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*Original via email to:
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Public Disclosure Commission
711 Capitol Way S #206
Olympia, WA 98504

Re: Complaint No. 174306
BIL File No. 6560-002

Dear PDC Staff,

This letter constitutes Washington Progress Alliance (WPA)'s response to the allegations raised in the complaint in PDC Case No. 174306. The complaint alleges that WPA is operating as an unregistered political committee. That is not the case.

The FCPA defines "political committee" as any individual or entity that has "the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." RCW 42.17A.005(41). WPA does not solicit or receive money that is designated for use in any candidate or ballot proposition campaign. And while the organization may make expenditures on occasion, it is not the primary purpose of the organization.

I. Legal standards

The PDC has explained the legal test to determine whether an entity is a political committee for the purposes of the FCPA. There are two independent qualifying activities included in the definition: receiving contributions and making expenditures. The registration requirement can be triggered by either of those activities. *See State v. Grocery Manufacturers Ass'n*, 5 Wn.App.2d 169, 186–187(2018) (citing *Utter v. Bldg. Industry Ass'n of Wash.*, 182 Wn.2d 398, 423–27 (2015)); PDC Interpretation 07-02 "Primary Purpose Test".

The contribution prong is met when an entity begins to solicit or expects to receive contributions to support or oppose an election campaign. This prong is straightforward and not at issue here. WPA does not solicit or receive money for the purposes of supporting or opposing any election campaign.

The expenditure prong is less straightforward, and courts have developed the "primary purpose" test for determining the requisite threshold of spending activity. PDC Interpretation 07-02. Under the test, an entity that makes expenditures is only a political committee if it is determined that a "primary purpose" of the organization is to "affect governmental decision-making by supporting or opposing candidates or ballot propositions." *Id.* To determine the primary purpose of an organization, the PDC uses the four-

factor, non-exclusive test as offered by the Washington Court of Appeals in *Evergreen Freedom Foundation v. Washington Ed. Ass'n.*, 111 Wn. App. 586 (Wash. Ct. App. 2002):

(1) the content of the stated goals and mission of the organization; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals and mission.

111 Wn. App. at 600.

In addition, to assess whether election spending activities require registration as a political committee, the PDC instructs organizations to assess whether they use over 30% of their general treasury budget on spending in election campaigns. PDC Interpretation 07-02. The PDC explains that the 30% test is not determinative on its own but that it provides a guide to assist organizations in deciding whether they need to consider the applicability of the *Evergreen* test to their situation.

II. WPA is not a political committee

As an initial matter, WPA's expenditures do not come remotely close to 30% of its general budget. WPA has not used more than 2% of its budget on expenditures related to election campaigns since 2020. According to the PDC's records, the PDC calculated that WPA spent \$7,918.98 on expenditures related to election related activities. However, the \$4,100 contribution to Citizens of Yelm was not an expenditure for election-related activities, as explained in more detail below. Excluding the Citizens of Yelm donation, between 2020-2025 the PDC reports that WPA spent \$3,818.98 on election related activities. In contrast, WPA's total operating budget over the same time period was \$5,267,310. Thus, WPA only spent 0.07% of its budget between 2020 and 2025 on election related activities. Because its expenditures on election activities come nowhere near the 30% guideline that the PDC instructs organizations to consider, it is clear that WPA is not a political committee and there is no need to analyze its organization under the four-factor *Evergreen* test.

However, it is also clear under the four-factor test that WPA is not a political committee. WPA is primarily a grant-making and funding organization—a “donor table”¹, working to uplift other organizations acting at the intersection of racial justice and politics. WPA makes grant investments in 501(c)(4) organizations and initiatives that are working to enact progressive goals in Washington communities—racial, gender, economic, and environmental justice. WPA helps other 501(c)(4) organizations by engaging in capacity building support, facilitating connections with other organizations, and through direct investments. That purpose is clearly reflected on the front page of WPA's website. Thus, the stated goals of the organization are clearly not election financing related. In fact, WPA's stated goals are specifically not election-related: “Instead of focusing on single campaigns or individual issue,

¹ <https://washingtonprogress.org/>

we took an infrastructure approach—investing in leadership development, community-based organizations, and tools and capacities that all communities can leverage to win on their issues.”²

With regards to the second prong, whether the organization's actions further its stated goals and mission, WPA's clearly do. The vast majority of its expenditures every year are spent on grants and donations to other 501(c)(4) organizations for capacity building or general support. Aside from payroll and operating expenses, grantmaking is WPA's primary expense. For example, this year, WPA will give about \$825,000 to other 501(c)(4) organizations. It is clear that WPA's actions further its stated goals and mission of supporting other progressive non-profit organizations.

The third prong, whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election, would probably be satisfied with regards to any organization that works and fights for social change, which WPA certainly does. Hypothetically, if tomorrow Washington's legislature enacted a radical liberal agenda, which it implemented by giving millions of dollars to progressive non-profit organizations around the state, that would further WPA's stated goals. But because the same could be said for most progressive organizations in Washington state, such evidence is hardly compelling.

Lastly, WPA primarily meets its stated goals through grant-making to other 501(c)(4) organizations, not through electoral political activity. Some grants to organizations are specific to certain projects, for example if an organization is going through an executive director transition, WPA might grant that organization money to support it through the change. Or if an organization wants to send staff to a specific conference, WPA might donate to the organization for that purpose. Sometimes, WPA offers general support to other organizations in the form of general operational grants.

Thus, under the four factors of the primary purpose test, WPA only (arguably) meets one factor, and its political activities represent only a minor aspect of the organization's overall activities. Therefore, registration as a political action committee was not required.

A. First Mile Circle

The PDC, in its letter to WPA, inquired about the First Mile Circle program described on WPA's website. Generally, WPA convenes community partners at different organizations to research and identify values-aligned candidates across Washington state to support through the First Mile Donor Circle. WPA does not collect any funds for the program and does not solicit money for the First Mile program. After WPA selects candidates, it connects donors with candidates. WPA makes a recommended contribution plan for each donor it works with, recommending the amounts that the donor could give to each candidate. The donor then chooses (or not) to donate, WPA has no further involvement in the direct contribution of funds to candidates. WPA staff communicate with donors directly, WPA has no contact with candidates. WPA does not accept any direct donations on behalf of candidates and does not provide any monetary contributions to any candidate or campaign through the First Mile program.

² *Id.*

WPA tracks all the time that its staff works on the First Mile program and sends letters to each candidate reporting the amount of staff time as in-kind donations. These in-kind staff time donations to candidates related to the First Mile program do not amount to significant expenditures. WPA is diligent about tracking all staff time spent on the First Mile program and reporting those in-kind donations to candidates. WPA's spending on the First Mile program does not come close to reaching the threshold to transform WPA into a political committee under any analysis.

B. Citizens for Yelm contribution

The PDC, in its letter to WPA, referenced a \$4,100 donation to Citizens for Yelm, which was reported by Citizens for Yelm to the Public Disclosure Commission. That expenditure was not made for the purpose of supporting or opposing a candidate or ballot initiative. Citizens of Yelm reached out to WPA for general operational support and indicated that it would use the funds to host community engagement events. WPA analyzed Citizen's proposed budget which showed expenditures for community engagement and operations but no political engagement or election related activities. WPA granted Citizens of Yelm the \$4,100, with the understanding that it would be used for non-election activities. Thus, the \$4,100 was not a political expenditure.

In light of these facts and legal reasonings, we ask that the PDC resolve this matter through dismissal.

Please contact me with any questions or concerns at (206) 257-6001.

Sincerely,



Marina Multhaup

Dmitri Iglitzin

Counsel for Progress Alliance of Washington

Cc: Lisa Pubigee, via email
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