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Note – This column is submitted by Senator Van Wanggaard for your consideration to print.

John Doe Law Reforms Needed to Protect Everyone

Wisconsin's John Doe laws are a very powerful investigatory tool. John Doe investigations are by definition secretive, and can be far-reaching. They are open-ended and can be used to investigate any crime. The right to free speech and right to counsel are limited. In its review of the recent John Doe investigation, the Seventh Circuit Court of Appeals raised constitutional concerns about the process.

As a former police officer and investigator, I have participated in and used Wisconsin's John Doe laws to solve crimes. With this first-hand experience, I can honestly say that I probably have more familiarity with the John Doe process than any other legislator. While some argue that concerns with the John Doe require it be abolished, I disagree. This is a powerful tool that can be used to solve crimes that might otherwise go unsolved and needs to be preserved. However, recent abuses of the law clearly show that the process can, and should, be improved to protect constitutional rights.

The most obvious constitutional issue with John Does involves the secrecy, which also raised the eyebrows of the 7th Circuit judges. Of course, it's easier to get information by telling someone not to say anything and promising secrecy when you're seeking information. Add the threat of jail or contempt of court, and it's not only more effective, it's intimidating. But the First Amendment right to speech, especially speaking to defend yourself, or about our government, needs to have the highest protection. A person should be able to defend him or herself against government allegations. It's their fundamental right. That's why the John Doe reform bill (SB 43) that my colleagues and I have presented places no limits on witnesses to a John Doe proceeding – only district attorneys and court personnel are subject to secrecy – much like every lawyer's duty of confidentiality.

A person's Sixth Amendment rights, which protect the rights of defendants, are just as important. The recent John Doe was ongoing for two years, sprung from a John Doe that was in effect for three years. Five years of secrecy is difficult to justify as the "speedy and public trial" guaranteed by the Constitution. That's why SB 43 places a six month limit on John Doe investigations. If more time is needed, it can be granted by a majority of chief judges in the state. Under the bill, the chief judges can also approve changes in the investigatory scope of a John Doe. The oversight of statewide chief judges should also ensure impartiality, another Sixth Amendment guarantee.

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Of course, over five years, an investigation can take many turns and go down many roads. What starts as a murder or drug investigation could wind up charging shoplifting. Clearly, these crimes are vastly different. Senate Bill 43 addresses this by allowing John Doe investigations for only the most serious crimes – most Class A through D felonies, and selected other felonies where it is arguably necessary. Combined with the oversight from the chief judges, these changes prevent fishing expeditions and misuse of the John Doe tool.

The recent John Doe in Milwaukee is a prime example of misuse. In addition to the First and Sixth Amendment rights being limited, there were questionable actions regarding other constitutional rights, as well. The First Amendment rights to speak, to peaceably assemble and associate, and the right to petition the government were the “crimes” being investigated. The Doe was led by a partisan attorney with a personal cause to investigate. He did so over five years, denying suspects their Sixth Amendment right to impartial justice and speedy trials. Military style tactics, seizure of family photographs, and children’s computers violated the protection against unreasonable search and seizure in the Fourth Amendment. Someone was temporarily jailed, allegedly for exercising their Fifth Amendment right against self-incrimination. And, children were denied the ability to call their parents or an attorney.

Regardless of one’s politics, this is something to be condemned, not praised. Ask yourself, honestly, what reasonable person would think that a five-year John Doe investigation that violated the First, Fourth, Fifth and Sixth Amendments doesn’t need reform? It’s difficult to justify unless you’re motivated by partisan politics. And that’s where a lot of the opposition comes from – partisanship. Opponents claim the bill kills John Doe investigations and will lead to corruption.

But the truth is, Senate Bill 43 doesn’t end John Doe investigations- not even the one in Milwaukee. The Supreme Court ended the Milwaukee investigation, along with most state and federal judges that reviewed it. The allegations could have been investigated through any number of other tools, not just the John Doe. But prosecutors chose the one tool that prevented people from defending themselves. John Doe investigations are an extraordinary tool that should be used to investigate extraordinary crimes. That’s why we protected John Doe laws, and strengthened the process with additional constitutional protections.

With great power comes great responsibility. Senate Bill 43 preserves the John Doe process while making it more responsible by protecting constitutional rights. Constitutional rights aren’t partisan – and protecting them shouldn’t be either.

Senator Van Wanggaard represents the 21st Senate District, consisting of Racine and Kenosha Counties. He is the chair of the Senate Committee on Judiciary and Public Safety. Wanggaard spent almost 30 years as a police officer with the Racine Police Department prior to serving in elective office.

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