

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

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

Plaintiffs,

v.

FRANCIS SCHMITZ, in his official and
personal capacities,
JOHN CHISHOLM, in his 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,

Defendant.

Case No. 2:14-cv-00139-RTR

DECLARATION OF FRANCIS SCHMITZ

Pursuant to 28 U.S.C. § 1746, I, FRANCIS D. SCHMITZ, hereby declare:

1. I am an attorney licensed in the State of Wisconsin.
2. I am a Defendant in the above-captioned lawsuit.
3. I make the following declaration based upon my personal knowledge.
4. From May 1984 to March 2013, I was employed by the United States Department of Justice (the "DOJ") as an Assistant United States Attorney.
5. On March 31, 2013, I retired from the DOJ and became a private practitioner in the State of Wisconsin, working at the Law Offices of Francis D. Schmitz LLC, W240N1221 Pewaukee Rd., Ste. E, Waukesha, WI 53188-1659.

6. In late July 2013, I was contacted by a senior staff member of the Wisconsin Government Accountability Board (“GAB”) and asked if I might be interested in working on the John Doe proceedings, subject of the above-captioned lawsuit, and serving as a special prosecutor. After further discussions with the GAB and others, I accepted the offer.

7. On August 17, 2013, I was appointed as a special investigator for the GAB upon the execution of a Wisconsin Government Accountability Board Agreement for Special Investigator 2013-2014 (“Agreement”). Pursuant to the Agreement, I was to investigate matters referred to me by the GAB for appropriate action for determination of whether violations of Wisconsin’s state campaign finance statutes (“Chapter 11”) or other laws administered by the GAB have occurred. The GAB thereafter directed me to investigate the conduct of various persons and organizations, with regard to coordination of their political advocacy, including expenditures, with political candidates, their agents and their personal campaign committees.

8. I was appointed by Order of Reserve Judge Barbara A. Kluka on August 23, 2013, pursuant to Wisconsin Statute § 978.045, to be the special prosecutor for five separate John Doe proceedings in Columbia County, Dane County, Dodge County, Iowa County and Milwaukee County (the “John Doe Proceedings”). I have been advised by counsel that this Order was previously filed, under seal, as “Exhibit S” in support of Defendants Chisholm, Landgraf, and Robles’ Memorandum of Law in Support of Motion to Dismiss.

9. I use an office at the GAB in Madison, Wisconsin, to help me fulfill my duties as the special prosecutor. I also have use of a desk in the Milwaukee County District Attorney’s Office. As we needed to have a number for various counsel to call me after we issued subpoenas, I chose the telephone at that desk and programmed it to have calls forwarded to my cell phone.

10. I am not a current member of a political party. I do not currently maintain an affiliation with any political organization.

11. There was a period of time several years ago that I formally joined the Republican Party. I took this action in connection with seeking the Presidential appointment as the United States Attorney for the Eastern District of Wisconsin after the 2002 Presidential election.

12. I voted for Governor Scott Walker in Wisconsin's 2012 gubernatorial recall election. I did not vote in any of the other recall elections in 2011 and 2012.

13. During the recall campaign, while I was employed by DOJ, I was involved in assisting law enforcement to investigate potential threats against Governor Scott Walker.

14. Passage of 2011 Wisconsin Act 10, also known as the Wisconsin Budget Repair Bill, did not affect my employee rights or benefits because I was a federal employee, not a state employee. I generally supported the Governor's efforts to balance the State budget.

15. Prior to my contractual relationship with the GAB (August 17, 2013) and my appointment as special prosecutor (August 23, 2013), I did not have any involvement with, or knowledge of, Eric O'Keefe or the Wisconsin Club for Growth or the other conservative groups Plaintiffs allege are being retaliated against.. That also holds true for most of the other groups which were subpoenaed, some of which I had heard of previously. I believe I had some interaction with the Metropolitan Milwaukee Chamber of Commerce in connection with my duties as a federal prosecutor.

16. Prior to being contacted by the GAB in late July 2013, as discussed in paragraph 6 of this declaration, I did not have any involvement with any John Doe Proceedings and did not speak to any of the other Defendants in the above-captioned lawsuit regarding any John Doe Proceedings.

17. I have not been aware at any time of any retaliatory motive that underlies the commencement and continuation of any John Doe proceedings.

18. Nothing I have observed, heard or read since becoming involved in this investigation would allow me to conclude that this investigation was motivated or based upon anything but reliable information which provides a basis to conclude that violations of Wisconsin laws may have occurred. I would never be part of an investigation that was conducted for a retaliatory purpose as such an investigation would be improper and unethical.

19. I do not harbor any ill will towards the Plaintiffs, or others whose conduct or actions are being investigated, for their political views or for the political positions they have taken.

20. In my role as a special prosecutor, while I have sought input and counsel from others involved in the investigation, I have made the final decisions on what actions to take and the content of pleadings and other filings.

21. On February 24, 2014, Judge Gregory Peterson entered an Order in the John Doe Proceedings that prohibited me, and others involved in the investigation, from examining any piece of evidence in my possession, whenever and however gathered in this investigation regardless of source. I have complied with Judge Peterson's order. I have been advised by counsel that this Order was previously filed, under seal, as "Exhibit I" in support of Defendants Chisholm, Landgraf, and Robles' Memorandum of Law in Support of Motion to Dismiss.

22. On March 22, 2014, Judge Gregory Peterson entered an Order for Qualified Use and Dissemination of John Doe Materials (All Proceedings) which authorized me to use the information, transcripts, documents and other materials ("John Doe Material") gathered in the John Doe proceedings for purposes related to the defense of the above-captioned lawsuit.

Attached hereto as Exhibit A is a true and correct copy of Judge Peterson's March 22, 2014, Order for Qualified Use and Dissemination of John Doe Materials (All Proceedings). [FILED UNDER SEAL] Pursuant to this Order, I am only using the "John Doe Material" for purposes related to the defense of the above-captioned lawsuit.

23. After the above-captioned lawsuit was filed, counsel for the GAB staff advised me and my counsel that I am subject to Wisconsin Statute § 5.05(5s) and § 12.13(5) because I have a contractual relationship with the GAB.

24. Wisconsin Statute §5.05(5s) specifically states that "Records obtained or prepared by the board in connection with an investigation, including the full text of any complaint received by the board, are not subject to the right of inspection and copying under s. 19.35 (1)"

25. Wisconsin Statute §12.13(5) is titled "UNAUTHORIZED RELEASE OF RECORDS OR INVESTIGATORY INFORMATION" and states the following: "Except as specifically authorized by law and except as provided in par. (b), no investigator, prosecutor, employee of an investigator or prosecutor, or member or employee of the board may disclose information related to an investigation or prosecution under chs. 5 to 12, subch. III of ch. 13, or subch. III of ch. 19 or any other law specified in s. 978.05 (1) or (2) or provide access to any record of the investigator, prosecutor, or the board that is not subject to access under s. 5.05 (5s) to any person other than an employee or agent of the prosecutor or investigator or a member, employee, or agent of the board prior to presentation of the information or record in a court of law." In addition, Wis. Stat. §12.60(1)(bm) provides criminal penalties for unauthorized release of investigatory information: "Whoever violates s. 12.13(5) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both."

26. Due to Wisconsin Statute § 5.05(5s) and § 12.13(5), counsel for the GAB advised me and my counsel, prior to March 12, 2014, that the GAB would not authorize the release of any records related to the GAB or the John Doe Proceedings for use in the above-captioned lawsuit. The GAB advised me and my counsel that I could only cite to and quote from materials from the John Doe Proceedings that had been filed in the above-captioned lawsuit by the Plaintiffs.

27. Since March 12, 2014, counsel for the GAB has advised me and my counsel that I am not authorized to attach or file the Wisconsin Government Accountability Board Agreement for Special Investigator 2013-2014 ("Agreement"), discussed in paragraph 7 of this declaration, in the above-captioned lawsuit. They have authorized the in camera review of the Agreement by the Court, if my contractual relationship with the GAB is challenged by the Plaintiffs.

28. Since March 12, 2014, counsel for the GAB has clarified that I can also cite to and quote from materials from the John Doe Proceedings that have been filed in the above-captioned lawsuit by the other Defendants who are not subject to Wisconsin Statute § 5.05(5s) and § 12.13(5). Counsel for the GAB has also authorized me to use the affidavits described in paragraphs 29-32 of this declaration.

29. Attached hereto as Exhibit B is a true and correct copy of Robert Stelter's August 10, 2012, Affidavit in Support of Petition for Commencement of a John Doe Proceeding.
[FILED UNDER SEAL]

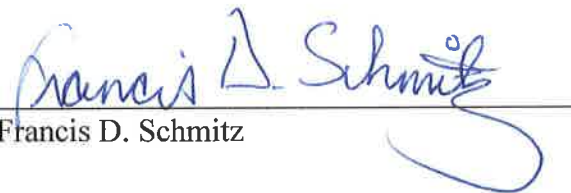
30. Attached hereto as Exhibit C is a true and correct copy of Robert Stelter's December 10, 2012, Affidavit in Support of a Request for Search Warrants and Subpoenas.
[FILED UNDER SEAL]

31. Attached hereto as Exhibit D is a true and correct copy of Dean Nickel's September 28, 2013, Affidavit in Support of a Request for Search Warrants. [FILED UNDER SEAL]

32. Attached hereto as Exhibit E is a true and correct copy of Robert Stelter's September 30, 2013, Affidavit in Support of a Request for Subpoenas. [FILED UNDER SEAL]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15, 2014.


Francis D. Schmitz