



WISCONSIN LEGISLATURE

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Transparency in John Doe Investigations a Must By Senators Tom Tiffany (R-Hazelhurst) and Van Wanggaard (R-Racine)

John Doe investigations are, by definition, secret. In an era when candidates for office and the public are rightly demanding more transparency into government affairs, John Doe investigations seal away information about potential government corruption, and potential government overreach. That flies in the face of Wisconsin's tradition of open government.

When the Federal Court of Appeals reviewed the 5-year long John Doe investigation into political activities, they were perplexed by Wisconsin's unique law. They questioned the constitutionality of a secret investigation that denies a person the right to defend him or herself, as well as free speech limits inherent in a John Doe Investigation.

But we know that John Doe investigations can be a powerful tool to solve otherwise unsolvable crimes. Our bill addresses the constitutional concerns that the Court of Appeals raised, and enhances oversight of John Doe investigations. Instead of never-ending investigations, our bill guarantees a speedy trial by requiring periodic review after 6 months by the chief judges of the state. Instead of demanding secrecy from third parties, witnesses and subjects of John Does, our bill guarantees them the freedom to speak. If someone feels unfairly targeted, they should be free to say so, not threatened with jail.

It's only because someone broke the law and leaked to the press about the John Doe investigation into the recalls that we knew about it. If a politician is under investigation, you should know about it. It's only because someone broke the law and leaked to the press that we knew about the abuses that occurred. But we shouldn't have to rely on people breaking the law to learn that someone's constitutional rights are being violated, or that a politician is being investigated.

The public has a right to know what is happening with his or her elected officials. Many people made that clear with the open records changes that were proposed earlier this year. The same is true for John Doe investigations. A person isn't any more or less entitled to secrecy in an investigation just because they are a public official. They should have the same protections and risks as anyone else under investigation.

That is true under our John Doe bill. Our bill doesn't single out a class of person for John Doe treatment. If you commit a John Doe-eligible crime, the John Doe process can be used to investigate. All Class A through D felonies qualify for John Doe treatment under our bill, as well

as felonies involving conspiracies and harm against a person. Anyone accused of one of these crimes – from President Obama and Governor Walker to the average Joe may be subject to a John Doe investigation if a certain crime is committed.

For other crimes, the usual tools are available, and they are numerous. A police investigation can investigate any crime and is usually highly effective. The district attorney can do investigations as well. A citizen can make a direct appeal to a judge to charge a crime. Some have claimed that only John Doe investigations can be used for political crimes. But, many political corruption crimes in Milwaukee were investigated and charged using a federal grand jury – a process which landed several elected officials, including a state senator, in jail in the early 2000's. Wisconsin's grand jury system, which is an investigation by a jury of peers, not a partisan district attorney, would work as well. But it's prosecutorial discretion, not investigatory methods, that usually drives which crimes are or are not charged.

There's nothing controversial about any of this. The changes that we are seeking to the John Doe process should have universal support. We've had more than one Democrat tell us behind closed doors that they agreed with the bill, but couldn't support it for partisan reasons. That's disappointing.

Treating everyone equally and fairly is a fundamental principle of our society. Protecting constitutional rights is something every legislator has sworn an oath to do. The First Amendment right to speech is first for a reason. We shouldn't have to rely on someone breaking the law to find out an elected official is under investigation, and everyone has a right to defend him or herself. We can and do demand transparency – not secrecy - from our elected officials and district attorneys. These are not partisan or political issues. And neither is our John Doe reform bill.

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