



Heart of John Doe dispute: Evolving campaign rules

By: Bruce Vielmetti
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As with just about everything in the second John Doe investigation of Scott Walker and his allies, the reaction within the legal community to Thursday's document release depended on perspective.

Two election law professors said the records strongly suggest prosecutors had something — though not yet enough to support charges or win conviction — to validate further investigation of possible violations of Wisconsin campaign finance law, and were not on the political witch hunt their critics allege.

Those critics still disagree. They say the new information shows there was no illegal coordinated spending. [Ilya Shapiro, from the Cato Institute](#), called Thursday's developments "sort of a non-story" and a "fishing expedition" that doesn't change anything. Shapiro said the plaintiffs in a civil suit to stop the John Doe supported disclosing even more documents in the case because "there's no evidence of coordinated spending."

That's really the heart of the Doe investigation. While outside groups can spend unlimited amounts on their own, they may not coordinate their spending with candidates or their campaigns.

The law about how campaign finance rules coexist with free speech has been evolving since the U.S. Supreme Court decided the Citizens United case in 2010. The ruling did away with limits on spending by corporations, unions and other groups, saying such spending was considered free speech.

The more [complex, sometimes overlooked and misunderstood rules](#) about coordination remain.

In the Doe matter, three judges have made key rulings, all with a different take. Most recently, U.S. District Judge Rudolph Randa halted the investigation saying prosecutors had failed to make their case given the more wide-open landscape after Citizens United. The ruling is now on appeal to the 7th Circuit Court.

Rick Hasen, a law professor at the University of California-Irvine who authors a [popular blog on election law](#), said Thursday that the Citizens United case didn't go quite as far as many people think it did. The ruling left intact certain limits on coordinating such spending with candidates or their campaigns, restrictions similar to the Wisconsin laws.

"We're talking Wisconsin law" in the John Doe case, Hasen said, "but its fairly analogous. All kinds of issue advocacy *can* count as coordination, and therefore be illegal," depending on the specifics.

Both Hasen and another election law expert, Ohio State University law professor [Daniel Tokaji](#), think Randa's interpretations of the law will not be shared by the 7th Circuit Court of Appeals.

"I was flabbergasted by some of the things he said that were like applauding coordination," Hasen said.

Tokaji said coordination is illegal for good reason, because it "raises the specter of corruption," and the U.S. Supreme Court has upheld the purpose of preventing the exchange of cash for political favors.

He said the new documents don't suggest the prosecutors looking into the Walker campaign were biased.

"There are laws against coordination" Tokaji said. "We're not the Wild West yet." Until that happens — and he said it might be the way the Supreme Court is going — "laws must be enforced."

Shapiro, however, predicts the 7th Circuit will affirm Randa's findings but "with less sweeping rhetoric" on narrower grounds.