

SANDLER REIFF

SANDLER REIFF LAMB
ROSENSTEIN & BIRKENSTOCK, P.C.

January 16, 2025

Alice Fiman
Compliance Officer
Washington Public Disclosure Commission
711 Capitol Way, Rm. 206
Olympia, WA 98504

Re: Response to Complaint from Conner Edwards, PDC Case Number 164739

By email to pdcc@pdcc.wa.gov

Dear Ms. Fiman:

The undersigned serves as counsel to Jane Fonda Climate PAC, a PAC registered with the Federal Election Commission (FEC ID # C00806893) (“JanePAC”). This letter responds on behalf of JanePAC to the Washington Public Disclosure Commission’s (“PDC”) notification of a complaint (the “Complaint”) from Connor Edwards (the “Complainant”).

The Complaint alleges that JanePAC failed to timely or accurately file its C-1PC registration and to timely or accurately file C-3, C-4, and earmarking reports. As will be discussed further below:

- I. JanePAC requested guidance from PDC on its registration and reporting obligations and timely registered within three business days of the date that PDC confirmed that registration was required (despite a change in guidance from PDC).
- II. JanePAC timely filed its C-5 reports as an Out-of-State Committee during the 2024 cycle, and filed its reports as a Washington Political Committee once registered.
- III. JanePAC did not make any earmarked contributions in Washington, and therefore did not fail to file a Special Report E.

As a result, JanePAC respectfully requests that this Complaint be dismissed as unfounded.

1. Out-of-State Committee Status

As noted, JanePAC is a political action committee registered with the Federal Election Commission and has been since February 28, 2022. As a federal PAC, JanePAC qualified as an out-of-state committee under Washington law for the start of its activity in October 2024.

Under Washington law, a committee can qualify as an out-of-state committee and be exempt from regular reporting if it meets a multi-part test. To qualify as an out-of-state committee, the committee must:

- (i) Be located out-of-state (i.e., maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State).
 - a. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.
- (ii) Be currently organized primarily for engaging in campaign activities in another state, meaning the committee must:
 - a. Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years;
 - b. Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and
 - c. Have spent less than twenty percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.¹

¹ Was. Admin. Code 390-16-049; Was. Public Disc. Comm'n, *Out-of-State Committees*, at <https://www.pdc.wa.gov/registration-reporting/candidates-committees/out-state-committees> (last accessed January 16, 2025).

Out-of-state committees are only required to file a C-5 report for any month in which the committee makes a Washington contribution or expenditure of \$50 or more.² The report must be filed by the 10th day after the month in which the contribution or expenditure was made.³

Under this standard, JanePAC qualified as an out-of-state committee because (1) its offices or headquarters are in another state; (2) it has organizational documents showing that it was created for the purpose of non-Washington activity; (3) it has been in existence for at least 2 years; and (4) it spent less than 20% of its total expenditures on Washington elections.⁴

As an out-of-state committee, JanePAC was not required to file a report covering its October activity until November 10, 2024. JanePAC did so and timely filed its C-5 report, covering its October activity through October 19, 2024, on November 8, 2024 – three days *after* this Complaint was submitted.

This C-5 report discloses the contributions to Dave Upthegrove, Melissa Deyman, and No on 2117.⁵ Therefore, the Complaint’s allegation of undisclosed contributions to these Washington committees is moot and ripe for dismissal as unfounded.⁶

2. Washington Political Committee Status

Separately, on October 20, 2024, JanePAC sent out a fundraising solicitation email for the PAC that specifically mentioned Washington ballot measure 2117. JanePAC’s counsel reached out to the PDC on October 24, 2024 via phone and email to confirm whether JanePAC would be required to register as a Washington political committee as a result of this solicitation or whether it could continue to file its out-of-state committee C-5 reports.

That same day, Scott Haley confirmed that an out-of-state committee engaged in solicitations that specifically mentioned Washington ballot measures ***would not be required to register and could continue to report using the C-5 report for Out-of-State Committees.***⁷

² Was. Public Disc. Comm’n, *Out-of-State Committees* at <https://www.pdc.wa.gov/registration-reporting/candidates-committees/out-state-committees> (last accessed January 16, 2025).; see Rev. Code Was. 42.17A.250; Was. Admin. Code 390-16-049.

³ *Id.*

⁴ Rev. Code Was. 42.17A.250; Was. Admin. Code 390-16-049.

⁵ JanePAC, Oct. 2024 C-5 Report at <https://apollo.pdc.wa.gov/c5/public/-/#/public/report/110259630> (last accessed January 16, 2025).

⁶ Was. Public Disc. Comm’n, *Dismissed as unfounded or frivolous*, at <https://www.pdc.wa.gov/rules-enforcement/enforcement/enforcement-guide/dismissed-unfounded-or-frivolous> (last accessed January 16, 2025).

⁷ Attachment A, Email from Scott Haley on Oct. 24, 2024 at 7:06 PM ET.

However, five days later, Mr. Haley reversed his prior guidance after discussing the question with more senior staff at PDC, telling JanePAC that it would be required to register.⁸ After additional discussion, PDC confirmed on October 31, 2024 that JanePAC would need to register for its proposed activity,⁹ and JanePAC registered on November 4, 2024.¹⁰

On the same day that it registered, JanePAC filed its C-3 reports for October 20,¹¹ October 23,¹² and October 29,¹³ along with its C-4 report covering October 20 through October 28.¹⁴ Notably, in the time since, JanePAC has timely filed its C-4 reports.¹⁵

As noted in the Complaint, Washington law requires a committee that organizes within three weeks of an election to register within three business days.¹⁶ Because JanePAC reasonably relied on PDC's guidance regarding its registration obligations, it did not initially file a C-1PC. However, once PDC reversed its own guidance to tell JanePAC to register on October 31, JanePAC did so on November 4 – *less than three business days later*.

Consequently, JanePAC did not file a late registration. Rather, it simply relied on PDC's advice relating to its registration obligations and filed once PDC advised it to do so.

⁸ Attachment A, Email from Scott Haley on Oct. 29, 2024 at 7:49 PM ET.

⁹ Attachment A, Email from Scott Haley on Oct. 31, 2024 at 5:09 PM ET.

¹⁰ JanePAC, Form C-1PC Registration at https://apollo.pdc.wa.gov/public/registrations/registration?registration_id=61838 (last accessed January 16, 2025). JanePAC is open to submitting an amended registration if required by the PDC to resolve the administrative error on its initial registration regarding its officers and supported/opposed candidates and ballot measures.

¹¹ JanePAC, Form C-3 Report (Oct. 20, 2024) at <https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110258724> (last accessed January 16, 2025).

¹² JanePAC, Form C-3 Report (Oct. 23, 2024) at <https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110258725> (last accessed January 16, 2025).

¹³ JanePAC, Form C-3 Report (Oct. 29, 2024) at <https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110258726> (last accessed January 16, 2025).

¹⁴ JanePAC, Form C-4 Report (Oct. 20 through Oct. 28, 2024) at <https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110258774> (last accessed January 16, 2025).

¹⁵ See JanePAC, Form C-4 Report (Oct. 29 through Nov. 30, 2024) at <https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110263256>, Form C-4 Report (Dec. 1 through Dec. 31, 2024) at <https://apollo.pdc.wa.gov/public/registrations/campaign-finance-report/110266568> (last accessed January 16, 2025).

¹⁶ Rev. Code Was. 42.17A.205(1).

That same day, JanePAC retroactively filed all reports going back to October 20, 2024 – the date of its solicitation email that mentioned the Washington ballot measure. Given its reliance on PDC’s advice in this matter, JanePAC could not do more than file its registration and reports as soon as possible following PDC’s changed guidance on October 31.

3. Earmarked Contributions

JanePAC did not make any earmarked contributions in Washington, and therefore did not fail to file a Special Report E. In Washington, a political committee acting as a conduit or intermediary must file Special Report E within two business days if it “receiv[es] a contribution earmarked for the benefit of a candidate or another political committee.”¹⁷

Washington defines an “earmarked contribution” as “any contribution given to an intermediary or conduit, either a political committee, candidate or third party, with a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which is intended to result in or which does result in all or any part of the contribution being made to or for the promotion of a certain candidate, state official, or ballot proposition.”¹⁸

Additionally, a “conduit” is “a person, other than an individual, that receives and spends earmarked contributions on behalf of a designated candidate, bona fide political party, caucus of the state legislature or other political committee.”¹⁹ An “intermediary” is “an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual’s employer, immediate family, or an association to which the individual belongs.”²⁰

JanePAC did not at any point act as a conduit or intermediary for a political contribution for any candidate, committee, or ballot proposition. The “special landing page” for Melissa Demyan noted in the Complaint was an ActBlue page hosted by JanePAC that supported Melissa Demyan’s campaign – funds went through ActBlue, to the campaign. JanePAC did not receive, transmit, or otherwise have any custody over funds contributed through the ActBlue page. Rather, as with all ActBlue contributions, the funds went to ActBlue as a payment processor and then were sent directly to Melissa Demyan’s campaign.

As a result, JanePAC made no earmarked contributions and did not trigger a Special Report E for this activity.

¹⁷ Rev. Code Was. 42.17A.270; Wash. Admin. Code 390-16-034.

¹⁸ Wash. Admin. Code 390-16-240(1).

¹⁹ Wash. Admin. Code 390-16-015(1).

²⁰ Rev. Code Was. 42.17A.005(31)(a).

4. Conclusion

Until October 20, 2024, JanePAC's sole reporting obligation in Washington was to file the C-5 report for out-of-state committees. JanePAC did just that by filing a C-5 report covering October 1 through October 19, 2024, which was filed on time on November 8, 2024.

After October 20, 2024, JanePAC sought advice from PDC regarding its registration and reporting obligations and registered within three business days of PDC confirming that registration was required. For this reason, its October C-5 report covers the first period of October, up through October 20, 2024, and its remaining political committee reports cover the time since that date. JanePAC is open to submitting an amended registration if required by the PDC to resolve the administrative error on its initial registration regarding its officers and supported/opposed candidates and ballot measures.

Aside from this minor administrative oversight, JanePAC has timely filed its registration and reports, and all of its activities have been properly reported and are publicly available on PDC's website.

Additionally, all contributions made on the "special landing page" for Melissa Demyan were transmitted through ActBlue, *not* through JanePAC, meaning that JanePAC did not receive, transmit, or have any custody over any contributions. As a result, JanePAC did not engage in any activity involving earmarked contributions and did not fail to file a Special Report E.

For these reasons, the Complaint fails to present sufficient evidence of a violation of Washington campaign finance law, and therefore the Complaint should be dismissed as unfounded.

If you have any questions or need further information concerning the above, please contact me at mitrani@sandlerreiff.com.

Sincerely,

A handwritten signature in blue ink, appearing to read 'David Mitrani', with a long horizontal flourish extending to the right.

David Mitrani
Aaron Barden

Counsel to Jane Fonda Climate PAC

Re: PDC - Out-of-State Committee Question

From PDC Support <pdcc@pdcc.wa.gov>

Date Thu 10/31/2024 5:09 PM

To Aaron Barden <barden@sandlerreiff.com>

Cc David Mitrani (Sandler Reiff) <mitrani@sandlerreiff.com>; Aaron Barden <barden@sandlerreiff.com>

Dave Mitrani,

An out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW **42.17A.205** through **42.17A.240** shall report as required in RCW **42.17A.250** (a form C-5 out-of-state political committee report) when it makes an expenditure supporting or opposing a Washington state candidate or political committee. A PAC that solicits contributions specifically for WA campaigns does not meet this requirement. First, the PAC is organized for the purpose of supporting/opposing WA elections once it begins to solicit for such races. Second, the fact that the out of state committee begins to report once it "makes an expenditure" indicates that the law does not contemplate PACs qualifying as an out of state PAC when it solicits contributions for WA elections. If it were permitted, that would mean an out of state PAC could solicit contributions for in-state elections without limit up until the point it made an expenditure in-state. That does not make sense, and does not comport with the principles of the law.

Thank you,

--Scott Haley
Filer Assistance Specialist

Washington State law established email as the PDC's official means of communication as of June 7th, 2018 (RCW 42.17A.055). Filers have a duty to amend their reports within 10 days of any material changes, such as new email addresses. Please ensure your email address is up to date.

To respond, please reply to this email.

Washington Public Disclosure Commission
<http://www.pdc.wa.gov>
1.360.753.1111

On Wed, 30 Oct at 6:53 AM , David Mitrani (Sandler Reiff) <mitrani@sandlerreiff.com> wrote:

External Email

Scott – thank you for your assistance here: I completely agree that an organization that raises funds in reference to Washington elections is a committee. In the Grocers' case, they were a 501(c)(6) collecting funds internally, whereas here it is a committee registered with the Federal Election Commission that is filing C-5 reports with the PDC.

Does that affect this guidance? A federal committee filing C-5 reports is already disclosing contributors to the FEC, and disclosing donors on the C-5 as well – so we want to confirm.

Thanks,
Dave

--

Dave Mitrani
Partner
Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.

1620 Eye Street NW, Suite 900
Washington, D.C. 20006
T: (202) 479 – 1111 x 307
sandlerreiff.com

From: Aaron Barden <barden@sandlerreiff.com>
Date: Wednesday, October 30, 2024 at 09:17
To: PDC Support <pdcc@pdc.wa.gov>
Cc: David Mitrani (Sandler Reiff) <mitrani@sandlerreiff.com>
Subject: Re: PDC - Out-of-State Committee Question
Hi Scott,

Thanks for following up - looping in a partner from my law firm to discuss this further!

Thanks,
Aaron

From: PDC Support <pdcc@pdc.wa.gov>
Sent: Tuesday, October 29, 2024 7:49 PM
To: Aaron Barden <barden@sandlerreiff.com>
Subject: Re: PDC - Out-of-State Committee Question

You don't often get email from pdcc@pdc.wa.gov. [Learn why this is important](#)

Aaron Barden,

You contacted the Washington Public Disclosure Commission recently about out-of-state committee that made a solicitation that specifically references a WA ballot measure. I told you that the committee could still report using form C-5, out of state political committee in that case. I discussed this with senior members of the Public Disclosure Commission. They told me that in the case of State of Washington v. Grocery Manufacturers Association, No. 96604-4, the court determined that a solicitation that specifically references a Washington State ballot measure requires a person to register and report as a political action committee in Washington State.

I apologize for not giving you the correct answer in my earlier message.

Thank you,

--Scott Haley
Filer Assistance Specialist

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To respond, please reply to this email.

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1.360.753.1111

On Fri, 25 Oct at 7:43 AM , Barden <barden@sandlerreiff.com> wrote:

External Email

Hi Scott,

Okay got it - appreciate the clarification!

Re: PDC - Out-of-State Committee Question

From PDC Support <pdcc@pdc.wa.gov>

Date Thu 10/24/2024 7:06 PM

To Aaron Barden <barden@sandlerreiff.com>

Aaron Barden,

To report expenditures in Washington State as an out-of-state political committee using form C5, all the criteria in (a) and (b) below must be satisfied:

(a) Out-of-State. First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) Organizational Purpose and Campaign Activities. Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee.

Therefore, to qualify as a current out-of-state committee, the committee must also:

- (i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,
- (ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,
- (iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

If an out of state political committee made a solicitation that specifically referenced a Washington State ballot measure, but it still wasn't domiciled in Washington State, it was organized primarily for engaging in campaign activities in another state, and it spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees, I think that it would still be able to report its expenditures in Washington State as an out-of-state political committee using form C5. I'm not an attorney, and if you'd like me to check this with more senior people in the agency and our staff attorney, I can do that.

Thank you,

--Scott Haley
Filer Assistance Specialist

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To respond, please reply to this email.

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On Thu, 24 Oct at 2:51 PM , Barden <barden@sandlerreiff.com> wrote:
I received an email from Aaron Barden of Sandler Reiff Lamb Rosenstein & Birkenstock, P.C., sent to my PDC email address. I moved it here to make it a ticket:

External Email
Hi Scott,

Apologies I missed your call - and when I try to call your direct line, I can't hear you if you're picking up, so I figured I'd follow up via email instead!

As I mentioned, I'm an attorney representing an out-of-state committee who had a question about WA nonfederal campaign finance. Specifically, if an out-of-state committee makes a solicitation that specifically references a WA ballot measure, can it still file the monthly C-5 reports, or is it required to register as a PAC?

Thanks!
Aaron

Aaron Barden (he/him/his)
Associate

Sandler Reiff Lamb Rosenstein & Birkenstock, P.C.
1620 Eye Street NW, Suite 900
Washington, DC 20006
(202) 479-1111

When he called, I was having a problem with my phone system.

--Scott Haley
Filer Assistance Specialist