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STATE OF WISCONSIN
SUPREME COURT

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

Case Nos. 2013AP2504–2508-W

STATE OF WISCONSIN ex rel. THREE UNNAMED PETITIONERS,

Petitioner,

v.

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

Respondents,

L.C.#s 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

BRIEF OF *AMICUS CURIAE* CITIZENS FOR RESPONSIBLE GOVERNMENT ADVOCATES, INC.

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[Caption continued on following page]

Case Nos. 2014AP296-OA

STATE OF WISCONSIN ex rel. TWO UNNAMED PETITIONERS,

Petitioner,

v.

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

Respondents,

L.C.#s 2012JD23, 2013JD1, 2013JD6, 2013JD9, 2013JD11

Case Nos. 2014AP417 - 421-W

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

Petitioner,

v.

THE HONORABLE GREGORY A. PETERSON, John Doe Judge,

Respondent,

and

EIGHT UNNAMED MOVANTS,

Interested Parties.

L.C.#s 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

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INTEREST OF THE *AMICUS CURIAE*

CRG Advocates, Inc. (CRG) is a Milwaukee-based issue-advocacy organization and is the petitioner in *Citizens for Responsible Government Advocates, Inc. v. Barland*, 2014AP2586-OA (Wis.), which the Court held in abeyance pending the resolution of this matter. CRG initially sought declaratory and injunctive relief in the Eastern District of Wisconsin to prevent the Wisconsin Government Accountability Board (GAB) and Milwaukee County District Attorney from enforcing their theory that "coordinated issue advocacy" is prohibited by Wisconsin law against it.

The Eastern District issued a temporary restraining order in CRG's favor. On stipulation of all parties in that case, the court entered a preliminary injunction to allow CRG to petition this Court for a ruling that Chapter 11 does not reach its issue advocacy. If the Court denies the request, or rules that Chapter 11 does reach issue advocacy, the Eastern District of Wisconsin will proceed to consider the constitutionality of Chapter 11's coordination provisions.

CRG has a clear interest in the outcome of this case both because its federal litigation may be resolved by a favorable ruling here and because

CRG is currently engaging in a coordinated issue-advocacy campaign that the Special Prosecutor may claim violates Wisconsin law.[1]

ARGUMENT

I. SPEECH ON THE ISSUES IS ABSOLUTELY PROTECTED BY THE FIRST AMENDMENT (QUESTIONS 11 AND 12).

The First Amendment prohibits any law "abridging the freedom of speech." While limited restrictions on campaign-related speech are permissible where necessary to guard against *quid-pro-quo* corruption, speech on the issues, as opposed to speech advocating the election or defeat of a candidate, is categorically excluded from such regulation because issue advocacy is *not campaign-related speech*.

"Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 474 (2007) (*WRTL*) (Roberts, C.J.).[2] The Special Prosecutor's

[1] CRG's Washington, D.C. counsel represented Wisconsin Club for Growth, Inc., and Eric O'Keefe in *O'Keefe v. Chisholm*, 14-1822 (7th Cir.), and portions of this brief substantially track sections of the brief filed on behalf of those parties in that matter. None of CRG's counsel, however, represent the Wisconsin Club for Growth or Eric O'Keefe or any other parties in this matter or in the John Doe proceeding. No party to this matter or the John Doe proceeding—including the Club and Eric O'Keefe—or their counsel has contributed funds for this *amicus* brief, authored this brief in whole or in part, or reviewed or discussed its contents prior to filing. In addition, this brief relies only upon information and filings that have been disclosed to the public.

[2] Chief Justice Roberts's opinion is controlling. *Marks v. United States*, 430 U.S. 188, 193–94 (1977). *See also Citizens United v. FEC*, 558 U.S. 310, 340 (2010). Subsequent citations refer to the Chief Justice's opinion.

insistence that speech on the issues can be restricted when coordinated with a candidate for office violates that principle and is "simply wrong." *O'Keefe v. Schmitz*, 19 F. Supp. 3d 861, 869 (E.D. Wis. 2014), vacated on other grounds in *O'Keefe v. Chisholm*, 769 F.3d 936 (7th Cir. 2014).

A. Legal Background

Buckley v. Valeo distinguished between limitations on political contributions and those on political expenditures. 424 U.S. 1, 18–26 (1976). Because "[a] contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support[,].…[a] limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication" and is permissible if it is "closely drawn to avoid unnecessary abridgment of First Amendment rights." 424 U.S. at 21, 25. By contrast, "[a] restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached," and such restrictions are subject to strict scrutiny. *Id*. at 19, 25–26. *See also Citizens United v. FEC*, 558 U.S. 310, 340, 345 (2010). Consistent with the contribution-expenditure distinction, certain expenditures coordinated with a

candidate may also be restricted, to prevent circumvention of contribution limits. *Buckley*, 424 U.S. at 46–47.

But the Court drew a critical distinction—between "express" and "issue" advocacy—to ensure that regulation reached only unambiguously election-related communications. Federal Election Campaign Act (FECA) Section 608(e)(1) purported to limit "any expenditure…relative to a clearly identified candidate." *See id*. at 41–42. Because "[t]he use of so indefinite a phrase as 'relative to' a candidate fails to clearly mark the boundary between permissible and impermissible speech," the law would be impermissibly vague absent a limiting construction. *Id*. at 41. That "constitutional deficienc[y]," the Court held, "can be avoided only by reading [section] 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate," *id*. at 43—in other words, "express advocacy." All other communications, or "issue advocacy," fell outside the reach of the Act. *Id. Accord FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 249–50 (1986). *Buckley* imposed an identical limiting construction on a provision requiring disclosure of expenditures made "for the purpose of…influencing" elections to ensure that its reach "is not impermissibly broad." 424 U.S. at 77–80.

WRTL confirmed the constitutional necessity of this distinction. *WRTL* concerned an amendment to FECA that expanded the scope of the prohibition on corporations' election-related speech to include "electioneering communications," defined as "any broadcast, cable, or satellite communication that refers to a candidate for federal office and that is aired within 30 days of a federal primary election or 60 days of a federal general election in the jurisdiction in which that candidate is running for office." 551 U.S. at 457–58. Although the provision had been upheld against facial challenge in *McConnell v. FEC*, 540 U.S. 93, 204–06 (2003), *WRTL* considered its application to "speech about public issues more generally, or 'issue advocacy,' that mentions a candidate for federal office." 551 U.S. at 456.

The Court ruled that "the interests held to justify restricting corporate campaign speech or its functional equivalent do not justify restricting issue advocacy," *id*. at 457, explaining it "has never recognized a compelling interest in regulating ads…that are neither express advocacy nor its functional equivalent." *Id*. at 476. The governmental interest in preventing corruption that supports express advocacy restrictions does not allow issue speech regulation: "Issue ads like WRTL's are by no means equivalent to contributions, and the *quid-pro-quo* corruption interest cannot justify

regulating them. To equate WRTL's ads with contributions is to ignore their value as political speech." *Id*. at 478–79.

B. Restrictions on Issue Advocacy Fail Strict Scrutiny.

"Laws that burden political speech are subject to strict scrutiny." *Citizens United*, 558 U.S. at 340 (quotation marks omitted). That includes limitations on expenditures for political communications, like those at issue here. *Buckley*, 424 U.S. at 19. Therefore, *Buckley's* and *WRTL's* constitutional line controls: "Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election." 551 U.S. at 474. It's that simple.

Coordination cannot alter that conclusion. Conditioning the right to speak on avoiding contact with candidates and elected officials "treads heavily upon the right of citizens, individual or corporate, to confer and discuss public matters with their legislative representatives or candidates for such office." *Clifton v. FEC*, 114 F.3d 1309, 1314 (1st Cir. 1997). "It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 461 (1958). *See also* U.S. Const. Amend I (recognizing right "to assemble, and to petition

the Government for a redress of grievances"). Exercise of that right cannot be conditioned on sacrificing the core First Amendment right to participate in "the discussion of political policy." *Buckley*, 424 U.S. at 48. *See Speiser v. Randall*, 357 U.S. 513, 526 (1958) (applying unconstitutional-condition doctrine); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (same).

Buckley's logic compels that result.[3] Limits on communications expenditures are subject to strict scrutiny because they "heavily burden[] core First Amendment expression. For the…right to speak one's mind on all public institutions includes the right to engage in vigorous advocacy no less than abstract discussion." 424 U.S. at 48 (alteration and quotation marks omitted). By contrast, contribution limits receive lesser scrutiny because contributions "serve[] as a general expression of support for the candidate and his views, but do[] not communicate the underlying basis for the support," and so do "not in any way infringe the contributor's freedom to discuss candidates and issues." *Id*. at 21. The key factor is that "the

[3] *FEC v. Colorado Republican Federal Campaign Committee*, (*Colorado II*) expressly reserved the question of what degree of scrutiny applies to regulation of issue advocacy *by political parties*. 533 U.S. 431, 456 n.17 (2001). *Colorado II* therefore does not mark a departure from *Buckley's* approach, subsequently reaffirmed in *WRTL*, of subjecting limitations on issue advocacy to strict scrutiny.

transformation of contributions into political debate involves speech by someone other than the contributor." *Id*.

Issue advocacy is an "expenditure" in every relevant respect, and *Buckley* identified "the discussion of political policy generally or advocacy of the passage or defeat of legislation" as the gold standard of constitutionally protected speech. *Id*. at 48. Issue speech does not merely convey support for a candidate, as a contribution might—it may not even mention a candidate. Limitations on such speech directly infringe the "freedom to discuss…issues."

Under *Buckley* and its progeny, speech on the issues can be regulated as a "contribution" only when it "involves speech by someone other than the contributor." *Id*. at 21. Only when issue advocacy "amount[s] to no more than payment of the candidate's bills" may it be restricted as a contribution. *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456 n.17 (2001) (*Colorado II*). *See also id.* at 447 (holding that government may regulate parties' coordinated campaign-related expenditures because they are "the functional equivalent of contributions").

Buckley and *WRTL* establish that genuine issue advocacy (as opposed to paying a candidate's bills) cannot be regulated as a campaign contribution. *WRTL* expressly says this. 551 U.S. at 464, 478–79. The Seventh Circuit

agreed in applying *Buckley* and *WRTL* to this very definition of "political purposes." *Wisconsin Right to Life, Inc. v. Barland*, 751 F.3d 804, 832 & n.20 (7th Cir. 2014) (*Barland II*) (noting structural role of "political purposes" trigger); *id.* at 834 (narrowing construction applies "when Chapter 11 is applied beyond candidates, their committees, and political parties").

On remand from *Barland II*, the Eastern District of Wisconsin permanently enjoined GAB and the Milwaukee County District Attorney from, among other things, "criminally investigating…any person…in any way inconsistent with" that limiting construction. Declaratory Judgment and Permanent Injunction, ECF No. 132 at 3, *Wisconsin Right to Life, Inc. v. Barland*, 10-CV-0669 (E.D. Wis. Jan. 30, 2015). In fact, the GAB and the District Attorney both conceded that Wisconsin law does not regulate, much less criminalize, issue advocacy by persons who are not candidates, campaign committees, or political parties. *See* Plaintiffs and Defendants' Proposed Judgment, ECF No. 130-2, at 2, *Wisconsin Right To Life, Inc. v. Barland*, No. 10-cv-669 (E.D. Wis. filed Nov. 24, 2014).

Various campaign-finance authorities cited by the Special Prosecutor[4] are not to the contrary, with all but one concerning express advocacy or

[4] *See* Appellant Brief, *O'Keefe v. Chisholm*, No. 14-1822, ECF No. 78 at 39–40 (7th Cir. Filed Aug. 1, 2014).

acknowledging that they do not address issue advocacy. *See Colorado II*, 533 U.S. at 456 n.17; *Center For Individual Freedom v. Madigan*, 697 F.3d 464, 494–96 (7th Cir. 2012);[5] *Wis. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 144 (7th Cir. 2011) (*Barland I*); *Republican Party of N.M. v. King*, 741 F.3d 1089, 1091 (10th Cir. 2013).

Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board, 605 N.W.2d 654, 680, 684 & n.9 (Wis. Ct. App. 1999), is the only exception and was not cited in a reported decision for more than a decade before this investigation. This Court should expressly overturn it.

C. Restrictions on Issue Advocacy Fail Closely Drawn Scrutiny.

The result is the same under *Buckley's* "closely drawn" scrutiny due to the vast overbreadth and chilling effects of restricting issue speech coordinated with a candidate or elected official.

If coordinated issue advocacy is a "contribution," the government must demonstrate that restrictions are "closely drawn" to match its interest in preventing *quid-pro-quo* corruption, real or apparent, and "to avoid

[5] *Madigan* rebuffed a challenge based on *WRTL's* distinction between issue and express advocacy because the statute there "is limited by language nearly identical to that used in *Wisconsin Right to Life* to define the functional equivalent of express advocacy." 697 F.3d at 485. By contrast, the Special Prosecutor seeks to extend Wisconsin law's prohibitions to reach issue advocacy.

unnecessary abridgment of associational freedoms." *Buckley*, 424 U.S. at 25. *See also Randall v. Sorrell*, 548 U.S. 230, 253–62 (2006) (Breyer, J.) (striking down contribution limit that "disproportionately burdens numerous First Amendment interests" and so was "not narrowly tailored").

"Contribution" limitations on coordinated issue advocacy are not closely drawn because they sweep up too much core speech and association, disproportionately burdening First Amendment rights. "Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest." *Buckley*, 424 U.S. at 42. Their participation in the coalition-building and public policy debates necessary to advance their views is all subject to the First Amendment's strongest protections, *id*. at 48, as is the right to advance public-policy objectives through the political process, including through collaboration with candidates, especially incumbents. *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975); *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966). These things are the lifeblood of representative democracy.

Suppose a state senator introduces a spending bill for additional cancer-research funding at the state university. He works with patient

advocacy organizations to defeat objections by fiscal conservatives, coordinating the timing, content, and targets of advertisements to ensure their effectiveness. One ad concludes: "Why does Representative Smith oppose research to find a cure? Call him today and tell him that research matters to Wisconsin families." *Compare WRTL*, 551 U.S. at 458–59 (reciting scripts of typical issue advertisements). Equating this issue advocacy with contributions "is to ignore [its] value as political speech." *Id*. at 479. And that's so even if "Representative Smith" is seeking the senator's seat. *Id*. at 468 (rejecting "the bizarre result that identical ads aired at the same time could be protected speech for one speaker, while leading to criminal penalties for another").

The abridgment of associational freedoms is even greater than this example alone suggests, due to the inevitable chilling effects of regulation and enforcement. Campaign-finance limitations are enforced by regulatory agencies and prosecutors wielding civil and criminal penalties. Particularly with so uncertain a concept as "coordination"—the metes and bounds of which are far from clear—the risk of enforcement actions, penalties, and criminal sanction will inevitably chill protected speech and association. Identical concerns led the Supreme Court to invalidate a state ban on "unreasonable" fundraising fees charged to charities. *Riley v. Nat'l Fed. Of*

the Blind of N.C., Inc., 487 U.S. 781, 794 (1988). Restricting issue advocacy merely because it is coordinated with a candidate for office likewise "must necessarily chill speech" and reduce the quantity of expression, *id.*, and therefore fails narrow tailoring. *See also Clifton*, 114 F.3d at 1314 & n.3; *FEC v. Christian Coalition*, 52 F. Supp. 2d 45, 88–89 (D.D.C. 1999).

This substantial abridgment of associational freedoms is not justified by the governmental interest in preventing *quid-pro-quo* corruption. Issue speech is not as valuable to candidates as cash contributions. Unlike cash, issue advocacy may not reflect a candidate's campaign priorities or preferred messaging, because issue-based organizations have their own priorities and beliefs that are reflected in their speech. For example, while a candidate's priority may be to criticize his opponent for cutting spending on women's health services, an anti-tax group would not carry that message in its advertisements. Moreover, unlike contributions, issue advocacy is inherently transparent—the very point is to educate and persuade through public communications. And there are far more targeted means to address the risk of *quid-pro-quo* corruption, including regulation of coordinated express

advocacy or its functional equivalent, targeted disclosure requirements, and regulation of "earmarking" for political purposes.[6]

Finally, regulating candidate-coordinated issue advocacy is precisely the kind of "prophylaxis-upon-prophylaxis approach" rejected in *WRTL* and which requires particular diligence in scrutinizing fit when considering First Amendment tailoring requirements. *WRTL*, 551 U.S. at 479. Contribution limits themselves are prophylactic, "because few if any contributions to candidates will involve *quid pro quo* arrangements." *Citizens United*, 558 U.S. at 357. Restriction of coordinated expenditures is another prophylaxis, to prevent circumvention of contribution limits. *Buckley*, 424 U.S. at 46–47. Extending that restriction to reach issue advocacy adds yet another prophylactic layer, on the view that what appears to be speech on the issues may be an attempt to circumvent regulation of unequivocally campaign-related speech. *WRTL*, 551 U.S. at 478–79. "Enough is enough." *Id.* at 478.

[6] *See, e.g., Colorado II*, 533 U.S. at 462–63.

II. THE SPECIAL PROSECUTOR'S THEORY IS INCOMPATIBLE WITH WISCONSIN LAW (QUESTIONS 7, 9, 10, 12, AND 13).

Even if issue advocacy could be restricted consistent with the First Amendment, Wisconsin's campaign-finance law cannot be read to do so without rendering it facially unconstitutional.

Wisconsin's system of campaign-finance regulation is similar to FECA, limiting campaign contributions and requiring their disclosure. Wis. Stat. §§ 11.26, 11.06(1). To prevent circumvention of contribution limits through coordination, it regards "disbursement[s]" that are "made or incurred with the authorization, direction or control of or otherwise by prearrangement with the candidate or the candidate's agent" as contributions. Wis. Stat. § 11.06(4)(d). And like FECA, it limits regulation to disbursements "made for political purposes," § 11.01(7)(a)(1), which it defines as actions "done for the purpose of influencing the election or nomination for election of any individual to state or local office…." § 11.01(16). This definitional provision is incorporated throughout Wisconsin's campaign-finance code.

According to GAB and the Special Prosecutor, whether an expenditure is "for political purposes" turns on whether the speaker intended to influence an election or its speech had that effect. El. Bd. 00-02 (affirmed 2008); Special Prosecutor's Consolidated Response to Motions to Quash

John Doe Subpoenas at 4 ("an act is done for a political purpose if it undertaken for the purpose of influencing the election of any individual") (quotation marks omitted).[7]

But *Buckley* construed FECA language identical to Wisconsin's "political purposes" provision as referring only to express advocacy, limiting its reach to "spending that is unambiguously related to the campaign of a particular federal candidate." 424 U.S. at 80. This was necessary, the Court held, to avoid constitutional vagueness and overbreadth concerns. *Id*. at 76–80.

Subsequently, *WRTL* rejected the same intent- and effects-based standard that the Special Prosecutor urges here. The Court explained, "*Buckley* had already rejected an intent-and-effect test for distinguishing between discussions of issues and candidates," on the basis that "analyzing the question in terms 'of intent and of effect' would afford 'no security for free discussion.'" 551 U.S. at 467 (quoting *Buckley*, 424 U.S. at 43). "[A]n intent-based test would chill core political speech by opening the door to a trial on every ad within the terms of [the statute], on the theory that the speaker actually intended to affect an election, no matter how compelling the

[7] Available at Seventh Circuit No. 14-1822, ECF No. 74-12 at 181.

indications that the ad concerned a pending legislative or policy issue." *Id*. at 468. The Court also rejected an "electoral effects" test, reasoning that it would "typically lead to a burdensome, expert-driven inquiry" and "unquestionably chill a substantial amount of political speech." *Id*. at 469. Instead, the Court held, "the proper standard…*must be objective*, focusing on the substance of the communication rather than amorphous considerations of intent and effect." *Id*. at 469 (emphasis added). The First Amendment, it concluded, permits regulation only of express advocacy and its "functional equivalent," as determined by its content and nothing else. *Id*. at 469–70.

Accordingly, an "intents-and-effects" interpretation of Wisconsin's "political purpose" limitation is incompatible with *WRTL*, reaching speech that is neither express advocacy nor its functional equivalent.

It is irrelevant that this case concerns alleged "coordination" of issue advocacy.

First, the same "political purposes" definition applies to "disbursements" (i.e., expenditures) that are not coordinated in any respect with a candidate or campaign committee. *See* Wis. Stat. § 11.01(7) (defining "disbursement"); §§ 11.05, 11.06 (imposing onerous registration and reporting requirements on any individual or group making disbursements); § 11.61(1)(a) (imposing criminal penalties for violation of those registration

and reporting requirements). These disbursements cannot be restricted under *Buckley*, *WRTL*, and *Citizens United*, so even if there were some constitutional distinction between coordinated and uncoordinated issue advocacy, it would still be necessary to limit Wisconsin's "political purposes" definition to express advocacy and its functional equivalent.

Second, "political purposes" triggers the application of Wisconsin's unusual "subcommittee" status. Wisconsin law limits each candidate for office to a single campaign committee and provides that any other "committee"—that is, a group that accepts contributions or makes expenditures for "political purposes"—that coordinates its actions with the candidate or his committee becomes a "subcommittee" of that campaign committee. Wis. Stat. § 11.10(4). The consequences of such a designation are severe, as a subcommittee is barred from:

- Making independent expenditures without the permission of the campaign committee's treasurer, Wis. Stat. § 11.16(1)(a), ceding control over the organization's speech to that individual;
- Using preexisting funds for any purpose, § 11.05(6);
- Accepting corporate contributions for independent expenditures, § 11.38;

- Accepting individual contributions for independent expenditures above the base limits applicable to the candidate's committee, § 11.26(1); and
- Contributing to other candidates' committees to which the candidate's committee has already contributed the base amount, § 11.26(2).

In the Special Prosecutor's view, these consequences follow ***any*** coordination of fundraising or expenditures, including issue advocacy, with a candidate or his committee. Special Prosecutor's Consolidated Response to Motions to Quash John Doe Subpoenas at 5, 21. Thus, if a cancer charity or the Boy Scouts coordinates a charitable fundraiser with a candidate for office, that organization becomes a campaign subcommittee subject to the requirements and limitations of Wisconsin campaign-finance law, facing civil and criminal penalties if it has accepted corporate donations or exceeded contribution limits, and is subject to state regulation of its speech and associational activities going forward *ad infinitum*.

For an issue-advocacy group, designation as a subcommittee is a manifestly unconstitutional free-speech death penalty. The government has no compelling interest, for example, in limiting independent expenditures or barring corporate speech expenditures. *E.g.*, *Buckley*, 424 U.S. at 16–18;

Citizens United, 558 U.S. at 365. Wisconsin's definition of "political purposes" must be limited to express advocacy and its functional equivalent to avoid that result.

Third, the Special Prosecutor's intent- and effects-based test for coordinated issue advocacy is still subject to all the vagueness objections identified in *Buckley* and *WRTL*. Regulation of coordinated issue advocacy—assuming that is permissible at all—requires a line clearer than the Special Prosecutor's, lest protected speech and association be chilled by uncertainty and litigation risk. *WRTL*, 551 U.S. at 468–69.

Fourth, the Special Prosecutor's argument that Plaintiffs could "coordinate" with a candidate regarding issue advocacy fails as a matter of Wisconsin law because it is circular. Wisconsin law does not define "coordination." Instead, under Wisconsin law, "coordination" with a candidate is based on an interpretation of the term "contribution" as something "of value…made for political purposes," using the same "political purposes" gateway as most other Wisconsin law provisions. Wis. Stat. § 11.01(6)(a). And "political purposes" is defined in Section 11.01(16) as something done "for the purpose of influencing the election…of any individual." Thus, under Wisconsin's statutory approach, whether conduct counts as unlawful "coordination" turns on whether the conduct was done for

"political purposes," which (in the Special Prosecutor's view) depends on whether the conduct was coordinated.

In sum, whether or not a state could regulate coordinated issue advocacy under some other statutory scheme, *this statutory scheme* must be subject to the same limiting construction applied in *Buckley* and *WRTL*, excluding issue advocacy from its reach.

CONCLUSION

The Court should affirm the decision of the John Doe judge.

Respectfully submitted this 16th day of March, 2015

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CERTIFICATION OF FORM AND LENGTH

Subject to CRG's motion for leave for additional words, I hereby certify that this brief conforms to the rules contained in §§ 809.19(8)(b) and (c), Wis. Stats., for a brief produced with a proportional serif font. The length of the brief is 4,125 words.

Dated at Milwaukee, Wisconsin this 16th day of March, 2015.

Christopher M. Meuler
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CERTIFICATION PURSUANT TO WIS. STAT. 809.19(12)

I hereby certify that upon granting of CRG's motion for leave to file, an electronic copy of this *amicus* brief will be submitted which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that this electronic brief will be identical in content and format to the printed form of the brief as of the date of filing. A copy of this certificate has been served with the paper copies of this brief with the Court and served on parties of record.

Dated at Milwaukee, Wisconsin this 16th day of March, 2015.

Christopher M. Meuler
State Bar No. 1037971

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of March, 2015, pursuant to §§ 809.80(3)(b) and (4), Wis. Stats., (22) copies of the Brief of *Amicus Curiae* Citizens for Responsible Government Advocates, Inc. were filed in the Wisconsin Supreme Court via hand delivery. Three (3) copies of the brief were served upon parties of record via first-class mail.

Dated at Milwaukee, Wisconsin this 16th day of March, 2015.

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