doe proceedings commenced in this investigation.

64. The investigation has lasted nearly four years, with the first phase beginning on May 5, 2010, and ending on February 21, 2013. It was conducted by attorneys at the Milwaukee County Attorney's Office under the supervision of Defendant Chisholm. For purposes of opening the proceeding, the crime that the Milwaukee District Attorney's office purportedly had reason to believe was committed related to missing money from veteran's fund called Operation Freedom, which was founded by Scott Walker. But Operation Freedom was never a priority of the District Attorney's Office, which had grander plans in mind from the outset.

65. After 2006, the Operation Freedom funds were managed by the Michelle Witmer Chapter of the Military Order of the Purple Heart ("MOPH"). In 2008, Darlene Wink, an employee in the Milwaukee County Executive's Office identified an apparent shortfall of roughly $11,000 from funds received by MOPH from the Executive's Office. The Executive's Office subsequently informed the Milwaukee County Attorney's Office.

66. On April 23, 2009, Chief Investigator David Budde interviewed Thomas Nardelli, Chief of Staff to Milwaukee County Executive Scott Walker, regarding the missing funds. Nardelli told Budde that he believed that Kevin Kavanaugh, the MOPH chapter treasurer, was responsible for the discrepancy and likely had stolen over $11,000 from the funds.

67. This interview occurred over one year before the Milwaukee County Attorney's Office opened a John Doe proceeding for the purported purpose of investigating the discrepancy.

68. Upon information and belief, the Milwaukee County Attorney's Office decided to use a John Doe proceeding to investigate the Milwaukee County Executive's Office as a means of influencing the 2010 election in which Scott Walker was a candidate for Governor. Attorneys

within the Office determined that, by opening an investigation into the missing Operation Freedom funds, they could investigate Darlene Wink's activities on her county computer and possibly expand an investigation into Walker's employees more generally to identify possible violations of law that could be linked directly to Scott Walker.

69. In the petition requesting the commencement of a John Doe proceeding, Defendant Landgraf represented that a John Doe proceeding was necessary because the Executive's Office had not provided documentation that would allow investigators to trace the funds from Milwaukee County to MOPH and because interviewing witnesses outside a John Doe proceeding had "not yielded satisfactory results." *See* Ex. A, Petition for Commencement of a John Doe Proceeding, *In re John Doe Proceeding* (Wis. Cir. Ct. Filed May 5, 2010). In fact, the County Executive's Office, after this representation became public, denied this allegation and stated in no uncertain terms that it had made "multiple follow-ups" to the DA's Office, since it had originally requested the investigation. Moreover, with one exception, every interview cited in the subsequent criminal complaint against Kavanaugh was with a willing witness outside the John Doe process.

70. The purported line of inquiry cited by Defendant Landgraf was narrow: "to identify the origin of the funds transferred to the Order." *Id.* Yet, within half the time between the Nardelli interview in 2009 and the commencement of the John Doe proceeding in May 2010, the investigation had turned to other issues involving Walker, his campaign, and his staff. And within two years, the investigation had turned to Walker's gubernatorial administration in Madison and, within three years, it had become the basis for a state-wide probe into virtually every conservative independent organization involved in Wisconsin politics.

71. Upon information and belief, even the purported line of inquiry had little if any importance to the Operation Freedom investigation. The concerns from the Executive's Office related to what happened to the funds *after* they had been transferred to MOPH and had little if any relevance to the "origin" of the funds, *id.*, which, upon information and belief, was never in doubt. Yet Landgraf used this pretext as an excuse for "subpoenaing county officials" and for "examination of business records maintained by the County Executive's office and other County Departments," despite that relatively few records would be relevant to and relatively few officials would have knowledge of this narrow topic. The actual purpose of the petition was to obtain access to county officials and documents for an open-ended fishing expedition into Walker's office.

72. The political potential of the investigation was apparent to Landgraf from the beginning. In the petition, Landgraf argued that the investigation should be conducted under a secrecy order because "publicity of allegations and inferences would be particularly unfair to the County Executive, a man who is seeking the nomination of the Republican Party for the Office of Governor of the State of Wisconsin in this Election Year." *Id.* Under the purported basis for the John Doe proceeding, this would be unnecessary: an investigation that Walker's Chief of Staff invited would hardly embarrass Walker, so long as it was limited to its original purpose, and imposing a secrecy order could prevent Walker from demonstrating to the public that he was not the target and that his office had requested it—two arguments Walker had a difficult time making subsequently precisely because of the secrecy order. In fact, it was the secrecy order and the concomitant lack of public scrutiny that allowed Landgraf and others to turn the investigation against Walker, to permit selective leaks to embarrass Walker, and to prevent any substantive defense by Walker or others as the investigation became a media sensation during his recall.

Thus, upon information and belief, while requesting secrecy with the purported purpose of helping Walker avoid embarrassment, Defendant Landgraf made it all the more possible to embarrass him.

73. The first priority of the investigation was the county employees, and Darlene Wink in particular, and its aims were far broader than tracing a few thousand dollars to a source that was uncontested. Nine days after the commencement of the proceeding, the John Doe judge signed a search warrant allowing investigators to search the Milwaukee County computer that Wink used, and the warrant was executed immediately. Without delay, investigators examined her computer and had already discovered Wink's personal email accounts in time to issue a Preservation Letter Request the next day, May 15. Wink's personal email accounts bore no relation to the purpose of tracing funds from the County to MOPH. Nevertheless, the John Doe judge subsequently issued a search warrant for them. Wink, like so many witnesses with information about Operation Freedom, would later testify willingly about the Operation Freedom funds, demonstrating that, had their purpose been to ascertain what she knew of the funds, investigators could simply have asked. In contrast to the one-year delay to launch an investigation into the missing funds, the few days needed to target Wink shows that Walker's employees were of interest from the very beginning.

74. The same day as the search, the Milwaukee County Supervisor John F. Weishan, Jr., sent a criminal complaint to Defendant Chisholm, carbon copying Defendant Landgraf. The complaint alleged that Darlene Wink was "illegally using state resources for political purposes" by posting articles favorable to Scott Walker. This amounted to "donat[ing] resources, email services, computer services, staff salary, etc., which did not belong to her for the political benefit of Scott Walker's campaign." In addition, the complaint alleged that Scott Walker's campaign

failed to report these illegal contributions and, in so failing, violated Wisconsin law. The complaint concluded that the Milwaukee County Attorney's Office should investigate, not only Darlene Wink, but also Scott Walker and his campaign. Thus, within nine days of the commencement the investigation, Chisholm and Landgraf had succeeded in their true goal: finding an excuse to conduct an open-ended investigation of Walker's staff for the remainder of his campaign and beyond.

C. The Scope of the Investigation Immediately Broadened and Has Broadened Exponentially Ever Since

75. Chisholm, Landgraf, and their subordinates, including Defendant Nickel, followed through on that purpose. The investigation has been breathtakingly broad. It has swallowed up everything in its path that could remotely be used as political fodder against Scott Walker and any groups or individuals that support initiatives or changes proposed by Walker. Credible reports state that over 100 witnesses were interviewed and hundreds of thousands of documents were seized and reviewed, which unquestionably cost far more than the missing $11,000 supposedly under investigation.

76. On May 10, 2010, GAB formally initiated an investigation into William Gardner, a railroad owner, based on a complaint by his former girlfriend that he had asked her to make a campaign contribution to Scott Walker on his behalf and with his reimbursement. Under Wisconsin law, the venue for an eventual prosecution would have to be (and eventually was) Washington County because of Gardner's residency in Hartford. Nevertheless, that very month, GAB consulted with Landgraf and they agreed that this investigation should continue in Milwaukee County under the auspices of the John Doe investigation. The Gardner allegations were unrelated to the Operation Freedom funds, and there would be no basis for drawing a connection between the issues under investigation—unless it was already established that the

investigation was aimed at individuals or groups that support Walker, who was the sole common denominator. On information and belief, the purpose was to lend credibility to requests before the John Doe judge to expand the investigation further into Walker, his associates, his campaign, and his supporters.

77. On May 28, 2010, Gardner contacted GAB, agreed to cooperate, and eventually turned over the information that would be used in the criminal complaint against him. A John Doe proceeding was unnecessary to obtain his conviction, but served as a pretext to allow Chisholm and Landgraf's continue their unlawful fishing expedition into Walker's affairs.

78. The investigation quickly turned to other employees within Walker's office, including through computer seizures at county offices, and by November 1, 2010, investigators succeeded in obtaining a search warrant of another employee in the County Executive's Office: Kelly Rindfleisch.

79. Continuing their pattern of using the John Doe investigation for political means, investigators executed a broad search warrant allowing them to comb through the Office of the County Executive the day before the November 2 gubernatorial election. That same day, investigators executed a search warrant at the home where Rindfleisch was residing on a temporary basis. Execution of this warrant was not necessary for the investigation, as Rindfleisch did not keep any possessions there except clothes and other personal items.

80. By the end of November, prosecutors turned their investigation on Timothy Russell, another county employee, whose computer was seized in August. The John Doe Judge authorized expansion of the John Doe proceeding on November 30, and Milwaukee authorities promptly executed a search warrant on his home on December 7. Although this raid produced nothing of value for the John Doe investigation, it uncovered wholly unrelated conduct on behalf

of Russell's domestic partner that Chisholm and Landgraf used to further justify continued expansion of the investigation.

81. Over the following year, as political tensions in Wisconsin blazed, investigators continued to dig deeper into the Walker affairs in an effort to find some evidence of criminal conduct that could influence the recall election. By December 2011, the investigation had expanded into alleged bid-rigging in connection with a competitive bidding process for office space for the Milwaukee County's Department of Aging. The bidding process occurred in the fall of 2010, as did the events under investigation, and the tip leading to the investigation was received in the fall 2010. By December 2011, investigators were asking whether Walker's office had improperly provided inside information to some brokers ahead of others during the bidding process. No bid was ever awarded, making the theory unlikely to succeed.

82. As of May 2012, this line of inquiry was still ongoing, and, by this time, investigators were focused on whether a Walker aide had improperly received preferential treatment in the bidding process. This line of inquiry could not have been contemplated at the outset of the investigation because the events had not yet occurred. The events at issue were entirely unrelated to the Operation Freedom funds, and the sole common denominator with the other subject matters of the investigation was Scott Walker and his supporters.

83. Upon information and belief, numerous other legal and factual avenues were also being explored and had been explored at this time, none leading to a viable prosecution against Walker or those close to him.

84. By June 2012, finding no basis for prosecution related to the 2010 Department of Aging office bids after months of resources had been poured into the inquiry, the County Attorney's Office, rather than move on, continued to search for anything that could be used for

political purposes without any regard for probable cause or even reasonable suspicion. On June 18, 2012, Defendant Robles filed an open records request with the state Department of Administration seeking communications between the agency and staffers in Governor Walker's office at the state capitol. The request sought all communications "related to the designation and determination of individuals as 'key professional staff' of the Office of Governor" since the time Walker took office on January 3, 2011. Robles tried to disguise the purpose of the request. It was not submitted on Milwaukee County DA letterhead and did not provide Robles's job title. Robles provided a personal e-mail address for the request, raising issues under Wisconsin's public records laws, but the possible impropriety was never investigated. Legal counsel for the Department of Administration recognized that the request related to the official business of the County Attorney and emailed a response to Robles's government email account on June 27 with a carbon copy to Kent Lovern and Hanna Kolberg of the DA's Office.

85. On information and belief, the Robles request signaled yet another shift in the John Doe investigation, as the DA's Office began to evaluate whether it could plausibly continue its ongoing efforts and refocus them from Walker's time as County executive to Walker's tenure as Governor, despite that Walker's administration did not fall within Office's jurisdiction of Milwaukee County. For that, Chisholm and Landgraf would need the ability to oversee Walker's activities 80 miles away in Madison, which would require a new John Doe proceeding with statewide reach and even a broader scope.

86. In August 2012, Landgraf filed a petition for another John Doe proceeding, which was officially opened in September. Upon information and belief, it was initiated for the purpose of continuing the political vendetta in the days after Walker's victory in a renewed attempt to defeat him and/or his Budget Repair Bill.

87. From Defendants' perspective, the expanded investigation would allow them to continue their campaign of harassment and intimidation from persons affiliated with Scott Walker at the County Executive's office to the entire conservative social welfare organization community in Wisconsin, and beyond. It would also put them before a new John Doe judge, one who was not wary of the growing scope of their investigation. The timing would conveniently coincide with the 2014 campaign season, which was set to heat up late in 2013, and that year's legislative session. That target timeline allowed prosecutors time to solve several practical problems with their scheme.

88. First, upon information and belief, the evidence on hand was not sufficient to justify an investigation of the scope contemplated. This problem was addressed in part by combing through the mountains of evidence obtained from the first John Doe proceeding and was addressed in part through the Robles public records request and similar investigations into publicly available information.

89. Second, upon information and belief, Landgraf and Chisholm needed the ability to conduct the investigation on a state-wide basis. This problem was resolved by opening other John Doe investigations. Defendants persuaded other district attorneys to petition for John Doe proceedings. A proceeding was opened in Dane County, where Walker's administration was and is headquartered. A proceeding was opened in Dodge County, where, on information and belief, prosecutors continued to investigate Kelly Rindfleisch and others. A proceeding was opened in Columbia County. And a proceeding was opened in Iowa County, allowing prosecutors to target Plaintiff O'Keefe. A single judge, Barbara Kluka, was appointed to oversee each of these proceedings.

90. Defendants did not want the investigation to be run by the respective district attorneys, which could significantly detract from their political ends and risk their motives being exposed. So, after having engineered the opening all these proceedings, Defendant Chisholm complained to the John Doe judge that having multiple proceedings was inefficient and cumbersome and requested that they be run along with the Milwaukee County proceeding in one effectively consolidated proceeding. Chisholm's request was granted.

91. Third, upon information and belief, Landgraf and Chisholm were aware of the criticism they would face once this phase of the investigation became public and so needed a way of minimizing the appearance of impropriety. This problem was resolved by having Defendant Francis Schmitz, who lacked the publicly known ties to liberal politics plaguing Defendants, appointed as special prosecutor. Schmitz is a former federal terrorism prosecutor with no experience in campaign finance or First Amendment law. He admitted to O'Keefe's lawyers that he is "a neophyte" with respect to these areas of law. Schmitz has further admitted in court papers that he has not applied for any of the subpoenas, subpoenas duces tecum, or search warrants in this matter, and that he has not appeared before the John Doe judge to take oral testimony. Schmitz's phone number is a Milwaukee County District Attorney's Office phone number, indicating that this Office remains the headquarters of the investigation. In fact, the orders appointing Schmitz specifically authorize the same district attorneys and staff members who wanted to avoid the appearance of impropriety (including Defendants) to carry out the day-to-day work of the investigation, and, on information and belief, they still maintain effective control over the investigation.

92. Upon information and belief, Landgraf, Chisholm, Robles, and Nickel continue to play an active and supervisory role in the investigation. Landgraf and Robles have been involved

with phone conferences with counsel in the various proceedings. Nickel swore out the affidavits for some or all of the home raid warrants.

93. Early in 2013, Chisholm solicited Attorney General J.B. Van Hollen's assistance in taking the investigation statewide. Van Hollen recommended that, if Chisholm was concerned about access to statewide jurisdiction, he refer the matter to the GAB to serve "as a lead investigator and first decisionmaker," which it had done in prior cases. Ex. B, Van Hollen Letter to Chisholm (May 31, 2013).

94. Chisholm rejected this advice. The investigation was not directed under the auspices of GAB but was turned into an unprecedented five-county John Doe proceeding. In Chisholm's petition to the John Doe Judge to appoint a special prosecutor, he explained that GAB was not the correct party to conduct the investigation because the investigation was criminal, completely ignoring Van Hollen's caution that one purpose of the investigation should be to *determine whether the charges should be civil and criminal*. As Van Hollen noted, if GAB determined that enforcement should be through criminal sanctions, it could have referred the case to the appropriate district attorney, which would have served the ends of justice, but would not have given Chisholm the opportunity to continue the witch hunt. The petition demonstrates that Chisholm decided that the prosecutions would be criminal before obtaining much of the relevant evidence.

D. The Current Inquiries Are Based on an Invalid Legal Theory

95. Defendants are basing their current phase of the investigation on a theory of campaign coordination that would make nearly all political advocacy in Wisconsin subject to government scrutiny and regulation. In particular, their theory is that Wis. Stat. § 11.01(16), which defines "political purposes" for purpose of Wisconsin campaign-finance law, reaches

communications other than those that are express advocacy or its functional equivalent. On that basis, Defendants assert that speech and speech expenditures coordinated with a campaign or campaign committee are subject to Wisconsin laws limiting contributions to campaigns and mandating disclosure.

96. Defendants assert that potentially every activity in which Plaintiff WCFG and 28 other social welfare organizations engaged during the 2011 and 2012 recall elections constitutes a contribution to, or may be attributable to, Friends of Scott Walker ("FOSW"), Governor Walker's official campaign committee, by virtue of the fact that FOSW allegedly employed Mr. Richard "R.J." Johnson, a veteran political operative in Wisconsin who has ties to certain of the groups.

97. Defendants argue that R.J. Johnson's ties with FOSW and with other social welfare organizations during the recall campaign, including WCFG, were sufficient to render the activities of these organizations "coordinated" with FOSW. Under Defendants' theory, by operation of law, these organizations either (1) became subcommittees of FOSW, and so were subject to the same limitations applicable to FOSW, or (2) their expenditures became "contributions" to FOSW. *See* Ex. C*,* State's Consolidated Response to Motions to Quash Subpoenas Duces Tecum, *In re John Doe Proceedings* (Wis. Cir. Ct. Filed December 9, 2013).

98. A key problem, according to Defendants' theory, with the alleged coordination scheme, is that these "contributions" should have been *reported* as contributions in kind to FOSW to fulfill the legislative purpose in Wisconsin of transparency in elections.

99. The legal theory is flawed in several respects. Because WCFG engaged only in issue advocacy and not express advocacy at all times relevant to the investigation, the

coordination theory proposed cannot extend to its activities. Both Wisconsin law and the First Amendment preclude this application.

100. Under Wisconsin law, campaign finance regulation is predicated on communication being for a "political purpose." This term of art is, in turn, predicated on the communication expressly advocating the election or defeat of a clearly identified candidate. Thus, Wisconsin campaign finance law does not extend to issue advocacy, including the communications made by Plaintiffs. Without express advocacy, Plaintiffs' and other targets' communications are not properly subject to the limitations and disclosure requirements of Wisconsin law.

101. Under the First Amendment, regulation of campaign speech is subject to strict scrutiny and is only legitimate to the extent that they are narrowly tailored to the government's interest in preventing quid pro quo corruption. In addition, statutes and regulations cannot be overbroad or vague. These principles take on even more importance when the statutes or regulations are being applied to support criminal liability, and, under ordinary principles of statutory interpretation, all benefit of the doubt as to a vague statute goes to the defendant. The Supreme Court applied these principles to federal provision substantially identical to the Wisconsin statute and held that the provision would be unconstitutional unless restricted in its scope to express advocacy. *See Buckley v. Valeo*, 424 U.S. 1, 77-80 (1976). That decision was made over 40 years ago, and the law is thus well settled and should be known to a reasonable prosecutor. A reasonable prosecutor would also know that the Supreme Court's decision in *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), similarly prohibits the intent-based standard for "political purpose" that Defendants assert reaches Plaintiffs' issue-advocacy communications.

102. In addition, Plaintiffs' advocacy did not promote Scott Walker at any time relevant to this investigation. Plaintiffs spoke out on the Budget Repair Bill and other issues, but did not promote Walker during the recall petition or during the recall election. Plaintiffs did not donate money to any organizations for the purpose of making communications regarding Scott Walker, and, to their knowledge, recipients never made communications regarding Scott Walker, with one exception that cannot be attributable to their donation. These facts are easily ascertainable, as virtually all of Plaintiffs' advocacy is available online, including on YouTube. As GAB has recognized in an official opinion issued over a decade ago and reaffirmed since, and which thus reflects settled law, any statutory language that could be read to prohibit all contact between independent organizations and candidates is unenforceable. Yet the purpose and effect of Defendants' actions is to render Plaintiffs' protected association and speech a criminal offense, demonstrating blatant disregarding for Plaintiffs' well-established constitutional rights.

103. Further, under the First Amendment, Defendants' "subcommittee" legal claim—which would cause issue advocacy groups to be deemed to be subcommittees of a campaign based on a purported "hub" connecting them—is legally flawed for the same reasons. It is also unlawfully overbroad because it amounts to a prohibition on association between these groups. The theory is also flawed because Plaintiffs' activities did not relate to the campaign of which they are alleged to be a subcommittee, and Supreme Court precedent is clear that Defendants may not redefine terms to circumvent First Amendment rights. *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996).

104. In addition, the factual theory that R.J. Johnson was the hub of a coordination scheme with FOSW is entirely unrelated to the numerous legislative campaigns that are included

in the subpoenas, demonstrating that the purpose of the subpoenas is to harass, not to gather information for a legitimate prosecution.

105. The Defendants have also alleged that the monetary transfers among the conservative social welfare organizations that are subject to the John Doe investigation are somehow illegal. In fact, there is absolutely no prohibition against independent groups donating money or otherwise communicating or coordinating with *one another*. For that reason, vast amounts of information related to communications between and among the independent organizations is irrelevant to the purported purpose of the investigation. Liberal groups engaged in precisely the same cash flow operations and have not been scrutinized by a John Doe investigation or otherwise.

106. Liberal groups involved in the Wisconsin recall campaigns conducted precisely the same activities that Schmitz and the other Defendants have identified as justifying an investigation into conservative groups, but there is no John Doe investigation into these groups. This selective use of prosecutorial discretion and retaliation itself violates the First and Fourteenth Amendments, irrespective of the legal validity of the prosecution. It is settled law that prosecutors may not make investigative and prosecutorial decisions as retribution for First Amendment activities or based on the political views of the respective targets, and a reasonable prosecutor would know that such bases for decision-making is unlawful.

107. The investigation is conducted primarily with the purpose of intimidating conservative groups, hobbling their operations, impairing their fundraising efforts, and otherwise preventing their participation in the upcoming election cycle. It has no legitimate legal basis.

E. The John Doe Judge Found that No Probable Cause Exists To Maintain the Investigation, But Defendants Have Announced Intent To Continue It Anyway

108. On January 10, 2014, John Doe Judge Peterson quashed the subpoenas issued in the investigation and found that the search warrants (long since executed) lacked probable cause. Peterson ordered the return of property seized from the raids as well as any property provided pursuant the subpoena demands.

109. In making this ruling, Peterson found that Defendants' campaign finance theories are invalid as a matter of statutory interpretation and that they violate the constitution. His ruling held unequivocally that "the statutes only prohibit coordination by candidates and independent organizations for a political purpose, and political purpose . . . requires express advocacy. There is no evidence of express advocacy." Ex. D Decision and Order Granting Motions to Quash Subpoenas and Return of Property (Jan. 15, 2014).

110. The ruling found that, without this limitation, "the definition of political purpose [in the Wisconsin statute] might well be unconstitutionally vague." *Id.* (citing *Buckley v. Valeo*, 424 U.S. 1, 77 (1976)). The ruling found that any "broad language" in Wisconsin law that might arguably extend to "all coordination" between a candidate and independent organizations "is constitutionally suspect," and that GAB "has recognized" this flaw in an opinion over a decade old. *See Id.* (Citing El. Bd. 00-2 (reaffirmed by GAB in 2008)). The ruling therefore makes clear that this law was well settled by 2013 and that a reasonable prosecutor would know of it.

111. The ruling further found that "statutes do not regulate coordinated fundraising. Only coordinated expenditures may be regulated and the State does not argue coordination of expenditures occurred." *Id.* (citation omitted).

112. In holding that the legal theory underpinning the investigation was invalid, the decision necessarily demonstrates that there is no legitimate government interest in continuing the investigation.

113. Defendants have not responded to Plaintiffs' requests that they cease and desist their conduct.

F. The Investigation Has Been Characterized by Prosecutorial Misconduct

114. Along with allowing prosecutors' ongoing access to Walker-related files, the investigation provided an avenue for them to engage in intimidating behavior and harassment to achieve the goals of their politically motivated quest.

115. One such incident began in September 2010, when Christopher Brekken, owner of Rice Lake Harley Davidson in Barron County, received a subpoena seeking the credit card number used for certain purchases from his dealership on a specific date. Brekken's dealership does not and did not maintain records of the credit card numbers of specific customers and had no way of obtaining the information. In fact, such information is protected by Wisconsin and federal law, and it would be illegal for Brekken's dealership to maintain records of credit card numbers or obtain them from other sources. Brekken timely informed Landgraf that he had no information in response to this request and could not obtain it. This answer did not satisfy Landgraf, and he obtained a bench warrant for Brekken's arrest. Brekken was arrested on October 19, 2010 and remained in jail even after producing the basic information about the purchases that he was legally allowed to maintain. Landgraf informed Brekken's attorney that he should pressure Brekken's bank or credit card company to turn over the information, despite that it would be illegal to do so. Brekken was finally released after he agreed to drive five hours to

Milwaukee to testify before the John Doe Judge, which resulted in his providing to Landgraf the same information that he had initially provided.

116. Brekken has subsequently sued Landgraf on several civil counts, including false imprisonment and abuse of process. In a hearing in that case in March 2013, Barron County Judge Timothy Doyle expressed his amazement at Landgraf's behavior: "Obviously a lot of what happened here was politically motivated and not—the conduct described is nothing that we as Wisconsinites should be proud of, bottom line . . . . Mr. Landgraf was behaving badly, probably for political reasons."

117. Landgraf expressed his own view of the affair in November 2013 to the Wisconsin Reporter: "What difference does it make? . . . We ultimately got the information and details we needed." Though clearly inconsistent with prosecutorial ethics, the statement accurately describes the philosophy and *modus operandi* of the investigation.

118. Another incident occurred in December 2011, when Landgraf ordered that Andrew Jenson, a commercial real estate broker, be arrested, and he was be jailed overnight. Jensen and his real estate firm were both donors to Walker's 2010 campaign. Defendant Robles personally undertook the task of arresting him. The incident caused a sensation in the Milwaukee papers, where Jensen's mug shot was prominently published, and it was broadcast that criminal charges were pending.. The papers also stated that Jensen was jailed for "refusing to cooperate" with the investigation. None of this was true. Over a year later, Jensen's attorney, with the consent and approval of the John Doe Judge, issued a short statement that his client was not a target of the investigation, that he would not be charged, and that he had "fully cooperated, and ha[d] truthfully answered all of the investigators' questions." Landgraf and Robles never explained their actions in light of the basis for jailing Jensen being proven false.

119. The investigation also involved home raids against unsuspecting individuals that resulted in the discovery of no criminal conduct whatsoever. In all cases, these raids were unrelated to legitimate law enforcement purposes but were intended to intimidate and harass persons affiliated with the County Executive's office.

120. At dawn on September 14, 2011, around a dozen law enforcement officers, including FBI agents, raided the home of former Walker aide Cynthia Archer in Madison. Dane County Sheriff Dave Mahoney told reporters that one of his deputies had been placed at the house during the search at the request of investigators from Chisholm's office and that his office was otherwise not involved. To this day, it is unknown what prosecutors were looking for or what they *thought* they were looking for, but the evidence seized has apparently not proven relevant to any of the crimes eventually charged. This, of course, did not prevent Archer's reputation from being harmed in the process as collateral damage of Defendants' search for materials to use against Walker.

121. As the investigation broadened into a state-wide effort, the intimidation tactics spread as well. Plaintiff O'Keefe first learned of the investigation on October 3, 2013, when he was served a subpoena asking for an astonishing range of documents, not only related to the Walker recall election, but going back as far as 2009 and implicating numerous election campaigns.

122. That same day, investigators coordinated at least three raids on private residences in residential neighborhoods. All began between 6:00am and 6:30am, dawn that day being just before 7:00am. School age children were home in at least two residences and school buses passed their houses during the course of the raids, which lasted over two and a half hours. The searches were conducted by six armed sheriff's deputies with flak vests, bright lights were aimed

at the houses, and multiple vehicles were parked on the lots, police lights ablaze. At least one official from the Milwaukee County District Attorney's Office was present at the sites.

123. Targets were not allowed to call attorneys. Investigators seized computers and phones of all family members, whether or not they were targeted in the investigations. All paper files that appeared political were seized. In at least one case, no inventory of items seized was provided, and inventories that were provided were at least partially erroneous. Affidavits purportedly showing probable cause have never been disclosed. The warrants show that Defendant Dean Nickel signed the affidavits.

124. Among the documents and records seized in the raids are some that are vital to targeted organizations' activities, including political speech and association.

125. There was no reason for prosecutors to believe that relevant information would have been destroyed or that raids were otherwise necessary.

126. Upon information and belief, these raids were calculated to threaten and intimidate and could easily have been conducted in a proper manner with the same investigative effectiveness.

127. The commencement of this new wave of activity was timed amidst key political events, including Walker's recall victory and the 2014 legislative session and campaign season.

128. These activities occurred with remarkably little judicial supervision. Judge Barbara Kluka approved as many as 100 subpoenas of breathtaking scope and home raids related to at least 29 organizations based on meritless legal theories of campaign finance going to the heart of protected First Amendment activity and implicating documents covered by, among others, First Amendment privilege. Yet billing records show that she only completed one day of work. The extraordinary speed by which she approved these complex demands demonstrates

how easy it has been for Defendants Schmitz, Chishom, Landgraf, and Robles to push their agenda by the John Doe judges, at least until Judge Peterson was appointed.

129. In this one day's worth of work, Judge Kluka also approved the substantially identical secrecy orders in force in the John Doe proceedings (collectively, "Secrecy Order"). *See* Ex. E, Secrecy Order. The Secrecy Order provides no information as to why the context of the investigation requires secrecy, other than boilerplate statements about preventing "tampering with prospective testimony or secreting evidence," and "render[ing] witnesses more free in their disclosures." The Order was not carefully reviewed: one version stated the purpose "to render witnesses more free in their disclosures" twice. The Secrecy Order provides that employees of the Milwaukee County District Attorney's Office, including support staff, will have access to the secret materials. Kluka also made the findings allowing for the appointment of Defendants Schmitz as Special Prosecutor.

130. Judge Kluka's involvement with the case was improper, and she recused herself because of an undisclosed "[c]onflict" after rubberstamping dozens of subpoenas, warrants, and secrecy orders on one day's work. This decision has never been explained. Judge Peterson was appointed as the new John Doe Judge.

131. The subpoenas are overly broad and request an extraordinary amount of information. Ex. F, O'Keefe Subpoena. Upon information belief, for each target, the subpoena demands all information related to several individuals and groups, including R.J. Johnson, Deborah Jordahl, and Kate Doner, each of whom has been vital to WCFG. The subpoena demands *all* information related to *all* 2011 and 2012 recall elections. It also demands *all* communications with *every other* subpoena recipient and potentially other individuals entities. Further, it seeks documents going back even before the relevant time periods, in some cases to

2009. And many of the demands are not limited to the recalls, to Wisconsin, or to political matters.

132. The subpoenas also demand, for each recipient, *all* fundraising information, including identities of donors. While this information would be quite helpful in intimidating organizations and their donors, it has no rational relationship to the theories of coordination law advanced by Defendants as the basis for the investigation, as coordination is a theory that implicates the relationship between an independent organization and an official campaign committee, not the relationship between an organization and its donors.

133. The subpoenas also request, for each recipient, *all* records of "money spent." While this information would be quite helpful in intimidating organizations and their donors, it has no rational relationship to the theories of coordination law advanced by Defendants as the basis for the investigation, as coordination implicates communications between an independent organization and an official campaign committee, not money spent in an election, even money given from one independent organization to another.

134. The subpoenas demand other information in broadly worded requests that have no plausible relationship to any legitimate investigative interest.

135. The information demanded includes significant materials protected by the First Amendment, including under the doctrine of First Amendment privilege. When asked—after the raids had occurred—what Schmitz's approach would be to ensuring that the First Amendment privilege (among others) was protected, he indicated to Mr. O'Keefe's counsel that he had never heard of the concept, demonstrating further disregard for the constitutional rights of their targets and their purpose of intimidation. Schmitz has subsequently indicated that his attorneys will not recognize First Amendment privilege protection as part of their ethical restraint. First

Amendment privilege, nevertheless, is clearly established law and a reasonable prosecutor in Schmitz's position would know that inspection of political materials in violation of the privilege is unlawful.

136. The information demanded in the subpoenas extends far beyond the mistaken legal theories cited as justifying the investigation. The coordination scheme posited by Defendants could not be remotely related to the donors of these groups or communications between and among them, none of which are Wisconsin political committees. In other words, *most* of the information sought in the subpoenas could not be relevant to Defendants' legal theory, even if taken as valid on its face. In response to a motion to quash certain of these subpoenas, Defendant Schmitz entirely ignored this fatal flaw and offered no justification for these far-reaching demands.

137. The demands for documents in these subpoenas impose a tremendous burden on these organizations, as they incur large legal fees and review thousands of documents. And, in many cases, the information demanded is already in the possession of Defendants through the home raids.

138. The purpose of the subpoena requests and the broad scope of the investigation is to intimidate, harass and otherwise discourage these conservative groups from engaging in First Amendment protected speech.

139. The John Doe judge eventually quashed these subpoenas with respect to certain parties who filed motions, but Defendants have announced their intention to continue the investigation.

E. The Targets of the Investigation Were Selected Based on Political Views and Associations

140. All the while, as Defendants Chisholm and Landgraf were continually engaging in an ever-broadening investigation in an attempt to discredit Scott Walker and to harass and intimidate his supporters, the Milwaukee County District Attorney's Office continually refused to investigate credible allegations of misconduct involving Democrats.

141. In January of 2010, the City of Milwaukee awarded Jeff Fleming a no-bid contract paying $75 an hour for up to 15 hours a week with benefits. Through December 2009, Fleming had been a campaign spokesman for Mayor Tom Barrett, who was then a candidate against Walker for the 2010 governorship. His contract was to perform public relations services for a division of the Mayor's office. During his time in this role, Fleming went back and forth between county duties, private business work, and campaign work for Barrett. Among other things, Fleming worked on speeches for Barrett, and correspondence regarding this and other campaign activities was sent both to Fleming's city account and his personal account. Fleming was hired again in August 22 to be a part-time spokesman for the Department of City Development. Barrett's Chief of Staff explained that "We knew Jeff, and were comfortable with him," and news stories raised the concern that Fleming was working for the campaign on city time. The District Attorney's Office did not investigate this appearance of impropriety, much less commence an open-ended investigation into Barrett's campaign.

142. In spring 2010, the Milwaukee County District Attorney's Office declined to prosecute a county employee named Christopher Liebenthal, who was caught engaging in "excessive political blogging" for liberals from his taxpayer-funded computer. The District Attorney's Office recognized that "Mr. Liebenthal's actions constitute an extreme example," but stated that it would prefer to see the situation handled as a personnel matter rather than a criminal

matter. The decision by Defendants Chisholm and Landgraf to treat this conduct as a personnel matter is completely different from how they treated indistinguishable conduct by Wink and Rindfleisch. Each was charged criminally on multiple counts, and Rindfleisch was sentenced to jail time for similar conduct treated as a "personnel" matter in Liebenthal's case.

143. In September 2010, the *Milwaukee Journal-Sentinel* reported that unions and Democratic candidates were coordinating a plan to attack Scott Walker for neglecting county facilities in connection with a parking garage incident. Unions would sponsor television ads, officials would continue to call for an independent investigation, and the Democratic governor's administration would allow state engineers to inspect the county facility. Defendants did not investigate this appearance of impropriety or coordination , much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

144. On September 22, 2010, the Wisconsin Republican Party filed a formal complaint with GAB alleging illegal coordination based on comments by John-David Morgan, an SEIU Local # 1 employee who actively supported Barrett's campaign, to a Walker campaign member. Morgan boasted that unions were commanding local media coverage of the campaigns and that county supervisors—he mentioned at least one specific name—were involved as well. Both the Morgan incident and the ensuing Republican GAB complaint received coverage in the *Milwaukee Journal-Sentinel* and other news sources. Defendants did not investigate this coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

145. In 2011, the Wisconsin Republican Party filed a complaint with GAB regarding Shelly Moore, a Democratic candidate for government and a public school teacher. The complaint alleged that she used school equipment, including her computer, for her recall

campaign. In a work email, published in news stories about the complaint, Moore acknowledged that she was prohibited from using public property for this purpose, but stated "I don't frankly care." This was reported widely in Wisconsin and around the nation. Defendants did not investigate this Moore's conduct, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

146. In July 2011, weeks before the recall election between Democratic Party challenger Shelly Moore and Republican incumbent Sheila Harsdorf, reports surfaced that We Are Wisconsin offices were identified to be operating out of the same building offices as official Shelly Moore campaign offices in multiple sites. Defendants did not investigate this appearance of coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

147. Also in summer of 2011, a complaint was filed with GAB against Friends of Senator Hansen, a Democratic incumbent, alleging coordination with liberal groups. The complaint states "Any person with eyes can see after reviewing the material sent to homes, or from watching TV advertisements sponsored by these various groups, that a direct violation of campaign law has occurred." The District Attorney's Office did not investigate this appearance of coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

148. On August 2, 2011, the Republican Party of Wisconsin filed a complaint with GAB asking for an investigation of "possible coordination" between representative Sandy Pasch and Citizen Action of Wisconsin, where Pasch serves on the board of directors. Defendants did not investigate this appearance of coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

149. On November 19, 2011, the Committee to Recall Scott Walker, a left-leaning political committee subject to the same requirements under Wisconsin law as Walker's official recall committee, including prohibitions on corporate contributions, announced a gathering to kick off the Walker recall effort. The event was widely announced as being "[i]n coordination with We Are Wisconsin, United Wisconsin, and the [Democratic Party of Wisconsin] . . . ." In fact, the Recall Committee was formed by leading Union and Democratic social welfare organization members, and the timing of the recall was carefully discussed between these members, political candidates, and nationwide Democratic Party leaders, including officials from the Barack Obama presidential campaign. In one prototypical meeting in October 2011, union leaders met with Obama's campaign manager and deputy campaign manager for several hours to discuss the timing of the recall. Social welfare organizations such as United Wisconsin had been collecting unofficial signatures since February 2011 in preparation for the recall. United Wisconsin registered a political action committee for the recall in March 2011. This activity was reported in November 2011 as raising questions about United Wisconsin's "independence." In fact, the word "coordination" or a derivation was used regularly in articles to describe United Wisconsin's role in the recall petition. Defendants did not investigate this coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

150. On March 25, 2012, Daniel Bice of the Milwaukee Journal Sentinel reported that Wisconsin for Falk had come "almost out of nowhere" and "blitzed" local airwaves with $1.6 million of television advertisements to favor Kathleen Falk. The name of this supposedly independent group was suspiciously similar, noted the article, to Falk's official committee, "Falk for Wisconsin," and the candidate appeared in the advertisements, directly staring at the camera, clearly demonstrating that Falk worked with this group to film the ads. Other advertisements

produced by this supposedly independent organization include Falk voice-overs, again indicating her involvement in creating the advertisements. Defendants did not investigate this appearance of coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

151. In May 2012, Michael Dean, on behalf of Anthony Ostry, filed a formal complaint with GAB and with John Chisholm, alleging campaign violations by Wisconsin AFL-CIO. The union sent advertisements constituting express advocacy by mail and was apparently designed to fall within the "members only" disclosure exemption of Wis. Stat. § 11.21. In fact, the mailing was clearly deficient by that statute's guidelines, most obviously in that Ostry, who was not an AFL-CIO member, received the document. The complaint alleges that AFL-CIO must have known of these blatant deficiencies, indicating willful violation of the statute. No one from GAB or the Milwaukee County District Attorney's Office ever followed up with Ostry or Dean and no investigation occurred, must less a state-wide John Doe investigation concerning nearly thirty social welfare organizations with regard to thirteen recall elections. Defendants did not investigate this appearance of impropriety, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

152. AFL-CIO's annual report filed with the Department of Labor in September 2012 shows a $69,500 expenditure to the Center for Media and Democracy under Schedule 16 for "Political Activities and Lobbying," with the stated purpose of "Support of State Legislative Advocacy." But according to GAB's records, the Center for Media and Democracy, which is a 501(c)(3), was not a registered lobbyist at the relevant time period, and top staffers of the group were not registered as individual lobbyists. Lobbying without the proper registration violates

Wisconsin state law, but the Defendants did not investigate this appearance of impropriety, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

153. In November 2012, the Federal Election Commission fined the Professional Firefighters of Wisconsin and eleven former board members $58,000 for knowingly and willfully violating campaign laws and regulations. This union is also a state committee in Wisconsin, has donated to Democratic candidates in Wisconsin (including Kathleen Falk), and has activities on the state level. Defendants did not investigate this appearance of impropriety, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

154. In November 2013, the Center for Media and Democracy, a left-wing 501(c)(3) hosted a conference call between reporters and its director Lisa Graves, who is well connected with Democratic Party members in Madison, Milwaukee, and statewide. One reporter asked about the investigation and whether the same activity being investigated had occurred among liberal and Democratic groups. Graves's response indicated that such activity did occur, but was distinguishable, she said, because "they're advancing not just an ideological agenda but an agenda that helps advance the bottom line of their corporate interests. That's quite a distinct difference from some of the funders in the progressive universe." Defendants did not investigate this acknowledgement of coordination, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

155. Upon information and belief, numerous other activities materially identical to the activities giving rise to the manifold branches of this massive investigation have occurred within Democratic campaigns and among left-wing issue advocacy and independent expenditure

groups. Defendants did not investigate any of this conduct, much less commence an open-ended investigation into the entire left-wing movement in Wisconsin.

156. All of this demonstrates that Defendants' investigation is motivated by an improper purpose: to retaliate against, or chill, conservative political speech and association. The investigation is not a legitimate investigatory process, but is instead a biased, politically motivated scheme primarily with the purpose of intimidating conservative groups, hobbling their operations, impairing their fundraising efforts, and otherwise preventing their participation in the upcoming election cycle.

F. The Investigation Has Had the Purpose and Effect of Influencing Wisconsin Politics

157. The Secrecy Order in the investigation has prevented the citizens of Wisconsin from fully discovering the prosecutorial abuses involved from witnesses and targets and prevented witnesses from defending themselves in the public arena. However, the Order was not very successful in preventing information from reaching the public. In fact, information from the investigation routinely reached the public at critical times during the 2010 gubernatorial election, the 2011 budget battle, and the 2011 and 2012 recall elections. Upon information and belief, some of this information reached the public through direct or indirect selective leaks from the DA's Office. Other information reached the public through other avenues that are not or cannot be controlled by secrecy orders. John Doe has repeatedly been a political rallying cry—and even a fundraising tool—for Democrats at each turn in influence important political events.

158. Upon information and belief, the first reports of the investigation were leaked to the press in the days following Scott Walker's victory in the Republican primary. Thirteen days after that election, Daniel Bice of the Milwaukee Journal Sentinel gave the first public report on the investigation. Citing unnamed sources, Bice informed the public that the John Doe

proceeding consisted of "two investigations," one into Gardner's campaign contributions and the other related to Milwaukee County employees and Darlene Wink's resignation. The article did not mention the Operation Freedom funds, but made sure to draw connections with the upcoming gubernatorial race. The source of this information was, by necessity, direct or indirect leaks from the Milwaukee County Attorney's Office, which operated under the control of Defendant Chisholm.

159. The day before the gubernatorial election, investigators chose to execute search warrants into Rindfleisch's residence and the Milwaukee County Offices, evidently with the hope of attracting some last minute John Doe attention before the election. Nothing would have prevented investigators from delaying the searches a few days until after the election.

160. In January 2012, Democratic Party Chairman Michael Tate sent out an email solicitation to supporters, asking them to give $10 "so we have the resources we need to expose Scott Walker's latest scandal involving more than $60,000 that was stolen from military veterans and their families." A spokesman for state Democrats explained that "Using these facts about Walker to motivate our base and muster resources to fight his vast sums of sleazy corporate cash is entirely appropriate."

161. In February and the following months of 2012, Scott Walker made several disclosures related to the investigation, first, that he had hired criminal defense attorneys to represent him in the matter, next, that he had established an official criminal defense fund, and later, that he had been reimbursed for legal expenses paid from his own pocket from his campaign. Numerous articles online and in print and advertisements followed each disclosure, ridiculing Walker and calling him a corrupt government official. The John Doe investigation,

thus, harmed Scott Walker politically, but the Secrecy Orders prevented him from defending himself adequately to the public.

162. On April 15, 2012, Daniel Bice reported that the John Doe investigation presented the "biggest question hanging over" the recall election. In particular, the article asked whether Chisholm would file additional criminal charges before the June 5 election. In fact, as of three months earlier, all complaints that would ever be filed to date from the investigation had already been filed. But the investigation continued as a means of attempting to influence the outcome of the recall election.

163. On May 28, 2012, the *Milwaukee Journal-Sentinel* reported that the John Doe investigation had zeroed in on key evidence related to the 2010 county bidding process that implicated Scott Walker and his longtime campaign advisor John Hiller. The report quotes some inside sources, upon information and belief directly or indirectly from the County Attorneys' Office, as calling this lead "a bombshell" and hinting that a criminal complaint might be in the works. The election was one week away.

164. On May 30, 2012, six days from the election, the Democratic Party of Wisconsin used the John Doe proceeding for further political advantage in a press release announcing that Walker had "mistakenly" admitted that he was under criminal investigation by referencing his criminal defense fund. The press release also played up the home raids on Rindfleisch and Archer as evidence of the severity of the matter. News coverage of this and similar advertising efforts was extensive, as reporters speculated about possible impending criminal charges against Walker at this critical time in Wisconsin politics.

165. In the final days before the 2012 gubernatorial recall, Tom Barrett made John Doe central to his campaign. Near the end of May 2012, his campaign issued advertisements

discussing the John Doe investigation and particular evidence it had uncovered and asserting that the evidence showed criminal misconduct by the governor and his employees. These assertions were false as there was no misconduct by the governor, but the continuing John Doe investigation by Chisholm—who had publicly supported Barrett in past elections—lent them improper credibility.

166. On May 31, the County Attorney's Office indicated that it granted immunity to Fran McLaughlin, former county spokeswoman, in the John Doe proceeding, and Tom Barrett's campaign issued a statement calling on Walker to "come clean with the people of Wisconsin" and asserting that "his credibility is stretched to the limit."

167. On June 1, in the final debate of the recall election, Barrett repeatedly used the John Doe investigation as a line of attack against Walker.

168. The more recent expansion of the investigation is similarly aimed at influencing the upcoming 2014 legislative session and campaign period, during which Walker will run for re-election as Governor, especially with the purpose of intimidating conservative groups, hobbling their operations, impairing their fundraising efforts, and otherwise preventing their participating in public debate during these times of intense public interest in matters of politics and policy.

169. The first public announcement of the new phase of the investigation was on October 21, 2013, in a Daniel Bice article in the *Milwaukee Journal-Sentinel*. Bice cited unnamed sources and provided the basic facts of the investigation, including that special prosecutor Schmitz had been appointed to run the investigation, that it had "spread to at least five counties," and that Defendant Landgraf had been investigating "'all over the place.'" Much of the activity was occurring in Madison and little information was known until rather recently, said

the article. The subject matter of the investigation was events occurring since 2010, it said. On information and belief, the information from the article was leaked directly or indirectly from the DA's Office with the purpose of influencing the 2014 campaign cycle and legislative session and chilling conservative activism.

170. Around November 19, 2013, Democratic Party-affiliated Senate Minority Leader Chris Larson and the State Senate Democratic Committee issued a fundraising appeal based on the investigation, asking donors to contribute $29 to fight against the 29 conservative groups that were under investigation.

171. When asked about the investigation, the Democratic Party Chairman was quoted as stating that "[y]ou can assume they're finding serious acts of wrongdoing."

172. Upon information and belief, the Defendants intend selectively to leak information from the investigation to the media during the 2014 legislative session and election cycle to chill conservative speech and influence legislative and electoral outcomes.

G. The Convictions Obtained from the Investigation Do Not Legitimize It

173. The investigation has, to date, been a complete failure. Although the Milwaukee County District Attorney's Office paraded six convictions around in support of its legitimacy, none of these convictions in any way implicated Walker's staff for campaign-finance violations, the county bidding process, or Walker's conduct of his gubernatorial administration, and, thus, the convictions can in no way legitimize these detours. Thus, the convictions are entirely unrelated to the politicized bent of the investigation—which turned up nothing—and are entirely unrelated to the ongoing inquiries, which has absolutely no chance of success.

174. In October 2012, Kevin Kavanaugh was convicted of embezzlement from the funds belonging to Operation Freedom. Kavanaugh's conviction simply represents what would

have been the result of a disciplined, ethical investigation undertaken without political motivation. Although issues related to Operation Freedom were the original purpose of the first John Doe petition, little evidence used in the criminal complaint against Kavanaugh resulted from the John Doe investigation, as all but one interview described therein was given by a willing witness without a secrecy order.

175. In November 2012, Timothy Russell pled guilty to one felony count of embezzlement for theft from the Operation Freedom funds. As with Kavanaugh's conviction, Russell's conduct would have been discovered simply by investigating the Operation Freedom funds and is unrelated to the political campaign waged by the investigation.

176. In April 2011, William Gardner pled guilty to campaign-finance related violations. Although Defendants Chisholm and Landgraf used the Gardner aspects of the investigation as a pretext to turn John Doe into a political investigation, all critical evidence was gathered outside the John Doe investigation. Gardner was sentenced to community service and probation.

177. In October 2012, Kelly Rindfleisch pled guilty to one count of misconduct for doing campaign work for lieutenant governor candidate Brett Davis while at work for Milwaukee County. She agreed to the plea because she lacked the funds to mount a legal defense and hoped to avoid jail time to care for her 88-year-old, ailing mother. At her sentencing hearing, Landgraf falsely alleged impropriety on behalf of Scott Walker. In doing so, Landgraf disclosed materials covered by the Secrecy Order that did not relate to the case against Rindfleisch. Rindfleisch's conviction is not remotely related to the initial justification for the John Doe investigation and is not related to ongoing inquiries.

178. In February 2012, Darlene Wink pled guilty to political fundraising in a courthouse. As with Rindfleisch, her conviction is the result of prosecutors turning peoples' lives upside down in a politically motivated fishing expedition. Defendants Chisholm and Landgraf chose not to apply the same scrutiny to liberal individuals. Both Fleming and Liebenthal provided similar opportunities to use the power of their office to scrutinize individuals for campaign-related technical impropriety, and they declined. Meanwhile, Wink was the first channel used to launch the investigation, and her conviction does not relate to the initial justification for the John Doe investigation and is not related to ongoing inquiries.

179. In January 2013, Russell's domestic partner pled guilty to a misdemeanor charge of contributing to the delinquency of a minor and was subsequently sentenced to 50 hours community service. There is no relationship whatsoever between this conviction and the goals or legal theories of the ongoing investigation.

III. The Investigation Is Calculated To Chill Protected Speech

180. The investigation retaliates against conservative individuals and groups on the basis of the content of their speech and their political associations, thereby chilling protected First Amendment speech and association.

181. An individual or organization considering conservative political advocacy in Wisconsin will know from the precedent of the investigation that he or she risks coming under official scrutiny and attack and suffer the consequences, including legal expenses. This may include being subpoenaed to turn over documents that are entirely unrelated to any legitimate scope of inquiry and threatened public disclosure of information that is protected from disclosure under federal law. It could very well involve a home raid that embarrasses family members, causes inconvenience, and raises questions with neighbors and the press.

182. Under Defendants' view of Wisconsin law an individual or organization interested in engaging in political speech cannot understand what is allowed and what is prohibited simply by reading the statute and may face investigation or prosecution for speech or association that is constitutionally protected. Such a person will understand in the future that the mere indicia of "coordination" or perceived intent to support a candidate or campaign may subject him or her to years' long investigations, home raids, subpoenas, and possible prosecution, and the odds of that harassment increase substantially if he or she is considering taking a conservative position. He or she thus is reasonable to curtail protected speech and association beyond what is legally required.

183. The natural and probable consequence of the investigation is therefore to chill speech and association.

IV. The Investigation Has Actually Chilled First Amendment Protected Speech and Associational Activities

184. Plaintiff Eric O'Keefe's nationwide political activities were debilitated from the time he received the subpoena, and he and the organizations with which he is affiliated will continue to remain on the sidelines in Wisconsin until the investigations end.

185. Plaintiff WCFG has been sidelined entirely and has ceased all First Amendment protected activity.

186. As the investigation is ongoing throughout the 2014 legislative session and campaign period, the investigation will have the intended effect of silencing Plaintiffs in Wisconsin during the 2014 legislative session and election cycle.

187. The subpoenas and home raids occurred on October 3, 2013. Even before coverage in the press, O'Keefe discovered immediate impediments to his political activism. Conference calls for the following week were cancelled. Phone calls went unanswered or were

kept unusually short. Several phones from his organization were seized in raids and were not in available for use. Vital documents and records were also seized.

188. O'Keefe lost significant fundraising potential instantly, as few if any donors will give to an organization under investigation for campaign finance violations. Moreover, O'Keefe is under a Secrecy Order prohibiting disclosure of information to prospective donors of the investigation, and yet it is unethical to raise money from donors without such disclosure.

189. WCFG's funds were soon near depletion, and it lost all capacity for political speech.

190. WCFG, concerned about the scope of inquiries and possible reprisals, aborted an advertising campaign that was then underway. The campaign highlighted improvements in the economy and attributed them in part to the Budget Repair Bill.

191. By this time, WCFG would have had at least three advertisement campaigns underway and/or in the works, and all of these efforts have ceased entirely.

192. Plaintiffs will continue to be silenced during the 2014 legislative session and election season.

193. Upon information and belief, all the targets of the investigation are experiencing the same debilitating effects on their ability to engage in political speech and association.

194. Upon information and belief, liberal and Democratic-supporting groups are not being debilitated in this way and thus will participate in the 2014 legislative session and campaign period.

195. Because the conservative groups and individuals that are targeted in the investigation represent nearly the whole of the conservative side of issue advocacy in Wisconsin, the investigation will result in a substantial competitive advantage for liberal advocacy and

Democratic candidates in the 2014 legislative session and campaign period. Upon information and belief, the investigation is calculated to achieve this precise result.

COUNT I:
RETALIATION IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

196. Plaintiffs repeat and re-allege the averments of paragraphs 1-195 as if fully set forth herein.

197. Plaintiffs engaged in activity protected by the First Amendment, including, without limitation, sponsoring, creating, and publishing issue advocacy relative to the Budget Repair Bill and other issues during the 2011 and 2012 recall elections.

198. Defendants' conduct under color of state law would deter First Amendment activity of a person of reasonable firmness and that has, in fact, deterred the First Amendment activity of Plaintiffs and others. This deprivation of Plaintiffs' rights constitutes irreparable harm.

199. Plaintiffs' First Amendment activity, including the particular viewpoints they expressed, was the primary or at least a substantial motivating factor in the Defendants' decision to take their retaliatory actions.

200. As a direct result of Defendants' violation of his First and Fourteenth Amendment rights, Plaintiffs have sustained damages in an amount to be determined at trial. The right to be free from retaliation for exercise of constitutional rights, including the First Amendment, is well established and reasonable officers in the position of Defendants would know that retaliating against Plaintiffs and others based on the content and viewpoint of their speech is unlawful.

201. Unless Defendants are enjoined from committing the above-described constitutional violation, Plaintiffs will continue to suffer irreparable harm.

COUNT II:
SELECTIVE USE OF PROSECUTORIAL POWER IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

202. Plaintiffs repeat and re-allege the averments of paragraphs 1-195 as if fully set forth herein.

203. Defendants, acting under color of state law, have singled out Plaintiffs as targets for investigation, subpoenas, and other forms of prosecutorial power, while others similarly situated were not targeted.

204. The decision to target Plaintiffs was based on arbitrary classifications, including without limitation, the exercise of their First Amendment rights and the content and viewpoint of their First Amendment protected speech. This conduct has deprived and continues to deprive Plaintiffs of their rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, causing them irreparable harm.

205. As a direct result of Defendants' violation of the First and Fourteenth Amendments, Plaintiffs have sustained damages in an amount to be determined at trial.

206. Unless Defendants are enjoined from committing the above-described constitutional violations, Plaintiffs will continue to suffer irreparable harm.

COUNT III:
BAD FAITH EXERCISE OF PROSECUTORIAL POWER WITH NO LEGITIMATE GOVERNMENT PURPOSE IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

207. Plaintiffs repeat and re-allege the averments of paragraphs 1-195 as if fully set forth herein.

208. The Defendants' continued investigation into Plaintiffs, under color of law, has no reasonable possibility or expectation of obtaining a lawful conviction.

209. The Defendants' investigation into Plaintiffs' activities is in bad faith and has the purpose of retaliating against Plaintiffs for exercise of their constitutional rights, including without limitation freedom of speech and association, and has the purpose of discouraging and preventing the exercise of their constitutional rights, including without limitation free speech and association, in the future.

210. Defendants' continued investigation into Plaintiffs has thereby deprived them and continues to deprive them of their rights under the First and Fourteenth Amendments, causing irreparable harm.

211. As a direct result of Defendants' violation of the First and Fourteenth Amendments, Plaintiffs have sustained damages in an amount to be determined at trial.

212. Unless Defendants are enjoined from committing the above-described constitutional violation, Plaintiffs will continue to suffer irreparable harm.

COUNT IV:
INFRINGEMENT OF FIRST AMENDMENT PRIVILEGE IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

213. Plaintiffs repeat and re-allege the averments of paragraphs 1-195 as if fully set forth herein.

214. Defendants have compelled disclosure, through subpoenas and home raids, of materials including, among other things, information about donors to WCFG and WCFG's internal deliberations and strategies.

215. This compelled disclosure already has and will continue to result in harassment of Plaintiffs and others affiliated with them, including WCFG donors, unless enjoined.

216. This compelled disclosure already has and will continue to chill Plaintiffs' political speech and association. Other consequences of the demands include depriving Plaintiffs

of fundraising ability and intimidating Plaintiffs into refraining from free speech, with the result of negative consequences, including the inability to participate in the 2014 legislative session and campaign period.

217. This compelled disclosure already has and will continue to discourage others from becoming affiliated with WCFG, including through donations, unless enjoined.

218. Defendants have no compelling interest in forcing these disclosures, as the investigation is undertaken in bad faith and the means of compelling disclosure are not narrowly tailored.

219. As a result of Defendants' violation of the Fourth and Fourteenth Amendments, Plaintiffs have sustained damages in an amount to be determined at trial.

220. Unless Defendants are enjoined from committing the above-described constitutional violation, Plaintiffs will continue to suffer irreparable harm.

COUNT V:
INFRINGEMENT OF THE RIGHT OF FREE SPEECH IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

221. Plaintiffs repeat and re-allege the averments of paragraphs 1-195 as if fully set forth herein.

222. The First Amendment protects Plaintiffs' speech about government officials, the conduct of state government, and other matters of public interest.

223. The Secrecy Order imposed by Defendants and Peterson acting under color of state law prohibits Plaintiffs from disclosing much of the facts alleged above regarding the actions of the Defendants, who are public officials, and the conduct of the John Doe investigation, a matter of public interest.

224. The Secrecy Order threatens punishment by contempt for protected expression, and thereby unconstitutionally deprives Plaintiffs of their free speech rights under the First Amendment, causing them irreparable injury.

225. Unless Defendants and Peterson are enjoined from committing the above-described constitutional violation, Plaintiffs will continue to suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment against Defendants and Peterson, including:

a) A finding that Defendants' acts and conduct constitutes a violation of Plaintiffs' constitutional rights, including those guaranteed by the First and Fourteenth Amendments;

b) Both preliminary and permanent injunctions restraining Defendants and all those in privity, concert, or participation with them from continuing the John Doe investigation;

c) An order relieving O'Keefe, WCFG, and others from any duty to cooperate further with Defendants in their bad faith investigation;

d) An order mandating that Defendants immediately return all materials obtained in the John Doe investigation to their rightful owner and destroy all copies of such materials;

e) An order relieving O'Keefe and WCFG from compliance with the Secrecy Order;

f) Compensatory damages sustained as a result of Defendants' unlawful deprivation of Plaintiffs' constitutional rights;

g) An award of the attorneys' fees and costs and other expenses, including pre-judgment and post-judgment interest, that Plaintiffs have been forced to incur; and

h) Any and all other relief that the Court determines is just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs respectfully demand a trial by jury of all issues triable by a jury in their Complaint.

Dated: February 10, 2014

Respectfully submitted,

/s/ David B. Rivkin

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* Admission to the Eastern District of Wisconsin pending