

Supreme Court declines to hear lawsuit seeking to block probe into Gov. Scott Walker recall campaign

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The U.S. Supreme Court on Monday declined to hear an appeal seeking to permanently block a secret probe into Wisconsin Gov. Scott Walker's 2012 recall campaign and its dealings with allied groups, ending one line of attack by subjects of the investigation.

The high-profile probe remains stalled, however, because of a separate decision last year by a Wisconsin judge that is now being reviewed as part of a trio of cases before the Wisconsin Supreme Court.

The state's high court is expected to decide the cases this summer, which will determine whether the investigation can be revived or must be abandoned for good. The ruling is likely to come just as the Republican governor launches an expected presidential campaign.

The U.S. Supreme Court passed on taking the case without any comment, as is its usual practice. Its decision leaves in place an appeals court ruling that dismissed the lawsuit.

Prosecutors launched their John Doe probe in August 2012 in Milwaukee County and last year expanded it to four other counties. They were looking at whether Walker's campaign illegally collaborated with ostensibly independent groups, such as the Wisconsin Club for Growth.

John Doe investigations allow prosecutors to compel people to testify and produce documents and bar them from talking publicly about the probe.

The Wisconsin Club for Growth and one of its directors, Eric O'Keefe, sued prosecutors last year and tried to hold them personally liable for violating their civil rights.

U.S. District Judge Rudolph Randa in May 2014 ruled against prosecutors and they appealed.

In September, a panel of the U.S. 7th Circuit Court of Appeals in Chicago dismissed the federal lawsuit, ruling that the issues it raised should be handled by the state rather than the federal judiciary.

Joseph Russell, the attorney for special prosecutor Francis Schmitz, praised Monday's decision not to take up the appeal.

“The (U.S.) Supreme Court’s decision to leave standing the decision of the lower court ends this case, and represents a complete victory for Mr. Schmitz and his team,” Russell said in a statement.

Conservatives had viewed getting the U.S. Supreme Court to accept the case as important. Five groups, including the Center for Competitive Politics and the Cato Institute, filed friend-of-the-court briefs in the unsuccessful effort to get the high court to take it up.

While the ruling means the end of this litigation, other lawsuits persist. The club is also involved in two challenges to the probe in state court — one of the ones before the state Supreme Court and another before a Waukesha County judge.

“The (U.S.) Supreme Court’s decision not to hear our claims does not change the fact that the only court to review the John Doe investigation found it to be an abuse of civil liberties and First Amendment rights,” O’Keefe said in a statement that referred to the ruling by Randa that has been tossed out.

“The appeals court said that any attempt to hold (Milwaukee County District Attorney) John Chisholm and his associates accountable should proceed in state courts, and that’s exactly what I expect to happen.”

Attention now turns to the Wisconsin Supreme Court, which will decide the future of the probe. It is considering two challenges to the investigation and a request by Schmitz to overturn a decision by John Doe Judge Gregory Peterson in January 2014 that quashed subpoenas that had been issued.

Peterson ruled that he did not believe anything illegal had transpired and his quashing of the subpoenas effectively shut down the investigation.

In filings to the Wisconsin Supreme Court that became public last week, Schmitz, the special prosecutor, wrote that the investigation had been halted in its early stages. So far, there is not enough evidence to charge anyone with a crime, but prosecutors should be allowed to look further into the matter, he wrote.

“Admittedly, there are gaps in the investigation,” Schmitz wrote. “No charges have yet been filed, nor could they be filed at this point. The issue is whether the known facts bear investigation and inquiry. The special prosecutor submits that they do.”

In other court documents, prosecutors have said that Walker helped raise money for the Wisconsin Club for Growth and that the group received a \$700,000 contribution from a company that was then seeking to open a large open pit iron mine in northern Wisconsin. Walker later approved legislation easing mining restrictions, but the mining firm ultimately abandoned the project.

Typically, court documents are available to the public, but in the state and federal lawsuits numerous documents were sealed or had key passages blacked out because of the secret nature of the investigation.

The Reporters Committee for Freedom of the Press and four other journalism groups intervened in the federal case to try to unseal the records. Hundreds of pages of once-secret documents were eventually unsealed, including some that were apparently inadvertently made public by the court.