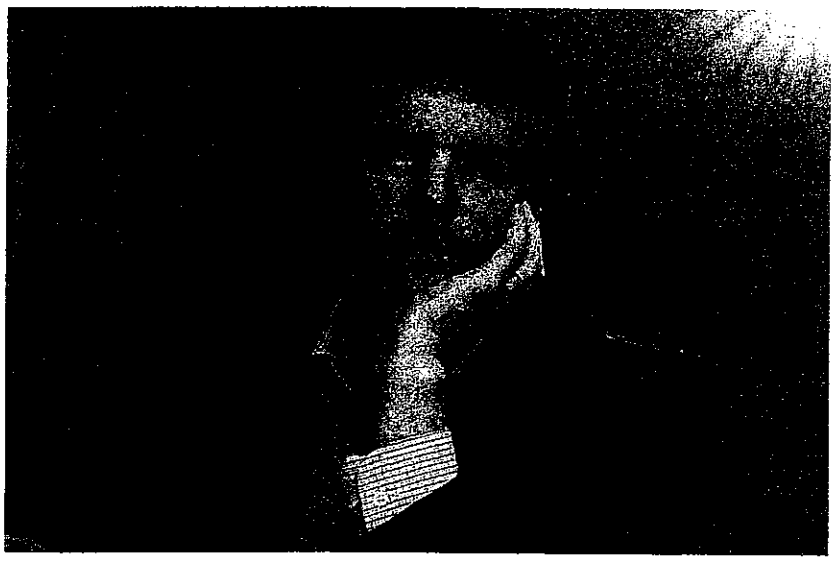
HANDOUT 2

THE WALL STREET JOURNAL.

OPINION | COMMENTARY

The Wisconsin Targets Tell Their Story

After victory in court, conservative activists talk on the record for the first time about their 21-month ordeal.



Wisconsin Club for Growth Director Eric O'Keefe. *PHOTO: MIRIAM SUSHMAN/FOR THE WASHINGTON POST VIA GETTY IMAGES*

By **COLLIN LEVY**

July 22, 2015 7:46 p.m. ET

The John Doe investigation of Wisconsin conservatives collapsed last week with a powerful decision from the Wisconsin Supreme Court that called state prosecutors' theory of campaign-finance law "unconstitutional" and "unsupported in either reason or law." But the legal exoneration shouldn't pass without noting the hardship the secret probe imposed on its targets and on political debate in Wisconsin.

For the past few days, I've been talking to the targets of the task force of Milwaukee Democratic prosecutors, the Wisconsin Government Accountability Board and Special Prosecutor Francis Schmitz. Their experiences, on the record here for the first time, reveal the nasty political sweep of an investigation that invaded privacy with surveillance of email accounts, raided homes with armed law enforcement, and swarmed individuals with subpoenas demanding tens of thousands of documents while insisting on secrecy.

One target did speak up in public in real time— Eric O'Keefe, who went on the record in limited ways with me not long after he was subpoenaed in October 2013 as part of the prosecutors' investigation of conservative speech during the Wisconsin recall elections. The director of the Wisconsin Club for Growth knew that violating the gag order put him at personal risk, but he told me then that he had to fight because it was an assault on basic constitutional freedoms and "we have done nothing illegal." A Journal editorial exposed the extent and dubious legal basis of the Doe investigation for the first time.

As the legal challenges went on in state and federal court, Mr. O'Keefe's disclosures to us made him a bull's-eye for prosecutors and local media. "I did not want to see the inside of a jail cell," Mr. O'Keefe says, but "I didn't want to shirk my duty to confront tyrannical behavior."

In a Jan. 24, 2014, filing with John Doe Judge Gregory Peterson, Special Prosecutor Schmitz wrote that "the Wisconsin Club for Growth (hereafter WiCFG), acting through Eric O'Keefe, has demonstrated contempt for the John Doe process, secrecy order, and Wisconsin legal system." The filing added that Mr. O'Keefe had "disclosed the existence of his subpoena and the fact that search warrants were executed," and included footnotes to our editorials as evidence.

Now the 60-year-old Mr. O'Keefe is willing to provide more details about his decision. He says he talked it over with his children, and he and his wife, Leslie, discussed "how she should operate if I was arrested for contempt of court." The maximum penalty in Wisconsin is a $10,000 fine and one year in jail. "She asked if she could bail me out of

jail. My position was 'no.' "

The prosecutors were especially interested in Mr. O'Keefe's correspondence with R.J. Johnson and Deborah Jordahl, political consultants who had worked with Wisconsin Gov. Scott Walker. Mr. Johnson was on a plane when the raids happened, and his 16-year-old son woke up at home to find six law-enforcement agents with guns and a warrant. "He was told he couldn't move, that he couldn't call a lawyer, that he couldn't call his parents. He was a minor and he was isolated by law enforcement," Mr. Johnson says.

"My first reaction was incomprehension. We were baffled. We had no idea what this was about or that this is what they do over campaign finance issues. . . . It wasn't until much later that we even began to understand that it was connected to the first Doe [investigation]."

Mr. Johnson now knows that prosecutors had been tracking him since 2011 during the first John Doe probe, which began as an investigation of money stolen from a veterans group when Mr. Walker was still the Milwaukee county executive. In 2011, Mr. Johnson was called in for an interview connected to the investigation, though he was officially not a target at the time.

John Doe Judge Neal Nettesheim compelled Mr. Johnson's attorney to disclose what emails they had reviewed together and told him that attorney-client privilege didn't apply. "When we sat down for our interview, I was told my attorney couldn't speak, couldn't object. I was asked how does my business operate, who are my contacts, how do I make money, what are my percentages, who are my clients? If I didn't answer I would be in contempt."

At the end of that conversation, Milwaukee Assistant District Attorney Bruce Landgraf asked a question, Mr. Johnson recalls: " 'Is there any reason at the end of the campaign you deleted all of your emails?' So I knew then I had been tracked all the way through, that they had been reading my emails. . . . They knew what they were looking for all along, but I didn't know anything again until they showed up at my door."

Once news of the subpoenas was leaked to the Milwaukee Journal Sentinel, a favorite venue for prosecutors, his business was in the cross hairs. While many of his longtime contacts were supportive, Mr. Johnson says, some business calls went unreturned, and he had to pass up an opportunity in another state because he could have been a liability for the clients. "Even if they hadn't heard about the Doe" investigation, he says, "it would have been unethical for me to bring them in blind. So I had to turn down business on that account."

His business partner, Deborah Jordahl, says that while her own home was being searched and her children were roused in the dark by law enforcement, prosecutors were searching her office without her knowledge. "Earlier this year I learned . . . David Budde, the lead investigator for Milwaukee County District Attorney John Chisholm, was searching our office in Madison. My partner and I were never notified of the search of our office," Ms. Jordahl says, "and the prosecutors never provided us with a copy of the warrant or an inventory of what was taken." (Mr. Budde did not respond to a request for comment.)

Meantime, she says, "my business partner and I had to figure out how to function without our equipment or records, and without the ability to disclose our situation to anyone. . . . You live under a cloud of suspicion."

Ms. Jordahl says prosecutors have deliberately misled the media about their involvement with the raids and how the search warrants were executed while denying her the right to call her attorney. "[Milwaukee District Attorney John] Chisholm denied any direct involvement in the raids through his attorney but his investigators led the searches at each site," Ms. Jordahl says, adding that Special Prosecutor Schmitz "lied when he said we were not told we could not call a lawyer."

The subpoenas that hit Wisconsin Manufacturers and Commerce demanded so much information that the group hired a forensics team to copy it from computers. "They had absolutely unlimited resources," says the group's president, Kurt Bauer, of the prosecutors, "and I think part of the goal all along was to chill our fundraising and keep us off the airwaves. So the money and time we had to spend defending ourselves was money and time that we couldn't spend toward issue advocacy."

He adds: "I've been in or around politics for two decades and I would have thought this happens in other countries but not the U.S., and not in Wisconsin. In this country, we don't leverage the justice system to punish our political opponents."

In all, the prosecutors' pursuit of their mistaken legal theory of campaign coordination included more than two dozen subpoenas. It also used subpoenas of Internet search providers and raids on the homes of Ms. Jordahl, Mr. Johnson, former Walker aide Kelly Rindfleisch and former Walker Chief of Staff Keith Gilkes, who now runs a super PAC supporting Mr. Walker's presidential campaign.

'They were spying on people who were making it tough for them to retain their hold on state government," Mr. O'Keefe says. "People often ask, 'What were they investigating?' That's the wrong question. It wasn't the *what*, it was the *who*."

And the "who" happened to be political allies of Scott Walker, who was a political opponent of Messrs. Chisholm and Landgraf. While this story has a happy ending, it still required years of legal expense to fight back and expose the prosecutorial abuses. The targets have been vindicated, but a reckoning for prosecutors and the abusive John Doe machinery is still in order.

Ms. Levy is the Journal's lead editorial writer on the Wisconsin John Doe investigation and campaign-finance law.

NATIONAL REVIEW

Wisconsin's Shame: 'I Thought It Was a Home Invasion'

From the May 4, 2015, issue of NR

By David French — April 20, 2015

'THEY CAME WITH A BATTERING RAM."

Cindy Archer, one of the lead architects of Wisconsin's Act 10 — also called the "Wisconsin Budget Repair Bill," it limited public-employee benefits and altered collective-bargaining rules for public-employee unions — was jolted awake by yelling, loud pounding at the door, and her dogs' frantic barking. The entire house — the windows and walls — was shaking.

She looked outside to see up to a dozen police officers, yelling to open the door. They were carrying a battering ram.

VIDEO: David French Discusses 'Wisconsin's Shame'

She wasn't dressed, but she started to run toward the door, her body in full view of the police. Some yelled at her to grab some clothes, others yelled for her to open the door.

"I was so afraid," she says. "I did not know what to do." She grabbed some clothes, opened the door, and dressed right in front of the police. The dogs were still frantic.

"I begged and begged, 'Please don't shoot my dogs, please don't shoot my dogs, just don't shoot my dogs.' I couldn't get them to stop barking, and I couldn't get them outside quick enough. I saw a gun and barking dogs. I was scared and knew this was a bad mix."

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She got the dogs safely out of the house, just as multiple armed agents rushed inside.

Some even barged into the bathroom, where her partner was in the shower. The officer or agent in charge demanded that Cindy sit on the couch, but she wanted to get up and get a cup of coffee.

"I told him this was my house and I could do what I wanted." Wrong thing to say. "This made the agent in charge furious. He towered over me with his finger in my face and yelled like a drill sergeant that I either do it his way or he would handcuff me."

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They wouldn't let her speak to a lawyer. She looked outside and saw a person who appeared to be a reporter. Someone had tipped him off.

The neighbors started to come outside, curious at the commotion, and all the while the police searched her house, making a mess, and — according to Cindy — leaving her "dead mother's belongings strewn across the basement floor in a most disrespectful way."

Then they left, carrying with them only a cellphone and a laptop.

"IT'S A MATTER OF LIFE OR DEATH."

That was the first thought of "Anne" (not her real name). Someone was pounding at her front door. It was early in the morning — very early — and it was the kind of heavy pounding that meant someone was either fleeing from — or bringing — trouble.

"It was so hard. I'd never heard anything like it. I thought someone was dying outside."

She ran to the door, opened it, and then chaos. "People came pouring in. For a second I thought it was a home invasion. It was terrifying. They were yelling and running, into every room in the house. One of the men was in my face, yelling at me over and over and over."

It was indeed a home invasion, but the people who were pouring in were Wisconsin law-enforcement officers. Armed, uniformed police swarmed into the house. Plainclothes investigators cornered her and her newly awakened family. Soon, state officials were seizing the family's personal property, including each person's computer and smartphone, filled with the most intimate family information.

Why were the police at Anne's home? She had no answers. The police were treating them the way they'd seen police treat drug dealers on television.

In fact, TV or movies were their only points of reference, because they weren't criminals. They were law-abiding. They didn't buy or sell drugs. They weren't violent. They weren't a danger to anyone. Yet there were cops — surrounding their house on the outside, swarming the house on the inside. They even taunted the family as if they were mere "perps."

As if the home invasion, the appropriation of private property, and the verbal abuse weren't enough, next came ominous warnings.

Don't call your lawyer.

Don't tell anyone about this raid. Not even your mother, your father, or your closest friends.

The entire neighborhood could see the police around their house, but they had to remain silent. This was not the "right to remain silent" as uttered by every cop on every legal drama on television — the right against self-incrimination. They couldn't mount a public defense if they wanted — or even offer an explanation to family and friends.

Yet no one in this family was a "perp." Instead, like Cindy, they were American citizens guilty of nothing more than exercising their First Amendment rights to support Act 10 and other conservative causes in Wisconsin. Sitting there shocked and terrified, this citizen — who is still too intimidated to speak on the record — kept thinking, "Is this America?"

"THEY FOLLOWED ME TO MY KIDS' ROOMS."

For the family of "Rachel" (not her real name), the ordeal began before dawn — with the same loud, insistent knocking. Still in her pajamas, Rachel answered the door and saw uniformed police, poised to enter her home.

When Rachel asked to wake her children herself, the officer insisted on walking into their rooms. The kids woke to an armed officer, standing near their beds.

The entire family was herded into one room, and there they watched as the police carried

off their personal possessions, including items that had nothing to do with the subject of the search warrant — even her daughter's computer.

And, yes, there were the warnings. Don't call your lawyer. Don't talk to anyone about this. Don't tell your friends. The kids watched — alarmed — as the school bus drove by, with the students inside watching the spectacle of uniformed police surrounding the house, carrying out the family's belongings. Yet they were told they couldn't tell anyone at school.

They, too, had to remain silent.

The mom watched as her entire life was laid open before the police. Her professional files, her personal files, everything. She knew this was all politics. She knew a rogue prosecutor was targeting her for her political beliefs.

And she realized, "Every aspect of my life is in their hands. And they hate me."

Fortunately for her family, the police didn't taunt her or her children. Some of them seemed embarrassed by what they were doing. At the end of the ordeal, one officer looked at the family, still confined to one room, and said, "Some days, I hate my job."

For dozens of conservatives, the years since Scott Walker's first election as governor of Wisconsin transformed the state — known for pro-football championships, good cheese, and a population with a reputation for being unfailingly polite — into a place where conservatives have faced early-morning raids, multi-year secretive criminal investigations, slanderous and selective leaks to sympathetic media, and intrusive electronic snooping.

Yes, Wisconsin, the cradle of the progressive movement and home of the "Wisconsin idea" — the marriage of state governments and state universities to govern through technocratic reform — was giving birth to a new progressive idea, the use of law enforcement as a political instrument, as a weapon to attempt to undo election results, shame opponents, and ruin lives.

RELATED: Scott Walker's Righteous Victory in Wisconsin

Most Americans have never heard of these raids, or of the lengthy criminal investigations of Wisconsin conservatives. For good reason. Bound by comprehensive secrecy orders,

conservatives were left to suffer in silence as leaks ruined their reputations, as neighbors, looking through windows and dismayed at the massive police presence, the lights shining down on targets' homes, wondered, no doubt, What on earth did that family do?

This was the on-the-ground reality of the so-called John Doe investigations, expansive and secret criminal proceedings that directly targeted Wisconsin residents because of their relationship to Scott Walker, their support for Act 10, and their advocacy of conservative reform.

Largely hidden from the public eye, this traumatic process, however, is now heading toward a legal climax, with two key rulings expected in the late spring or early summer. The first ruling, from the Wisconsin supreme court, could halt the investigations for good, in part by declaring that the "misconduct" being investigated isn't misconduct at all but the simple exercise of First Amendment rights.

RELATED: Politicized Prosecution Run Amok in Wisconsin

The second ruling, from the United States Supreme Court, could grant review on a federal lawsuit brought by Wisconsin political activist Eric O'Keefe and the Wisconsin Club for Growth, the first conservatives to challenge the investigations head-on. If the Court grants review, it could not only halt the investigations but also begin the process of holding accountable those public officials who have so abused their powers.

But no matter the outcome of these court hearings, the damage has been done. In the words of Mr. O'Keefe, "The process is the punishment."

It all began innocently enough. In 2009, officials from the office of the Milwaukee County executive contacted the office of the Milwaukee district attorney, headed by John Chisholm, to investigate the disappearance of $11,242.24 from the Milwaukee chapter of the Order of the Purple Heart. The matter was routine, with witnesses willing and able to testify against the principal suspect, a man named Kevin Kavanaugh.

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What followed, however, was anything but routine. Chisholm failed to act promptly on the report, and when he did act, he refused to conduct a conventional criminal investigation but instead petitioned, in May 2010, to open a "John Doe" investigation, a proceeding under Wisconsin law that permits Wisconsin officials to conduct extensive

investigations while keeping the target's identity secret (hence the designation "John Doe").

John Doe investigations alter typical criminal procedure in two important ways: First, they remove grand juries from the investigative process, replacing the ordinary citizens of a grand jury with a supervising judge. Second, they can include strict secrecy requirements not just on the prosecution but also on the targets of the investigation. In practice, this means that, while the prosecution cannot make public comments about the investigation, it can take public actions indicating criminal suspicion (such as raiding businesses and homes in full view of the community) while preventing the targets of the raids from defending against or even discussing the prosecution's claims.

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Why would Chisholm seek such broad powers to investigate a year-old embezzlement claim with a known suspect? Because the Milwaukee County executive, Scott Walker, had by that time become the leading Republican candidate for governor. District Attorney Chisholm was a Democrat, a very partisan Democrat.

Almost immediately after opening the John Doe investigation, Chisholm used his expansive powers to embarrass Walker, raiding his county-executive offices within a week. As Mr. O'Keefe and the Wisconsin Club for Growth explained in court filings, the investigation then dramatically expanded:

> Over the next few months, [Chisholm's] investigation of all-things-Walker expanded to include everything from alleged campaign-finance violations to sexual misconduct to alleged public contracting bid-rigging to alleged misuse of county time and property. Between May 5, 2010, and May 3, 2012, the Milwaukee Defendants filed at least eighteen petitions to formally "[e]nlarge" the scope of the John Doe investigation, and each was granted. . . . That amounts to a new formal inquiry every five and a half weeks, on average, for two years.

This expansion coincided with one of the more remarkable state-level political controversies in modern American history – the protest (and passage) of Act 10, followed by the attempted recall of a number of Wisconsin legislators and, ultimately, Governor Walker.

VIDEO: David French Discusses 'Wisconsin's Shame

Political observers will no doubt remember the events in Madison — the state capitol overrun by chanting protesters, Democratic lawmakers fleeing the state to prevent votes on the legislation, and tens of millions of dollars of outside money flowing into the state as Wisconsin became, fundamentally, a proxy fight pitting the union-led Left against the Tea Party–led economic Right.

At the same time that the public protests were raging, so were private — but important — protests in the Chisholm home and workplace. As a former prosecutor told journalist Stuart Taylor, Chisholm's wife was a teachers'-union shop steward who was distraught over Act 10's union reforms. He said Chisholm "felt it was his personal duty" to stop them.

Meanwhile, according to this whistleblower, the district attorney's offices were festooned with the "blue fist" poster of the labor-union movement, indicating that Chisholm's employees were very much invested in the political fight.

In the end, the John Doe proceeding failed in its ultimate aims. It secured convictions for embezzlement (related to the original 2009 complaint), a conviction for sexual misconduct, and a few convictions for minor campaign violations, but Governor Walker was untouched, his reforms were implemented, and he survived his recall election.

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But with another election looming — this time Walker's campaign for reelection — Chisholm wasn't finished. He launched yet another John Doe investigation, "supervised" by Judge Barbara Kluka. Kluka proved to be capable of superhuman efficiency — approving "every petition, subpoena, and search warrant in the case" in a total of one day's work.

If the first series of John Doe investigations was "everything Walker," the second series was "everything conservative," as Chisholm had launched an investigation of not only Walker (again) but the Wisconsin Club for Growth and dozens of other conservative organizations, this time fishing for evidence of allegedly illegal "coordination" between conservative groups and the Walker campaign.

In the second John Doe, Chisholm had no real evidence of wrongdoing. Yes,

conservative groups were active in issue advocacy, but issue advocacy was protected by the First Amendment and did not violate relevant campaign laws. Nonetheless, Chisholm persuaded prosecutors in four other counties to launch their own John Does, with Judge Kluka overseeing all of them.

Empowered by a rubber-stamp judge, partisan investigators ran amok. They subpoenaed and obtained (without the conservative targets' knowledge) massive amounts of electronic data, including virtually all the targets' personal e-mails and other electronic messages from outside e-mail vendors and communications companies.

RELATED: Politicized Prosecution Run Amok in Wisconsin

The investigations exploded into the open with a coordinated series of raids on October 3, 2013. These were home invasions, including those described above. Chisholm's office refused to comment on the raid tactics (or any other aspect of the John Doe investigations), but witness accounts regarding the two John Doe investigations are remarkably similar: early-morning intrusions, police rushing through the house, and stern commands to remain silent and tell no one about what had occurred.

At the same time, the Wisconsin Club for Growth and other conservative organizations received broad subpoenas requiring them to turn over virtually all business records, including "donor information, correspondence with their associates, and all financial information." The subpoenas also contained dire warnings about disclosure of their existence, threatening contempt of court if the targets spoke publicly.

For select conservative families across five counties, this was the terrifying moment — the moment they felt at the mercy of a truly malevolent state.

Speaking both on and off the record, targets reflected on how many layers of Wisconsin government failed their fundamental constitutional duties — the prosecutors who launched the rogue investigations, the judge who gave the abuse judicial sanction, investigators who chose to taunt and intimidate during the raids, and those police who ultimately approved and executed aggressive search tactics on law-abiding, peaceful citizens.

For some of the families, the trauma of the raids, combined with the stress and anxiety of lengthy criminal investigations, has led to serious emotional repercussions.

"Devastating" is how Anne describes the impact on her family. "Life-changing," she says. "All in terrible ways."

O'Keefe, who has been in contact with multiple targeted families, says, "Every family I know of that endured a home raid has been shaken to its core, and the fate of marriages and families still hangs in the balance in some cases."

Anne also describes a new fear of the police: "I used to support the police, to believe they were here to protect us. Now, when I see an officer, I'll cross the street. I'm afraid of them. I know what they're capable of."

Cindy says, "I lock my doors and I close my shades. I don't answer the door unless I am expecting someone. My heart races when I see a police car sitting in front of my house or following me in the car. The raid was so public. I've been harassed. My house has been vandalized. [She did not identify suspects.] I no longer feel safe, and I don't think I ever will."

Rachel talks about the effect on her children. "I tried to create a home where the kids always feel safe. Now they know they're not. They know men with guns can come in their house, and there's nothing we can do." Every knock on the door brings anxiety. Every call to the house is screened. In the back of her mind is a single, unsettling thought: These people will never stop.

Victims of trauma — and every person I spoke with described the armed raids as traumatic — often need to talk, to share their experiences and seek solace in the company of a loving family and supportive friends. The investigators denied them that privilege, and it compounded their pain and fear.

The investigation not only damaged families, it also shut down their free speech. In many cases, the investigations halted conservative groups in their tracks. O'Keefe and the Wisconsin Club for Growth described the effect in court filings:

> O'Keefe's associates began cancelling meetings with him and declining to take his calls, reasonably fearful that merely associating with him could make them targets of the investigation. O'Keefe was forced to abandon fundraising for the Club because he could no longer guarantee to donors that their identities would remain confidential, could

> not (due to the Secrecy Order) explain to potential donors the nature of the investigation, could not assuage donors' fears that they might become targets themselves, and could not assure donors that their money would go to fund advocacy rather than legal expenses. The Club was also paralyzed. Its officials could not associate with its key supporters, and its funds were depleted. It could not engage in issue advocacy for fear of criminal sanction.

These raids and subpoenas were often based not on traditional notions of probable cause but on mere suspicion, untethered to the law or evidence, and potentially violating the Fourth Amendment's prohibition against "unreasonable searches and seizures." The very existence of First Amendment–protected expression was deemed to be evidence of illegality. The prosecution simply assumed that the conservatives were incapable of operating within the bounds of the law.

Even worse, many of the investigators' legal theories, even if proven by the evidence, would not have supported criminal prosecutions. In other words, they were investigating "crimes" that weren't crimes at all.

If the prosecutors had applied the same legal standards to the Democrats in their own offices, they would have been forced to turn the raids on themselves. If the prosecutors and investigators had been raided, how many of their computers and smartphones would have contained incriminating information indicating use of government resources for partisan purposes?

With the investigations now bursting out into the open, some conservatives began to fight back. O'Keefe and the Wisconsin Club for Growth moved to quash the John Doe subpoenas aimed at them. In a surprise move, Judge Kluka, who had presided over the Doe investigations for more than a year, recused herself from the case. (A political journal, the *Wisconsin Reporter*, attempted to speak to Judge Kluka about her recusal, but she refused to offer comment.)

The new judge in the case, Gregory Peterson, promptly sided with O'Keefe and blocked multiple subpoenas, holding (in a sealed opinion obtained by the *Wall Street Journal*, which has done invaluable work covering the John Doe investigations) that they "do not show probable cause that the moving parties committed any violations of the campaign finance laws." The judge noted that "the State is not claiming that any of the independent

organizations expressly advocated" Walker's election.

O'Keefe and the Wisconsin Club for Growth followed up Judge Peterson's ruling by filing a federal lawsuit against Chisholm and a number of additional defendants, alleging multiple constitutional violations, including a claim that the investigation constituted unlawful retaliation against the plaintiffs for the exercise of their First Amendment rights. United States District Court judge Rudolph Randa promptly granted the plaintiffs' motion for a preliminary injunction, declaring that "the Defendants must cease all activities related to the investigation, return all property seized in the investigation from any individual or organization, and permanently destroy all copies of information and other materials obtained through the investigation."

From that point forward, the case proceeded on parallel state and federal tracks. At the federal level, the Seventh Circuit Court of Appeals reversed Judge Randa's order. Declining to consider the case on the merits, the appeals court found the lawsuit barred by the federal Anti-Injunction Act, which prohibits federal courts from issuing injunctions against some state-court proceedings. O'Keefe and the Wisconsin Club for Growth have petitioned the Supreme Court for a writ of certiorari and expect a ruling in a matter of weeks.

At the same time, the John Doe prosecutors took their case to the Wisconsin Court of Appeals to attempt to restart the Doe proceedings. The case was ultimately consolidated before the state supreme court, with a ruling also expected in a matter of weeks.

And so, almost five years after their secret beginning, the John Doe proceedings are nearly dead — on "life support," according to one Wisconsin pundit — but incalculable damage has been done, to families, to activist organizations, to the First Amendment, and to the rule of law itself.

In international law, the Western world has become familiar with a concept called "lawfare," a process whereby rogue regimes or organizations abuse legal doctrines and processes to accomplish through sheer harassment and attrition what can't be accomplished through legitimate diplomatic means. The Palestinian Authority and its defenders have become adept at lawfare, putting Israel under increasing pressure before the U.N. and other international bodies.

The John Doe investigations are a form of domestic lawfare, and our constitutional

system is ill equipped to handle it. Federal courts rarely intervene in state judicial proceedings, state officials rarely lose their array of official immunities for the consequences of their misconduct, and violations of First Amendment freedoms rarely result in meaningful monetary damages for the victims.

As Scott Walker runs for president, the national media will finally join the *Wall Street Journal* in covering John Doe. Given the mainstream media's typical bias and bad faith, they are likely to bring a fresh round of pain to the targets of the investigation; the cloud of suspicion will descend once again; even potential favorable court rulings by either the state supreme court or the U.S. Supreme Court will be blamed on "conservative justices" taking care of their own.

Conservatives have looked at Wisconsin as a success story, where Walker took everything the Left threw at him and emerged victorious in three general elections. He broke the power of the teachers' unions and absorbed millions upon millions of dollars of negative ads. The Left kept chanting, "This is what democracy looks like," and in Wisconsin, democracy looked like Scott Walker winning again and again.

Yet in a deeper way, Wisconsin is anything but a success. There were casualties left on the battlefield — innocent citizens victimized by a lawless government mob, public officials who brought the full power of their office down onto the innocent.

Governors come and go. Statutes are passed and repealed. Laws and elections are important, to be sure, but the rule of law is more important still. And in Wisconsin, the rule of law hangs in the balance — along with the liberty of citizens.

As I finished an interview with one victim still living in fear, still shattered by the experience of nearly losing everything simply because she supported the wrong candidate at the wrong time, I asked whether she had any final thoughts. "Just one," she replied. "I'm hoping for accountability, that someone will be held responsible so that they'll never do this again." She paused for a moment and then, with voice trembling, said: "No one should ever endure what my family endured."

– David French is an attorney, a writer, and a veteran of the Iraq War. This article first appeared in the May 4, 2015, issue of NR.

DONATE

Judicial Watch: New Documents Show IRS Used Donor Lists to Target Audits

JULY 22, 2015

(Washington, DC) – Judicial Watch announced today that it has **obtained documents** from the Internal Revenue Service (IRS) that confirm that the IRS used donor lists to tax-exempt organizations to target those donors for audits. The documents also show IRS officials specifically highlighted how the U.S. Chamber of Commerce may come under "high scrutiny" from the IRS. The IRS produced the records in a Freedom of Information lawsuit seeking documents about selection of individuals for audits, based upon application information and donor lists submitted by Tea Party and other 501(c)(4) tax-exempt organizations (***Judicial Watch v. Internal Revenue Service*** (No. 1:15-cv-00220)).

A **letter** dated September 28, 2010, then-Democrat Senate Finance Committee Chairman Max Baucus (D-MT) informs then-IRS Commissioner Douglas Shulman: " I request that you and your agency survey major 501(c)(4), (c)(5) and (c)(6) organizations ..." In reply, in a letter dated February 17, 2011, Shulman writes: "In the work plan of the Exempt Organizations Division, we announced that beginning in FY2011, we are increasing our focus on section 501(c)(4), (5) and (6) organizations."

In 2010, after receiving Baucus's letter, the IRS **considered** the issue of auditing donors to 501(c)(4) organizations, alleging that a 35 percent gift tax would be due on donations in excess of $13,000. The documents show that the IRS wanted to cross-check donor lists from 501(c)(4) organizations against gift tax filings and commence audits against taxpayers based on this information.

A gift tax on contributions to 501(c)(4)'s was considered by most to be a dead letter since the IRS had never enforced the rule after the Supreme Court ruled that such

taxes violated the First Amendment. The documents show that the IRS had not enforced the gift tax since 1982.

But then, in February 2011, at least **five donors** of an unnamed organization were audited.

The documents show that Crossroads GPS, associated with Republican Karl Rove, was **specifically referenced** by IRS officials in the context of applying the gift tax. Seemingly in response to the Crossroads focus, on April 20, IRS attorney Lorraine Gardner emails a 501(c)(4) **donor list** to former Branch Chief in the IRS' Office of the Chief Counsel James Hogan. Later, this information is apparently shared with IRS Estate Gift and Policy Manager Lisa Piehl while Gardner seeks "information about any of the donors."

Emails to and from Lorraine Gardner also suggested bias against the U.S. Chamber of Commerce. An IRS official (whose name is redacted) **emails** Gardner on May 13, 2011, a blog post responding to the IRS targeting of political and other activities of 501(c)(4), (5) and (6) organizations:

> The U.S. Chamber of Commerce is a 501(c)(6) organization and may find itself under high scrutiny. One can only hope.

The subject line of the email highlights this anti-Chamber of Commerce comment: "we are making headlines notice the end regarding 501(c)(6) applicability enjoy." This critical comment is forwarded to other IRS officials and shows up attached to **another** Gardner IRS email chain with the subject line "re: 501(c)(4)" that discusses a pending decision about a tax-exempt entity.

In early May, once the media began reporting on the IRS audits of donors, IRS officials **reacted** quickly. One official acknowledges the issue "**is a biggy**" when a reporter from *The New York Times* contacts the IRS on May 9.

On May 13, 2011, former IRS Director of Legislative Affairs Floyd Williams discusses compliance with "interest" from Capitol Hill: "Not surprisingly, interest on the hill is picking up on this issue … with Majority Leader Reid's office, has suggested the possibility of a briefing for the Senate Finance Committee staff on general issues related to section 501(c)(4) organizations I think we should do it as interest is likely to grow as we get closer to elections."

Later that day, then-Director of the Exempt Organizations Lois Lerner weighs in with **an email** that confirms that she supported the gift tax audits. Lerner acknowledges

that "the courts have said specifically that contributions to ***527 political organizations*** are not subject to the gift tax–nothing that I'm aware of that about contributions to organizations that are not political organizations." Section 501(c)(4) organizations are not "political organizations." [Emphasis in original]

Lerner's involvement and support for the new gift tax contradicts the **IRS statement** to the media at the time that audits were not part of a "broader effort looking at donations 501(c)(4)'s." In July 2011, the IRS retreated and soon-to-be Acting IRS Commissioner Steven Miller **directed** that "examination resources should not be expended on this issue" and that all audits of taxpayers "relating to the application of gift taxes" to 501(c)(4) organizations "should be closed."

"These documents that we had to force out of the IRS prove that the agency used donor lists to audit supporters of organizations engaged in First Amendment-protected lawful political speech," said Judicial Watch President Tom Fitton. "And the snarky comments about the U.S. Chamber of Commerce and the obsession with Karl Rove's Crossroads GPS show that the IRS was targeting critics of the Obama administration. President Obama may want to continue to lie about his IRS scandal. These documents tell the truth – his IRS hated conservatives and was willing to illegally tax and audit citizens to shut down opposition to Barack Obama's policies and reelection."

Judicial Watch had filed **a separate lawsuit** for records about targeting of individuals for audit in November 2013. In that litigation, the IRS had refused to search any email systems, including Lerner's records. A federal court ruled the IRS' search was sufficient and dismissed the lawsuit earlier this month.

In September 2014, another Judicial Watch FOIA lawsuit **forced the release** of documents detailing that the IRS sought, obtained and maintained the names of donors to Tea Party and other conservative groups. IRS officials acknowledged in these documents that "such information was not needed." The documents also show that the donor names were being used for a "secret research project."

The House Ways and Means Committee announced at a May 7, 2014, **hearing** that, after scores of conservative groups provided donor information "to the IRS, nearly one in ten donors were subject to audit." In 2011, as many as **five donors** to the conservative 501(c)(4) organization Freedom's Watch were audited, according to the ***Wall Street Journal***. Bradley Blakeman, Freedom's Watch's former president, also alleges he was "**personally targeted**" by the IRS.

In February 2014, then-Chairman of the Ways and Means Committee Dave Camp

(R-MI) **detailed** improper IRS targeting of existing conservative groups:

> Additionally, we now know that the IRS targeted not only right-leaning applicants, but also right-leaning groups that were already operating as 501(c)(4)s. At Washington, DC's direction, dozens of groups operating as 501(c)(4)s were flagged for IRS surveillance, including monitoring of the groups' activities, websites and any other publicly available information. Of these groups, 83 percent were right-leaning. And of the groups the IRS selected for audit, 100 percent were right-leaning.

Koch Bros. Group Donor Testifies He Got Death Threats

By **Bonnie Eslinger** **Share us on:**

Law360, Los Angeles (February 25, 2016, 12:14 AM ET) -- A donor to the Koch Brothers' Americans for Prosperity Foundation testified on Wednesday in a California federal trial over whether the state's attorney general can demand the conservative group's major contributor list, saying the public revelation that he donated drew death threats and boycotts to his business.

Former North Carolina Republican lawmaker Arthur Pope is chairman of his family's charity, which has contributed to the Americans for Prosperity Foundation and its predecessor, the Citizens for a Sound Economy Foundation, since 1993. During day two of a bench trial in Los Angeles on the foundation's claims that its First Amendment rights shield it from having to give California Attorney General Kamala Harris an IRS tax form containing a national list of major donors, Pope testified that negative publicity regarding his association with the organization has had a damaging effect on his life.

"It's caused my family great concern for their safety, my safety. It's lead to a threat of assassination about me, it's lead to boycotts of my business," Pope testified on Wednesday.

Attorney William Burck of Quinn Emanuel Urquhart & Sullivan LLP, which is representing the foundation, asked Pope if he ever considered stopping his financial support of the organization. The Republican leader said yes, but added that because his family charity has previously filled out required tax disclosures for their donations, it wouldn't make any difference.

"Is it fair to say if you could do it all over again, you might have done it in a way to keep it confidential?" Burck said.

Pope said his situation provided a "cautionary tale" about how donors could be targeted as a result of the causes they support.

"I don't want anyone else to go through that," Pope said. "But at this point it's too late for me. I'm not going to give in to the boycotts and threats."

Exhibits put into evidence at Wednesday's bench trial before U.S. District Judge Manuel Real included Internet postings and other literature calling Pope a climate-change denier, a "puppet master" for the right wing who deserved to be assassinated, a supporter of school segregation, and a big-money backer of

the "Republican takeover" of North Carolina's state legislature in 2010 — claims that are mostly "outright false," Pope said.

A 30-second clip of a video game that allows players to shoot at Americans for Prosperity employees was also shown to the court.

"When you saw this, did you think it was a joke?" Burck asked.

Pope said he thought it was "horrible" that people who disagreed with him or others associated with Americans for Prosperity would think it was "OK to kill us like zombies."

The John William Pope Foundation, named after Arthur Pope's father, gave $1 million to Americans for Prosperity in 2013, according to the nonprofit's tax filings.

On Tuesday, Americans for Prosperity Foundation CEO Lucas Anthony Hilgemann testified that "seven-figure" donors are the group's "**lifeblood**," and added that a major part of his role as CEO is assuring the major donors that their names will not be made public.

Americans for Prosperity Foundation is a Delaware 501(c)(3) nonprofit founded by conservative billionaire business magnates Charles and David Koch, with David Koch serving as the foundation's chairman, according to court filings.
The group is a sister organization of Americans for Prosperity, a 501(c)(4) advocacy group.

The foundation filed suit in December 2014, seeking declaratory judgment and injunctive relief to protect it from being forced to submit a federal tax form containing the names and addresses of its major donors across the country, known as Schedule B, to the attorney general. The suit contends that being forced to disclose the information would violate the nonprofit's First Amendment rights.

The suit contends that the right-leaning foundation's activities promoting "limited government and free markets" are "not universally popular," and that it has been the target of death and bomb threats as well as threats of boycotts and public shaming.

The foundation alleged that the attorney general first requested its Schedule B form in March 2013, but that after its refusal, matters "reached a boil" in October, when the attorney general informed the foundation that if it did not turn over the donor form, she would revoke its nonprofit state tax exemption, suspend its registration and impose fines on its directors and officers.

In February 2015, Judge Real granted the foundation's bid for a **preliminary injunction**, ruling that the

Americans for Prosperity Foundation would suffer irreparable harm if its donor list were revealed, even only to the attorney general's office.

In January, the Ninth Circuit **overturned that ruling**, finding that Judge Real erred in issuing the injunction, since there was no evidence that a confidential disclosure would cause actual harm. The foundation had not shown anything more than subjective fears that handing over the forms in confidence would chill participation or lead to harassment of its donors, the panel said.

Harris argued in her trial brief that the Ninth Circuit ruling clearly establishes that the Schedule B requirement is "substantially related" to the attorney general's compelling interest in protecting the public from charitable fraud.

The foundation is represented by Harold Barza, Carolyn Thomas, William Burck, Keith Forst, Derek Shaffer and Jonathan Cooper of Quinn Emanuel Urquhart & Sullivan LLP.

California Attorney General Kamala D. Harris is representing her office with Supervising Deputy Attorney General Tamar Pachter and Deputy Attorneys General Alexandra Robert Gordon and Emmanuelle S. Soichet.

The case is Americans for Prosperity Foundation v. Kamala Harris, case number 2:14-cv-09448, in the U.S. District Court for the Central District of California.

--Additional reporting by Daniel Siegal and Emily Field. Editing by Aaron Pelc.

Court rebukes IRS for tea party targeting, orders release of secret list

By Stephen Dinan - *The Washington Times - Tuesday, March 22, 2016*

A federal appeals court spanked the IRS Tuesday, saying it has taken laws designed to protect taxpayers from the government and turned them on their head, using them to try to protect the tax agency from the very tea party groups it targeted.

The judges ordered the IRS to quickly turn over the full list of groups it targeted so that a class-action lawsuit, filed by the NorCal Tea Party Patriots, can proceed. The judges also accused the Justice Department lawyers, who are representing the IRS in the case, of acting in bad faith — compounding the initial targeting — by fighting the disclosure.

"The lawyers in the Department of Justice have a long and storied tradition of defending the nation's interests and enforcing its laws — all of them, not just selective ones — in a manner worthy of the Department's name. The conduct of the IRS's attorneys in the district court falls outside that tradition," Judge Raymond Kethledge wrote in a unanimous opinion for a three-judge panel of the Sixth Circuit Court of Appeals. "We expect that the IRS will do better going forward."

Justice Department officials declined to comment on the judicial drubbing, and the IRS didn't respond to a request for comment on the unusually strong language Judge Kethledge used.

The case stems from the IRS' decision in 2010 to begin subjecting tea party and conservative groups to intrusive scrutiny when they applied for nonprofit status.

An inspector general found several hundred groups were asked inappropriate questions about their members' activities, their fundraising and their political leanings.

The IRS has since apologized for its behavior, but insisted the targeting was a mistake born of overzealous employees confused by the law rather than a politically motivated attempt to stifle conservatives.

Tea party groups have been trying for years to get a full list of nonprofit groups that were targeted by the IRS, but the IRS had refused, saying that even the names of those who applied or were approved are considered secret taxpayer information. The IRS said section 6103 of the tax code prevented it from releasing that information.

Judge Kethledge, however, said that turned the law on its head.

"Section 6103 was enacted to protect taxpayers from the IRS, not the IRS from taxpayers," he wrote.

Edward Greim, a lawyer at Graves Garrett who is representing NorCal Patriots, said they should be able to get a better idea of the IRS' decision-making once they see the list of groups that was targeted.

"What we'll be able to see is how, starting in the spring of 2010, with the first one or two groups the IRS targeted, we'll be able to see that number grow, and we'll even be able to see at the tail end their possible covering up that conduct," he said.

He said they suspect the IRS, aware that the inspector general was looking into the tax agency's behavior, began adding in other groups to try to muddle the perception that only conservatives were being targeted.

Tuesday's ruling is the second victory this year for NorCal Patriots.

In January U.S. District Judge Susan J. Dlott certified their case as a class-action lawsuit, signaling that she agreed with NorCal Patriots that the IRS did systematically target hundreds of groups for special scrutiny.

Certifying the class allows any of the more than 200 groups that were subjected to the criteria to join the lawsuit. But until the IRS complies with the appeals court's ruling this week, the list of those groups is secret.

Now that the class has been certified, the case moves to the discovery stage, where the tea party groups' lawyers will ask for all of the agency's documents related to the targeting and will depose IRS employees about their actions.

The lawyers hope they'll be able to learn details Congress was unable to shake free in its own investigations.

The Justice Department has concluded its own criminal investigation into the IRS and said the targeting was the result of bad management. But investigators said they found no criminal behavior, and specifically cleared former IRS head Lois G. Lerner, saying her fellow employees said she tried to correct the problems when she learned of them.

Republicans dismissed that investigation as a whitewash by the Obama administration.