

REVISED REDACTED

STATE OF WISCONSIN
SUPREME COURT

RECEIVED
04-06-2015
CLERK OF SUPREME
COURT
OF WISCONSIN

Case No. 2013AP2504-2508-W
Case No. 2014AP296-OA
Case No. 2014AP417-421-W

STATE OF WISCONSIN ex rel. THREE UNNAMED PETITIONERS,

Petitioner,

v.

Case Nos. 2013AP2504-2508-W

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

Respondents,

L.C. Nos. 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

STATE OF WISCONSIN ex rel. TWO UNNAMED PETITIONERS,

Petitioner,

v.

Case Nos. 2014AP296-OA

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

Respondents,

L.C. Nos. 2012JD23, 2013JD1, 2013JD6, 2013JD9, 2013JD11

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

Petitioner,

v.

Case Nos. 2014AP417-421-W

THE HONORABLE GREGORY A. PETERSON, John Doe Judge,

Respondent,

and

EIGHT UNNAMED MOVANTS,

Interested Parties.

L.C. Nos. 2013JD11, 2013JD9, 2013JD6, 2013JD1, 2012JD23

ORIGINAL BRIEF OF UNNAMED MOVANT NO. 8

[REDACTED]

Concerning John Doe Proceedings in Five Counties
Hon. Gregory A. Peterson, Presiding
Columbia County No. 2013JD11; Dane County No. 2013JD9;
Dodge County No. 2013JD6; Iowa County NO. 2013JD1;
Milwaukee County No. 2012JD23

Jeffrey J. Morgan
State Bar No. 1027924
Counsel for Unnamed Movant No. 8
309 N. Water Street, Suite 350
Milwaukee, WI 53202
(414) 276-1233
jeff@ldm-law.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES	vii
ISSUES PRESENTED	1
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	7
STATEMENT OF THE CASE	8
STATEMENTS OF THE FACTS	9
ARGUMENT	9
I. RESERVE JUDGES MAY NOT BE APPOINTED TO PRESIDE OVER MULTI-COUNTY JOHN DOE INVESTIGATIONS (SUPREME COURT ISSUE NO. 1 and 2)	10
A. Standard of Review	10
B. The Director of State Courts May Not Appoint a Reserve Judge to Preside Over a Five-County John Doe Investigation	10
C. A Chief Judge in One Judicial District Certainly May Not Make Such an Appointment Extending to Four Counties in Other Judicial Districts	11
II. A JOHN DOE'S JUDGE HAS NO COMPETENCY TO CONVENE A JOHN DOE INVESTIGATION OVER FIVE COUNTIES, AT LEAST IF LED BY ONE COUNTY'S DISTRICT ATTORNEY (SUPREME COURT ISSUE NO. 3)	11
A. Standard of Review	11
B. Merits	11
III. THIS SPECIAL PROSECUTOR'S APPOINTMENT WAS UNLAWFUL FROM THE START (SUPREME COURT ISSUE NO. 4)	11
A. Standard of Review	11
B. Overview	12
C. No Statutory Authority	12

D.	No Case Law Authority	12
E.	No Public Policy Justification	12
F.	No Competence	12
IV.	BECAUSE NEITHER THE JOHN DOE JUDGE NOR THE SPECIAL PROSECUTOR HAD COMPETENCY TO PROCEED, EVERYONE MUST RETURN TO THE POSITIONS THEY OCCUPIED BEFORE AUGUST 2013 (SUPREME COURT ISSUE NO. 5)	12
A.	Standard of Review	13
B.	Merits	13
V.	WIS. STAT. §11.26(13m), WHEN READ IN CONJUNCTION WITH WIS. STAT. §§9.10 AND 11.06(7), ELIMINATES ANY JUSTIFICATION FOR THE SPECIAL PROSECUTOR'S EXPANSIVE VIEW OF COORDINATION RESTRICTIONS (SUPREME COURT ISSUE NO. 6)	13
A.	Standard of Review	13
B.	Wisconsin's Statutory Restriction on Coordination in Wis. Stat. §11.06(7) Only Applies to a Specific Kind of Disbursement	13
C.	An Incumbent Officeholder Does Not Become a Recall "Candidate" Subject to the Coordination Restrictions of Wis. Stat. §11.06(7) Until Constitutional and Statutory Requirements Are Met	13
D.	Wis. Stat. §11.26(13m) Permits a Window of Unlimited Campaign Contributions Prior to the Time an Incumbent Officeholder is Subject to a Recall Election	14
E.	The Alleged "Conduct of Coordination" Does Not, and Cannot, Violate Chapter 11	14
VI.	WISCONSIN CAMPAIGN FINANCE LAW DOES NOT REGULATE COORDINATED ISSUE ADVOCACY (SUPREME COURT ISSUE 7, INCLUDING SUBPARTS)	14

A.	Standard of Review	14
B.	Only Express Advocacy Communications Qualify as Regulated "Disbursements" or "Contributions"	15
C.	The Special Prosecutor's Theory of Criminal Liability is Incompatible with Chapter 11	15
1.	Coordinated Issue Advocacy Communications are Not "In-Kind" Contributions	15
2.	GAB §1.42 Does Not Apply to Non-Committee Issue Advocacy	15
3.	Coordinating Issue Advocacy Does Not Convert an Independent Organization into a "Subcommittee" of a Candidate	16
4.	<i>Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board</i> , 231 Wis.2d 670, 605 N.W.2d 654 (Ct. App. 1999), petition for review dismissed, 231 Wis.2d 377, 607 N.W.2d 293 (1999) (WCVP) Does Not Apply, and if it Does, Should be Overruled	16
VII.	FUNDRAISING THAT IS COORDINATED AMONG A CANDIDATE OR A CANDIDATE'S CAMPAIGN COMMITTEE AND AN INDEPENDENT GROUP DOES NOT, AND CANNOT, VIOLATE WIS. STAT. CH. 11 (SUPREME COURT ISSUE NO. 8)	16
A.	Standard of Review	16
B.	Since 1980, the Wisconsin Legislature Has Explicitly and Repeatedly Rejected Prohibitions on Coordinated Fundraising	16
C.	Statutory and Regulatory Language, Including GAB §1.42 and Wis. Stat. §11.10(4), Does Not Prohibit Coordinated Fundraising	17

D.	The Common Sense Understanding of Permissible Coordinated Fundraising is Shown Through the Almost Identical Coordination Activity of the Opposing Recall Candidate and His Supporters	17
VIII.	STRETCHING CHAPTER 11 TO REACH COORDINATED ISSUE ADVOCACY COMMUNICATIONS WOULD RENDER THE STATUTE UNCONSTITUTIONAL (SUPREME COURT ISSUE NOS. 9, 11-13)	17
A.	Standard of Review	17
B.	Absent a "Content" Standard, the "Conduct" of Coordination Cannot Convert Communications Into Campaign Contributions	18
1.	Contribution Limits Are Unconstitutionally Overbroad if Not Closely Drawn to Government Interest	18
2.	Untethered to a "Content" Standard, Converting Coordinated Communications Into Contributions is Unconstitutionally Overbroad .	18
3.	The Scope of the Investigation Into the [REDACTED] Demonstrates the Overbreadth of the Special Prosecutor's Flawed Theory of Criminal Liability	18
C.	Absent a Limiting Construction, the Definition of Political Purposes is Unconstitutionally Vague	19
1.	"For the Purpose of Influencing" is Unconstitutionally Vague . . .	19
2.	Wisconsin Law Does Not Provide Any Objective "Content" Standard Beyond Express Advocacy	19
IX.	THE RECORDS IN THE JOHN DOE PROCEEDINGS DO NOT INDICATE THAT WISCONSIN LAW WAS VIOLATED BY A	

CAMPAIGN COMMITTEE'S COORDINATION WITH
INDEPENDENT ADVOCACY ORGANIZATIONS THAT
ENGAGED IN EXPRESS ADVOCACY SPEECH (SUPREME
COURT ISSUE NO. 10) 20

A. Standard of Review 20

B. [REDACTED] 20

C. A De Novo Review of the Records Confirms
that there is No Evidence of Express
Advocacy or Criminal Conduct 20

X. THE AFFIDAVITS UNDERLYING THE DOE WARRANTS AND
SUBPOENAS DID NOT PROVIDE PROBABLE CAUSE FOR
THEIR ISSUANCE AND THEY ARE CONSTITUTIONALLY
INFIRM(SUPREME COURT ISSUE NO. 14) . . . 20

A. Standard of Review 20

B. The Warrant and Subpoena Standard is
Probable Cause: An Honest Belief,
Supported by Facts, that Some Crime has
Occurred 21

C. Regardless of the Standard, There Can be
No Evidence of a Crime Without Any Crime
to Charge 21

i. Under Any Standard of Review, the
Decision to Quash the Subpoenas was
Correct 21

ii. Impermissible Coordination, Even as
the Prosecutor Defines It, Requires
Far More than the Activities Alleged
to Support the Subpoenas . . . 22

iii. The Specific Allegations about [REDACTED]
Conduct and Speech Cannot Sustain a
Subpoena 22

iv. The Conduct Identified by the
Prosecutor is Constitutionally-
Protected Speech 22

D.	On Both Due Process and Fourth Amendment Grounds, the Subpoenas Should Remain [REDACTED]	22
i.	Neither the Courts Nor the Administrative Agencies Have Found the "Law" on Impermissible Coordination Settled	23
ii.	The Subpoenas' Overbreadth is Fatal	23
E.	The Subpoena for [REDACTED] [REDACTED] Records Suffers the Same Flaws as for Other Parties	23
CONCLUSION		27
CERTIFICATION PURSUANT TO WIS. STATS. §809.19(8)(d)		28
CERTIFICATION PURSUANT TO WIS. STATS. §809.19(12)(f)		29
APPENDIX		

TABLE OF AUTHORITIES

Unnamed Movant No. 8 [REDACTED] expressly adopts the Table of Authorities as set forth in the respective opening briefs of: Unnamed Movant No. 1 [REDACTED]; Unnamed Movant No. 2 [REDACTED] and its Officers and Directors); Unnamed Movant No. 4 and 5 [REDACTED] and [REDACTED]; and Unnamed Movant No. 7 [REDACTED].

Cases Cited:

In re John Doe Proceeding, 2003 WI 30, 260 Wis.2d 653, 660 N.W.2d 260 9
State v. Bollig, 222 Wis.2d 558, 587 N.W.2d 908 (Ct. App. 1998) 2
Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board, 231 Wis.2d 670, 605 N.W.2d 654 (Ct. App. 1999), petition for review dismissed, 231 Wis.2d 377, 607 N.W.2d 293 (1999) iii,4

Wisconsin Statutes:

Wis. Stat. §9.10 ii,13
 Wis. Stat. Chapter 11 ii,iii,iv,5,6,14,15,16,17
 Wis. Stat. §11.01(6) 3
 Wis. Stat. §11.01(7) 3
 Wis. Stat. §11.01(16) 3,4
 Wis. Stat. §11.06(4)(d) 3
 Wis. Stat. §11.06(7) ii,13
 Wis. Stat. §11.10(4) iii,3,17
 Wis. Stat. §11.26(1)(a) 7
 Wis. Stat. §11.26(13m) ii,2,13,14
 Wis. Stat. §11.27 7
 Wis. Stat. §11.61(1) 7
 Wis. Stat. §939.05 7
 Wis. Stat. §939.31 7
 Wis. Stat. §968.26 1
 Wis. Stat. §978.045(1r) 2

Other Authorities:

GAB §1.42 iii,15,17
 First Amendment, United States Constitution 4,6,10,25
 Fourth Amendment, United States Constitution vi,22
 Article I, Section 3, Wisconsin Constitution 6

ISSUES PRESENTED

In its December 16, 2014 Order, this Court set forth the relevant issues as follows:

1. Whether the Director of State Courts had lawful authority to appoint reserve judge, [REDACTED] as the John Doe judge to preside over a multi-county John Doe proceeding.

2. Whether the Chief Judge of the First Judicial District had lawful authority to appoint reserve judge, [REDACTED], as the John Doe judge to preside over a multi-county John Doe proceeding.

3. Whether Wis. Stat. §968.26 permits a John Doe judge to convene a John Doe proceeding over multiple counties, which is then coordinated by the district attorney of one of the counties.

4. Whether Wisconsin law allows a John Doe judge to appoint a special prosecutor to perform the functions of a district attorney in multiple counties in a John Doe proceeding when (a) the district attorney in each county requests the appointment; (b) but none of the nine grounds

for appointing a special prosecutor under Wis. Stat. §978.045(1r) apply; [REDACTED]

- [REDACTED]
5. If, arguendo, there was a defect in the appointment of the special prosecutor in the John Doe proceedings at issue in these matters, what effect, if any, would that have on the competency of the special prosecutor to conduct the investigation; or the competency of the John Doe judge to conduct these proceedings? See, e.g., *State v. Bollig*, 222 Wis. 2d 558, 569-70, 587 N.W.2d 908 (Ct. App. 1998).
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

6. Whether, with regard to recall elections, Wis. Stat. §11.26(13m) affects a claim that alleged illegal coordination occurred during the circulation of recall petitions and/or resulting recall elections.
- [REDACTED]
- [REDACTED]

7. Whether the statutory definitions of "contributions", "disbursements," and "political purposes" in Wis. Stat. §§11.01(6), (7) and (16) are limited to contributions or expenditures for express advocacy or whether they encompass the conduct of coordination between a candidate or a campaign committee and an independent organization that engages in issue advocacy. If they extend to issue advocacy coordination, what constitutes prohibited "coordination?"
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- 7a. Whether Wis. Stat. §11.10(4) and §11.06(4)(d) apply to any activity other than contributions or disbursements that are made for political purposes under Wis. Stat. §11.01(16) by: (i) the candidate's campaign committee; or (ii) an independent political committee.
- [REDACTED]
- [REDACTED]

- 7b. Whether Wis. Stat. §11.10(4) operates to transform an independent organization engaged in issue advocacy into a "subcommittee" of a candidate's campaign committee if the independent advocacy organization has coordinated its issue

1. *Journal of the American Medical Association*, 2000; 283: 2689-2694.

[illegible][illegible]

1000

1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

[illegible]

© 2006 The Authors
Journal compilation © 2006 Blackwell Publishing Ltd

...the ...

[illegible][illegible][illegible]

1. *Pharmaceutical industry* – The pharmaceutical industry is the largest of the three industries, with sales of \$10.5 billion in 1997. It is the only industry that has a significant presence in all three markets. The pharmaceutical industry is the only industry that has a significant presence in all three markets. The pharmaceutical industry is the only industry that has a significant presence in all three markets.

Table 1. Demographic characteristics of study population

[illegible]

1. *Journal of Management Studies*, 1997, 34, 1, 1-14.

8. Whether fundraising that is coordinated among a candidate or a candidate's campaign committee and independent advocacy organization violates Wis. Stat. ch. 11.

9. Whether a criminal prosecution may, consistent with due process, be founded on a theory that coordinated issue advocacy constitutes a regulated "contribution" under Wis. Stat. ch. 11.

10. Whether the records in the John Doe proceedings provide a reasonable belief that Wisconsin law was violated by a campaign committee's coordination with independent advocacy organizations that engaged in express advocacy speech. If so, which records support such a reasonable belief?

[REDACTED]

[REDACTED]

[REDACTED]

11. If Wis. Stat. ch. 11 prohibits a candidate or a candidate's campaign committee from engaging in "coordination" with an independent advocacy organization that engages solely in issue advocacy, whether such prohibition violates the free speech provisions of the First Amendment of the United States Constitution and/or Article I, Section 3 of the Wisconsin Constitution.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12. Whether pursuant to Wis. Stat. ch. 11, a criminal prosecution may, consistent with due process, be founded on an allegation that a candidate or candidate committee "coordinated" with an independent advocacy organization's issue advocacy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13. Whether the term "for political purpose" in Wis. Stat. §11.01(16) is unconstitutionally vague unless it is limited to express advocacy to elect or defeat a clearly identified candidate.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14. Whether the affidavits underlying the warrants issued in the John Doe proceedings provided probable cause to believe that evidence of a criminal violation of Wis. Stat. §§11.27, 11.26(1)(a), 11.61(1), 939.31, and 939.05

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Because these issues have vast statewide public importance, this Court should follow its usual practice of allowing oral argument and publishing its decision, as this Court indicated it would in its December 16 and 19, 2014 orders.

STATEMENT OF THE CASE

Unnamed Movant No. 8 [REDACTED] expressly adopts
 the Statement of the Case as set forth in the opening
 brief of Unnamed Movant No. 1 [REDACTED]
 [REDACTED], Unnamed Movant No. 2 [REDACTED]
 [REDACTED], Unnamed Movant
 No. 4 [REDACTED] and
 Unnamed Movant No. 5 [REDACTED]
 [REDACTED].

Unnamed Movant No. 8 [REDACTED]

[REDACTED]

[REDACTED] The instant brief addresses the issues delineated in the Supreme Court Order of December 16, 2014. [REDACTED]

[REDACTED]

[REDACTED]

STATEMENT OF THE FACTS

Unnamed Movant No. 8 [REDACTED] expressly adopts the Statement of the Facts, including its subsections, of Unnamed Movant No. 2 [REDACTED].

ARGUMENT

With respect to Issues 1-5 below, Unnamed Movant No. 8 maintains that, even if procedural errors require the parties to be returned to the positions they occupied before August 2013, the remaining issues before this Court should still be decided. "[E]ven if an issue is moot, this court may address the issue if: (1) the issue is of great public importance; (2) the situation occurs so frequently that a definitive decision is necessary to guide circuit courts; (3) the issue is likely to arise again and a decision of the court would alleviate uncertainty; or (4) the issue will likely be repeated, but evades appellate review because the appellate review process cannot be completed or even undertaken in time to have a practical effect on the parties." *In re John Doe Proceeding*, 2003 WI 30, ¶19, 260 Wis.2d 653, 660 N.W.2d 260.

Here, the constitutionality and reach of Wisconsin's campaign finance laws, and ultimately the First Amendment rights of individuals, candidates, elected officials, donors, and third party groups to participate freely in Wisconsin's political processes are at stake. These issues will undoubtedly and necessarily recur each election cycle, and the answers have clear, state-wide import. Everyone involved in any aspect of a political campaign - candidates, campaign committees, 501(c) organizations, and the voting public - deserves clarity from this Court on the governing rules. Accordingly, this Court should reach the remaining questions regardless of whether the outcome of Issues 1-5 might otherwise moot those questions.

I. RESERVE JUDGES MAY NOT BE APPOINTED TO PRESIDE OVER MULTI-COUNTY JOHN DOE INVESTIGATIONS (SUPREME COURT ISSUE NOS. 1 and 2)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of Unnamed Movant No. 7 [REDACTED] [REDACTED] as set forth in Argument I(A) of [REDACTED] opening brief.

B. The Director of State Courts May Not Appoint a Reserve Judge to Preside Over a Five-County John Doe Investigation

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 7 [REDACTED] as set forth in Argument I(B) of [REDACTED] opening brief.

C. A Chief Judge in One Judicial District Certainly May Not Make Such an Appointment Extending to Four Counties in Other Judicial Districts

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 7 [REDACTED] as set forth in Argument I(C) of [REDACTED] opening brief.

II. A JOHN DOE JUDGE HAS NO COMPETENCY TO CONVENE A JOHN DOE INVESTIGATION OVER FIVE COUNTIES, AT LEAST IF LED BY ONE COUNTY'S DISTRICT ATTORNEY (SUPREME COURT ISSUE NO. 3)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of Unnamed Movant No. 7 [REDACTED] [REDACTED] as set forth in Argument III(A) of [REDACTED] opening brief.

B. Merits

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 7 [REDACTED] as set forth in Argument III(B) of [REDACTED] opening brief.

III. THIS SPECIAL PROSECUTOR'S APPOINTMENT WAS UNLAWFUL FROM THE START (SUPREME COURT ISSUE NO. 4)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of Unnamed Movant No. 7 [REDACTED]

██████████ as set forth in Argument II(A) of █████ opening brief.

B. Overview

Unnamed Movant No. 8 ██████████ expressly adopts the Argument of Unnamed Movant No. 7 ██████████ as set forth in Argument II(B) of █████ opening brief.

C. No Statutory Authority

Unnamed Movant No. 8 ██████████ expressly adopts the Argument of Unnamed Movant No. 7 ██████████ as set forth in Argument II(C) of █████ opening brief.

D. No Case Law Authority

Unnamed Movant No. 8 ██████████ expressly adopts the Argument of Unnamed Movant No. 7 ██████████ as set forth in Argument II(D) of █████ opening brief.

E. No Public Policy Justification

Unnamed Movant No. 8 ██████████ expressly adopts the Argument of Unnamed Movant No. 7 ██████████ as set forth in Argument II(E) of █████ opening brief.

F. No Competence

Unnamed Movant No. 8 ██████████ expressly adopts the Argument of Unnamed Movant No. 7 ██████████ as set forth in Argument II(F) of █████ opening brief.

IV. BECAUSE NEITHER THE JOHN DOE JUDGE NOR THE SPECIAL PROSECUTOR HAD COMPETENCY TO PROCEED, EVERYONE MUST RETURN TO THE POSITIONS THEY OCCUPIED BEFORE AUGUST 2013 (SUPREME COURT ISSUE NO. 5)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of Unnamed Movant No. 7 [REDACTED] [REDACTED] as set forth in Argument IV(A) of [REDACTED] opening brief.

B. Merits

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 7 [REDACTED] as set forth in Argument IV(B) of [REDACTED] opening brief.

V. WIS. STAT. §11.26(13m), WHEN READ IN CONJUNCTION WITH WIS. STAT. §§9.10 AND 11.06(7), ELIMINATES ANY JUSTIFICATION FOR THE SPECIAL PROSECUTOR'S EXPANSIVE VIEW OF COORDINATION RESTRICTIONS (SUPREME COURT ISSUE NO. 6)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of the opening brief of Unnamed Movant No. 1 [REDACTED].

B. Wisconsin Statutory Restriction on Coordination in Wis. Stat. §11.06(7) Only Applies to a Specific Kind of Disbursement

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 1 [REDACTED] [REDACTED] as set forth in Issue No. 6(B) of its opening brief.

C. An Incumbent Officeholder Does Not Become a Recall "Candidate" Subject to the Coordination Restrictions of Wis. Stat. §11.06(7) Until

Constitutional and Statutory Requirements Are
Met

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 1 [REDACTED]
[REDACTED] as set forth in Issue No. 6(C) of its
opening brief.

D. Wis. Stat. §11.26(13m) Permits a Window of
Unlimited Campaign Contributions Prior to the
Time an Incumbent Officeholder is Subject to a
Recall Election

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 1 [REDACTED]
[REDACTED] as set forth in Issue No. 6(D) of its
opening brief.

E. The Alleged "Conduct of Coordination" Does
Not, and Cannot, Violate Chapter 11)

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Standard of Review of Unnamed Movant No. 1 [REDACTED]
[REDACTED] as set forth in Issue No. 6(E) of
its opening brief.

**VI. WISCONSIN CAMPAIGN FINANCE LAW DOES NOT REGULATE
COORDINATED ISSUE ADVOCACY (SUPREME COURT ISSUE NO.
7, INCLUDING SUBPARTS)**

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 2 [REDACTED]
[REDACTED] as set forth in Argument III of its
opening brief.

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review, including subsections, of Unnamed Movant No. 2 [REDACTED] as set forth in its opening brief.

B. Only Express Advocacy Communications Qualify as Regulated "Disbursements" or "Contributions"

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument III(A) of its opening brief.

C. The Special Prosecutor's Theory of Criminal Liability is Incompatible with Chapter 11

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument III(B) of its opening brief.

1. Coordinated Issue Advocacy Communications are not "In-kind" Contributions

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument III(B)(1) of its opening brief.

2. GAB §1.42 Does Not Apply to Non-Committee Issue Advocacy

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument III(B)(2) of its opening brief.

3. Coordinating Issue Advocacy Does Not Convert an Independent Organization into a "Subcommittee" of a Candidate

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument III(B)(3) of its opening brief.

4. WCVF Does Not Apply, and if it Does, Should be Overruled

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument III(B)(4) of its opening brief.

VII. FUNDRAISING THAT IS COORDINATED AMONG A CANDIDATE OR A CANDIDATE'S CAMPAIGN COMMITTEE AND AN INDEPENDENT GROUP DOES NOT, AND CANNOT, VIOLATE WIS. STAT. CH. 11 (SUPREME COURT ISSUE NO. 8)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of the opening brief of Unnamed Movant No. 1 [REDACTED].

- B. Since 1980, the Wisconsin Legislature Has Explicitly and Repeatedly Rejected Prohibitions on Coordinated Fundraising

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 1 [REDACTED] [REDACTED] as set forth in Issue No. 8(B) of its opening brief.

C. Statutory and Regulatory Language, Including GAB §1.42 and Wis. Stat. §11.10(4), Does Not Prohibit Coordinated Fundraising

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 1 [REDACTED] [REDACTED] as set forth in Issue No. 8(C) of its opening brief.

D. The Common Sense Understanding of Permissible Coordinated Fundraising is Shown Through the Almost Identical Coordination Activity of [REDACTED]

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 1 [REDACTED] [REDACTED] as set forth in Issue No. 8(D) of its opening brief.

VIII. **STRETCHING CHAPTER 11 TO REACH COORDINATED ISSUE ADVOCACY COMMUNICATIONS WOULD RENDER THE STATUTE UNCONSTITUTIONAL (SUPREME COURT ISSUE NOS. 9, 11-13)**

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument IV of its opening brief.

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review, including subsections, of Unnamed Movant No. 2 [REDACTED] as set forth in Argument IV(A) of its opening brief.

B. Absent a "Content" Standard, the "Conduct" of Coordination Cannot Convert Communications Into Campaign Contributions

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument IV(A) of its opening brief.

1. Contribution Limits Are Unconstitutionally Overbroad if Not Closely Drawn to Government Interest

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument IV(A)(1) of its opening brief.

2. Untethered to a "Content" Standard, Converting Coordinated Communications Into Contributions is Unconstitutionally Overbroad

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 2 [REDACTED] [REDACTED] as set forth in Argument IV(A)(2) of its opening brief.

3. The Scope of the Investigation Into the [REDACTED] Demonstrates the

Overbreadth of the Special
Prosecutor's Flawed Theory of
Criminal Liability

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 2 [REDACTED]
[REDACTED] as set forth in Argument IV(A)(3) of its
opening brief.

C. Absent a Limiting Construction, the
Definition of Political Purposes is
Unconstitutionally Vague

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 2 [REDACTED]
[REDACTED] as set forth in Argument IV(B) of its
opening brief.

1. "For the Purpose of Influencing" is
Unconstitutionally Vague

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 2 [REDACTED]
[REDACTED] as set forth in Argument IV(B)(1) of its
opening brief.

2. Wisconsin Law Does Not Provide Any
Objective "Content" Standard Beyond
Express Advocacy

Unnamed Movant No. 8 [REDACTED] expressly adopts
the Argument of Unnamed Movant No. 2 [REDACTED]
[REDACTED] as set forth in Argument IV(B)(2) of its
opening brief.

IX. THE RECORDS IN THE JOHN DOE PROCEEDINGS DO NOT INDICATE THAT WISCONSIN LAW WAS VIOLATED BY A CAMPAIGN COMMITTEE'S COORDINATION WITH INDEPENDENT ADVOCACY ORGANIZATIONS THAT ENGAGED IN EXPRESS ADVOCACY SPEECH (SUPREME COURT ISSUE NO. 10)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of the opening brief of Unnamed Movant No. 1 [REDACTED].

B. The John Does Judge Did Not Clearly Violate a Plain Duty [REDACTED]

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 1 [REDACTED] as set forth in Issue No. 10(B) and the preamble of its opening brief.

C. A De Novo Review of the Records Confirms That There is no Evidence of Express Advocacy or Criminal Conduct

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 1 [REDACTED] as set forth in Issue No. 10(C) and the preamble of its opening brief.

X. THE AFFIDAVITS UNDERLYING THE DOE WARRANTS AND SUBPOENAS DID NOT PROVIDE PROBABLE CAUSE FOR THEIR ISSUANCE AND THEY ARE CONSTITUTIONALLY INFIRM (SUPREME COURT ISSUE NO. 14)

A. Standard of Review

Unnamed Movant No. 8 [REDACTED] expressly adopts the Standard of Review of the opening brief of Unnamed Movant No. 4 [REDACTED] and Unnamed Movant No. 5 [REDACTED].

B. The Warrant and Subpoena Standard is Probable Cause: An Honest Belief, Supported by Facts, That Some Crime Has Occurred

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument I(C) of their opening brief.

C. Regardless of the Standard, There Can be No Evidence of a Crime Without Any Crime to Charge

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument II of their opening brief.

i. Under Any Standard of Review, [REDACTED]

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED]

[REDACTED] as set forth in Argument II(A) of their opening brief.

- ii. Impermissible Coordination, Even As the Prosecutor Defines It, Requires Far More Than the Activities Alleged to Support the Subpoenas

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument II(B) of their opening brief.

- iii. The Specific Allegations About [REDACTED] Conduct and Speech Cannot Sustain a Subpoena

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument II(C) of their opening brief.

- iv. The Conduct Identified by the Prosecutor is Constitutionally-Protected Speech

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument II(D) of their opening brief.

- D. On Both Due Process and Fourth Amendment Grounds, the Subpoenas Should Remain [REDACTED]

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument III of their opening brief.

- i. Neither the Courts Nor the Administrative Agencies Have Found the "Law" on Impermissible Coordination Settled

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument III(A) of their opening brief.

- ii. The Subpoena's Overbreadth is Fatal

Unnamed Movant No. 8 [REDACTED] expressly adopts the Argument of Unnamed Movant No. 4 [REDACTED] [REDACTED] and Unnamed Movant No. 5 [REDACTED] as set forth in Argument III(B) of their opening brief.

- E. The Subpoena for [REDACTED] [REDACTED] Suffers the Same Flaws As for Other Parties
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

a. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

b. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

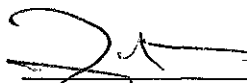
The subpoena fails to establish the nexus between the materials sought and the subject matter of the Doe. The tight connection required between those concerns have not been properly limited. The subpoenas overbreadth and invasion into free speech renders it fatally defective.

CONCLUSION

For the foregoing reasons, as well as the adopted arguments, Unnamed Movant No. 8 [REDACTED] requests that the Court uphold Judge Peterson's January 10, 2014 decision and dismiss the Special Prosecutor's petition, as well as issue writs of mandamus and prohibition with respect to the proceedings initiated by the three unnamed petitioner.

Dated at Milwaukee, Wisconsin this 2nd day of February, 2015.

Respectfully submitted,



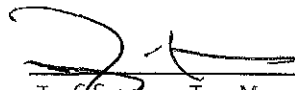
Jeffrey J. Morgan, SBN 1027924
Counsel for Unnamed Movant No. 8
309 N. Water Street, Suite 350
Milwaukee, WI 53202
(414) 276-1233
jeff@ldm-law.com

CERTIFICATION

I hereby certify that this brief conforms to the rule contained in Wis. Stats. §809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of this petition is 27 pages.

Dated in Milwaukee, Wisconsin this 2nd day of February, 2015.

Respectfully submitted,



Jeffrey J. Morgan, SBN: 1027924
Counsel for Unnamed Movant No. 8
309 N. Water Street, Suite 350
Milwaukee, WI 53202
(414) 276-1233
jeff@ldm-law.com

CERTIFICATION

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stats. 809.19(12)(f).

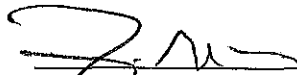
I further certify that:

This electronic brief is identical in content and format to the printed for of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all parties.

Dated in Milwaukee, Wisconsin this 2nd day of February, 2015.

Respectfully submitted,



Jeffrey J. Morgan, SBN: 10297924
Counsel for Unnamed Movant No. 8
309 N. Water Street, Suite 350
Milwaukee, WI 53202
(414) 276-1233
jeff@ldm-law.com

APPENDIX

Unnamed Movant No. 8 [REDACTED] hereby expressly adopts the Joint Appendix filed on behalf of the parties to this action and any appendix reference shall be to that document.