

The Center for Media and Democracy

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June 14, 2012

Jonathan Becker
Wisconsin Government Accountability Board
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984

RE: Campaign Finance complaint made pursuant to Wis. Stat. §§ 11.05, 11.055, 11.06, and 11.07.

Dear Mr. Becker:

Enclosed, please find our complaint alleging that the Campaign to Defeat Barack Obama purchased and aired advertisements for a “political purpose” – specifically, urging the retention of Governor Scott Walker in the June 5, 2012 recall election -- but did not register with the Government Accountability Board (GAB) as a political committee, as is required by Wis. Stat. § 11.05, or pay filing fees, as required by § 11.055, or report its contributions and expenditures, as required by § 11.06, or designate an agent, as required by § 11.07.

Please contact me if you need further information or have additional questions.

Sincerely,

Brendan Fischer
Law Fellow
Center for Media and Democracy

STATE OF WISCONSIN
BEFORE THE GOVERNMENT ACCOUNTABILITY BOARD

The Complaint of
Brendan Fischer,
Center for Media and Democracy,

COMPLAINT

Complainant

against

The Campaign to Defeat Barack Obama

Respondent

This complaint is made pursuant to Wis. Stat. §§ 11.05, 11.055, 11.06, and 11.07.

I, Brendan Fischer, allege that:

The Campaign to Defeat Barack Obama (CDBO) purchased and aired advertisements for a “political purpose” – specifically, urging the retention of Governor Scott Walker in the June 5, 2012 recall election -- but did not register with the Government Accountability Board (GAB) as a political committee, as is required by Wis. Stat. § 11.05, or pay filing fees, as required by § 11.055, or report its contributions and expenditures, as required by § 11.06, or designate an agent, as required by § 11.07.

Introduction

CDBO is a Political Action Committee registered with the Federal Election Commission (FEC) under committee ID C00495010.¹ CDBO’s address and the address for its treasurer are both in California. It was created in 2011 by the “Our Country Deserves Better Committee,” the parent organization of the “Tea Party Express.”²

In CDBO’s filings with the FEC for the month of April, it reported spending \$31,634 on April 16 for independent expenditures in Wisconsin paid to the New York firm “Political Communications Advertising, and \$2,557 to Russo Marsh and Associates for television

¹ CDBO Report of Receipts and Disbursements, filed May 20 with the FEC (for period April 1 – 30) at page 1, available at <http://images.nictusa.com/pdf/075/12951872075/12951872075.pdf#navpanes=0>. Attached as Exhibit A.

² See “A Trio of ‘Joes’ to Help Launch Anti-Obama Group,” CNN.com (Mar. 24, 2011), available at <http://politicalticker.blogs.cnn.com/2011/03/24/a-trio-of-joes-to-help-launch-an-anti-obama-group/>

production, for a total of \$34,191 on television advertising in Wisconsin for that month. (See Exhibit A).³

Its April filing also indicated that it had incurred a debt of \$76,406 to Russo Marsh and Associates for prior independent expenditures in Wisconsin. (See Exhibit A).⁴

Although CDBO has not filed its monthly FEC report for May or June, it did report to the federal government that it paid Political Communications Advertising \$10,557 for advertising in Wisconsin on May 17th (See Exhibit B).⁵

CDBO did not report any of its Wisconsin spending to state officials. The total amount of political spending by CDBO to influence Wisconsin elections since its founding last year is not known.

Although CDBO reported in its federal filings that the expenditures were made to oppose a federal candidate (President Barack Obama), the ads were also clearly made for the purpose of supporting the retention of Governor Walker in his June 5 recall election. The content of these ads is discussed below.

These disbursements were made for a “political purpose,” as defined in Wis. Stat. § 11.01(16) and interpreted by the Government Accountability Board (GAB) in Wis. Admin. Code § GAB 1.28(3). CDBO’s expenditures also amount to well over \$25, the threshold for registration in Wis. Stats. §§ 11.05 and 11.055. CDBO therefore should have registered as a non-resident political committee⁶ and reported its spending and all contributions made for its independent expenditures.⁷ It also should have paid a filing fee to the board and designated an agent within the state.⁸ However, CDBO is not listed as having registered with the state, and the Wisconsin Campaign Finance Information system does not show any registered group with a name similar to CDBO’s name.

We respectfully ask the GAB to require that CDBO comply with the election integrity requirements in Chapter 11 of the Wisconsin statutes, and we ask the Board to penalize CDBO for violating state law. Such determinations by the GAB will help send a message to

³ CDBO Report of Receipts and Disbursements, filed May 20, at page 261, available at <http://images.nictusa.com/pdf/075/12951872075/12951872075.pdf#navpanes=0>

⁴ See CDBO Report, filed May 20, at page 258. Russo Marsh is a PR firm led by Joe Wierzbicki, who is also the Executive Director of CDBO. The April filing also shows Wierzbicki receiving fundraising commissions in the amount of at least \$31,634, in addition to his travel expenses and whatever his percent of profit-sharing may be from the fees paid to Russo Marsh. In April, CDBO raised \$269,767 and spent \$163,979, including the \$34,191 on Wisconsin ads in April. *See also* Kenneth Vogel, “GOP Operatives Crash the Tea Party, POLITICO (April 14, 2010), available at <http://www.politico.com/news/stories/0410/35785.html>

⁵ CDBO 24/48 Hour Notice of Independent Expenditures, filed May 17 with the FEC, available at <http://images.nictusa.com/pdf/753/12951787753/12951787753.pdf#navpanes=0> (attached as Exhibit B).

⁶ Wis. Stat. § 11.05(1); § 11.01(7)(a); *see also* Wis. Admin. Code §GAB 1.10.

⁷ Wis. Stat. § 11.06. GAB Emergency Rule § 1.91 specifies that a corporation must designate a separate account for its independent expenditures, and disclose all contributions and expenditures made for those expenditures. As noted below, CDBO raised funds for the specific purpose of running these independent expenditures – and those contributions must be disclosed under Wisconsin law.

⁸ Wis. Stat. §§ 11.055, 11.07.

other organizations that engage in political spending in Wisconsin without obeying Wisconsin law.

The CDBO Advertisements

Evidence suggests that the following four advertisements aired in Wisconsin in the two months before the June 5 recall election.

1) “America Needs More Scott Walker and Less Barack Obama!”

The Wisconsin Democracy Campaign reports that CDBO ran a TV ad in the Green Bay and Milwaukee markets in April of 2012 titled “America Needs More Scott Walker and Less Barack Obama!”⁹ The ad claims that “under Governor Scott Walker, things in Wisconsin have begun to turn around,” and includes statements such as “keep up the great work, Governor Walker -- you’re saving our state;” “Governor Walker is trying to have fiscally responsible policy [and] trying to hold down taxes to give average workers a break;” “Scott Walker is doing a great job in Madison;” and “I support Governor Scott Walker.” The ad concludes that “America needs more of Governor Scott Walker’s style of leadership.” The ad also critiques President Barack Obama.¹⁰

The “America Needs More Scott Walker” ad was posted on the Campaign to Defeat Barack Obama website over the following statement: “Make a contribution now to stand with Scott Walker and help win this critical 2012 battle!” (See Exhibit C).

2) “Barack Obama: Fiddling in Madison While FAILING in Washington”

The Wisconsin Democracy Campaign also reports that CDBO ran an ad in the Green Bay and Milwaukee markets in April titled “Barack Obama: Fiddling in Madison While FAILING in Washington.”¹¹ The ad alleges that there has been a “campaign of harassment and intimidation” in Wisconsin by “President Obama’s allies,” and praises Governor Walker for “standing up to the bullying.” The ad also features statements from purported Wisconsin residents saying “I support my Governor, Scott Walker” and “in the face of adversity he has shown true courage” and “we support Scott Walker.” The ad’s announcer tells viewers “he deserves our gratitude.”¹²

The “Fiddling in Madison” ad is also posted on the CDBO website over the statement “Make a contribution now to stand with Scott Walker and help win this critical 2012 battle!” (See Exhibit C).

3) “We Applaud Governor Walker”

⁹ Wisconsin Democracy Campaign, “Campaign to Defeat Barack Obama PAC” page, accessed June 12, 2012, available at <http://www.wisdc.org/defeat-barack-obama-pac-2012.php>

¹⁰ “America Needs More Scott Walker and Less Barack Obama!” uploaded to YouTube March 29, 2012, available at <http://youtu.be/KJlBaGui0uo>

¹¹ Wisconsin Democracy Campaign, “Campaign to Defeat Barack Obama PAC” page, *supra* note 8.

¹² “Fiddling in Madison While Failing in Washington,” uploaded to YouTube April 6, 2012, available at <http://youtu.be/T3i-geaV8Wk>

On May 29, CDBO posted a link on its Facebook page titled “BREAKING NEWS: See Our Brand New TV Ad!” The posting said “be the first to see & show your friends our gorgeous new ad to support Scott Walker, beat back Obama’s minions and DEFEAT the RECALL.” (Exhibit D). Upon clicking the link, viewers are brought to a website with a video titled “We Applaud Governor Walker” at the top. (Exhibit E).

The “We Applaud Governor Walker” ad begins by stating, “Governor Scott Walker has stood by his principles and provided the leadership that was needed to turn Wisconsin around.” In the ad, CDBO President Mary Pearson says “Governor Walker’s reforms are working here in Wisconsin,” with an arrow pointing to Madison (Pearson lives in California). Purported Wisconsin residents praise Governor Walker’s “leadership, integrity, and straightforwardness.” The announcer tells viewers “we applaud Governor Scott Walker for creating jobs in Wisconsin, lowering property taxes, erasing Wisconsin’s budget deficit, and bringing economic growth and opportunity back to the badger state.” The ad also critiques President Obama and claims he is “interfering with the progress being made here in Wisconsin.” The ad ends with CDBO President Pearson telling viewers “God bless this great nation, and god bless Governor Scott Walker.”¹³

The top of the CDBO webpage with the “We Applaud Governor Walker” ad says “thanks to the financial support of individuals like you we are continuing to expand our efforts in Wisconsin to DEFEAT the RECALL. We are proud to unveil yet another TV ad that will join our arsenal in Wisconsin.” (See Exhibit E). Because CDBO has not registered with the GAB or reported its expenditures, it is not known in which Wisconsin television markets this ad has run.

The website also mentions other TV ad campaigns in Wisconsin and solicits donations to “get these ads seen all across Wisconsin.” (See Exhibit E).

4) “Michael Reagan & Wisconsinites Speak Out for Scott Walker”

On May 29, CDBO posted a link to its Facebook page that said “See the brand new TV ad to DEFEAT the RECALL!!” (Exhibit F). The link brings viewers to a page that says “We are pleased to release a fantastic new TV ad for our campaign to support Gov. Scott Walker and DEFEAT the RECALL – and we’re honroed (sic) to report that this TV ad features President Ronald Reagan’s son Michael Reagan.” (Exhibit G).

The ad, titled “Michael Reagan & Wisconsinites Speak Out for Scott Walker,” begins by saying “Governor Scott Walker is turning Wisconsin around, and no less than Ronald Reagan’s son has taken note of his efforts.” Michael Reagan tells viewers, “We need leaders like Scott Walker. He’s a reminder of somebody named Reagan from a long time ago. Scott Walker, because of what he’s doing, has turned a negative into a positive, bringing businesses back to Wisconsin, getting people back to work in Wisconsin.” He continues: “Why in the world would the people of Wisconsin want to go back to those days of yesteryear when the budget was out of control, jobs were not available, is beyond me.” A purported Wisconsin resident tells viewers “he has saved us taxpayers billions and billions

¹³ “We Applaud Governor Walker;” uploaded to YouTube May 29, available at <http://youtu.be/td54PTaii60>

of dollars.” Reagan concludes the ad by saying “win this one for ‘The Gipper’,” with an image of Ronald Reagan appearing to salute Walker.¹⁴

On the CDBO page that shows the ad, below the embedded video, the page says “Help us get this ad seen all across Wisconsin in the critical closing days of this RECALL election by making an online contribution.” It also invites visitors to “view two more of the ads we are running” with embedded video of the “America Needs More Scott Walker” and “Fiddling in Madison While Failing in Washington” ads. The page also says:

“This election is critically important. If Gov. Walker loses, he will not only be ousted, but his Republican Lieutenant Governor could be ousted. And on top of that 4 Republican State Senators are subject to RECALL and if we lose 2 of those races, then Republicans lose control of the State Senate and the Left can completely block Gov. Walker's agenda.

“But, even more than that - if the RECALL succeeds and Gov. Walker is removed from office, it will be a huge boost to Barack Obama's efforts to steal away Wisconsin's 10 Electoral Votes in the November presidential election.

“We must win. We must DEFEAT the RECALL.” (See Exhibit F).

5) Other CDBO Ads in Wisconsin

In addition to these four ads, CDBO produced and distributed other videos backing Walker, although there are not complete records to indicate if they aired on TV or were available only on the internet.¹⁵ These other ads are detailed in the appendix to this filing.

Ads Were Made for a Political Purpose; CDBO Must Register and Disclose

Each of these ads were clearly made for a “political purpose,” as defined in Wis. Stat. § 11.01(16), since they endorse Walker in advance of the June recall election..

Pursuant to its authority to administer and enforce Chapter 11 of the Wisconsin statutes, the GAB has provided additional clarification about the meaning of “political purpose” in 1.28 of the administrative code. All of the ads meet the definition in 11.01 of Wisconsin statutes and meet the definition set forth in subsection (a) of 1.28(3) as well as the definition in subsection (b), as detailed below.

Under Wisconsin law, any group making disbursements for a political purpose over \$25 in a calendar year must register as a political committee and report its funding and spending. *See*, Wis. Stat. §§ 11.05(1), 11.01(7)(a), and 11.06; *see also* Wis. Admin. Code § GAB 1.91.

¹⁴ “Michael Reagan & Wisconsinites Speak out for Scott Walker,” uploaded to YouTube May 28, 2012, available at <http://youtu.be/YFi-CwE-x4o>

¹⁵ *See* Campaign to Defeat Barack Obama YouTube account, available at <http://www.youtube.com/user/DefeatObamaCampaign?feature=watch>

CDBO's Ads Meet the Definition of "Political Purpose" in GAB 1.28(3)(a)

Wis. Admin. Code § GAB 1.28(3)(a) defines a communication being for a "political purpose" if it references a clearly identified candidate, unambiguously relates to the campaign of that candidate, and contains terms such as "support" or "defeat" (or the functional equivalent).

The first two ads described above ("America Needs More Scott Walker" and "Fiddling in Madison") use the term "support" with respect to Governor Walker, who is clearly identified.

The third ad was accompanied by promotional material that expressly referenced the ad's use to aid Walker in his recall election: "be the first to see & show your friends our gorgeous new ad to support Scott Walker, beat back Obama's minions and DEFEAT the RECALL."

The fourth ad ("Michael Reagan & Wisconsinites Speak Out for Scott Walker"), which appears to have run in the week before the election, clearly identifies Walker and tells viewers to "win this one for the Gipper." The term "win" is functionally equivalent to the terms mentioned in GAB 1.28(3)(a)(1-6).

If these ads do not meet the definition of political purpose – meaning "done for the purpose of influencing the election" of an individual to state office -- very few ads run during election season would count. Moreover, even CDBO assumed that at least some of its spending on ads in Wisconsin counted as independent expenditures under federal law, and reported so on its federal filings.

CDBO's Ads Also Meet the Definition of "political purpose" in GAB 1.28(3)(b)

Under Wis. Admin. Code § GAB 1.28(3)(b) an advertisement is by definition one for a "political purpose" if it is made 60 days before an election, includes reference to a clearly identified candidate, and is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.¹⁶

Each of the four ads discussed above were aired within 60 days of the June 5 recall election, clearly identify Governor Walker both in name and image, and are susceptible of no reasonable interpretation other than an appeal to vote for him, even if they were not considered to have expressly urged viewers to support Scott Walker in the recall.

The ads refer to Walker's personal qualities, character, and fitness for office:

- the "America Needs More Scott Walker" ad tells Walker to "keep up the great work," saying he "is doing a great job,"
- the "Fiddling in Madison" ad says "in the face of adversity he has shown true courage" and "he deserves our gratitude,"

¹⁶ GAB 1.28(3)(b) was challenged in both state and federal court when it was published on July 31, 2010, and its enforcement was temporarily enjoined by the Wisconsin Supreme Court on August 13, 2010. The Wisconsin Supreme Court vacated that injunction on March 19, 2012. See *Wisconsin Prosperity Network v. Myse*, 2010AP1937-OA (Mar. 19, 2012). The GAB has stated that it will be enforcing this subsection.

- the “We Applaud Governor Walker” ad praises Walker’s “leadership, integrity, and straightforwardness,”
- the “Michael Reagan” ad tells viewers “We need leaders like Scott Walker. He’s a reminder of somebody named Reagan from a long time ago.”

The ads also support his public record:

- the “America Needs More Scott Walker” ad tells Walker to “keep up the great work,” saying he “is doing a great job,” and praises him for “trying to have fiscally responsible policy [and] trying to hold down taxes to give average workers a break”
- the “Fiddling in Madison” ad praises Walker for “standing up to the bullying”
- the “We Applaud Governor Walker” ad praises Walker “for creating jobs in Wisconsin, lowering property taxes, erasing Wisconsin’s budget deficit, and bringing economic growth and opportunity back to the badger state”
- the “Michael Reagan” ad tells viewers that Walker “has turned a negative into a positive, bringing businesses back to Wisconsin, getting people back to work in Wisconsin” and “he has saved us taxpayers billions and billions of dollars”

CDBO’s Other Communications Show the Ads Were for a “Political Purpose”

Each communication from CDBO about these ads – such as Facebook and web postings – clearly meet the “political purpose” definition described in 1.28(3)(a). The communications declare the need to DEFEAT the RECALL and “Support Governor Walker.” (See Exhibits C-G, see also Exhibit H).

These Facebook and web postings also ask for donations to fund the TV airtime for the ads. Additionally, CDBO sent an email to solicit donations for their “TV Ad Fund.” The banner at the top of this email says “Support Governor Scott Walker!” (See Exhibit I). The email appears to have been a paid advertisement sent through RedState.com.

CDBO’s public communications reinforce the fact that the ads were made for a political purpose. CDBO raised money for the ads with the promise that putting the communications on TV would help “DEFEAT the RECALL” and “support Governor Walker.” CDBO promoted the ads online by discussing how the ads were intended to influence Wisconsin’s recall elections. And as discussed above, the ads met the definition of communications for a political purpose under Wisconsin law.¹⁷

CDBO Should Be Penalized for its Non-Compliance

Despite CDBO spending tens of thousands of dollars to support Scott Walker in his recall campaign and making it clear that its purpose was to influence Wisconsin voters, the group did not register as a political committee and did not disclose its funding and spending to the state of Wisconsin.

¹⁷ All funds raised through these appeals were “made for” the political purpose of funding the pro-Walker TV ads. These contributions and all others made for the purpose of funding CDBO’s political activities must be disclosed under Wis. Admin. Code § GAB 1.91.

Additionally, CDBO chairperson, Lloyd Marcus, boasted on his website that CDBO purchased over \$100,000 in TV ads in Wisconsin to help influence the Wisconsin state senate recall elections last summer. (See Exhibit J). It does not appear that the group registered as a political committee for those expenditures, either.

We respectfully request that the GAB investigate the actions of this group and sanction the organization for any and all violations, including any civil and/or criminal penalties it deems appropriate. Wisconsin law states that any person, including any committee or group, who violates chapter 11 of the Wisconsin statutes may be required to forfeit not more than \$500 for each violation.” § 11.60 (1). Additionally “whoever intentionally violates s. 11.05 (1), (2), (2g) or (2r), 11.07 (1) or (5) . . . is guilty of a Class I felony.” § 11.61 (1)(a). Furthermore, Sub. (1)(a) does not require the state to prove that the defendant had actual knowledge of the violated statute. *State v. Dreske*, 88 Wis. 2d 60, 276 N.W.2d 324 (Ct. App. 1979).

With the November state and federal elections less than five months away, we would ask the Board to expedite its investigation of CDBO in order to help ensure the integrity of Wisconsin’s electoral process.

Date: June 14, 2012

Brendan Fischer
Center for Media and Democracy
520 University Ave Suite 260
Madison, Wisconsin 53703

I, Brendan Fischer, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

(complainant’s signature)

STATE OF WISCONSIN)

) ss.

County of Dane)

Sworn to before me this day of ___ day of June, 2012.

_____, Notary Public

My commission expires _____, or is permanent.

Appendix

The following are ads produced by the Campaign to Defeat Barack Obama and posted on their website and YouTube account. It is not known whether these ads aired on Wisconsin television or were available only via the internet.

- “Conservative Leaders Unite to Support Scott Walker”¹⁸
 - This 4 minute, 15 second web ad features a variety of Tea Party and conservative leaders speaking in support of Walker and his policies. Dick Morris tells viewers the video was sponsored by CDBO, and notes the group is raising money to “fight the Wisconsin recall elections.” CDBO chairperson Lloyd Marcus says “Thank you Scott Walker for having backbone to do what you said you were going to do Scott Walker has stood on principle and done the right thing.” Marcus also serenades viewers with a version of “God Bless America.” Michael Reagan notes that he would like to kidnap Walker and bring him to California. The ad also includes statements in support of Walker from Judd Phillips of Tea Party Nation and Amy Kremer of Tea Party Express.
- “We Appreciate Gov. Walker & Reject Obama's Intervention”¹⁹
 - This ad begins by saying “The people of Wisconsin have a message for Governor Scott Walker – Thank You” and shows footage of “Stand With Walker” signs and Governor Walker. It continues with commentary supporting Walker from individuals portrayed as Wisconsin citizens.
- “Obama: Stop trying to Harm Wisconsin's Progress!”²⁰
 - This ad says “Governor Scott Walker showed strong leadership and made tough decisions to help turn Wisconsin around,” and shows footage of Walker. It continues with commentary supporting Walker from individuals portrayed as Wisconsin citizens.
- “Barack Obama: Stop Interfering with Gov. Walker”²¹
 - This ad shows more commentary supportive of Walker from individuals portrayed as Wisconsin citizens. The ad states that “the people of Wisconsin are fighting back, standing with Governor Walker.”

¹⁸ “Conservative Leaders Unite to Support Scott Walker,” uploaded to YouTube June 2, 2012, available at <http://youtu.be/Qqrq2zXOKOs>

¹⁹ “We Appreciate Gov. Walker & Reject Obama's Intervention,” uploaded to YouTube May 29, 2012, available at <http://youtu.be/rCcM12Q23nM>

²⁰ “Obama: Stop trying to Harm Wisconsin's Progress! (TV Ad),” uploaded to YouTube May 28, 2012, available at <http://youtu.be/zkPIvAq0BSs>

²¹ “Barack Obama: Stop Interfering with Gov. Walker,” uploaded to YouTube May 28, 2012, available at <http://youtu.be/b8bcIYt1gLA>