

## Tax-Exempt Organization Complaint (Referral) Form

1. NAME OF REFERRED ORGANIZATION: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Date of Referral: \_\_\_\_\_

2. ORGANIZATION'S EMPLOYER IDENTIFICATION NUMBER (EIN): \_\_\_\_\_

3. NATURE OF VIOLATION:

- Directors/officers/persons are using income/assets for personal gain
- Organization is engaged in commercial, for-profit business activities
- Income/assets are being used to support illegal or terrorist activities
- Organization is involved in a political campaign
- Organization is engaged in excessive lobbying activities
- Organization refused to disclose or provide a copy of Form 990
- Organization failed to report employment, income, or excise tax liability properly
- Organization failed to file required federal tax returns and forms
- Organization engaged in deceptive or improper fundraising practices
- Other (describe): \_\_\_\_\_

4. DETAILS OF VIOLATION:

Name(s) of Person(s) Involved: \_\_\_\_\_

Organizational Title(s): \_\_\_\_\_

Date(s): \_\_\_\_\_

Dollar Amount(s) (if known): \_\_\_\_\_

Description of activities: \_\_\_\_\_

5. SUBMITTER INFORMATION:

Name: \_\_\_\_\_

Occupation or Business: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_

I am concerned that I might face retaliation or retribution if my identity is disclosed.

6. SUBMISSION AND DOCUMENTATION: The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to [eoclass@irs.gov](mailto:eoclass@irs.gov).

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## TAX EXEMPT ORGANIZATION COMPLAINT (REFERRAL) INSTRUCTIONS

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### General Information

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The information provided on this form will help the Internal Revenue Service (IRS) determine if there has been a violation of federal tax law. Submission of this form is voluntary.

Upon receipt of this form, the IRS will send you a letter acknowledging receipt of the information you submitted. If at a later date you wish to submit additional information regarding the organization, please attach a copy of the form initially submitted, and send it to the address shown above.

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### Specific Instructions

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1. **ORGANIZATION NAME AND ADDRESS:** Provide the current name and address of the organization. If the organization has used prior or multiple name(s) or address(es), also provide that information.
2. **EMPLOYER IDENTIFICATION NUMBER:** Provide the organization's employer identification number (EIN). The EIN is a nine-digit number, issued by the IRS, that the organization uses for tax purposes (like a Social Security Number (SSN) for an individual). If the EIN is unavailable, include a state nonprofit corporation registration number, if available.
3. **NATURE OF VIOLATION:** Mark the description that describes the organization's alleged violation. More than one line may apply. If none of the descriptions appear to apply, briefly state the issue on the Other line.
4. **DETAILS OF THE VIOLATION:** Provide specific details of the alleged violation including names, actions, places, amounts, dates, and the nature of any evidence or documentation (who, what, where, when, how). Include the names of other organizations, entities, or persons that may be involved with the organization, providing EINs or SSNs, if available.
5. **YOUR INFORMATION:** Provide your name, address, and business or occupation. Include your daytime telephone number, in case we wish to contact you. The acknowledgement letter will be sent to the address you provide.

If you are concerned that you may face retribution if your identity is disclosed, check the appropriate box. You may enter "Anonymous" for Submitter's Name if you do not want to be identified.

6. **SUBMISSION AND DOCUMENTATION:** Mail the completed form, including any supporting documentation that you would like for us to review, to the address provided on the form. You may also fax or email the completed form and any supporting documentation to the fax number and email address provided on the form. Include a cover letter describing the documentation or evidence you are providing. If you have already received an acknowledgment letter, include a copy of that letter. If possible, please try to submit all documentation at the same time.

If your referral relates to a church please be aware that Congress has imposed special limitations, found in IRC section 7611, on how and when the IRS may conduct civil tax inquiries and examinations of churches. You can find out more about these special limitations in Pub. 1828, Tax Guide for Churches and Religious Organizations, in the section on Special Rules Limiting IRS Authority to Audit a Church.

7. **CLAIM FOR REWARD:** To claim a reward for providing this information to the IRS, file Form 211, Application for Reward for Original Information.
  8. **NOTE:** Federal law prohibits the IRS from providing you with status updates or information about specific actions taken in response to the information you submit.
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This attachment sets forward the basis for the complaint against Wisconsin Club for Growth. As described herein:

I.) WiCFG misled the Service by claiming that it spent \$0 on political campaign activities in 2011 and 2012, when it appears to have spent millions on such activities;

II.) WiCFG engaged in a substantial amount of political campaign activities, exceeding the level that is permissible for a 501(c)(4) "social welfare" nonprofit;

III.) WiCFG operated primarily to advance the private partisan interests of the Republican Party, and the private financial interests of its funders, in violation of its 501(c)(4) tax-exempt status.

### **Introduction: The Nature of the Alleged Violations**

Wisconsin Club for Growth (WiCFG), a tax-exempt corporation organized under Section 501(c)(4) of the Internal Revenue Code, spent an estimated \$9.1 million on broadcast communications identifying candidates for elective office in Wisconsin, discussing their qualifications, and airing close to election day in Wisconsin's 2011 and 2012 recall elections. The facts, circumstances, and content of the ads demonstrate that they constituted intervention or participation in a campaign under IRS rules.

Further, according to documents made public in the course of a state criminal investigation, WiCFG allegedly coordinated many of those communications with candidates for elective office and state political party leaders. The IRS has stated that it will consider all facts and circumstances in determining whether a particular communication amounts to political campaign activity, and the fact of coordination is further evidence that these communications amount to political intervention.

We believe the evidence demonstrates that WiCFG misled the IRS by claiming to have spent \$0 on political campaign activities in 2011 and 2012, when it actually spent millions on such activities.

In addition to misleading the IRS as to its expenditures on political campaign activities in 2011 and 2012, WiCFG engaged in such a degree of political intervention during those years that all facts and circumstances suggest it was primarily engaged in non-exempt political activities, and thus ineligible for 501(c)(4) tax-exempt status.

Section 501(c)(4) organizations are required to primarily engage in the promotion of social welfare; these organizations cannot engage in more than an insubstantial amount of non-exempt activity, such as direct or indirect political intervention.

WiCFG spent an estimated \$9.1 million in connection with Wisconsin's 2011 and 2012 recall elections, and funneled at least \$9,624,000 to other groups -- some of which were controlled by WiCFG's leaders -- that spent those funds on political campaign ads. This amounts to almost all of WiCFG's \$20 million in total expenditures in 2011 and 2012,

making it clear that WiCFG's first and primary emphasis in 2011 and 2012 was to elect political candidates in Wisconsin.<sup>1</sup>

Additionally, the facts and circumstances indicate that WiCFG operated primarily for the private benefit of Governor Scott Walker's campaign, the Republican Party, and its donors. An organization is not eligible for tax-exempt status if it operates for a substantial private purpose, and activities undertaken to provide a partisan benefit are considered to serve private interests, rather than the common good.

WiCFG was led by R.J. Johnson, a paid political advisor to Wisconsin Governor Scott Walker and former Executive Director of the Republican Party of Wisconsin. The Walker campaign used WiCFG to support Walker's own reelection effort and to elect a Republican legislature that would enact Walker's political agenda.

Walker raised millions of dollars for WiCFG, and his campaign staff instructed Walker to refer to WiCFG as "your" 501c4 in fundraising appeals. The campaign used WiCFG to bypass Wisconsin's campaign contribution limits, disclosure requirements, and ban on corporate campaign contributions while spending almost all of its money on ads supporting the election of Walker and of Republican political candidates that backed Walker's political priorities.

Additionally, WiCFG operated to further the private financial interests of one of its top donors, the Florida-based mining company Gogebic Taconite. That for-profit corporation made \$700,000 in donations to WiCFG between 2011 and 2012, and WiCFG, in turn, spent an estimated \$1.5 million targeting state senators who opposed Gogebic's efforts to revise Wisconsin environmental laws so it could build an iron ore mine in the northern part of the state.

Thus, in addition to misleading the IRS on its 2011 and 2012 tax returns, WiCFG engaged primarily in political campaign activities during those years and substantially operated for the private political benefit of the Walker campaign and the Republican Party and the private financial benefit of a top funder. It thus should not be entitled to tax-exempt status.

### **Background Facts**

#### ***Wisconsin's recall elections***

In February of 2011, one month after Scott Walker was sworn in as governor, he called for the introduction of a controversial "budget repair bill" eviscerating collective bargaining rights for public sector employees and cutting funding for education, among other measures. Walker never mentioned collective bargaining during his 2010 campaign. Three days after the bill was introduced, WiCFG began running ads supporting the legislation, claiming that public sector employees were "not paying their fair share."<sup>2</sup> The bill, which

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<sup>1</sup> WiCFG had an estimated \$12,606,477 in total expenditures in 2011, and \$8,035,883 in 2012, according to its tax returns from those years. See Exhibits F, H.

<sup>2</sup> See "Benefits," <https://www.youtube.com/watch?v=yYEGoxdxzA0>

once passed became known as Act 10, prompted massive protests and plans to recall Governor Walker and the Republican state legislators who supported the bill.

Under Wisconsin law, a petition for the recall of state elected officials cannot be filed until after they have held office for one year. Wis. Stat. § 9.10(2)(s).

Governor Walker was not eligible for recall until January of 2012, yet he was a “candidate” for purposes of the code as early as March of 2011, when Wisconsin citizens began widely discussing plans to trigger a recall election at the earliest possible date.<sup>3</sup> According to Treasury Department regulations, “The term candidate for public office means an individual who offers himself, or is proposed by others, as a contestant for an elective public office.” See Treas. Reg. § 1-501(c)(3)-1 (iii).<sup>4</sup>

Walker began fundraising for his expected recall election in the first half of 2011,<sup>5</sup> and as described below, began fundraising for WiCFG around the same time.

Some Wisconsin state senators were eligible for recall in 2011, and in July and August of that year recall elections were held for nine Senators, both Republican and Democrat. Partisan control of the legislature was at stake in those elections, and with it, Governor Walker’s ability to implement his political agenda. WiCFG and groups that it funded ran ads supporting Republicans in those 2011 races, which were largely considered a referendum on Governor Walker and his Act 10 legislation.<sup>6</sup>

The group United Wisconsin officially initiated the gubernatorial recall process on November 15, 2011 and began gathering petition signatures. Nearly 1 million signatures supporting the recall were filed on January 17, 2012, and recall elections for Governor Walker and four Republican state senators took place on June 5, 2012. Walker won his election, the most expensive in Wisconsin history,<sup>7</sup> with more than \$81 million spent by candidates and “independent” groups once all figures were calculated.<sup>8</sup>

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<sup>3</sup> See e.g., Craig Gilbert, “Recall Drives Could Make History,” *Milwaukee Journal Sentinel*, Mar. 6, 2011, <http://www.jsonline.com/news/statepolitics/117501513.html>

<sup>4</sup> Although this definition of “candidate” comes from IRS 501(c)(3), the service has noted that “IRC 501(c)(4) does not define political campaign activities; instead, the definition and interpretation of terms used has occurred principally under IRC 501(c)(3).” Raymond Chick & Amy Henchey, Political Organizations and 501(c)(4), 1995 EO CPE Text.

<sup>5</sup> See Associated Press/NBC15, “Scott Walker Raises \$2.5 Million in First Half of Year,” July 19, 2011 (noting that “Democrats have also said recalling him from office next year will be a priority”) [http://www.nbc15.com/home/headlines/Scott\\_Walker\\_Raises\\_25\\_Million\\_In\\_First\\_Half\\_Of\\_Year\\_125845278.html](http://www.nbc15.com/home/headlines/Scott_Walker_Raises_25_Million_In_First_Half_Of_Year_125845278.html)

<sup>6</sup> See “Groups, Candidates Spend Record \$44 Million in Recalls,” Wisconsin Democracy Campaign, (posted September 12, 2011, updated March 12, 2012), <http://www.wisdc.org/pr092011.php>

<sup>7</sup> Paul Abowd, “Wisconsin Recall Breaks Record Thanks to Outside Cash,” *Center for Public Integrity*, June 3, 2012, <http://www.publicintegrity.org/2012/06/03/9039/wisconsin-recall-breaks-record-thanks-outside-cash>

<sup>8</sup> See “Recall Race for Governor Cost \$81 Million,” Wisconsin Democracy Campaign (posted July 25, 2012, updated January 31, 2013), <http://www.wisdc.org/pr072512.php>

### ***Wisconsin Club for Growth***

Wisconsin Club for Growth (WiCFG) is a tax-exempt corporation organized under Section 501(c)(4) of the Internal Revenue Code.

For all practical purposes WiCFG “was” political operatives R.J. Johnson and Deborah Jordahl, according to internal documents obtained by Wisconsin prosecutors in the course of an investigation into alleged state campaign finance violations during the recall elections. Exhibit A at 9-10. “We own CFG,” Johnson has stated. Exhibit B at 9. Johnson was previously Executive Director of the Republican Party of Wisconsin and twice was the Republican National Committee’s Midwest Regional Political Director.

At the same time that Johnson “own[ed]” WiCFG, he was also a paid senior advisor to the Walker campaign throughout the 2011 and 2012 recall elections. Exhibit B at 8, 10. Johnson and his consulting firms received commissions for ad placement on behalf of the Walker campaign, WiCFG, and other groups that ran ads supporting Walker or Republican candidates. Exhibit A at 10-11.

According to an affidavit from Government Accountability Board investigator Dean Nickel:

R.J. Johnson was directly involved with operations of the Friends of Scott Walker (FOSW) campaign, as well as Wisconsin Club for Growth . . . essentially coordinating the campaign activities of both entities . . . . As a gubernatorial recall candidate, Scott Walker raised funds for his personal campaign committee (FOSW) and simultaneously personally raised funds for WiCFG which was also involved in political activity to his benefit . . . During 2011 and 2012, WiCFG became the means for coordinating the political activities of WiCFG with other 501(c)(4) organizations and the personal political campaign committee of Governor Walker

Exhibit A at 9.

In advance of the 2011 senate recall elections, on May 4, 2011, Governor Walker sent an email to Karl Rove extolling R.J. Johnson’s importance in leading the coordination effort, writing:

Bottom-line: R.J. helps keep in place a team that is wildly successful in Wisconsin. We are running 9 recall elections and it will be like running 9 Congressional markets in every market in the state (and Twin Cities).

Exhibit B at 10.

Milwaukee County District Attorney’s Office Investigator Francis Stelter stated in an affidavit that:

“R.J. Johnson had substantial involvement in the decisions of [the 2012 Walker campaign] during the recall elections; he also directed the activities of WiCFG, and was involved in the activities of [Citizens for a Strong America] and other entities.”

Exhibit C at 23; *see also* Exhibit A at 8-9.

According to Special Prosecutor Francis Schmitz:

“during the 2011 and 2012 Wisconsin Senate and Gubernatorial recall elections, R.J. Johnson used WiCFG as the hub for the coordinated activities involving 501(c)(4) organizations and [the Walker campaign].”

Exhibit B at 9.

WiCFG spent an estimated \$9.1 million on so-called “issue ads” supporting or opposing candidates during Wisconsin’s 2011 and 2012 recall elections.<sup>9</sup> As described below in Part I, the facts and circumstances demonstrate that these expenditures constituted political intervention for purposes of the Code, as evidenced by the content of the communications, their coordination with candidates for elective office and state political party leaders, and WiCFG’s internal and external statements.

Yet, WiCFG reported to the IRS in both 2011 and 2012 that it engaged in zero political activity. In its 2011 and 2012 filings with the IRS, WiCFG answered “no” to the question, “Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office” (Form 990, Part IV, question 3).

WiCFG formed an affiliated 527 called the Wisconsin Club for Growth Political Fund in May of 2011. According to its Form 990 filings with the IRS, the 527 WiCFG Political Fund raised \$738,000 in 2011, and \$39,000 in 2012. It is believed to have spent most of those funds on Wisconsin elections, although no spending was reported to Wisconsin’s Government Accountability Board.

Because the estimated total spent by WiCFG in Wisconsin’s 2011-2012 recall elections exceeds \$9.1 million in direct expenditures, any spending through WiCFG’s 527 arm that may be included in this estimate amounted to less than ten percent of its overall spending.

In addition to directly spending at least \$9.1 million influencing Wisconsin elections, WiCFG acted as a “hub” for funneling at least \$9,624,000 to other 501(c)(4) groups that would support Wisconsin Republicans’ election efforts. Evidence indicates that WiCFG

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<sup>9</sup> WiCFG’s ads stopped short of expressly telling viewers how to vote, and thus were not reported to Wisconsin’s Government Accountability Board; the \$9.1 million estimate is from the Wisconsin Democracy Campaign, a nonpartisan organization that tracks campaign spending in Wisconsin elections. *See* “Recall Race for Governor Cost \$81 Million,” Wisconsin Democracy Campaign, available at <http://www.wisdc.org/pr072512.php>

knew that its grants would be used for the non-exempt function of political campaign intervention.

In remarks prepared by R.J. Johnson and sent to Governor Walker for use in an August 18, 2011 conference call -- just after the 2011 Senate recall elections and in advance of the 2012 gubernatorial recall election -- Johnson said WiCFG's efforts were run by:

... operatives R.J. Johnson and Deb Jordahl, who coordinated spending through 12 different groups. Most spending by other groups was directly funded by grants from the club."

Exhibit A at 6, Exhibit B at 10.

For example, WiCFG transferred almost \$3 million to Wisconsin Manufacturers and Commerce in 2012, which ran ads supporting Governor Walker or attacking his opponent; Johnson may have received a commission for placing WMC's ads. Exhibit A at 10-11. The 501(c)(4) Citizens for a Strong America (CFSA), a creation of R.J. Johnson and Deb Jordahl, was almost entirely funded by grants from WiCFG in 2011 and 2012, and it in turn spent millions on ads supporting or opposing candidates in Wisconsin. Exhibit B at 7, 9, 10. CFSA also funneled millions more to additional groups that engaged in political intervention. Exhibit B at 9-10.

Other entities involved in the alleged coordination activities included the Republican Party of Wisconsin (RPW), Republican State Leadership Committee (RSLC), the Republican Governors Association (RGA), and others. Exhibit B at 9-10.

### ***The "John Doe" investigation***

Five elected county District Attorneys in Wisconsin and Wisconsin's Government Accountability Board (GAB)<sup>10</sup> have been investigating WiCFG for possible campaign finance violations during Wisconsin's 2011 and 2012 recall elections.

The investigation has been conducted under Wisconsin's "John Doe" statute, an investigatory process overseen by a judge and conducted in secret that allows prosecutors to compel people to testify and produce documents. Wis. Stat. § 968.26.<sup>11</sup> It is analogous to a grand jury investigation, but conducted in front of a judge rather than a jury.

Prosecutors allege that WiCFG and the Walker campaign were engaged in a wide-ranging criminal scheme to evade state campaign finance disclosure requirements and contribution limits by secretly coordinating their fundraising and spending.

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<sup>10</sup> The GAB is the state agency charged with the administration and enforcement of Wisconsin's election and campaign finance laws. Wis. Stat. § 5.05(1).

<sup>11</sup> See also Marcus H. Bergahn, "What is a John Doe Anyway," Hurley Burish & Stanton website, [http://www.hbslawfirm.com/articles\\_display.php?id=72](http://www.hbslawfirm.com/articles_display.php?id=72)



On September 5, 2012, Judge Barbara Kluka authorized the commencement of the investigation. Exhibit A at 3. Special Investigator Stelter alleged in an affidavit in support of initiating the investigation that: “During 2011 and 2012, R.J. Johnson, Governor Scott Walker, Keith Gilkes, and others, conspired to use WiCFG to coordinate political activity in response to recall elections against Wisconsin state senators, as well as Governor Walker.” Exhibit A at 4-5.

Under Wisconsin law, coordinated electoral “issue ad” expenditures count as in-kind campaign contributions, subject to the same disclosure requirements and contribution limits that apply to a candidate’s campaign contributions. *See Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis.2d 670, 679, 605 N.W.2d 654, 659 (Wis. Ct. App. 1999) (“Contributions to a candidate’s campaign must be reported whether or not they constitute express advocacy.”); El. Bd. Op. 00-2 at 8–13 (“Coordination with a candidate or candidate committee transforms . . . purportedly independent disbursements and even true ‘issue ads’ into in-kind or monetary contributions to a candidate.”).

Prosecutors allege that WiCFG made millions of in-kind campaign contributions to candidate campaigns, in excess of state contribution limits, and without reporting those contributions as required by Wisconsin law. Additionally, prosecutors allege that the level of coordination between the Walker campaign and WiCFG may have been such as to render WiCFG a “subcommittee” of the Walker campaign under Wis. Stat. § 11.10(4).

The full set of evidence that prosecutors are relying on in the John Doe investigation is not publicly known. Documents referenced in this complaint and included as attachments have become public in the course of a challenge to the investigation, filed in federal court by the subjects of the subpoenas, in a failed effort to halt the probe.<sup>12</sup> Prosecutors have gathered additional evidence of WiCFG’s political campaign activities and coordination with campaigns and the Republican Party, but that documentation has not been made public.

Based on the preliminary evidence of coordination gathered by the John Doe prosecutors, the investigation was approved unanimously by Wisconsin’s Government Accountability Board, which is a bipartisan panel of retired judges appointed by the governor and confirmed by the senate.<sup>13</sup>

The investigation is officially a five-county effort, involving five District Attorneys, both Republican and Democrat. A 2007 Wisconsin law requires that campaign finance violations be prosecuted in the counties where defendants reside,<sup>14</sup> and the five prosecutors from both parties found that the evidence of coordination was sufficient to warrant the John Doe probe.

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<sup>12</sup> See *O’Keefe v. Schmitz*, --- F. Supp. 2d, 2014 WL 1795139 (E.D. WI., May 6, 2014), *O’Keefe v. Chisholm*, --- F.3d ---, 2014 WL 5088077 (7th Cir. Sept. 24, 2014).

<sup>13</sup> Wis. Stat. § 15.07(1)(a)(2). *See also* Daniel P. Tokaji, *America’s Top Model: The Wisconsin Government Accountability Board* (January 16, 2013). To be published in *U.C. Irvine Law Review*, Symposium: Foxes, Henhouses, and Commissions: Assessing the Nonpartisan Model in Election Administration, Redistricting, and Campaign Finance (2013, Forthcoming).

<sup>14</sup> *See* 2007 Wisconsin Act 1.

The probe is led by former counter-terrorism prosecutor Francis Schmitz, who is now in private practice. Schmitz -- who was a finalist for appointment as U.S. Attorney by President George W. Bush and told a federal court that he voted for Governor Walker in 2012 -- similarly determined that there was sufficient evidence of coordination to justify the criminal investigation.

In February of 2014, WiCFG sued in federal court to stop the investigation. It was initially halted by Judge Rudolph Randa in the Eastern District of Wisconsin, *O'Keefe v. Schmitz*, --- F. Supp. 2d, 2014 WL 1795139 (E.D. WI., May 6, 2014), but his ruling was unanimously reversed by the 7<sup>th</sup> Circuit Court of Appeals, which declared that the matter should be resolved by Wisconsin courts. *O'Keefe v. Chisholm*, --- F.3d ----, 2014 WL 5088077 (7th Cir. Sept. 24, 2014). The investigation has been preliminarily halted in state court on statutory grounds, but that ruling is being appealed. *See* Exhibit A at 22. The validity of the evidence referenced in this complaint has not been disputed.

State proceedings are ongoing about the scope of Wisconsin's campaign finance law and whether it regulates communications that stop short of express advocacy or its functional equivalent. However, for the purposes of WiCFG's compliance with the Internal Revenue Code, the eventual outcome of these proceedings are immaterial: the IRS does not use an "express advocacy" test for judging whether an ad constitutes intervention or participation in a campaign. *See* Rev. Rul. 2004-06, Rev. Rul. 2007-41.

Whether the John Doe investigation ultimately results in criminal charges does not change the analysis of whether WiCFG existed primarily for the private benefit of the Walker campaign and the Republican Party, and whether WiCFG engaged in unreported political intervention for purposes of the Internal Revenue Code. Any coordinated communications from WiCFG should be counted as political intervention for purposes of the IRC.

### **Detailed Description of Alleged Violations**

#### **I.) WiCFG Engaged in Unreported and Excessive Political Intervention**

WiCFG reported to the IRS in both 2011 and 2012 that it engaged in zero political activity.<sup>15</sup> Yet it spent an estimated \$9.1 million on broadcast communications identifying state candidates, discussing their qualifications, and airing close to election day in Wisconsin's 2011 and 2012 recall elections.<sup>16</sup> And, WiCFG allegedly coordinated many of those communications with candidates for elective office and state political party leaders. Additionally, WiCFG boasted both internally and externally that its expenditures were

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<sup>15</sup> In its 2011 and 2012 filings with the IRS, WiCFG answered "no" to the question, "Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office" (2011 Form 990, Part IV, question 3).

<sup>16</sup> *See* "Recall Race for Governor Cost \$81 Million," Wisconsin Democracy Campaign, <http://www.wisdc.org/pr072512.php>

designed to influence the elections. These facts strongly suggest that WiCFG engaged in unreported political campaign activities during 2011 and 2012.

**a. Content of WiCFG’s communications satisfy IRS factors for political intervention**

Many of the TV and radio advertisements aired by WiCFG in 2011 and 2012 were broadcast near an election, identified candidates, and discussed issues that distinguished the candidates. The content of the ads alone satisfy many of the factors the IRS has identified as constituting intervention or participation in a campaign. *See* Rev. Rul. 2004-06, Rev. Rul. 2007-41. The ads did not include the “magic words” explicitly telling viewers to “vote for” or “vote against” a candidate, but the IRS does not use an “express advocacy” test for judging whether an ad constitutes intervention or participation in a campaign. *Id.*<sup>17</sup>

Revenue Rule 2007-41 indicates, “A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election.”

The IRS has indicated that key factors in determining whether a communication constitutes political intervention include:

- 1) whether the statement identifies one or more candidates for a given public office;
- 2) whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions;
- 3) whether the statement is delivered close in time to the election;
- 4) whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- 5) whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- 6) whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

*See* Rev. Rule 2007-41. *See also* Rev. Rul. 2004-06 (listing other factors and examples).

WiCFG spent an estimated \$9.1 million on ads during Wisconsin’s 2011 and 2012 recall elections. Many of these communications satisfy several of these factors.

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<sup>17</sup> “All the facts and circumstances must be considered to determine whether an expenditure for an advocacy communication relating to a public policy issue is for an exempt function under § 527(e)(2). When an advocacy communication explicitly advocates the election or defeat of an individual to public office, the expenditure clearly is for an exempt function under § 527(e)(2). However, when an advocacy communication relating to a public policy issue does not explicitly advocate the election or defeat of a candidate, all the facts and circumstances need to be considered to determine whether the expenditure is for an exempt function under § 527(e)(2).” Rev. Rul. 2004-06 at 1.

For example, in the final weeks of Wisconsin's August 2011 state senate recall elections, WiCFG ran nearly identical TV ads attacking two candidates in the race, Rep. Sandy Pasch (who was challenging Sen. Alberta Darling)<sup>18</sup> and Rep. Fred Clark (who was challenging Sen. Luther Olsen).<sup>19</sup> The ads included precisely the same claims, yet mentioning Pasch in one ad, and Clark in the other.

The ads (1) identified a candidate; (2) expressed disapproval of the candidates (Pasch and Clark, respectively), claiming they put "illegal aliens over Wisconsin veterans" for voting in favor of in-state tuition for undocumented students; (3) ran within weeks of the state senate elections; (4) raised an issue distinguishing the candidates; (5) were in no way part of ongoing communications by WiCFG (neither immigration nor veterans affairs are part of WiCFG's core issue areas); and (6) were in no way tied to a non-electoral event such as a vote in the legislature. Thus, the ads meet all of the factors cited in IRS Rev. Rule 2007-41 for determining whether a communication constitutes political intervention.

**b. Coordination makes clear that WiCFG's communications constituted political intervention**

The IRS has noted that, in addition to the factors mentioned above, it will consider all facts and circumstances in a particular case. Evidence indicates that WiCFG's communications -- which already satisfy many of the factors the IRS has identified as constituting intervention or participation in a campaign -- were coordinated with political party leaders and candidates for elective state office, making clear that the millions WiCFG spent on electoral ads in 2011 and 2012 constituted political campaign activities for purposes of the Code.

R.J. Johnson, the former head of the Wisconsin Republican Party and paid Walker campaign advisor who claimed to "own" WiCFG, coordinated the group's activities with both candidates and party officials. He coordinated WiCFG expenditures with the Walker campaign, and also coordinated with Republican Party organizations, such as the Republican State Leadership Committee and the Republican Governors Association. Exhibit B at 9-10.

If a communication -- run near an election, identifying candidates, and discussing issues that distinguish the candidates -- is coordinated with a candidate or their party, the clear inference is that it constitutes political campaign intervention, when all facts and circumstances are considered.

This inference is reinforced by findings of Congress and courts that, in the context of campaign finance law, coordination is evidence of political campaign activity.

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<sup>18</sup> See "Representative Sandy Pasch: Illegal Aliens Over Wisconsin Voters," available at <https://www.youtube.com/watch?v=v7MTfjZf0Gg>

<sup>19</sup> See "Representative Fred Clark: Illegal Aliens Over Wisconsin Voters," available at <https://www.youtube.com/watch?v=uium9pSdwfo>

Congress has declared that, for purposes of federal campaign finance law, coordination can turn a communication aired near an election that might otherwise be considered “issue advocacy” into a political expenditure of such value to the candidate that it should be treated as an in-kind contribution to the candidate. *See* 11CFR §§ 109.21(c)(1), 100.29. The U.S. Supreme Court has explicitly upheld these provisions as a means of preventing circumvention of candidate campaign finance limits.<sup>2021</sup>

As the U.S. Supreme Court has noted, “coordinated expenditures are as useful to the candidate as cash,” *Federal Election Commission v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 446, 121 S.Ct. 2351, 150 L.Ed.2d 461 (2001). The presence of coordination demonstrates that a candidate perceives an expenditure as valuable to their campaign. *Id.*

As one District of Columbia court observed in the influential case *FEC v. Christian Coalition*:

The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities” to be treated as a campaign contribution.

52 F. Supp. 2d 45, 92 (D.D.C. 1999). As noted above, coordinated expenditures are also counted as in-kind campaign contributions under Wisconsin campaign finance law. *See Wisconsin Coalition for Voter Participation, Inc. v. State Elections Board*, 231 Wis.2d 670 (Wis. Ct. App. 1999), El. Bd. Op. 00-2 at 8–13.

Communications from WiCFG that amount to campaign contributions are undoubtedly “political campaign intervention” for purposes of the IRC.<sup>22</sup>

**c. WiCFG’s internal and external communications reflect that its activities constituted political campaign intervention**

WiCFG’s own internal and external communications further indicate that WiCFG was engaged in political campaign intervention.

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<sup>20</sup> In 2003 the U.S. Supreme Court explicitly upheld Section 202 of the Bipartisan Campaign Reform Act, which deemed that “electioneering communications” will be considered a contribution if coordinated with a candidate. The Court in *McConnell v. FEC* held “there is no reason why Congress may not treat coordinated disbursements for electioneering communications in the same way it treats all other coordinated expenditures.” 540 U.S. 93, 96 (2003).

<sup>21</sup> Additionally, as the U.S. Supreme Court noted in *Buckley v. Valeo*, expenditures “controlled or coordinated” with candidates were “treated as contributions rather than expenditures” under the Federal Election Campaign Act of 1971, which “prevent[ed] attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions.” *Id.* at 46-47, citing FECA sec. 608(b).

<sup>22</sup> Notably, both state and federal law bar corporations (including non-profit corporations like WiCFG) from making contributions, in-kind or otherwise, to candidate campaigns.

In advance of the July-August 2011 recall elections for nine state senators, Governor Walker sent a May 4, 2011 email to Karl Rove describing the role of WiCFG and R.J. Johnson in those senate campaigns:

Bottom-line: R.J. helps keep in place a team that is wildly successful in Wisconsin. We are running 9 recall elections and it will be like running 9 Congressional markets in every market in the state (and Twin Cities).

Exhibit B at 10.

In advance of the 2012 gubernatorial recall elections, internal emails between Walker and his staff referred to fundraising for WiCFG for the purposes of “raising money for Walker’s possible recall efforts.” See Exhibit A at 4.

According to Walker’s fundraiser Kate Doner, the governor “want[ed] all the issue advocacy efforts run thru one group to ensure correct messaging.” *Id.*

Walker was instructed that, when fundraising for WiCFG, “Stress that donations to WiCFG are not disclosed and can accept corporate donations without limits,” and to “Let [donors] know that you can accept corporate contributions and it is not reported.” *Id.*

Some of WiCFG’s public-facing communications also reflected that its activities were political campaign intervention. One day after the November 2012 elections gave Republicans control of the Wisconsin state senate, WiCFG made a post on its website boasting of playing a “pivotal role in last night’s results.” Exhibit E.

All of these facts and circumstances, considered together, demonstrate that WiCFG engaged in political campaign activities in 2011 and 2012, yet misled the IRS by reporting \$0 in such activities.

## **II.) WiCFG exceeded the permissible level of political campaign activity for a 501(c)(4) nonprofit**

At a minimum, WiCFG misled the IRS by claiming it engaged in zero political activity in 2011 and 2012, when in reality it spent millions of dollars that constituted political campaign intervention for purposes of the IRC. Yet, the level of political spending by WiCFG – both directly through campaign ads and indirectly through its surrogates – exceeds the level of permissible political activity under any reasonable interpretation of the Code, such that electing candidates to office was WiCFG’s primary activity in 2011 and 2012.

The IRC is unambiguous when it comes to allowable expenditures by an organization organized under Section 501(c)(4) of the code: since 1913, the Code has stated that what is now known as a 501(c)(4) organization must be “operated exclusively for the promotion of

social welfare” (emphasis added). Starting in 1959, the IRS has taken the position that a 501(c)(4) need only be “*primarily* engaged” in promoting social welfare.<sup>23</sup>

WiCFG has exceeded the level of permissible political activity under even the most liberal reading of “primarily engaged.” A review of all the facts and circumstances demonstrates that WiCFG’s first and primary emphasis was electing Republicans to state office. In 2011 and 2012, WiCFG devoted well over half of its overall resources towards directly and indirectly intervening in political campaigns for elective office.

WiCFG spent an estimated \$9.1 million in 2011 and 2012 on ads that constitute political intervention. And, as described below, it funneled at least \$9,624,000 to other groups, some of which were controlled by WiCFG, that spent those funds on political campaign activities.

Taken together, nearly all of WiCFG’s \$20 million in total expenditures in 2011 and 2012 was focused on political campaign intervention.<sup>24</sup>

**a. WiCFG funneled millions to other nonprofits for purpose of funding political campaign activities**

According to Wisconsin prosecutors, during the 2011-2012 recall elections WiCFG was used as a “hub” by R.J. Johnson and the Walker campaign for funneling millions to other 501(c)(4) nonprofit organizations that would use those funds to engage in political intervention. Exhibit B at 9. At least one of these groups, Citizens for a Strong America (CFSA), was almost entirely funded by WiCFG in 2011 and 2012 and also controlled by WiCFG’s Johnson, and was therefore effectively acting as a Wisconsin Club for Growth surrogate. Any political campaign intervention by CFSA and similar groups should be attributed to WiCFG.

Evidence indicates that WiCFG knew that its grants would be used for political campaign intervention.<sup>25</sup>

As described by Government Accountability Board Special Investigator Dean Nickel:

R.J. Johnson directed activities of Wisconsin Club for Growth (WiCFG), Citizens for a Strong America (CFSA), and Friends of Scott Walker (FOSW), and through WiCFG and CFSA, provided funding for other 501(c)(4) organizations . . . that ran ads supporting Governor Scott Walker, criticizing his opponent, or were involved in activities assisting Republican senate recall elections.

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<sup>23</sup> T.D. 6391, 1959-2 C.B. 139; Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

<sup>24</sup> WiCFG reported \$12,123,151 in total expenses in 2011, and \$8,000,561 in expenses in 2012, according to its tax returns from those years.

<sup>25</sup> To avoid tax liability under IRC 527(f)(1), a 501(c) organization is “required to take reasonable steps to ensure that the transferee does not use such amounts” for political campaign intervention. Treas. Reg. 1.527-6(b)(1)(ii) See also John Francis Reilly and Barbara A. Braig Allen, “Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations” at L-12, 2003 EO CPE Text.

Exhibit A at 10.

Additionally, according to Special Investigator Stelter:

Jordahl and R.J. Johnson were involved with the activities of CFSA that functioned as a conduit for funded activities of other organizations in support of Governor Walker against the recall.

Exhibit A at 7, *see also* Exhibit C at 13.

In 2011, WiCFG made a \$4,620,000 grant to CFSA. This amounted to CFSA's entire budget that year, save for a separate \$25 donation. *See* Exhibit F (WiCFG 2011 Form 990), Exhibit G (CFSA 2011 Form 990).

CFSA went on to spend over \$985,000 on "issue ads" influencing the Wisconsin Supreme Court election that year<sup>26</sup> -- making it the third-highest spender on that race, which was widely regarded as a referendum on Walker's Act 10 legislation<sup>27</sup> -- and over a million more influencing elections for state senate.<sup>28</sup>

In 2012, WiCFG reported granting \$2,020,000 to CFSA. *See* Exhibit G (WiCFG 2012 990). This again amounted to CFSA's entire 2012 budget, save for a separate \$28 donation. *See* Exhibit H (CFSA 2012 990).

In both 2011 and 2012, CFSA -- apparently under Johnson's direction -- funneled some of the money it received from WiCFG to other groups, which in turn spent on "issue ad" political activity in the state.<sup>29</sup> For example, CFSA funneled \$916,045 to the 501(c)(4) Wisconsin Family Action in 2011, which was over 90 percent of the grants that group received that year. CFSA gave an additional \$253,000 to Wisconsin Family Action in 2012. Wisconsin Family Action then spent an estimated \$850,000 on the Senate recall elections in 2011 and 2012, and an additional undisclosed amount on the Supreme Court race.<sup>30</sup>

On Wisconsin Club for Growth's form 990, it claimed the purpose of the 2011 and 2012 CFSA grants were for "education and mobilization."

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<sup>26</sup> *See* Wisconsin Democracy Campaign, "David T. Prosser Jr, Wisconsin Supreme Court 2011 campaign profile," available at <http://www.wisdc.org/pro11-100823.php>

<sup>27</sup> *See* Monica Davey, "Wisconsin Election Is Referendum on Governor," *New York Times*, April 4, 2011, [http://www.nytimes.com/2011/04/05/us/politics/05wisconsin.html?\\_r=2&](http://www.nytimes.com/2011/04/05/us/politics/05wisconsin.html?_r=2&)

<sup>28</sup> *See* Wisconsin Democracy Campaign, "Recall Race for Governor Cost \$81 Million," <http://www.wisdc.org/pr072512.php>

<sup>29</sup> *See* "WI Club for Growth, Target of Walker Recall Probe, at Center of Dark Money Web," PRwatch.org, November 18, 2013, <http://www.prwatch.org/news/2013/11/12309/new-john-doe-investigation-probes-dark-money-wisconsin-recall-elections-club>

<sup>30</sup> *See* Wisconsin Democracy Campaign, "Recall Race for Governor Cost \$81 Million"



In 2012, WiCFG transferred \$2,984,000 to the Wisconsin Manufacturers & Commerce Issues Mobilization Council (WMC-IMC), the 501(c)(4) “action” wing of the U.S. Chamber of Commerce’s 501(c)(6) Wisconsin affiliate.<sup>31</sup> See Exhibit H. WMC-IMC spent an estimated \$4 million on “issue ads” that year supporting Walker’s reelection.<sup>32</sup>

According to prosecutors, the transfers from WiCFG to WMC-IMC corresponded with WMC-IMC’s ad buys, which R.J. Johnson may have placed. It appears that WiCFG’s grants to WMC-IMC were earmarked for the purpose of funding WMC-IMC’s pro-Walker ads.

Special Investigator Nickel noted in an affidavit that:

Ten Capitol Inc. created ads for WMC supporting Scott Walker during the recall. Consistent with a commission for ad placement, R.J. Johnson and Associates received \$50,000 from Ten Capitol on June 22, 2012. WMC-IMC bank records reflect wire transfers in April and May 2012 to Ten Capitol totaling \$3,355,000. As Mr. Nickel summarizes, “Coinciding with the wire transfers to Ten Capitol, WMC-IMC received payments from WiCFG; for example, on May 4, 2012, WMC-IMC deposited \$1,000,000 from WiCFG; on May 7, 2012 WMC-IMC wired \$1,000,000 to Ten Capitol. On April 24, 2012, WMC-IMC wired \$712,000 to Ten Capitol; on April 25, 2012 it received \$1,000,000 from WiCFG.”

Exhibit A at 10-11.

#### **b. WiCFG’s “first and primary emphasis” was political intervention**

As the IRS noted in a 2008 Letter Ruling, a group is not eligible for tax-exempt status under section 501(c)(4) where the facts and circumstances show that the group’s “first and primary emphasis” is to elect candidates to public office. “[I]f an organization’s primary activities do not promote social welfare but are direct or indirect political intervention, the organization is not exempt under section 501(c)(4).” Private Letter Ruling 200833021.

In that ruling, the IRS noted that: “Whether an organization is ‘primarily engaged’ in promoting social welfare is a facts and circumstances determination. Relevant factors include the manner in which the organization’s activities are conducted; resources used in conducting such activities, such as buildings and equipment; the time devoted to activities (by volunteers as well as employees); the purposes furthered by various activities; and the amount of funds received from and devoted to particular activities.” *Id.*

Documents uncovered by Wisconsin prosecutors and described herein evince that WiCFG is an organization almost wholly devoted to, and intent on, electing Republicans to state office. WiCFG was “own[ed]” by a former Executive Director of the Republican Party of Wisconsin and current campaign advisor to Governor Walker. Walker’s campaign

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<sup>31</sup> WiCFG’s 2012 filing with the IRS lists the recipient of the grant as “WMC,” but its IRC section as 501(c)(4), suggesting the funds went to WMC-IMC.

<sup>32</sup> See Wisconsin Democracy Campaign, “Recall Race for Governor Cost \$81 Million”

instructed the governor to refer to WiCFG as “your” 501(c)(4) in fundraising appeals, and Walker himself raised millions for WiCFG to support his reelection in the face of “possible recall efforts.” And, WiCFG operated as a “hub” for funneling millions to other groups that would support Wisconsin Republicans’ election efforts.

A review of WiCFG’s expenditures demonstrates that it exceeded the level of permissible political activity under even the most liberal reading of “primarily engaged.” In 2011 and 2012 it devoted more than half of its overall resources towards directly and indirectly intervening in political campaigns for elective office.

WiCFG spent an estimated \$9.1 million on ads that constitute political intervention in 2011 and 2012. It then funneled at least \$9,624,000 to other groups, some of which were controlled by WiCFG officials, which spent those funds on political campaign ads.

This amounts to more than half of WiCFG’s \$20 million in total expenditures in 2011 and 2012, making it clear that WiCFG’s “first and primary emphasis” in 2011 and 2012 was to elect political candidates in Wisconsin.<sup>33</sup>

### **III.) WiCFG Existed for the Private Benefit of the Walker Campaign, the Republican Party, and Donors**

In addition to engaging in unreported and excessive political campaign intervention, evidence suggests that in 2011 and 2012, WiCFG primarily served as a platform to advance the financial and political interests of its funders, of the Walker campaign, and of the Republican Party.

Section 501(c)(4)(B) of the Code indicates that no part of the net earnings of 501(c)(4) groups like WiCFG, which are organized exclusively for the promotion of social welfare, shall inure to the private benefit of any individual or entity.

Activities undertaken to provide a partisan benefit are considered to serve private interests, rather than the common good. In American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989), the Service and the Tax Court determined that a 501(c)(3) organization closely tied to the Republican Party and that trained political campaign professionals affiliated with the Republican Party, operated for a substantial, non-exempt private purpose; namely, to benefit the private interests of Republican entities and candidates. The standard for determining what constitutes a private benefit applies equally to 501(c)(3) and 501(4) entities. *See* Private Letter Ruling 201224034; *see also* Private Letter Ruling 201221028 (revoking exemption for 501(c)(4) organization Emerge America, which trained Democratic women to run for office).

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<sup>33</sup> WiCFG had an estimated \$12 million in total expenditures in 2011, and \$8 million in 2012, according to its tax returns from those years.

An organization that conducts its activities to benefit a political party and its candidates serves private interests, and an organization that primarily serves private interests does not qualify for an exemption under section 501(c)(4).

Here, in 2011 and 2012 WiCFG was “own[ed]” by R.J. Johnson, the former Executive Director of the Republican Party of Wisconsin and the then-senior advisor to the campaign of Wisconsin Governor Scott Walker. At the time, Walker was the highest partisan elected official in the state.

Johnson, Governor Walker, and the Walker campaign used WiCFG to support Walker’s 2012 reelection effort and to elect a Republican legislature in 2011 and 2012 that would enact Walker’s political agenda.

Johnson coordinated WiCFG’s political campaign activities with Republican Party organizations during 2011 and 2012, according to prosecutors. Entities involved in the alleged coordination included the Republican Party of Wisconsin (RPW), Republican State Leadership Committee (RSLC), the Republican Governors Association (RGA), and others. Exhibit B at 9-10.

Evidence that WiCFG existed for private partisan interests is demonstrated by the degree of ownership over WiCFG expressed by Walker’s campaign. Walker’s campaign instructed the governor – the highest partisan elected official in the state -- to refer to WiCFG as “your” 501(c)(4), and it used WiCFG to evade state campaign finance laws. Walker fundraised for WiCFG and donors gave for the purpose of supporting Walker during the recalls. WiCFG then used almost the entirety of those funds to directly and indirectly support the reelection of the Republican senators who supported Walker’s agenda and the reelection of Walker himself.

WiCFG’s activities were overwhelmingly devoted to benefitting the private partisan interests of the Republican Party and its candidates by fundraising and spending to elect Republicans to office. Additionally, at least some of WiCFG’s political intervention activities were targeted at races where the outcome would financially benefit WiCFG’s donors, providing additional evidence that it operated primarily to benefit private interests.

We believe WiCFG therefore does not qualify for a tax exemption under section 501(c)(4).

**a. Walker was instructed to refer to WiCFG as “your” 501(c)(4) in fundraising appeals, and the Walker campaign used WiCFG to evade state campaign finance laws**

Campaign staff instructed the highest elected partisan official in Wisconsin, Governor Walker, to refer to WiCFG as “your” 501(c)(4) when fundraising for the organization. Exhibit A at 4.<sup>34</sup> Walker raised funds for WiCFG in 2011 and 2012 from both corporate and individual sources, in order to evade the disclosure and contribution requirements that

applied to his own campaign committee and those of legislative Republicans. *Id.* Emails between Walker and his staff referred to fundraising for WiCFG for the purposes of “raising money for Walker’s possible recall efforts.” *Id.*

The campaign used WiCFG to bypass Wisconsin’s campaign contribution limits, disclosure requirements, and ban on corporate campaign contributions.

For example, according to prosecutors, a June 20, 2011, email to Walker from his fundraiser Kelly Rindfleisch:

forwards an itinerary for a fundraising trip that provides background on donors Scott Walker was scheduled to meet. Among the talking points related to these scheduled meetings are the following: ‘Stress that donations to WiCFG are not disclosed and can accept corporate donations without limits’; and “Let them know that you can accept corporate contributions and it is not reported.’ The talking points also encourage Scott Walker to request contributions for ‘your 501c4.’”

Exhibit A at 4.

Walker’s campaign also “want[ed] all the issue advocacy efforts run thru [WiCFG]... to *ensure correct messaging.*” It raised funds for WiCFG by promising donors that it “can accept Corporate and Personal donations without limitations and no donors disclosure.” Additionally, prosecutors described:

An April 28, 2011, email from Kate Doner to R.J. Johnson that states: “*As the Governor discussed . . . he wants all the issue advocacy efforts run thru one group to ensure correct messaging.* We had some past problems with multiple groups doing work on ‘behalf’ of Gov. Walker and it caused some issues. In Wisconsin, a 501(c)(4) is the legal vehicle that runs the media/outreach/GOTV campaign. *The Governor is encouraging all to invest in the Wisconsin Club for Growth. Wisconsin Club for Growth can accept Corporate and Personal donations without limitations and no donors disclosure.*”

*Id.* (emphasis added).

#### **b. Donors gave to WiCFG for purpose of supporting Walker**

Checks to WiCFG noted in the memo line that the purpose of the donation was to benefit Walker’s private interests. For example, in court filings prosecutors noted that they had obtained the following evidence:

A March 10, 2012, email Scott Walker sent to Kate Doner stating that “Bruce and Suzie Kovner said they want to give more.” On March 22, 2012, the WiCFG bank account reflected a deposit of \$50,000 from the account of Bruce Kovner. The memo line of the check reflects the check is for “501c4-Walker.”

Exhibit A at 6.

Prosecutors uncovered numerous examples of Walker meeting with potential donors, and within a short period, large checks appearing in WiCFG's account from those same donors. *Id.*

Walker requested donations in excess of what his campaign could legally accept under state campaign finance limits,<sup>35</sup> and from corporate sources that could not legally donate directly to his campaign.<sup>36</sup>

Evidence of this political fundraising activity gathered by John Doe prosecutors includes:

- A February 23, 2012, itinerary of Scott Walker that reflects a conference call with David Hanna. On February 27, 2012, the WiCFG bank account reflected a wire transfer of \$50,000 from the account of the David William Hanna Trust.
- A March 7, 2012, email from Kate Doner to Scott Walker advising him regarding "meetings to make happen while in Sea Island . . . . Paul Singer: Grab him." On May 8, 2012, \$250,000 was deposited into the WiCFG account via wire transfer from the account of Paul Singer.
- A March 10, 2012, email Scott Walker sent to Kate Doner stating that "Bruce and Suzie Kovner said they want to give more." On March 22, 2012, the WiCFG bank account reflected a deposit of \$50,000 from the account of Bruce Kovner. The memo line of the check reflects the check is for "501c4-Walker."
- A March 10, 2012, itinerary that indicates Scott Walker met with Barry Maclean, the CEO of the Maclean-Fogg Company. On May 17, 2012, the WiCFG bank account reflects a deposit of \$100,000 from the Maclean-Fogg Company.
- A March 10, 2012, itinerary that indicates Scott Walker met with Michael Sullivan of SAC Capital Advisers. On April 13, 2012, the WiCFG bank account reflects a \$1,000,000 deposit from the account of Stephen Cohen, the founder and manager of SAC Capitol Advisors.
- A March 30, 2012 email that indicates Scott Walker was meeting with Donald Trump. WiCFG bank records reflect a \$15,000 contribution from Donald Trump on April 3, 2012.
- An April 10, 2012, Jennifer Bannister sent an e-mail to Governor Walker regarding a phone call with Ken Langone which she asked "How did the phone call with Langone

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<sup>35</sup> Wis. Stat. § 11.26(1)(a). The individual contribution limit for gubernatorial candidates is currently \$10,000, see [http://gab.wi.gov/sites/default/files/page/contribution\\_limits\\_partisan\\_state\\_9\\_2014\\_final\\_14326.pdf](http://gab.wi.gov/sites/default/files/page/contribution_limits_partisan_state_9_2014_final_14326.pdf)

<sup>36</sup> Wis. Stat. § 11.38(1)(a)

go this morning?” WiCFG bank records reflect that on April 10, 2012, Mr. Langone made a \$15,000 contribution to WiCFG.

- An April 17, 2012, email to Scott Walker advising him to ask Larry Nichols, Chairman of Devon Energy, to contribute “\$250k in support of your recall.” (emphasis in the original) WiCFG bank records reflect a \$50,000 contribution from Devon Energy on May 3, 2012.
- An April 20, 2012, email to Scott Walker, among others, providing a briefing for a meeting on that day facilitated by Eric O’Keefe with Keith Colburn and Richard Colburn. Scott Walker was to attend the meeting for the solicitation of \$100,000 “in support of the recall.” On April 27, 2012, the WiCFG bank account reflects a deposit of \$25,000 from the account of “K. Colburn.” On May 7, 2012, the WiCFG bank account reflects a deposit of \$50,000 from the account of Richard Colburn.

Exhibit A at 6-7.

**c. WiCFG used funds Walker raised to elect Republican legislators and to support Walker’s reelection campaign**

WiCFG used the funds Walker raised to run millions of dollars of ads praising Walker’s legislative agenda and supporting Republican state senators (or attacking their opponents), as described in Part I. Partisan control of the legislature was at stake in the 2011 and senate recall elections, and with it, Governor Walker’s ability to implement his political agenda.

In addition, WiCFG was used as a “hub” to funnel the funds raised by Walker and others to nonprofits that ran ads supporting Republican legislators and Walker’s campaign, as described in Part II.

Some of those funds were transferred to groups that ran ads directly supporting Walker’s reelection. According to WiCFG’s 2012 990 filing, it transferred \$2,984,000 to the Wisconsin Manufacturers & Commerce Issues Mobilization Council (WMC-IMC), the 501(c)(4) “action” wing of the U.S. Chamber of Commerce’s 501(c)(6) Wisconsin affiliate. Exhibit H. Although WiCFG only listed grants to WMC on its 2012 filing with the IRS, prosecutors -- apparently relying on bank records obtained from WiCFG -- note that “WiCFG gave WMC \$988,000 in 2011 and \$2,500,000 in 2012. WMC-IMC in turn paid for ads related to the various recall elections, primarily the 2012 Gubernatorial recall election.” Exhibit B at 14. WMC-IMC spent an estimated \$4 million on “issue ads” in 2012 supporting Walker’s reelection.<sup>37</sup>

According to prosecutors, the transfers from WiCFG to WMC-IMC corresponded with WMC-IMC’s ad buys. Special Investigator Nickel noted in an affidavit that:

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<sup>37</sup> See Wisconsin Democracy Campaign, “Recall Race for Governor Cost \$81 Million” (showing Citizens for a Strong America spent \$1.7 million), <http://www.wisdc.org/pr072512.php>

Ten Capitol Inc. created ads for WMC supporting Scott Walker during the recall. Consistent with a commission for ad placement, R.J. Johnson and Associates received \$50,000 from Ten Capitol on June 22, 2012. WMC-IMC bank records reflect wire transfers in April and May 2012 to Ten Capitol totaling \$3,355,000. As Mr. Nickel summarizes, "Coinciding with the wire transfers to Ten Capitol, WMC-IMC received payments from WiCFG; for example, on May 4, 2012, WMC-IMC deposited \$1,000,000 from WiCFG; on May 7, 2012 WMC-IMC wired \$1,000,000 to Ten Capitol. On April 24, 2012, WMC-IMC wired \$712,000 to Ten Capitol; on April 25, 2012 it received \$1,000,000 from WiCFG."

Exhibit A at 10.

**d. WiCFG operated for the private financial benefit of a top donor**

WiCFG's political intervention was also targeted at races where the outcome would financially benefit WiCFG's financial backers.

The Service has found that "conferring a sufficient amount of private benefit on select individuals will preclude exemption under section 501(c)(4) for an organization that would otherwise qualify." Private Letter Ruling 201224034.

For example, Florida-based mining company Gogebic Taconite made at least \$700,000 in publicly undisclosed donations to WiCFG between 2011 and 2012. Exhibit A at 10. WiCFG, in turn, spent at least \$1.5 million on electoral ads attacking state senators who opposed Gogebic's efforts to revise Wisconsin environmental laws in order to build an iron ore mine in the northern part of the state. Exhibit E.

In 2011, Gogebic Taconite worked with five Republican lawmakers to rewrite Wisconsin's environmental laws to facilitate the construction and operation of a proposed open-pit iron ore mine. According to one Republican lawmaker, "the initial bill that came out was for the most part written by" Gogebic Taconite.<sup>38</sup>

The bill passed the Wisconsin Assembly in January 2012, but faced opposition in the state senate. WiCFG launched a robocall campaign urging senators to pass the bill, but it failed in the senate by one vote in March of 2012. *Id.*

Two Democratic Senators who voted against the mining legislation, Sen. Jessica King of Oshkosh and Sen. Dave Hansen of Green Bay, faced reelection in November, and WiCFG spent at least \$1.5 million trying to defeat them.

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<sup>38</sup> See Theodor Meyer, "In Wisconsin, Dark Money Got a Mining Company What It Wanted," *ProPublica*, Oct. 14, 2014, <http://www.propublica.org/article/in-wisconsin-dark-money-got-a-mining-company-what-it-wanted>; see also Lee Bergquist, "Mining company, allies spent freely to get bill approved," *Milwaukee Journal Sentinel*, Sept. 1, 2014, <http://www.jsonline.com/news/statepolitics/mining-company-allies-spent-freely-to-get-bill-approved-mining-company-allies-spent-freely-to-get-b-273488581.html>

WiCFG spent an estimated \$919,000 on the King race, versus less than \$320,000 than the senator's own campaign. WMC, which had received funding from WiCFG, spent \$965,000. *Id.*

The day after the election, WiCFG boasted on its website:

“Thanks to your support, once again Wisconsin Club for Growth played a pivotal (sic) role in last night's results. In the last three weeks alone, the Club aired over \$1,500,000 in network television (sic) ads in Green Bay to educate voters on the records of Senator Jessica King and Senator Dave Hanson. King cast the deciding vote to kill the mine in Northern Wisconsin and the 3,000 jobs that came with it. When you put politics ahead of creating good paying jobs for Wisconsin families, you should be prepared to lose your own.”

Exhibit E.

Senator King lost by 600 votes, giving Republicans control of the state senate, and with it, the votes needed to give WiCFG funder Gogebic Taconite its iron ore mine.

### **Conclusion**

Based on the information provided above, the IRS should investigate:

- I.) whether WiCFG misled the Service by claiming that it spent \$0 on political campaign activities in 2011 and 2012, when it appears to have spent millions on such activities;
- II.) whether WiCFG engaged in a more than insubstantial amount of non-exempt political campaign activities in those years and other years, and accordingly is not primarily engaged in the promotion of social welfare; and
- III.) whether WiCFG has operated primarily to advance the private interests of the Republican Party, and the private financial interests of its funders, in violation of its 501(c)(4) tax-exempt status.

It is our belief that evidence made public thus far indicates that the answer to each of these questions is yes.

We additionally request that the Service examine the activities of R.J. Johnson and Deb Jordahl, and WiCFG director Eric O'Keefe, to assess whether they formed or otherwise directed any tax-exempt organizations to engage in a substantial level of political campaign intervention, or operated such a tax-exempt organization for the private benefit of any candidate's campaign or political party.

If the IRS investigation determines that the facts and circumstances show that WiCFG misled the IRS on its level of political campaign activities, is not primarily engaged in “the



promotion of social welfare,” and/or operates for a private benefit, we request that the IRS assess appropriate civil and criminal penalties.

If the IRS so finds, we believe it would be more than justified for the IRS to revoke WiCFG's tax-exempt status.

In our view, the amount of any penalties, if warranted, should be sufficiently large as to take into account the need for deterrence to stop similar violations from reoccurring in the future.

October 27, 2014

A handwritten signature in black ink, consisting of the letters 'B' and 'F' written in a stylized, cursive-like font.

Brendan Fischer  
General Counsel  
Center for Media and Democracy