



18 West Mercer Street, Suite 400
Seattle, WA 98119
TEL (800) 238.4231
FAX (206) 378.4132

ABBY LAWLOR
Associate Attorney
DIR (206) 644-6002
lawlor@workerlaw.com

September 26, 2023

Tanya Mercier
Compliance Office
Washington Public Disclosure Commission
711 Capitol Way S. #206
P.O. Box 40908
Olympia, WA 98504-0908

Re: PDC Case No. 141602
BIL No.: 6579-004

Dear Ms. Mercier,

We are writing on behalf of the Pro-Choice Washington PAC (PCW PAC or Committee) to respond to the allegations raised by Glen Morgan in his August 21 complaint. Mr. Morgan's complaint contains allegations of late reporting in violation of RCW 42.17A.235 and .240, and failure to report earmarked contributions in violation of RCW 42.17A.270. In an August 31 follow-up email to the Committee, you indicated the following:

We believe there may be some inaccuracies in the spreadsheet provided by the Complainant as evidence in this case. Please review the attached complaint and respond in writing only to the following issues.

1. Allegations of late reporting for reports, other than amendments, as outlined in the complaint.
 - A. Also tell us if your PAC actually participated in the election of the year of the report that is alleged to have been submitted late.
2. Allegations for violation of RCW 42.17A.270 specific to the reports outlined in the complaint.

As we are aware of numerous blanket late reporting allegations filed by Mr. Morgan supported only by a spreadsheet of filing dates and projected deadlines containing unspecified "inaccuracies," we ask that the PDC dismiss Mr. Morgan's complaint without further assessment. As you noted, Mr. Morgan's complaint sweeps in a large number of amended reports. Not noted by the agency, but also relevant, Mr. Morgan's complaint encompasses allegedly late reporting that occurred in 2019 and was already the subject of a previous complaint dismissed by the PDC that year.¹ Asking the Committee to sift through the 230 reports flagged by Mr. Morgan to separate out his plausible allegations of late reporting

¹ PDC Case No. 59665, initiated through a previous complaint by Mr. Morgan.

from his implausible ones imposes an unjustifiable burden on the Committee and other respondents similarly targeted by Mr. Morgan. Mr. Morgan should be required to provide additional evidence beyond the date on which a report was filed and the date on which he believes it was due to substantiate his claims. Otherwise, the agency risks further enabling Mr. Morgan's harmful repeat tactics towards PCW PAC and other committees that must expend significant time and resources in parsing and responding to Mr. Morgan's broad claims of late reporting. The agency has taken this approach to Mr. Morgan's late reporting allegations in the past, *see* Complaint Return Letter for PDC Case No. 32210, and such an approach is consistent with the directive in RCW 42.17A.001 that the Fair Campaign Practices Act (FCPA) be construed "to ensure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed." RCW 42.17A.001.

As discussed below, Mr. Morgan's second allegation that the Committee violated RCW 42.17A.270 by receiving unreported earmarked contributions is wholly without merit. Therefore, the PDC should dismiss his complaint in its entirety as unsubstantiated and unfounded. However, the Committee will address both Mr. Morgan's late reporting allegation and his earmarked contribution allegation in order to quickly resolve this complaint. In the event the PDC chooses to move forward with further assessment of facts, PCW PAC believes dismissal with a reminder or warning letter is the most appropriate outcome in this case given the minor impacts on the public of its late reporting, significant mitigating circumstances, and the Committee's painstaking self-directed work throughout 2023 to remedy past reporting errors.

I. Allegation of late reporting

A. Legal background

Under the FCPA, political committees must file reports of contributions and expenditures made as well as bank deposits on prescribed schedules. RCW 42.17A.235. However, amendments to previously filed reports are expressly allowed for under the Act, *see* RCW 42.17A.235(10), and neither the Act nor accompanying regulations impose rigid penalties for late or amended reporting. Such penalties would have the perverse effect of discouraging committees from correcting past errors or offering additional disclosure through late or amended reports.

The PDC's enforcement procedures recognize that the potential harm to the public of a committee's late reporting depends on the nature of the information being reported. Thus, a committee's failure to timely file accurate reports is a minor violation "[w]hen required information is not timely disclosed, but the public is not deprived of critical information" or "[w]hen incomplete information is disclosed, but a good faith effort to comply with disclosure is made, and the public is not deprived of critical information." WAC 390-37-061. Additionally, the Director may consider the specific context in which the late or amended reporting occurs in determining whether an alternative response to alleged noncompliance is appropriate. Specific factors weighing in favor of an alternative response include:

- 1) The impact of the noncompliance on the public was minimal;
- 2) The total expenditures by the respondent in the campaign or statement period were relatively modest;

- 3) The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent;
- 4) Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance; and
- 5) The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to the respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).

WAC 390-37-061. The PDC may also consider other circumstances that mitigate or explain late reporting or other noncompliance. *See id.*

B. PCW PAC's late filing is generally minor in comparison to its total volume of reporting and has little impact on the public.

As previously mentioned, Mr. Morgan's complaint contains allegations that PCW PAC untimely filed 230 reports. Of these, 59 are amended reports, which the Committee understands to no longer be included in the agency's assessment of facts. An additional 25 reports relate to reporting periods before the PDC opened its assessment of facts in Mr. Morgan's 2019 complaint. Of the remaining 146 reports:

- 12 are late-filed C-3 reports that disclose bank interest of less than \$1 reported in order to reconcile the Committee's end of year books.
- 1 is a C-4 report for a month in which the Committee was not required to file pursuant to 42.17A.235(3)(a) because its activities did not exceed \$200.²
- 8 are late-filed C-4 reports for reporting periods in which the Committee incurred no new expenditures and contributions were previously reported on C-3 reports.³
- 40 are late-filed C-3 and C-4 reports filed no more than 7 days after the applicable filing deadline and an additional 34 are C-3 and C-4 reports filed no more than a month after the applicable filing deadline.
- 18 are late-filed C-3 reports for deposits at or below \$25 and an additional 81 are late-filed C-3 reports for deposits at or below \$200.

In all, just six C-3 reports and three C-4 reports flagged by Mr. Morgan were more than a month late and involved greater than \$200 in reported activity. Mitigating circumstances around these reports will be addressed more fully below.

² C-4 Report No. 100982275.

³ C-4 Reports No. 100982276; 100982277; 110075213; 110108832; 110108834; 110108835; 110108836; 110108837.

The Committee's late reporting has not withheld critical information from the public and has generally been minor because it involves small amounts of money, short delays in reporting, and information that was otherwise disclosed on other reports or was not required to be disclosed. PCW PAC has a modest budget—spending between \$5,538 and \$30,513 per year during the period at issue. Its contributions largely consist of small recurring donations and in-kind contributions of staff time from Pro-Choice Washington. The Committee typically does not engage in spending beyond candidate contributions that are also disclosed to the public through reporting by candidate committees.

It is also important to note that Mr. Morgan's complaint does not involve a single late-reporting allegation related to the Committee's activity in 2023. After significant organizational challenges at Pro-Choice Washington discussed in more detail below, the PAC now has new administrative staff who have been working diligently to correct errors and omissions in the Committee's reporting and have consistently filed timely and accurate reports throughout 2023. Staff has also been in regular contact with the PDC as the Committee works to address past reporting problems and to create better reporting procedures. Because all of the allegedly late reporting at issue in Mr. Morgan's complaint relates to Committee activity in 2022 and earlier, and the Committee has already identified and corrected past problems with its reporting, the need for further PDC investigation or compliance action is significantly diminished.

C. Significant organizational challenges provide mitigating circumstances for PCW PAC's late reporting.

Pro-Choice Washington, the 501(c)(4) sponsor of PCW PAC, has experienced significant organizational challenges over the last three years that have impacted its ability to provide adequate in-kind administrative staff and oversight to the Committee. In June of 2020, during the early days of the COVID pandemic and in the midst of leadership transitions, PCW PAC failed to timely file a C-3 report for a \$310 deposit made on March 28. This oversight was later discovered and a report was filed on September 8.⁴ The pandemic and leadership changes also contributed to other minor shortfalls in the Committee's reporting during this period.

In the fall of 2021, Pro-Choice Washington learned that its then-national parent organization, NARAL Pro-Choice, would be suddenly ending its state affiliate structure. The organization had just four weeks to become an independent organization. This transition created significant staff and resource constraints and caused the Committee not to file C-3 reports for three large deposits made in September 2021 and to miss other reporting deadlines for more minor reports. Staff discovered these omissions by early 2022 and filed the missing reports.⁵ The Committee also failed to file C-4 reports covering the two final reporting periods in 2021 for contributions received during the reporting periods. These C-4s were also subsequently filed in early 2022.⁶ Because of the fall organizational transition, the PCW PAC was largely inactive during the 2021 election, making just over \$5,000 in total expenditures that year.

Lastly, beginning in early 2022, the Pro-Choice Washington staff person assigned to complete the Committee's PDC reports was frequently absent due to illness and a family emergency. Thus, much of PCW PAC's 2022 reporting occurred on or before March 4, 2022 or on or after August 28, 2022. The

⁴ C-3 Report No. 100996514.

⁵ C-3 Reports No. 110074445, 110075206, 110074446.

⁶ C-4 Reports No. 110074450, 110075200.

staff member's personal challenges throughout the summer caused the Committee to miss filing a C-4 report reflecting several campaign contributions made between 21 and 7 days before the primary and a C-3 report for a \$435 deposit also made during this period, both of which related to a fundraising event in which the PAC received both checks and online contributions. These reports were subsequently filed in August 2022 and January 2023.⁷ On August 28, 2022, the previous staff person filed numerous reports before relinquishing filing responsibility and the current staff person took over in September. However, the previous staff person remained in possession of the laptop with the Committee's ORCA for some time, and the Committee also failed to file a C-3 report reflecting a \$1,084.93 contribution from Pro-Choice Washington on September 9, 2022. This oversight was discovered and corrected in January 2023.⁸ Once again, these staffing challenges also contributed to more minor discrepancies in the Committee's reporting during this period.

In early 2023, new staff assigned to manage the Committee's PDC filings performed a reconciliation of the Committee's reporting and identified the need to file numerous new and amended reports to account for the typically minor omissions and discrepancies discussed above. Over the course of 2023, staff have proactively worked to correct PCW PAC's past reporting and to ensure timely and accurate future reporting. At its own direction, staff have filed 56 reports in 2023 to correct and supplement the Committee's 2022 reporting. Throughout this process, PCW PAC has regularly communicated with the PDC to receive guidance and support.

In sum, despite significant organizational challenges, PCW PAC has filed reports involving more than \$200 in contributions or expenditures more than a month after the applicable deadline on just nine occasions since the end of 2019. In each case, mitigating circumstances directly contributed to the Committee's lapses in reporting. Beginning in September of 2022 through today, PCW PAC staff has gone to significant lengths to proactively identify and correct past errors and the Committee has consistently filed timely reports throughout 2023.

II. Allegation of undisclosed earmarked contributions

Mr. Morgan also alleges that on at least 23 occasions in 2020, PCW PAC made direct candidate contributions on behalf of another PAC without complying with the requirements for disclosure of earmarked contributions in RCW 42.17A.270. That provision requires that committees receiving a contribution earmarked for the benefit of a candidate submit "earmarked contributions" reports to the PDC and any candidate benefitting from an earmarked contribution disclosing the original source of the funds.

Mr. Morgan's earmarked contributions allegation is unfounded and frivolous because the contributions described as from "NARAL PAC" on C-4 Report No. 101014973 and others are simply contributions from the Committee. Prior to the end of the NARAL Pro-Choice national affiliate structure in fall 2021, the Committee operated under the name "NARAL Pro-Choice Washington PAC," reflected on the Committee's C-1pc filings. Beginning September 9, 2021, following Pro-Choice Washington's departure from the NARAL umbrella, the Committee updated its registration and began to operate under its new name, "Pro-Choice Washington PAC." The Committee has at no time made earmarked contributions on behalf of another PAC.

⁷ C-4 Report No. 110108838; C-3 Report No. 110132784.

⁸ C-3 Report No. 110132675.

Conclusion

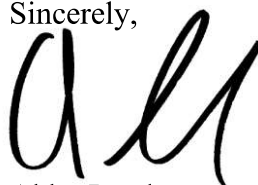
Given the broad nature of Mr. Morgan's late reporting allegations, which sweep in both amended reports as well as reports that were the subject of a previous PDC assessment of facts, we urge the PDC to dismiss Mr. Morgan's complaint as unfounded unless he is able to provide further evidence of specific information that was not timely disclosed to the public to substantiate his claims. Allowing this complaint to go forward unduly enables Mr. Morgan to impose significant burdens on respondent committees through bare-bones allegations easily compiled through the PDC's reporting data.

If the PDC moves forward with further assessment of these allegations, dismissal with a reminder or warning letter would be the most appropriate outcome. The public impact of the Committee's late reporting has been minimal and the Committee has identified significant mitigating circumstances to explain its lapses. PCW PAC has also already successfully self-corrected and has consistently timely reported throughout 2023. Moreover, Mr. Morgan's allegation of failure to report earmarked contributions is completely meritless. Dismissal would be consistent with the PDC's approach in other complaints involving allegations of late reporting.⁹

PCW PAC also requests that if the PDC subsequently embarks on any further assessment of the Committee's amended reports, the Committee is notified and given an opportunity to further supplement this response. The Committee's understanding based on your previous communication is that these reports are currently fully outside the scope of the agency's assessment of facts.

Please contact us with any questions or concerns at (206) 644-6002.

Sincerely,



Abby Lawlor

Danielle Franco-Malone

Counsel for Pro-Choice Washington PAC

⁹ See, e.g., PDC Case No. 27923 (complaint involving reports filed between 1-10 days late and amendments of timely reports dismissed with reminder); PDC Case No. 47219 (complaint involving periodic late reports dismissed with reminder); PDC Case No. 30820 (complaint involving periodic late reports and large volume of timely reporting dismissed with reminder); PDC Case No. 51086 (complaint involving failure to timely report in-kind staff contributions and other late reporting dismissed with warning).