

[PCAF letterhead]

February 24, 2011

District Attorney Ismael R. Ozanne  
Dane County District Attorney's Office  
215 S. Hamilton St. # 3000  
Madison WI 53703-3297

Dear Mr. Ozanne:

I write to request that your office initiate an immediate investigation into recently reported conduct of Governor Scott Walker that indicates potential violation of Wisconsin campaign finance and ethics laws.

On February 23, 2011, it was reported that reporter/blogger Ian Murphy, aka "Buffalo Beast", placed a telephone call to Gov. Walker under the pretense that he was billionaire businessman David Koch. Governor Walker took the call and spoke with him for twenty minutes, believing the entire time that he was speaking to Mr. Koch, a well-known conservative activist and Republican financial supporter. As you may know, Gov. Walker's campaign received \$43,000 from Koch Industries' Political Action Committee. Audio recordings and text transcripts of the call have been published online and by various media sources.

We believe an investigation is the only way to clear up any uncertainty that Gov. Walker operated in full compliance with the laws of Wisconsin.

Count One: Request for Coordinated Political Spending

In the course of the conversation, the man posing as Mr. Koch asked, "Now what else could we do for you down there?" Gov. Walker, believing he was speaking to a well-heeled political supporter, gave a detailed, two-part response. The first request related to tactics in the current legislative showdown. His second request was as follows:

The other thing is more long-term, and that is, after this, um, you know the coming days and weeks and months ahead, particularly in some of these, uh, more swing areas, a lot of these guys are gonna need, they don't necessarily need ads for them, but they're gonna need a message out reinforcing why this was a good thing to do for the economy and a good thing to do for the state. So to the extent that that message is out over and over again, that's obviously a good thing.

See [http://host.madison.com/wsj/article\\_531276b6-3f6a-11e0-b288-001cc4c002e0.html](http://host.madison.com/wsj/article_531276b6-3f6a-11e0-b288-001cc4c002e0.html)

This appears to be nothing more than a blatant attempt to solicit spending for political purposes,

in violation of applicable restrictions and limitations imposed by Wisconsin Campaign Financing laws.

Wisconsin law recognizes that truly independent spending in support of or opposition to candidates may not constitutionally be limited. It recognizes, however, that communications which have been coordinated with a candidate's campaign are not independent for this purpose, and should accordingly be treated as in-kind contributions to the candidate. *See, e.g.*, Wis. Stats. § 11.06(7). Guidance issued by the Elections Board and reaffirmed by the Government Accountability Board ("GAB") holds that coordinated expenditures may be subject to this treatment even if they are not made for communications that expressly advocate the election or defeat of a clearly identified candidate for office. El. Bd. 00-2 (Reaffirmed 3/26/08). Specifically, a communication may "be subject to campaign finance regulation if the following two elements are present: (1) the speech is made for the purpose of influencing voting at a specific candidate's election; and (2) the speech (and or the expenditure for it?) is coordinated with the candidate or his/her campaign." *Id.* Many types of conduct may qualify as coordination, but the most direct and obvious is making a request or suggestion for spending for political speech.

GAB regulations define a communication as being made for a "political purpose" if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. Further, a communication is conclusively presumed to fall into this definition if it is made during the 60 days before a general election or 30 days before a primary, includes a reference to a clearly identified candidates, and supports or condemns that candidate's position or stance on issues or that candidate's public record. GAB 1.28(3)(b). Given news reports and official filings regarding recall campaigns involving senators of each party, these timelines take on increased urgency.

In the reported phone conversation, Governor Walker appears to believe he was making a request or suggestion for election-related spending in support of members of his own party. This request follows one with a direct connection to the current legislative issue. He indicates that it is "more long-term," for the "months ahead," and references electoral considerations when he suggests a focus on "swing areas." The legislators from these swing areas, Governor Walker says, are "gonna need a message out reinforcing why this was a good thing to do." The Governor is requesting public messaging that identifies specific legislators who are candidates for re-election, is distributed close in time to an election, and supports that candidate's public record. Of course, the Governor is not himself one of these candidates, but as the highest elected official in the state it is plausible to believe that he is making this request as an agent of the Republican Party and its candidates.

It is unclear from the available transcript whether the Governor intended his request to be fulfilled by Mr. Koch personally, or by a nonprofit corporation he founded. (The latter seems more likely, based on the reference earlier to "your guy on the ground", an apparent reference to an employee of that organization.)

In either case, the request is an attempt to solicit an illegal contribution. If the corporation is the intended spender, any coordinated communications from it would violate Wis. Stats. 11.38. If

the intention is individual spending, that would be capped at \$1000 per candidate, pursuant to Wis. Stats. 11.26 – assuming, of course, the parties planned to properly report that spending as in-kind contribution. Such a conclusion taxes the imagination. Rather, the Governor was attempting to cause Mr. Koch, to whom he fully believed he was speaking, to make significant electoral expenditures that would be claimed to be independent when they were, in fact, coordinated.

#### Count Two: Soliciting Political Contributions Using State Facilities

Not only did the Governor solicit illegal coordinated political spending, he did so from his office in the state capitol, using government property and facilities. Wis. Stats. 11.36(4) prohibits entering or remaining in any state building, office, or room for the purpose of requesting a political contribution. Further an Ethics Board opinion clearly states “that the Ethics Code provides that a state public official may not rely on the state’s time, facilities, services, or supplies in soliciting campaign contributions.” Even if the coordinated spending requested by Mr. Walker were legal, the request for candidate support was improperly made from his government office using state telephone lines and state resources.

No one should be above the law. Governor Walker’s conduct in this reported conversation indicates he does not believe the Wisconsin campaign finance statutes or ethics rules apply to him. We strongly urge you to open an investigation into these potential violations to restore the confidence of Wisconsin’s citizens that theirs is a government of laws.

Sincerely,

David Donnelly  
National Campaigns Director