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2013 JUN 17 PM 2: 45

2013 JUN 17 PM 2: 34

FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6664
COMPLAINT FILED: Oct. 9, 2012
LAST RESPONSE RECEIVED: Feb. 12, 2013
ACTIVATED: Feb. 27, 2013

EARLIEST SOL: Oct. 3, 2016
LATEST SOL: May 5, 2017
ELECTION CYCLE: 2012

COMPLAINANT:

Ron Tusler

RESPONDENTS:

Wall for Congress and Florence Magnuson in her
official capacity as treasurer
James Wall
Service Employees International Union
Wisconsin Jobs Now!, Inc.
Paula Zellner

RELEVANT STATUTES:

2 U.S.C. § 441a(a)
2 U.S.C. § 441b(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Service Employees International Union ("SEIU") and Wisconsin Jobs Now!, Ins. ("Wisconsin Jobs Now") made, and James Wall and Wall for Congress and Florence Magnuson in her official capacity as treasurer ("Wall Committee" or "Committee") accepted, prohibited contributions in the form of Paula Zellner's campaign management services. This allegation is based primarily on several documents that suggest an overlap in Zellner's employment as the political director of Wisconsin Jobs Now and as the campaign manager of the Wall Committee. Complainant also suggests, without specifically articulating the allegation, that

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1 "serious questions arise" as to the potential coordination of protests between Wisconsin Jobs Now
2 and the Wall Committee.

3 Respondents deny these allegations, providing documents and sworn statements explaining
4 the timing and nature of Zellner's employment with both Wisconsin Jobs Now and the Wall
5 Committee. Those materials demonstrate that Zellner ceased working for Wisconsin Jobs Now
6 before she began working for the Wall Committee. Accordingly, we recommend that the
7 Commission find no reason to believe that the Wall Committee, James Wall, SEIU, Wisconsin
8 Jobs Now, and Paula Zellner violated 2 U.S.C. § 441b(a).

9 **II. FACTUAL AND LEGAL ANALYSIS**

10 **A. Factual Background**

11 The Wall Committee is the principal campaign committee of James Wall, an unsuccessful
12 2012 candidate for the U.S. House of Representatives from Wisconsin's 8th Congressional
13 district. Wall and his Committee filed Statements of Candidacy and Organization on October 14,
14 2011.

15 SEIU is an international labor organization comprising two million members. *See*
16 <http://www.seiu.org/our-union/>. Wisconsin Jobs Now is a non-stock corporation established in
17 April 2011 that describes itself as a "community-based, non-profit organization fighting to bring
18 economic justice to our communities." *See* <http://wisconsinjobsnow.org/about-us/>. The
19 Complaint describes Wisconsin Jobs Now as a "subsidiary" of SEIU, and the two organizations
20 filed a joint Response. Compl. at 1; *see also* Wisconsin Jobs Now/SEIU Resp. (Nov. 30, 2012).
21 Wisconsin Jobs Now's Executive Director, however, attests that, "SEIU has made contributions to
22 the work of WJN, but . . . has no connection to the[se] events." Michael Lauer Decl. ¶ 3 (Dec. 11,
23 2012).

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1 Paula Zellner served as Wisconsin Jobs Now's political director from May 2011 until
2 March 4, 2012. Wisconsin Jobs Now/SEIU Resp. at 1; *id.*, Ex. A; Paula Zellner Aff. ¶ 3
3 (Jan. 15, 2013). As part of her responsibilities to "arrang[e] events and other educational activities
4 concerning issues of concern to working families," Zellner organized a protest on January 5, 2012,
5 outside of a fundraiser for a Wisconsin state representative hosted at a private residence that
6 featured Congressman Paul Ryan as a guest speaker. Wisconsin Jobs Now/SEIU Resp. at 2;
7 Compl., Exs. 6, 13. The protesters, who carried trays of champagne and wore top hats, fur coats,
8 monocles, and pearls, shouted "[r]ich should pay more taxes!" and held signs displaying
9 "messages about the 1%." Compl., Exs. 6, 13.

10 In early February 2012, Zellner notified her supervisor, Wisconsin Jobs Now Executive
11 Director Michael Lauer, that she would be leaving Wisconsin Jobs Now to take a position with the
12 Wall Committee. Lauer Decl. ¶ 6. Zellner states that she began working as the campaign
13 manager for the Wall Committee on March 5, 2012. Zellner Aff. ¶ 4. Several documents included
14 with the Complaint, however, suggest that she began working for the Wall Committee before
15 March 5 while also being employed by Wisconsin Jobs Now beyond March 5. These documents
16 purport to show that:

- 17 • Zellner made a contribution to the Wall Committee on October 3, 2011, as reflected in the
18 Wall Committee's Amended 2011 Year-End Report disclosing this contribution, which
19 lists Zellner's occupation and employer as "Campaign Manager" for "Wall for Congress."
20 Compl. at 2; *see also* Amended 2011 Year-End Report.
21
- 22 • Zellner is listed as the point of contact on Wall Committee press releases dated October 5,
23 2011, and January 18, February 2, February 14, and February 29, 2012. Compl. at 2; *id.*,
24 Exs. 9, 10.
25
- 26 • The Wall Committee paid Zellner while she worked for Wisconsin Jobs Now, as shown by
27 the Wall Committee's 2012 April Quarterly Report that discloses a disbursement from the
28 Committee to Zellner on February 29, 2012, described as "airfare reimbursement."
29 Compl. at 2; *see also* 2012 April Quarterly Report.
30

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- 1 • Zellner made a contribution to a local campaign committee, Maureen May-Grimm for
2 Assembly, on May 5, 2012, as displayed in the relevant disclosure report that lists
3 Zellner's occupation and employer as "political coordinator" for "SEIU/WI Jobs Now."
4 Compl. at 2; *id.*, Ex. 5.

5 Based on these documents, the Complaint alleges that Zellner was working for the Wall
6 Committee at the same time that she was working for Wisconsin Jobs Now, and therefore Wall
7 and his Committee accepted a prohibited contribution from SEIU and Wisconsin Jobs Now in the
8 form of Zellner's campaign management services. Compl. at 1. Complainant observes that the
9 Wall Committee apparently did not pay Zellner for six months after she began work for them —
10 from October 2011 to April 2012¹ — which suggests that Zellner's salary was being paid by
11 Wisconsin Jobs Now and SEIU during that period. *Id.* at 2, 4. Complainant also alleges that,
12 following an August 5, 2012, newspaper article about these allegations, the Wall Committee
13 removed Zellner's name from its past press releases "to eliminate evidence of this issue." *Id.* at 3.

14 The Complaint further asserts that "serious and legitimate questions also arise over
15 potential illegal coordination between the two groups," because "Zellner's longstanding
16 involvement with Wisconsin Jobs Now! protests make it highly likely that she and Wall campaign
17 individuals were aware and coordinating Wisconsin Jobs Now! protests" directed at Wall's
18 opponent. *Id.* The Complaint does not articulate any additional factual basis for this conclusion,
19 but asserts that "[f]urther investigation is required."² *Id.*

¹ According to its disclosure reports, the Wall Committee's first payroll disbursement to Zellner was made on April 1, 2012. See 2012 July Quarterly Report.

² Complainant also filed a Supplemental Complaint alleging that, during a television news segment, SEIU and Wisconsin Jobs Now admitted that Zellner was on their payroll until the end of March 2012. Supp. Compl. at 1 (Oct. 24, 2012). The cited television broadcast, however, references only an e-mail from Wisconsin Jobs Now stating that Zellner was on its payroll until March 4, 2012. *Id.*, Ex. A. The Supplemental Complaint also attaches seven news articles about the allegations, suggesting that "[t]here may be valuable information admitted by Wall in the development of these stories," but does not provide any new information. *Id.* at 1.

1 Zellner, Wall, and the Committee filed a joint Response, including an affidavit by Zellner,
2 in which they unequivocally deny the allegations and explain the apparent discrepancies in
3 Zellner's employment dates:

- 4 • The Wall Committee's original 2011 Year-End Report (filed January 31, 2012) disclosing
5 Zellner's October 3, 2011, contribution listed her occupation and employer as "Information
6 Requested." When the Committee filed an Amended 2011 Year-End Report on April 17,
7 2012, it supplemented the information that was missing from the original report, including
8 Zellner's occupation and employer — which, as of April 17, 2012, was the Campaign
9 Manager of the Wall Committee. Wall Committee Resp. at 2 (Nov. 25, 2012); *see also*
10 2011 Year-End Reports.
- 11 • The Wall Committee's computer program retroactively populates the "contact person"
12 information on all press releases published to its website, so that a press release always
13 lists contact information that is current as of the date it is accessed on the website. Wall
14 Committee Resp., Ex. C.
- 15 • Zellner requested and received vacation time from Wisconsin Jobs Now to attend a
16 political training event in Washington, D.C., on February 29, 2012. The Wall Committee
17 reimbursed her for attending this event because she started with the Committee less than a
18 week later. *Id.* at 2.
- 19 • Zellner did not provide her occupation and employer information to Maureen May-Grimm
20 for Assembly. The Wall Committee suggests that Maureen May-Grimm for Assembly
21 assumed, without confirming, that Zellner was still working for her previous employer and
22 thus listed that information in connection with her May 5, 2012, contribution. *Id.* at 1.

23 Wisconsin Jobs Now and SEIU also submitted a joint Response denying the allegations.

24 The Response echoes the Wall Committee's explanation concerning Zellner's February 29, 2012,
25 training event, asserting that none of the expenses for this trip were paid by Wisconsin Jobs Now,
26 and that the disclosure report describes this disbursement as a "reimbursement," not a "payroll"
27 expense. Wisconsin Jobs Now/SEIU Resp. at 3; Lauer Decl. ¶ 8. The Response also explains
28 that, after Zellner notified Lauer that she would be leaving for the Wall Committee, he ensured
29 that she would not work on any activities that would impact Wall's congressional race and
30 prohibited her participation in strategy meetings regarding that congressional district. Wisconsin
31 Jobs Now/SEIU Resp. at 2; Lauer Decl. ¶ 7. Zellner thus spent her remaining time at Wisconsin

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1 Jobs Now working on a training conference for Wisconsin Jobs Now's staff and volunteers called
2 the 99% Summit. *Id.* In sum, the Response asserts that Zellner performed no work for the Wall
3 Committee while she was employed by Wisconsin Jobs Now and performed no work for
4 Wisconsin Jobs Now after she left employment there on March 4, 2012. Wisconsin Jobs
5 Now/SEIU Resp. at 1; *id.*, Ex. A.

6 **B. Legal Analysis**

7 A contribution is any gift, subscription, loan, advance, or anything of value made by any
8 person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(a)(i).
9 Commission regulations define "anything of value" to include in-kind contributions: the provision
10 of goods or services without charge or at a charge that is less than the usual and normal charge.
11 11 C.F.R. § 100.52(d)(1). It is unlawful for any corporation or labor organization to make a
12 contribution in connection with any election to any federal office, and unlawful for any political
13 committee to knowingly accept such a contribution. 2 U.S.C. § 441b(a).

14 1. Campaign Management Services

15 The Federal Election Campaign Act of 1971, as amended (the "Act") specifically includes
16 in the definition of "contribution" the payment by any person of compensation for the personal
17 services of another person that are rendered to a political committee without charge for any
18 purpose. 2 U.S.C. § 431(8)(a)(ii). Accordingly, if SEIU or Wisconsin Jobs Now paid Zellner's
19 salary while she was serving as the Wall Committee's campaign manager, the Respondents would
20 have violated the Act's prohibition on corporate and labor organization contributions. *See id.*
21 § 441b(a).

22 Although the information provided with the Complaint suggests that Zellner's time with
23 Wisconsin Jobs Now and the Wall Committee overlapped, the full record rebuts that inference.

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1 First, Zellner's employment with the Wall Committee was not listed on the Committee's 2011
2 Year-End Report filed January 31, 2012; instead, it only appeared on the amended report filed
3 April 17, 2012, at which point she was, in fact, working for the Committee. Second, the press
4 releases attached to the Complaint appear to have been accessed and printed from the Wall
5 Committee's website on September 25, 2012. *See* Compl., Exs. 9, 10. Because Zellner was
6 employed by the Committee on that date, and because the Committee's computer program
7 retroactively populates the contact information to be current as of the date accessed, her contact
8 information retroactively appears on all of the attached press releases. Wall Committee Resp. at 2;
9 *id.*, Ex. C. Third, the Wall Committee's disbursement to Zellner for the February 29, 2012, trip to
10 Washington, D.C., constituted reimbursement for a training that largely benefitted the Wall
11 Committee; it was not a payroll disbursement, and accordingly does not evidence that the Wall
12 Committee employed her on that date. *Id.* at 2. Finally, the listing of Zellner's employer as
13 Wisconsin Jobs Now/SEIU in connection with her May 5, 2012, contribution appears to be a
14 simple mistaken assumption on the part of Maureen May-Grimm for Assembly. *Id.* at 1.

15 When coupled with the information presented in the Complaint, the information provided
16 by the Responses, including sworn statements, adequately resolves any apparent overlap between
17 Zellner's employment:

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Table 1. Timeline of Zellner's Employment

Date	Event/Document
10/03/11	Zellner makes a contribution to the Wall Committee; 2011 Year-End Report lists her occupation and employer as "Information Requested"
01/05/12	Zellner organizes a protest sponsored by Wisconsin Jobs Now
02/29/12	Zellner attends training in Washington, D.C., for which she is <i>reimbursed</i> by the Wall Committee
03/04/12	Zellner leaves her employment at Wisconsin Jobs Now/SEIU
03/05/12	Zellner begins her employment at the Wall Committee
04/01/12	Zellner receives her first <i>payroll</i> disbursement from the Wall Committee
05/05/12	Zellner makes a contribution to Maureen May-Grimm for Assembly; disclosure form mistakenly lists her former occupation/employer
09/25/12	Complainant accesses Wall Committee press releases dated 10/05/11, 01/18/12, 02/02/12, 02/14/12, and 02/29/12, all of which list Zellner as point of contact

It thus appears that the Wall Committee paid Zellner within 30 days of her beginning work there (from March 5, 2012, to April 1, 2012), rather than the six months alleged in the Complaint. Furthermore, the fact that the Complainant accessed the Wall Committee's press releases on September 25, 2012, belies the allegation that the Committee removed Zellner's name from the press releases following an August 5, 2012, newspaper article "to eliminate evidence."

In sum, the available information Respondents provide amply supports the Respondents' position that Wisconsin Jobs Now or SEIU did not employ Zellner while she worked for the Wall Committee, and that neither Wisconsin Jobs Now nor SEIU were otherwise paying Zellner's salary at the Wall Committee. Accordingly, we recommend that the Commission find no reason to believe that Wisconsin Jobs Now or SEIU made, and that Zellner, Wall, or the Wall Committee accepted, a prohibited contribution in violation of 2 U.S.C. § 441b(a).

2. Coordinated Expenditures

Expenditures made by any person in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, the candidate's authorized political committee, or their agents, are a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i); 11 C.F.R. § 109.20(b). An expenditure is any purchase, payment, distribution, loan, advance, deposit, or gift of money or

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1 anything of value — including the provision of goods or services at less than the usual or normal
2 charge — made by any person for the purpose of influencing any election for federal office.
3 2 U.S.C. § 431(9); 11 C.F.R. § 100.111. Accordingly, if Wisconsin Jobs Now coordinated its
4 protests with the Wall Committee, as Complainant suggests, Respondents would have violated the
5 Act's prohibition on corporate contributions. *See* 2 U.S.C. § 441b(a).

6 The Complaint fails, however, to allege a specific incident of coordination. Instead, it
7 surmises that Zellner likely facilitated the coordination of protests between Wisconsin Jobs Now
8 and the Wall Committee based on her association with each entity. Furthermore, the only protest
9 that the Complaint specifically references — on January 5, 2012 — does not appear to constitute
10 an expenditure, much less a coordinated expenditure: rather than influencing an election for
11 federal office, this protest appears to have been conducted to draw attention to the issue of wealth
12 distribution. *See supra* p. 3. Moreover, the protest was conducted ten months before the 2012
13 general election. And even if the protest was an expenditure — and there is nothing in this record
14 to suggest that it is — there is no un rebutted evidence here to suggest that Zellner worked for, or
15 consulted with, the Wall Committee before sometime in February when she announced she was
16 leaving Wisconsin Jobs Now. Further, once Zellner announced she would be working for the
17 Wall Committee, Wisconsin Jobs Now appears to have taken the appropriate steps to prevent her
18 from being in the position to improperly influence election-related activity. *See Lauer Decl.*
19 ¶¶ 6, 7.

20 Accordingly, given the lack of any information suggesting that Wisconsin Jobs Now made
21 an expenditure in cooperation, consultation, or concert with, or at the request or suggestion of
22 Wall or the Wall Committee, we recommend that the Commission find no reason to believe that

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1 Wisconsin Jobs Now made or the Wall Committee accepted a prohibited contribution in violation
2 of 2 U.S.C. § 441b(a).

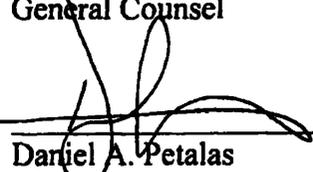
3 **III. RECOMMENDATIONS**

- 4 1. Find no reason to believe that Wall for Congress and Florence Magnuson in her official
5 capacity as treasurer; James Wall; Service Employees International Union; Wisconsin Jobs
6 Now!, Inc.; and Paula Zellner violated 2 U.S.C. § 441b(a).
7
8 2. Approve the attached Factual & Legal Analysis.
9
10 3. Approve the appropriate letters.
11
12 4. Close the file.
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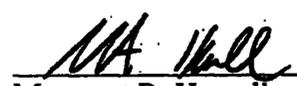
Anthony Herman
General Counsel

6/17/13
Date

BY: _____


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Attorney

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