INITIAL FILING—UNDER SEAL— REVISED REDACTED
SUPREME COURT
STATE OF WISCONSIN

Nos. 2013AP2504-2508-W
2014AP296-OA, and
2014AP417-421-W

2013AP2504-2508-W

IN THE MATTER OF JOHN DOE PROCEEDING

STATE OF WISCONSIN ex rel. THREE UNNAMED PETITIONERS,

Petitioner,

v.

The HONORABLE GREGORY A. PETERSON, John Doe Judge, the HONORABLE GREGORY POTTER, Chief Judge and FRANCIS D. SCHMITZ, as Special Prosecutor,

Respondents.

John Doe Investigative Proceeding in Five Counties,
Hon. Gregory A. Peterson, Presiding
Columbia County No. 13-JD-011; Dane County No. 13-JD-009; Dodge County No. 13-JD-006; Iowa County No. 13-JD-001; Milwaukee County No. 12-JD-023

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[redacted]REPLY BRIEF IN SUPPORT OF JOHN DOE JUDGE'S[redacted] DECISION

Godfrey & Kahn, S.C.
One East Main Street, Suite 500
Madison, WI 53703
608-257-3911
[redacted]

2014AP296-OA

STATE OF WISCONSIN ex rel. TWO UNNAMED PETITIONERS,

Petitioner,

v.

The HONORABLE GREGORY A. PETERSON, John Doe Judge and FRANCIS D. SCHMITZ, Special Prosecutor,

Respondents.

2014AP417-421-W

STATE OF WISCONSIN ex rel. FRANCIS D. SCHMITZ,

Petitioner,

v.

HONORABLE GREGORY A. PETERSON, John Doe Judge,

Respondent,

EIGHT UNNAMED MOVANTS,

Interested Parties.

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INTRODUCTION

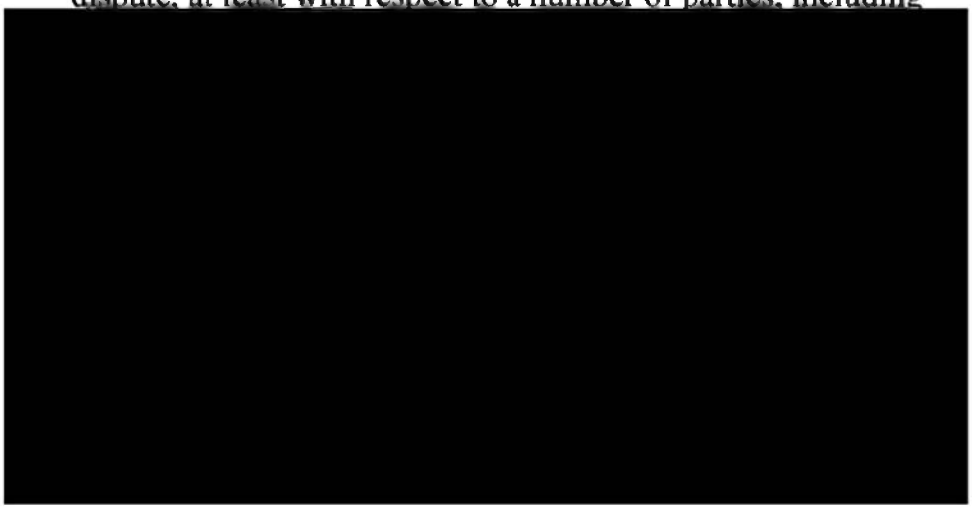
The special prosecutor has brought sincere conviction and determination to this Court in his brief. He has provided disparate if disconnected facts and allegations and a novel legal theory to justify [redacted] and prosecution. He has made a public policy argument for regulation and oversight in the name of good government.

However, the special prosecutor has not made a persuasive argument, under the First and Fourteenth Amendments, or under state law and the administrative code or any other campaign finance law authority, that conceivably justifies the proceedings he seeks to reinvigorate. Nor, onto the horizon, can his theory sustain a criminal charge, let alone a criminal conviction.

The special prosecutor has not—and not for want of trying—been able to explain how the individuals and organizations subjected to process could have had fair notice

that their political speech and association with others were potentially criminal. The special prosecutor has presented the regulation and limitation of political speech and conduct as he wants them to be. Yet he has not presented this Court with the law as it is—that is, the law as the legislature, the Government Accountability Board (the "G.A.B."), the John Doe judge, the federal courts and this Court itself have written and applied it.

Both affirmatively and by omission, the special prosecutor's brief does bring definition to the core issues in dispute, at least with respect to a number of parties, including



While conduct "in good faith" does not necessarily provide immunity, the acknowledgement reinforces the fact that [redacted] independently and appropriately expressed itself on public policy issues. And it has done that since [redacted].

- [redacted]

- *The decision by the John Doe judge to* [redacted] *the special prosecutor maintains, resulted in* [redacted]

[redacted]

[redacted]

[redacted] it is readily apparent that the special prosecutor has long had, at the very least, bank records and email communications. In hindsight, he should not have had even those documents. They invade the privacy and associational rights of organizations and individuals engaged—whether with each other, or with their members, or with the public—in a discussion of public policy and public debate. On that evidence, he either has a basis to recommend charges or he does not.

Campaign finance law aside, the special prosecutor's brief does not even address several constitutional issues raised by [redacted] here and in the Court of Appeals. Those issues involve the [redacted] a court's very ability to "review" a John Doe judge's discretionary

decisions, and the denial of due process on which this Court's precedent rests. *See Elections Board v. Wisconsin Manufacturers & Commerce*, 227 Wis. 2d 650, 597 N.W.2d 721 (1999). Whether by his silence the special prosecutor has waived any argument, these issues are not only jurisdictional, they provide the Court with a compelling basis to resolve these proceedings without attempting to write a constitutional catechism on campaign speech.

ARGUMENT

The First and Fourteenth Amendments require precision in government regulation and, even more so, in the criminal justice context. One of the difficulties presented by the special prosecutor's brief is the lack of precision—in its terminology, in its presentation of events, and in its narrative description of individuals, organizations, and their conduct.

He does not contend that [redacted] engaged in express advocacy. He does not contend that its consultants discussed

campaign advocacy with candidates or campaigns. And even if [redacted] had produced "advertisements for the benefit" of a campaign—as the special prosecutor suggests [redacted] did, SP Br. at 86—"for the benefit" is not the standard that determines whether speech is independent or not.

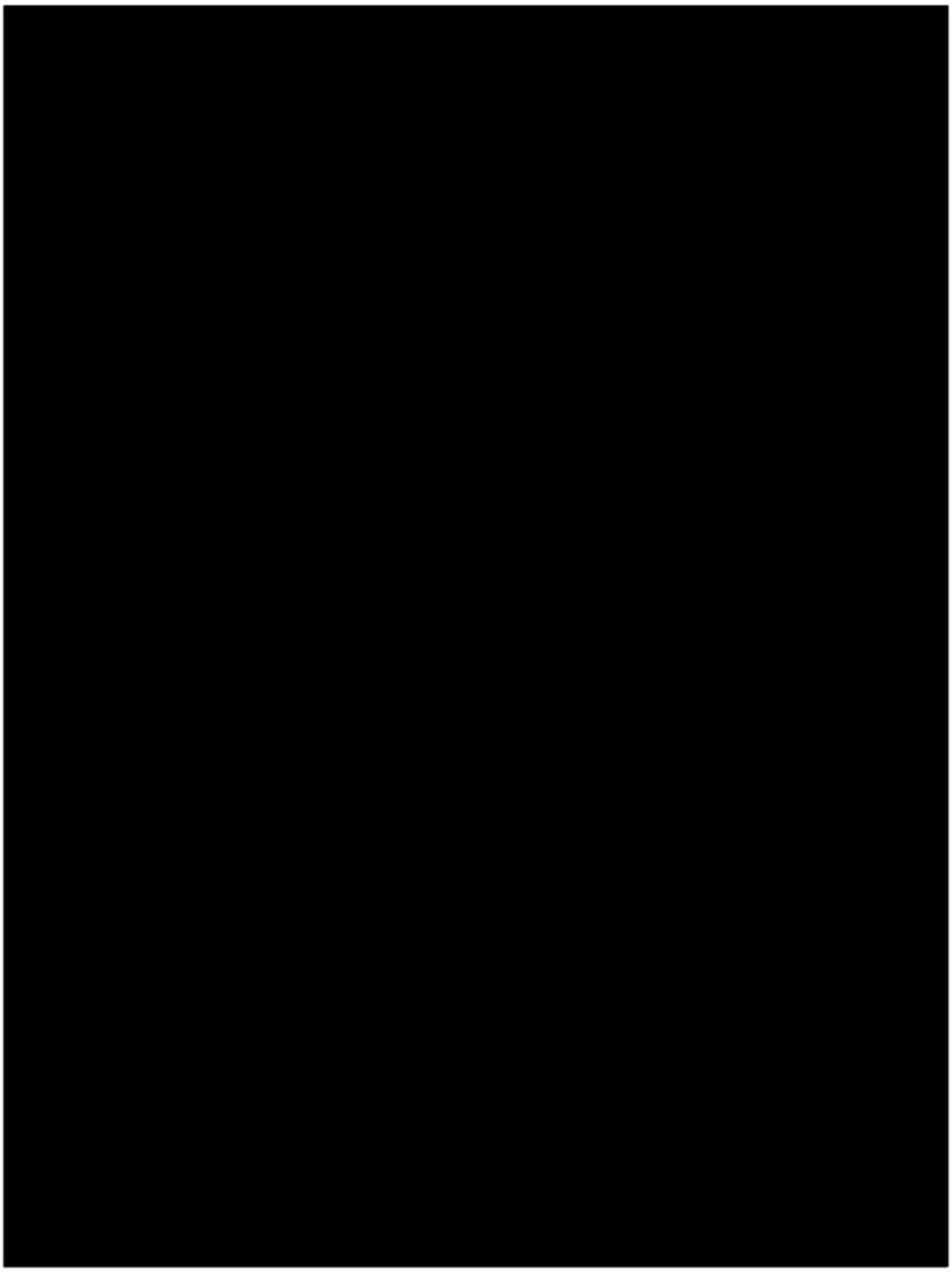
Nor is it illegal to sponsor advertisements "supporting" any candidate or criticizing her opponent. *Id.* at 19, 63, 68. Of course [redacted] supported and criticized policy proposals and the positions of public officials and candidates on those policies. Of course [redacted] discussed public policy with candidates and public officials. A litany of federal court decisions and the G.A.B. itself have suggested some guidance to help define "impermissible" interaction—however unsatisfying it might be to any or all of the parties—but the necessary elements from even that are missing here.

I. THE SPECIAL PROSECUTOR'S BRIEF HAS ADDED NOTHING NEW TO HIS S[redacted] DEFENSE, AND THE ALLEGATIONS MADE CANNOT SUPPORT [redacted], LET ALONE PROSECUTION.

The special prosecutor's extensive "Statement of Facts" has not changed the "case" against [redacted] or the justification for the [redacted] This is the extent of those allegations:

- [redacted]
- [redacted]
- [redacted]

[2] [redacted]



[redacted]

Those events may or may not be accurately described in isolation, but they have no relationship or contextual connection even within the special prosecutor's own legal theory. Accepting as true all of the special prosecutor's statements, the transactions and the speech he has identified violate no law and contravene no administrative regulation. Certainly, they do not sustain a "reasonable conclusion," by the special prosecutor's own standards, that they are potentially criminal. *See supra* at 7.

[redacted]

A "super" is a broadcasting term of art that refers to the written identification of an individual or written words that explain an idea when the individual or concept appears on the screen. A "super" visually supplements the spoken word, in other words, in television advertising. *See* Webster's New World Dictionary of Media and Communications 597-98 (rev. ed. 1996).

[redacted]

[redacted]

That telling factual mistake aside, the special prosecutor has described conduct and speech by [redacted] that do not support suspicion, let alone reasonable belief or probable cause. Organizations are free to transfer funds between themselves. It is not "reasonable" simply to assume that the transfer of funds between organizations reflects "illegal coordination." Public officials, whether or not candidates, are free to discuss issues and elections with organizations. And, those organizations are free to support or oppose the positions on public policies taken by public officials and candidates—alone or with other organizations.

The individuals referred to by name in the special prosecutor's materials as engaged in "impermissible coordination" are not employed by, retained by, or connected with [redacted]. The only [redacted] employee or agent whose name appears in those materials is [redacted] Moreover, his conduct was limited to [redacted]

[redacted]

[redacted] All of that conduct was appropriate, and none of it was even potentially unlawful.

II. THE SPECIAL PROSECUTOR'S BRIEF DOES NOT ASSERT A RIGHT TO APPEAL, AND HIS ARGUMENTS DO NOT SATISFY THE WRIT STANDARDS.

In the Court of Appeals, responding to the special prosecutor's writ petition, [redacted] began the substance of its brief with the jurisdictional argument that the decision by the John Doe judge [redacted] was not only discretionary but beyond judicial review. *See* Response Brief of Unnamed Movants Nos. 4 and 5—Special Prosecutor's Writ Petition (filed Mar. 31, 2014) at 7-12. [redacted] began its initial brief here with the same argument. *See* [redacted] Principal Brief (Superseding) in Support of John Doe Judge's

[redacted] Decision (filed Feb. 24, 2015) at 56-64. The special prosecutor has not responded to that argument. Nor has the special prosecutor attempted, especially in light of the "focused" facts now recited in his brief, to defend the [redacted]

That failure constitutes waiver. *State ex rel. Blank v. Gramling*, 219 Wis. 196, 199, 262 N.W. 614 (1935) ("Respondents on appeal cannot complain if propositions of appellants are taken as confessed which they do not undertake to refute."); *State v. Peterson*, 222 Wis. 2d 449, 459, 588 N.W.2d 84 (Ct. App. 1998) ("When a respondent does not refute an appellant's argument, we may assume it is conceded.").

Regardless of the special prosecutor's tactical choices, these issues warrant a decision from this Court. The very availability of judicial review is not only jurisdictional but it provides a potentially-dispositive resolution of these

proceedings and, not incidentally, can resolve potential issues arising in any John Doe proceeding.

Succinctly stated, the threshold question is whether a John Doe judge's decision [redacted] or, in the first instance, [redacted] is subject to *any* review. The consequences of answering that question "yes" are readily apparent, implicating the judicial process and the effectiveness and efficiency of John Doe proceedings, no matter their subject.

That an exercise of discretion is not subject to review is hardly a novel proposition. *See, e.g., Heckler v. Chaney*, 470 U.S. 821, 832 (1985) ("[A]n agency's decision not to take enforcement action should be presumed immune from judicial review under" the Administrative Procedure Act). No one suggests that a John Doe judge's decision not to appoint a special prosecutor is appealable. *See State v. Ramirez*, 83 Wis. 2d 150, 155, 265 N.W.2d 274 (1978)

(recognizing a "tradition of virtually unreviewable prosecutorial discretion concerning the initiation and scope of a criminal prosecution") (quoting *Ashe v. Swenson*, 397 U.S. 436, 452 (1970)). Nor are countless judicial and prosecutorial process decisions made every day in the criminal justice system.

Beyond the threshold question of the reviewability of the John Doe judge's [redacted] lies the mandamus standard, which the special prosecutor does address. SP Br. § XV, at 239-44. He begins by arguing that the pendency of an original action, filed by several other organizations, renders the "standards of discretionary review…inapplicable." *Id.* at 240. The Court indeed accepted the original jurisdiction petition as part of its wholesale consolidation of these proceedings for briefing and argument, without a record and with facts in dispute—other than the "fact" of the John Doe judge's decision.

Notwithstanding that, however, the special prosecutor then contends that a supervisory writ proceeding is "a review intended to correct errors." *Id.* at 241. But not every John Doe "error" is subject to review and, at that, surely not *de novo* review "to correct errors."

The precedent cited by the special prosecutor does not hold otherwise. SP Br. at 241-42, citing *e.g.*, *State ex rel. Reimann v. Circuit Court*, 214 Wis. 2d 605, 571 N.W.2d 385 (1997), *overruled in part*, *State ex rel. Robins v. Madden (In re Doe)*, 2009 WI 46, 317 Wis. 2d 364, 766 N.W.2d 542. That case involved a command to the John Doe judge to conduct a proceeding in the first place. It did not involve the manner in which it was conducted or was to be conducted, and it surely did not involve a discretionary decision about [redacted]

To reinforce his argument that a writ petition is tantamount to ordinary appellate review, moreover, the

special prosecutor emphasizes that the John Doe [redacted] decision was "effectively" [redacted] The John Doe judge's decision did nothing of the kind. *See supra* at 3 & n.1.

The special prosecutor accepts the words of the demanding standards of mandamus, *see* SP Br. at 243-44, citing *State ex rel. Kenneth S. v. Circuit Court*, 2008 WI App 120, ¶ 8, 313 Wis. 2d 508, 756 N.W.2d 573, but he does not apply them. "Judge Peterson had a 'plain duty,'" the special prosecutor contends, "to conduct a John Doe investigation requested by the District Attorney." SP Br. at 244. Yes, he had that duty. The John Doe did just that and, indeed, the John Doe judge has [redacted]

"The erroneous application of the law and facts," the special prosecutor contends, has "resulted in the judge failing

to perform his duties...." SP Br. at 244. To the contrary, the John Doe judge performed his duties—indeed, it is precisely the performance of those duties to which the special prosecutor objects. No duty has been violated, let alone a plain duty.

The John Doe statute defines the duties of the judge. *State ex rel. Robins v. Madden (In re Doe)*, 2009 WI 46, ¶¶ 14-17, 317 Wis. 2d 364, 766 N.W.2d 542; *Naseer v. Miller (In re Doe)*, 2010 WI App 142, ¶ 6, 329 Wis. 2d 724, 793 N.W.2d 209. The proceeding here was initiated by at least one district attorney, and thus the judge's duties are twofold: convene a proceeding and, if warranted, subpoena and examine witnesses. Wis. Stat. § 968.26(1) (2013-14). The first duty has been met, and the special prosecutor has

[redacted]

But these narrow statutory duties do not require as a "plain duty" that the John Doe judge acquiesce in every

request of the special prosecutor. "The extent to which the judge may proceed in an examination…is within the judge's discretion." Wis. Stat. § 968.26(3). The judge has to determine "the need to subpoena witnesses requested by the district attorney." *State v. Washington*, 83 Wis. 2d 808, 823, 266 N.W.2d 597 (1978). Accordingly, a John Doe judge is not required to conduct further proceedings—[redacted]—following the review of alleged facts presented. *Robins*, 2009 WI 46, ¶¶ 18-28; *Naseer*, 329 Wis. 2d 724, ¶ 8.

The John Doe judge did not have a "duty"—let alone a plain one—to uphold the special prosecutor's [redacted] the John Doe judge properly exercised discretion. His decision is not reviewable at all but if so, only in a mandamus proceeding. *Naseer*, 2010 WI App 142, ¶ 5 (when the act of a John Doe judge requires the

exercise of discretion, it does not present a clear legal duty and cannot be compelled through mandamus).

The fact that the special prosecutor himself chose one way to respond to that discretionary decision—temporarily halting the investigation of his own accord to pursue a supervisory writ—does not subject it to review. The special prosecutor could have proceeded with the materials already collected, or he could have tried to [redacted], but he chose instead to pursue a supervisory writ. The consequences of the special prosecutor's own decisions provide no basis for review.

III. THE SPECIAL PROSECUTOR'S LEGAL THEORY IS GROUNDED NEITHER STATUTORILY NOR CONSTITUTIONALLY, AND IT FAILS THE TEST OF DUE PROCESS ESTABLISHED BY THIS COURT 15 YEARS AGO.

In some circles, an unequivocal decision by this Court to cut the Gordian knot of "illegal coordination"—and the

application of the express advocacy/issue advocacy distinction in *Buckley v. Valeo*, 424 U.S. 1 (1976)—would be welcomed. Regardless of the substance of that decision, it would be welcomed in some circles because it would be definitive in an area of the law that remains mired in controversy and uncertainty.[6] But this Court need not and should not do that. While it surely should conclude these proceedings by dismissing them, the legislative and regulatory process remains the most appropriate forum for any broader determination.

The U.S. Court of Appeals repeatedly has noted the law's uncertainty and imprecision. *E.g.*, *Wisconsin Right to Life, Inc. v. Barland*, 751 F.3d 804, 808, 834-35 (7th Cir.

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[6] "Few cases since *Buckley* have squarely confronted the constitutional limits defining..." coordinated expenditures. Brent Ferguson, *Beyond Coordination: Defining Indirect Campaign Contributions for the Super PAC Era*, 42 Hastings Const. L.Q. 101, 107 (forthcoming Spring 2015, cited with permission) *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2577075 (comprehensive discussion of the evolving law on impermissible coordination).

2014) ("*Barland II*"); *O'Keefe v. Chisholm*, 769 F.3d 936, 942 (7th Cir. 2014), *petition for cert. filed*, 83 U.S.L.W. 3638 (U.S. Jan. 21, 2015) (No. 14-872). The legislature in this session proposes a wholesale review of state campaign finance law—virtually untouched for almost 30 years. In fact, it has scheduled a joint legislative hearing on campaign finance for March 24, 2015.[7] The G.A.B. itself has called for that wholesale reassessment of the statute.[8] For several years,

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[7] No less, the legislature also may well revisit the John Doe statute. 2015 Senate Bill 43 (introduced Feb. 19, 2015); *see* Patrick Marley, *GOP Backs Changes to Doe Law*, Milwaukee J. Sentinel, Mar. 12, 2015, at 1A.

[8] [redacted] February 2, 2015 brief, discussing a G.A.B. resolution to recommend revision of Chapter 11 at its January 13, 2015 meeting, quoted a phrase from the resolution: "[w]hereas, the language of the statutes is convoluted and difficult for the average person to read...." According to the special prosecutor, the final resolution removed that phrase (which was the third "whereas" clause of the resolution). SP Br. at 9-10.

The minutes of the January 13, 2015 meeting (which included the changes to, and adoption of, the resolution) were not made available with the agenda for the March meeting until March 2, 2015. According to the G.A.B. website, "[m]inutes are not posted until they have been approved by the Board at a subsequent meeting." The essence of the resolution did not change. The recording of the meeting, moreover, does not definitively establish the resolution of the "convoluted" provision. *See*

the G.A.B. has had on its "to do" list—but has never acted on it nor even put forth a draft rule—the promulgation of an administrative rule setting forth an impermissible coordination standard.

Moreover, to the extent "facts" are in the appellate record at all, the factual and legal circumstances here do not provide this Court with an appropriate context for constitutional decision-making. It bears repeating: no one has been charged, no one has been tried, no one has been convicted, no civil proceedings have been initiated. Any decision by this Court, in this unique if not peculiar set of circumstances, would be tantamount to an advisory opinion with but one exception—a decision to terminate the proceedings and to affirm the invalidity of the [redacted]

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http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhdid=9476, starting at 01:59:18.

[redacted] for all of the reasons asserted here by the responding parties.

The special prosecutor's silence on fundamental issues extends both to the [redacted] and to due process itself. Meanwhile, as the special prosecutor ignores the issue of overbreadth, courts continue to quash overreaching by prosecutors who demand more than probable cause will tolerate. *See, e.g., In re Search of Google Email Accounts identified in Attachment A*, No. 3:14-MJ-00387 KFM, 2015 WL 926619, at *4, *7 (D. Alaska Mar. 3, 2015) (recognizing that the "rise of personal computing and networking has heightened the risk of overbroad warrants," and denying as overbroad a request "to seize and search...six Gmail accounts in their entirety" as "not tailored to [the] narrow probable cause showing for the limited time periods" of between seven and thirty days). The special prosecutor surely does discuss his perceived basis for the [redacted]

[redacted] *see* SP Br. § XVI at 245-55, which other parties will address. But even in the context of the [redacted] discussion, the constitutional shortcomings of the [redacted] stand out along with, not incidentally, the discretionary authority of the John Doe judge [redacted]

The watchwords, the special prosecutor contends, are the "substantial deference" owed to the judicial officer [redacted]. *Id.* at 246. Yet that substantial deference requirement does not disappear when the judicial officer chooses *not* to [redacted]

at 247, quoting *State v. Higginbotham*, 162 Wis. 2d 978, 990,

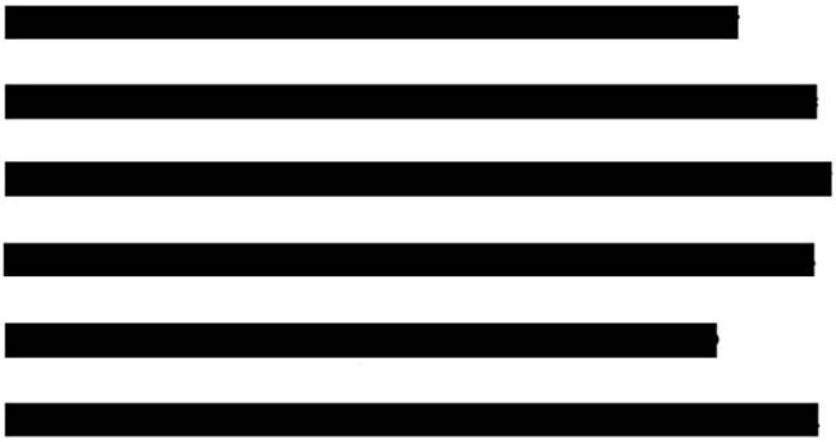
471 N.W.2d 24 (1991). [redacted]

[redacted].[9]

The litany of allegations advanced by the special prosecutor ultimately focuses on a few specific individuals, a few specific documents, and a few specific organizations that, allegedly, have "engaged in express advocacy." *Id.* at 250, 255-66. [redacted] does not appear in that litany.

Neither the special prosecutor nor anyone else ever has suggested that [redacted] engaged in express advocacy. While surely there is an obligation for every party to raise issues at the first opportunity before a judicial officer, *see id.* at 255, [redacted] did that the first time it had the

[9] [redacted]



This question of due process—and its absence here—should weigh heavily and not only because of the position in which it has placed this Court. Whether or not the special prosecutor has a basis to proceed against *any* individual or organization, whether or not his theory has *any* legal foundation, how were the responding parties to discern that in 2011 and 2012?

This Court need not sift and winnow the cavalcade of federal court campaign finance decisions to resolve these proceedings. Its own precedent, beginning with *Elections Board v. WMC*, 227 Wis. 2d 650, provides more than enough

jurisprudence. Indeed, this Court could begin and end its analysis with the [redacted] decision and with its holdings on John Doe proceedings and the standards for mandamus. *See supra* at section I. But those federal court decisions—without exception—support the unnamed movants' procedural and substantive positions here.

Three days before the initial briefs were due and filed here, the U.S. District Court in Milwaukee entered a permanent injunction that does prevent the Milwaukee County District Attorney and the G.A.B. from even *trying* to enforce the statutes and rules, as those parties read them, against "impermissibly coordinated" issue advocacy. *See Wisconsin Right to Life, Inc. v. Barland*, No. 10-C-669, 2015 WL 658465 (E.D. Wis. Jan. 30, 2015, *as amended* Feb. 13, 2015).[10] That final order and judgment rest on the

[10] To the extent the special prosecutor has knowledge of that injunction and acts "in active concert" with any of those directly enjoined, he is also enjoined. Fed. R. Civ. P. 65(d)(2)(C).

U.S. Court of Appeals' decision in *Barland II*, 751 F.3d 804, but, no less, they rest on the comprehensive analysis of the federal precedent in that decision. The injunction could not be more unequivocal or forceful, including a judicial mandate to the G.A.B. to post the judgment on the state's campaign finance website. *Id.* at *1.

While the special prosecutor has attempted to isolate a related stipulation as case-specific, *see* SP Br. at 10-11, the result in these federal cases is telling even if not dispositive here. The result is telling because it emphasizes—once more—the uncertain state of Wisconsin campaign finance law. The special prosecutor would seek to charge at least some of the responding parties in these proceedings with conduct that he thinks should be criminal when a federal judge has enjoined other law enforcement officers (including the district attorney from the county where these proceedings

originated) from investigating or charging that same conduct. That cannot possibly comport with due process.

IV. THE SPECIAL PROSECUTOR'S VIEW OF CAMPAIGN FINANCE LAW AND "IMPERMISSIBLE COORDINATION" IS AN ASPIRATION, NOT A REALITY.

The special prosecutor asserts "facts" and assumptions to support his theory that independent organizations engaged in impermissible coordination of expenditures with a candidate committee. The special prosecutor has described in painstaking detail his vision for campaign finance law in Wisconsin, but he has yet to accept what it actually is.

The state legislature may one day adopt the special prosecutor's position. In the face of the federal court's injunction, the G.A.B. may finally promulgate rules—something it has never done—that would provide some guidance consistent with the special prosecutor's point of view. Until then, however, the Chapter 11 definition of

"political purpose" includes only express advocacy as the G.A.B. repeatedly has conceded. Until then, Wisconsin law does not prohibit consultants from working for both candidates and independent organizations in different races. Any coordination standard in Wisconsin should continue to be applied narrowly and in a constitutionally-precise fashion to protect First Amendment rights of speech and association. *See* El. Bd. Op. 00-2.

The special prosecutor would apply an impermissible coordination standard to advance his view of how independent organizations and political consultants should be regulated. He acknowledges the only existing guidance on coordination, set forth by the G.A.B. 15 years ago, *id.*, but then ignores it because it does not advance his investigation or sustain his vision of what the law should be. At the least, impermissible coordination requires two specific parties—an independent organization and a candidate (or a candidate's

agent)—and a "prearranged" expenditure for a specific communication in support of that candidate. This guidance is simple in both the contact that it prohibits and the contact that it allows.

Independent organizations may communicate with each other at any time about any issue. And independent organizations may communicate with public officials and candidates about public policy issues at any time. *Id.* Yet, it is exactly these permissible contacts that serve as the basis for the special prosecutor's misplaced criminal investigation. *See supra* at 8-9.

The decision in *Federal Election Commission v. Christian Coalition*, 52 F. Supp. 2d 45 (D.D.C. 1999), on which the special prosecutor so heavily relies, is no different. *See* SP Br. at 140-51. In it, the court rejected an "insider trading" or conspiracy standard that classifies all communications with a candidate or candidate's agent,

regardless of purpose or content, as *per se* coordination. Such a theory would inappropriately "sweep[] in all attempts by corporations and unions to discuss policy matters with the candidate while these groups are contemporaneously funding communications directed at the same policy matters." 52 F. Supp. at 90. That would "heavily burden[] the common, probably necessary, communications between candidates and constituencies during an election campaign." *Id.*

In *Christian Coalition*, the court *declined* to prohibit discussions and contact between independent organizations and candidates—whether or not they could involve "considerable incentives to engage in corrupt practices"—because "[s]uch conversations lie in the heartland of protected political discussion." *Id.* at 93. The difficulty in determining when a discussion with a campaign could theoretically become impermissible coordination does not justify a

prophylactic rule that would discourage, if not stifle, protected expression. *Id.*

Yet, the special prosecutor has failed to show any of the "to-and-fro" between the independent organization and candidate or, for that matter, any expenditure that *Christian Coalition* requires. He has failed to meet the guidance in the G.A.B.'s own advisory opinion adopted in 2000. No "joint venture" or "partnership" with a candidate can be found in [redacted] speech or conduct. *See* SP Br. at 180, 182.

Perhaps the legislature and the G.A.B. could have adopted a more restrictive coordination standard, but neither has done so. Even if Wisconsin by law or rule could have gone beyond the *Christian Coalition* standard, it has not done so. Following its own precedent in *WMC*, this Court should decline the special prosecutor's invitation to enforce a legal standard that does not exist and has never before been applied—anywhere to anyone.

CONCLUSION

For the reasons stated above and in their initial brief, [redacted] [redacted] ask that the Court dismiss the John Doe proceeding in its entirety or, if not, to affirm the John Doe judge's decision [redacted]

Dated this 19th day of March, 2015.

GODFREY & KAHN, S.C.

By: _____
Brady C. Williamson
Bar No. 1013896
Eric J. Wilson
State Bar No. 1047241

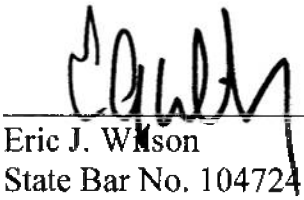
[redacted]

P.O. ADDRESS:
One East Main Street, Suite 500
P.O. Box 2719
Madison, WI 53701-2719
Phone: 608-257-3911
Fax: 608-257-0609

RULE 809.19(8)(d) CERTIFICATION

I hereby certify that this brief and accompanying appendix conform to the rule contained in s. 809.19(8)(b) for a brief and appendix produced with a proportional serif font. The length of those portions of this brief referred to in the Court's December 16, 2014 order and s. 809.19(1)(d), (e), and (f) is 5,381 words.

Dated: March 19, 2015.

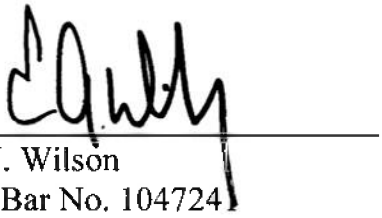


Eric J. Wilson
State Bar No. 1047241

ELECTRONIC FILING CERTIFICATION

I hereby certify, pursuant to Wis. Stat. § 809.19(12)(f), that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Dated: March 19, 2015.



Eric J. Wilson
State Bar No. 104724

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