

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

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

Plaintiffs,

v.

Case No. 14cv139-rtr

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

Defendants.

**DEFENDANT DEAN NICKEL'S OBJECTION TO PLAINTIFFS' PROPOSED ORDER
GRANTING IN PART INTERVENORS' MOTION TO UNSEAL**

Defendant Dean Nickel ("Nickel"), by and through his attorneys, Axley Brynelson, LLP, hereby objects to Plaintiffs' proposed order granting in part Intervenor's motion to unseal (Dckt 218-1) and states as follows:

1. From day one of this lawsuit, Plaintiffs have claimed that the secrecy order in the John Doe investigation has prevented them from defending themselves in a public forum and have allowed Defendants to carry out their partisan witch-hunt in secrecy. Plaintiffs have sued Nickel, a contract investigator for the Government Accountability Board, solely for his role in swearing out a single affidavit in support of a request for search warrants. Plaintiffs have used

this lawsuit to ridicule and accuse Nickel for carrying out a bad faith investigation solely based on the political viewpoints of the subjects of the investigation. (*See* Compl., ¶¶ 75-77, 92, 108-113).

2. To properly defend himself in this far-reaching and highly public lawsuit, Nickel has relied on the exact affidavit that forms the basis of the allegations against him along with the numerous exhibits to that affidavit.¹ Nickel believes that the affidavit and exhibits attached thereto establish that his actions were not taken in bad faith and were not based on the political viewpoints of the subjects of the investigation. The exhibits to his affidavit contain numerous emails and other documents that form the basis for the John Doe investigation. Clearly, the public has a strong interest and First Amendment right to view these documents. *See Smith v. United States Dist. Court for Southern Dist.*, 956 F.2d 647, 650 (7th Cir. Ill. 1992) (“The appropriateness of making court files accessible is accentuated in cases where the government is a party: in such circumstances, the public's right to know what the executive branch is about coalesces with the concomitant right of the citizenry to appraise the judicial branch.”)²

3. Plaintiffs now seek to prevent the public from seeing the affidavit and attached exhibits that form the basis of their lawsuit against Nickel. Plaintiffs also ask the Court to keep sealed the three affidavits of Robert Stelter along with exhibits. These four affidavits encompass much, if not all, of the evidence supporting the investigation. Thus, Plaintiffs are asking the Court to unseal every document *except* those documents that support the investigation and the Defendants’ legal defenses in this lawsuit.

4. It is fundamentally unfair to allow Plaintiffs to publicly accuse Nickel and the other Defendants of conducting a bad-faith investigation while at the same time asking this Court to keep hidden from the public the documents that form the basis for Nickel’s signing of the

¹ Nickel’s affidavit is Exhibit F to Dckt 110 and Exhibit D to Dckt 117.

² Nickel also adopts the legal analysis and argument set forth in Defendants’ Chisholm, Landgraf and Robles’s response (dckt 221) to Plaintiffs’ proposed order.

affidavit and the basis for the investigation in the first instance. By making these public allegations against Nickel, Plaintiffs should not be permitted to serve as a roadblock to prevent the public from viewing the documents that support Nickel and the other Defendants' defenses.

5. Plaintiffs' assertion that there are only "four documents" that they are seeking to keep sealed is entirely misleading. The four documents they seek to keep sealed are four affidavits (including Nickel's affidavit) that attach numerous other documents, records and communications that all form the basis of the John Doe investigation. Thus, there are literally hundreds of pages of documents Plaintiffs' intend to keep sealed and hidden from the public's view through their proposed order on the motion to unseal.

6. Lastly, Nickel has no objection to the removal of certain personal identifying information from the exhibits attached to his affidavit and Stelter's affidavits, including social security numbers and bank routing numbers.

For the reasons stated above, Defendant Dean Nickel respectfully requests that all records be unsealed and the Court decline to sign Plaintiffs' proposed order.

Dated: May 16, 2014.

AXLEY BRYNELSON, LLP

/s/ Patrick J. Fiedler

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