

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 5

WAUKESHA COUNTY

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**ERIC O'KEEFE, and  
WISCONSIN CLUB FOR GROWTH, INC.,  
Individually and on behalf of others similarly situated,**

**Plaintiffs,**

v.

**Case No. 2014CV1139**

**WISCONSIN GOVERNMENT ACCOUNTABILITY  
BOARD, and KEVIN J. KENNEDY, in his official capacity,**

**Defendants.**

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**STIPULATION AND CONSENT AGREEMENT**

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**STIPULATION**

The parties, by their respective counsel, hereby stipulate and agree as follows:

1. In this action, plaintiffs O'Keefe and the Wisconsin Club for Growth contend that defendant Wisconsin Government Accountability Board ("GAB") failed to adhere to its enabling statute in respect to a certain John Doe proceeding ("John Doe II") by, among other things:

- A. Participating in a criminal investigation for approximately ten (10) months without Board authorization;
- B. Continuing to participate in John Doe II and conduct its investigation after making a referral, or after losing the right to make a referral, to one or more district attorneys for criminal prosecution;
- C. Assisting in seeking and obtaining search warrants without authorization

from a circuit court;

- D. Inspecting, storing, and copying financial records without authorization from a circuit court;
- E. Continuing an investigation after it was terminated by operation of law; and
- F. Making unauthorized expenditures associated with its participation in John Doe II.

2. The GAB acknowledges it had contact with prosecutors about the subject of John Doe II prior to its initiation and later made expenditures in conducting GAB Investigation No. 2013-02 in cooperation with prosecutors conducting the John Doe II investigation but contends that its conduct in that respect, including but not limited to any of the subjects of the plaintiffs' amended complaint, was not in violation of its enabling statute.

3. The parties have agreed to resolve and settle the disagreements framed in the above-entitled action by their agreement set forth below, which agreement may be made part of a final order of the court resolving all claims in this matter.

#### **CONSENT AGREEMENT**

1. From the date of entry of this judgment, whether directly or through its staff and agents, the Wisconsin Government Accountability Board ("GAB") shall adhere to the following conditions relative to the exercise of its investigative authority under Wis. Stat. § 5.05(2m):

- A. The GAB, may undertake an investigation only upon (a) receiving a complaint, (b) treating written allegations submitted to the GAB as a

complaint by an outside party, or (c) receiving a report from its staff or agents based on information presented to the agency in the normal course of business, and then, after one of these three events occurs, (d) voting to open an investigation. If the GAB Board makes a finding of probable cause followed by a referral to a district attorney or other law enforcement authority, the GAB shall not provide investigative assistance in respect to any further investigation or prosecution by such district attorney or other law enforcement authority except upon the approval of the Board. “Investigative assistance” requiring prior Board approval under this section includes (a) preparing drafts or other work product related to filings with a court or judge (b) paying vendors for the investigation; (c) undertaking responsibility for the review of evidence; and (d) storing evidence. “Investigative assistance” does not include providing subject-matter advice and information to law enforcement following such referral, nor does it include review and comment upon draft language for legal filings and briefs that implicate Wisconsin ethics, campaign finance, or election law.

- B. The GAB may only provide funding or assistance for use in a civil or criminal investigation, or a civil prosecution as authorized by Wis. Stat. § 5.05(2m)(a).
- C. The GAB may only seek and obtain search warrants as authorized by Wis. Stat. § 5.05(1)(b). This does not preclude the GAB from reviewing evidence provided to the agency by law enforcement, subject to the

conditions in Paragraph I.A, *supra*.

- D. The GAB may only secure, inspect, store, or copy financial institution records as authorized by Wis. Stat. § 5.05 (1)(b). This does not preclude the GAB from reviewing evidence provided to the agency by law enforcement. This also does not prohibit the GAB from requesting and receiving financial institution records from a registrant to resolve an audit or reporting issue identified by agency staff in the performance of its administrative duties.
- E. The GAB may not continue an investigation after it is terminated by operation of law. This does not preclude the GAB from reopening an investigation upon a finding of reasonable suspicion of a violation of law pursuant to Wis. Stat. § 5.05 (2m)(b)4.
- F. The GAB may not conduct research and drafting of legal documents on behalf of litigants, including law enforcement agencies or their employees or agents and outside third-party groups, for use in a criminal investigation or prosecution, or in the defense of a criminal investigation or prosecution, including in litigation related to appeals or the validity of a criminal investigation or prosecution, where the GAB is not a party to the litigation. This does not prohibit the GAB from intervening pursuant to Wis. Stat. § 5.05 (9) or from moving to file a brief as an amicus. Upon request by law enforcement, GAB staff may review and comment on, but not draft language for, legal filings and briefs that implicate Wisconsin ethics,

campaign finance, or election law, but may do so only with Board approval.

2. All documents produced and testimony obtained in discovery in this matter was either produced in a court of law by the defendants or provided to counsel for the plaintiffs within the meaning of Wis. Stat. § 12.13(5). Therefore, the release of such documents or testimony by the defendants shall not be subject to sanction under Wis. Stat. § 12.60(1)(bm).

3. The protective order entered on July 25, 2014 shall remain in full force and effect only as to the following materials produced in discovery or filed with the court, and such materials shall be treated as “Confidential” under the protective order and shall remain under seal, or shall only be released as redacted, as described below:

- A. Any documents that constitute substantive “John Doe” evidence, that is, documents or data (whether in hard copy or in digital form) obtained as a result of John Doe II, as described by the court in *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 103, shall remain under seal in the court file and may not be released publicly by the parties unless such release is permissible under applicable secrecy orders, otherwise not prohibited by applicable law, or authorized by the Wisconsin Supreme Court, the John Doe judge, or other court of competent jurisdiction.
- B. Other documents and testimony that contain or refer to substantive “John Doe” evidence, as described in sub. 2.A. above, shall be redacted to protect the confidentiality of such information and may not be released publicly by the parties unless such release is permissible under applicable secrecy

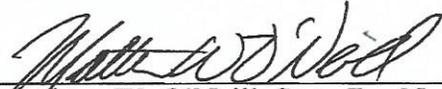
orders, otherwise not prohibited by applicable law, or authorized by the Wisconsin Supreme Court, the John Doe judge, or other court of competent jurisdiction.

- C. Documents and testimony that reveal the personal and identifying details of targets and groups under investigation, other than plaintiffs Eric O'Keefe and the Wisconsin Club for Growth, Inc., including names, addresses, and other identifying information, shall remain under seal or shall be redacted so as to maintain confidentiality of such information and such documents or information may not be released by any party without the prior written consent of the target or group, which consent shall reference this order.
- D. Gmail addresses used by the GAB, and its agents and staff, and used by the Milwaukee County District Attorney's office, and its agents and staff, in the course of their work on GAB Investigation 2013-02 or John Doe II shall be redacted to protect the confidentiality of such information.
- E. All documents filed in the John Doe proceeding which was the subject of litigation in *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 85, 363 Wis. 2d 1, 866 N.W.2d 165, and in *State ex rel. Two Unnamed Petitioners v. Peterson*, 2015 WI 103, shall remain under seal unless release of such document(s) is expressly authorized by the Wisconsin Supreme Court, the John Doe judge or this court.

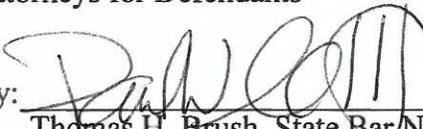
4. All claims asserted in the plaintiffs' amended complaint shall be dismissed upon their merits, with prejudice and without costs to any party.

Dated this 17<sup>th</sup> day of December 2015.

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