



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

October 19, 2016

Wisconsin Ethics Commission
212 East Washington Avenue
PO Box 7984
Madison, WI 53707-7984

Wisconsin Ethics Commission Members:

We write this letter to request you investigate serious allegations raised in recently released documents. Pursuant to Wis. Stat. § 19.49(2)(b)1, the Ethics Commission has the authority to investigate.

Over 1,300 pages of recently released documents by *The Guardian* appear to demonstrate that between approximately 2011 and 2013, Governor Scott Walker, his campaign committee Friends of Scott Walker (FOSW), and various corporations may have engaged in criminal conduct by violating Wisconsin's long-standing ban on accepting corporate monies, ethics laws and prohibitions against misconduct in public office. Specifically, these documents reveal that Governor Scott Walker may have broken various laws in existence at the time by soliciting and accepting corporate monies through a dark money organization, Wisconsin Club for Growth (WCFG), which he coordinated with and controlled, for the purposes of his re-election and the re-election of several Republican Senators.¹ Further, it appears that the corporations that contributed and/or accepted these monies, including WCFG, violated Wisconsin's long-standing ban on direct and indirect corporate donations to candidates, candidate committees and other entities as set forth in Wis. Stat. § 11.38 during this time period.

These potential crimes have not previously been raised or considered during the various John Doe proceedings about these issues.

Due to the gravity of this conduct, and the significant public interest at stake in ensuring transparency and fairness in our elections, we respectfully request that you investigate this potential criminal conduct. The details of the potential laws violated and criminal conduct engaged in are set forth below.

I. Walker likely violated Wis. Stat. § 11.38(1)(b), the corporate contribution ban

¹ It should be noted that Dane County is the appropriate venue for charges to be brought because Wisconsin Club for Growth is incorporated in Sun Prairie, Governor Walker's campaign receives mail in Middleton, and Governor Walker resides in Madison.

Wisconsin has had a long history of banning direct and indirect corporate contributions and disbursements to candidates and candidate committees. Wis. Stat. § 11.38(1)(a)1. This ban on candidates and candidate committees accepting corporate money, directly and indirectly, has never been struck down by any court, was in place during the conduct in question, and exists today.²

At the time of these occurrences, political parties, committees, and candidates were prohibited from accepting “any contribution or disbursement made to or on behalf of such individual or entity which is prohibited by this section.” Wis. Stat. § 11.38(1)(b). A contribution is received by a candidate “when it is under the control of the candidate or campaign treasurer” or the candidate or treasurer accepts the benefit thereof. Wis. Stat. § 11.06(4)(a). Further, any committee that “is organized or acts with the cooperation of or upon consultation with a candidate or agent or authorized committee of a candidate” is deemed a subcommittee of the candidate’s campaign committee, and therefore must abide by the same rules as the candidate’s committee. *Id.*, Wis. Stat. § 11.10(4).

It appears from the documents released that Governor Walker and/or his campaign committee violated these laws by basically accepting corporate monies through WCFG, an entity they apparently coordinated with and controlled. The conduct of Governor Walker and FOSW campaign staff clearly indicate that the secret, unlimited corporate contributions he solicited for and directed to WCFG were valuable to him and central to his re-election efforts. Governor Walker’s intention, as set forth in an April, 2011 email from his fundraising consultant, was to have all ads “run thru one group to ensure correct messaging . . . The Governor is encouraging all to invest in the Wisconsin Club for Growth [which] can accept Corporate and Personal donations without limitations and no donors disclosure.”³ It was functionally as if, because of the close coordination between Walker, FOSW, and WCFG, these contributions were being made to Walker personally and/or to his campaign committee.

As a result of this scheme, it appears WCFG did not operate independently from Scott Walker and FOSW, but as a subcommittee controlled by Governor Walker and FOSW. WCFG was run by Walker’s top political adviser, R.J. Johnson, and other key staff members appear to have directed both entities. For example, fundraising consultant Kate Doner, though employed by FOSW, appears to have raised money for both FOSW and WCFG.⁴ Talking points prepared by Doner in June, 2011 instructed Walker to ask for donations to “*your 501c4*” (emphasis added). In May, 2011, Doner instructs Walker to ask the Clear Channel’s Lowry Mays, “Would he give \$250K to your 501c4. Let him know that you can accept corporate contributions and it is not reported.”⁵ Walker also asked campaign staffers and Johnson “did I

² Though Wisconsin’s strong campaign finance laws favoring disclosure and transparency have been largely eroded by Governor Walker and legislative Republicans this session, Wisconsin’s corporate money ban still forbids corporations from directly contributing to candidates or candidate committees. See 2015 Wisconsin Act 117.

³ See attached documents.

⁴ *Schmitz Affidavit*, (December, 2013).

⁵ Instances of Governor Walker soliciting and receiving corporate contributions to WCFG were reported on by the Center for Media and Democracy. A copy of their article *Scott Walker John Doe: Corporate Checks Fueled Coordinated Campaign* is attached.

send out thank you notes to all of our c(4) donors?”⁶ Despite efforts to cloak their actions, Governor Walker and his staff clearly thought of WCFG as an extension of the Walker campaign efforts.

Governor Walker seemingly intended to use WCFG as his own personal campaign committee to evade campaign finance rules in order to solicit unlimited, secret corporate donations to help in his re-election and the re-election of Republican senators. Correspondence reveals that he specifically targeted corporations for contributions to WCFG. In a September 7, 2011 correspondence, Doner instructs Governor Walker to “Get on a plane to Vegas and sit down with Sheldon Adelson. Ask for \$1 million now. Corporations. Go heavy after them to give.”

Documents released also show that corporate money flowed to WCFG in many instances because Scott Walker asked, including a \$500,000 corporate check from Contran Corporation (the parent or holding company of NL Industries) to WCFG on April 21, 2011, \$930,000 in corporate dollars from Gogebic Taconite,⁷ and \$35,000 from Texas EZPawn, LLP,⁸ to name a few. In June, 2011, emails show that Governor Walker had dinner with the CEO of the largest privately owned trucking company in the United States, Schneider National, in the hope of getting him and his peers to donate \$250,000 to WCFG. Shortly thereafter, Schneider National gave \$65,000 between 2011 and 2012 to WCFG. Menards, Inc. also gave \$2 million corporate dollars to WCFG. Governor Walker reports in a June 14, 2011 email to his campaign fundraiser that “I got \$1 million from John Menard today.”

No court decision in these John Doe proceedings has addressed the issue of Wisconsin’s corporate contribution ban, and it does not appear to have been raised by any of the parties in these proceedings. On the contrary, there is ample history and evidence that both Wisconsin law and an established series of U.S. Supreme Court decisions have treated corporate political contributions quite differently from personal donations. *See, e.g. FEC v. Beaumont*, 539 U.S. 146 (2003).

Even if the corporate ban was interpreted to apply only to corporate advertisements containing express advocacy or its functional equivalent, it appears that WCFG, in coordination with Governor Walker and FOSW, was engaged in the functional equivalent of express advocacy. Even under this scenario, the corporate money accepted by WCFG should also be subject to the corporate ban.⁹

Candidates and candidate committees that violate Wisconsin’s corporate ban on accepting corporate contributions are subject to serious consequences, including forfeiture of the candidate’s right to office and felony penalties. This is because the corrupting nature of such activities threaten the very heart of

⁶ *Id.*

⁷ *See* Petition for Writ of Certiorari, *Chisholm v. Two Unnamed Petitioners* at 8.

⁸ Select documents showing corporate contact with Walker followed by a check to WCFG are attached.

⁹ *See* the Center for Media and Democracy’s article, *Leaked Documents Show Court’s Dismissal of the John Doe Was Based on a False Premise* for analysis (attached). *See also Citizens United*, 558 U.S. at 7-9, where the court held that the Hillary Clinton film at issue is the functional equivalent of express advocacy, as there was “no reasonable interpretation other than as an appeal to vote for or against a specific candidate.”

Wisconsin's campaign finance system as it existed at the time, which was to "serve the public purpose of stimulating vigorous campaigns on a fair and equal basis and to provide for a better informed electorate." Wis. Stat. Sec. 11.001 (1) (2011-12). It is therefore imperative that these allegations be investigated.

II. Corporations that gave money to WCFG, and WCFG's acceptance of corporate money, likely violated Wisconsin's corporate contribution ban

Wisconsin law also prohibits corporations from making contributions or disbursements, either directly or indirectly, to candidates or committees, in addition to groups and individuals. Wis. Stat. §11.38(1)(a)1. Over the years, various federal courts have imposed limitations on the corporate disbursement ban set forth in federal law and in Wis. Stat. §(1)(a)1. In *Citizens United v. FEC*, 558 U.S. 310 (2010), the United States Supreme Court struck down a federal ban on corporate independent expenditures as violating the First Amendment of the U.S. Constitution. The Court stated that "By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate." *Id.* at 360, citing *Buckley v. Valeo*, 424 U.S. 1, 46 (1976). In striking down this ban on corporate independent expenditures, the Court reasoned that "[t]he absence of prearrangement and coordination alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." *Id.*, citing *Buckley*, 424 U.S. at 47. The 7th Circuit Court of Appeals adopted this analysis in enjoining the enforcement of Wisconsin's corporate disbursement ban in *Wisconsin Right to Life v. Barland*, 751 F.3d 804 (2014).¹⁰

What the recently revealed documents show is that WCFG did not intend for the corporate contributions it received to be independent from Scott Walker and FOSW as defined by *Buckley* and *Citizens United*. As revealed by the documents and as set forth above, the behavior of Scott Walker, individuals working for FOSW, and those working for WCFG, clearly indicate they intended to coordinate their campaign efforts. WCFG therefore likely violated this ban because it acted in coordination with, and appears to be controlled by, Governor Walker and/or FOSW. We do not believe that WCFG returned or donated these funds that violated the corporate monies ban as is required by Wis. Stat. § 11.38(6).

Further, the corporations that gave these monies to WCFG who were solicited by Scott Walker or other members of his campaign team also violated the ban on corporate contributions, as they knew (as indicated on the memo portion of checks to WCFG that said "because Scott Walker asked," "501c4-Walker," "For Governor Walker's Recall Election," "per Governor Walker")¹¹ or should have known that Scott Walker and/or FOSW were controlling these monies. Corporations that violate Wis. Stat. § 11.38(1) are subject to serious criminal penalties, including a Class I Felony and treble damages. Wis. Stat. § 11.61(1)(b); Wis. Stat. § 11.60(3). These potential serious violations must be investigated.

¹⁰ OAG-05-10 (August 9, 2010).

¹¹ A copy of their article *Scott Walker John Doe: Corporate Checks Fueled Coordinated Campaign* is attached.

III. Governor Walker may have engaged in a *quid pro quo* scheme in violation of Wisconsin statutes

As specifically recognized by the Wisconsin legislature in Wis. Stat. Sec. 11.001(1), “. . . when a candidate becomes overly dependent upon large private contributors, the democratic process is subjected to potential corrupting influence.” Corporate money coming to a candidate or to a campaign committee or corporate money secretly coordinated and controlled by a candidate, encourages *quid pro quo* corruption.¹² The documents recently released strongly suggest that indeed, corporations that gave significant donations got significant legislative favors in close proximity to their donations, indicating that a pay-for-play system may have been in place.

Governor Walker’s seeming coordination and control of WCFG, and his apparent solicitation and direction of secret, unlimited corporate money for his re-election and the re-election efforts of several Republican Senators, may have violated Wis. Stat. Sec. 946.12(3), misconduct in public office. The pertinent portion of the statute states that a public officer or public employee is guilty of a Class I felony if the officer, “by act of commission or omission . . . exercises a discretionary power in a manner inconsistent with the duties of the officer’s or employee’s office or employment or the rights of others and with intent to obtain a dishonest advantage for the officer or employee or another.” In ascertaining the duty of a public official, Courts look at various standards, including the Code of Ethics for Public Officials set forth in Wisconsin at the time of this alleged conduct, Wis. Stat. §§ 19.45 and 19.46. See *State v. Jensen*, 2004 WI App 89, ¶¶ 17-20.

The policy declaration preceding the Code of Ethics for Public Officials states, “It is declared that high moral and ethical standards among state public officials and state employees are essential to the conduct of free government.” Wis. Stat. § 19.41(1).

The released documents reveal a pattern of behavior in which Governor Walker met with big corporate donors and encouraged them to contribute unlimited, secret money through WCFG, that he coordinated with in his re-election efforts and efforts made on behalf of several Republican senators. In close proximity to the checks flowing, many corporate contributors appeared to receive significant legislative favors. Bank records show that Gogebic Taconite contributed at least \$930,000 to WCFG in 2011. In close proximity, Gogebic Taconite successfully lobbied the legislature to re-write its mining laws, allowing the company to open a mine in northern Wisconsin. In fact, Senate Majority leader Scott Fitzgerald conceded that Gogebic Taconite actually wrote the mining bill.¹³

Additional bank records show that the owner of NL Industries, a commercial lead pigment corporation, donated \$500,000 in corporate funds through Contran Corporation, which he also owned, and \$250,000

¹² *Citizens United*, *supra*, at 360.

¹³ See <https://youtube/IfUX0bkCbyg>.

in personal funds to WCFG in close proximity to two corporate immunity bills being passed by the Wisconsin legislature.

Governor Walker's conduct in using his position for the financial benefit of WCFG, a group in which he had an interest and controlled, also appears to have violated important ethics regulations set forth in Wis. Stat. § 19.45(2) and § 19.46(1)(a) and (b) at the time of these occurrences. These provisions essentially prohibit a state public official from using his position in a way that he, his family, or an organization in which he is associated benefits.

Clearly, Governor Walker had a strong association with the WCFG. He leveraged his capacity as Governor to drive donors to help him defeat a recall by donating to WCFG, benefiting that organization and ultimately, himself in violation of his ethical obligations. Governor Walker and legislative Republicans then re-wrote Wisconsin campaign finance laws during the 2015-16 legislative session to legalize much of their likely illegal conduct. Misconduct in office is a Class I Felony. This situation and the possibility of corruption should be thoroughly investigated to preserve the public interest in our government.

IV. Governor Walker's threat to District Attorneys may have violated WI law and ethical standards

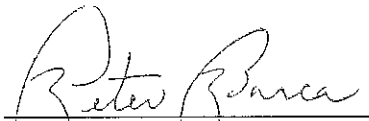
On September 22, 2016, Governor Walker issued a thinly veiled threat aimed at Wisconsin district attorneys. Governor Walker questioned the need for resources in the Milwaukee County DA's office if District Attorney John Chisholm continued an investigation into possible corruption and illegal conduct by Governor Walker or the other individuals and entities previously investigated by the John Doe investigations.

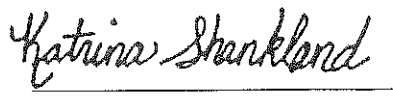
It appears that Governor Walker used his office to send a message to district attorneys that they should not further investigate his potential criminal conduct or that of others who were the subject of the John Doe proceedings at the risk of losing critical funding. Wis. Stat. § 19.45(13) prohibits state public officials from promising or refraining to take official action, such as funding district attorney positions. Any person who intentionally violates Wis. Stat. § 19.45(13) is guilty of a Class I Felony. Wis. Stat. § 19.58. Furthermore, it may constitute prohibited conduct under Wis. Stat. § 943.30(4).

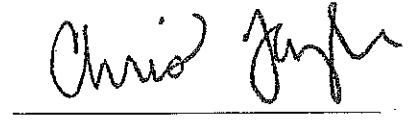
Threats by Governor Walker to retaliate and not fully staff Wisconsin's district attorney offices if they initiate a valid criminal investigation is not an appropriate or lawful use of the Governor's office and should be investigated.


These serious allegations, and potential violations of Wisconsin statutes, require an immediate, thorough response. We sincerely hope that you will investigate these possible crimes to protect the public interest in a government that is free of corruption.


We look forward to your response.

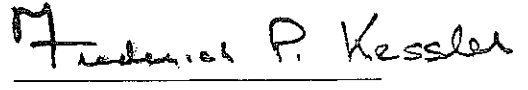

Rep. Peter Barca


Rep. Katrina Shankland

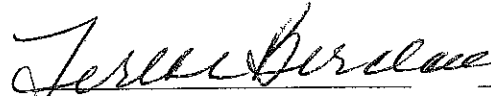

Rep. Chris Taylor

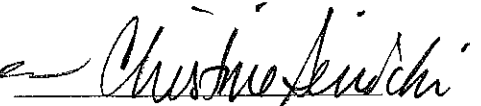

Rep. Dana Wachs

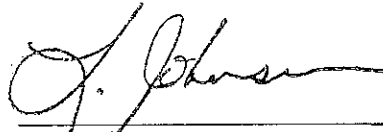

Rep. Mark Spreitzer

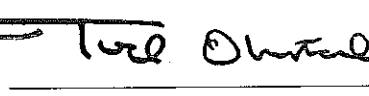

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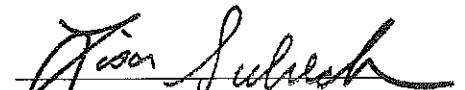

Rep. Gary Hebl



Rep. Terese Berceau



Rep. Christine Sinicki

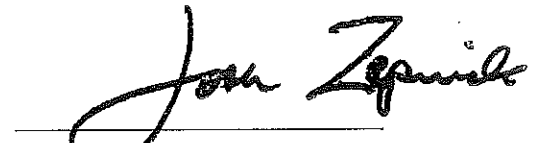

Rep. LaTonya Johnson

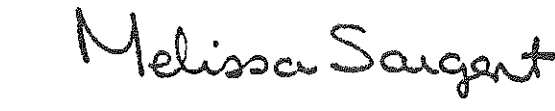

Rep. Tod Ohnstad



Rep. Lisa Subeck


Rep. Jonathan Brostoff


Rep. Sondy Pope


Rep. Josh Zepnick


Rep. Melissa Sargent


Rep. JoCasta Zamarripa