On John Doe, DAs Deserve Our Thanks!

Posted on May 01, Posted by Wisconsin Democracy Campaign, Matt Rothschild Category Wisconsin

MADISON - The Wisconsin Democracy Campaign thanks the courageous district attorneys **John Chisholm**
,
Ismael Ozanne
, and
Larry Nelson
for appealing the Wisconsin Supreme Court's decision in the John Doe II case to the U.S. Supreme Court on Thursday.

While the details of their appeal have not been made public yet, there are two solid grounds for the appeal.

The first is that at least a couple of the justices should have recused themselves from the John Doe case because of a conflict of interest.

The four justices on the Wisconsin Supreme Court who dismissed the John Doe investigation concerning alleged coordination between Scott Walker and so-called outside groups were aided enormously by some of the very groups that were party to the John Doe case.

Wisconsin Manufacturers & Commerce, Wisconsin Club for Growth, and Citizens for a Strong America—all of which were reportedly embroiled in the John Doe--together spent more than $8 million in support of Justice Patience Roggensack, Justice Annette Ziegler, Justice Michael Gableman, and Justice David Prosser.

The second, and even more crucial, basis for an appeal is the fact that the Wisconsin Supreme Court blatantly misread forty years of U.S. Supreme Court precedent on campaign finance.

In tossing out the John Doe II case, the Wisconsin Supreme Court said that the First Amendment prohibits the state of Wisconsin from imposing a ban on coordination between candidates and issue advocacy groups. But dating back to Buckley v. Valeo in 1976 and right on through Citizens United of 2010, the U.S. Supreme Court campaign finance decisions have been predicated on there being no coordination between candidates and issue advocacy groups.

In Buckley, the court ruled that expenditures by outside groups that are coordinated with candidates amount to campaign contributions. “The ultimate effect is the same as if the person had contributed the dollar amount to the candidate and the candidate had then used the contribution,” the court ruled. Such expenditures, it said, should be “treated as contributions rather than expenditures.”

Only the lack of coordination reduces the risk of corruption, the Court stressed in Buckley. “The absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidates.”