



1 committee ("IEOPC") that supported James and advocated against his opponents. The  
2 Complaint alleges that Outsider PAC funded an advertisement titled "*Difference*," which  
3 republished a portion of a James Committee campaign advertisement titled "*Liberal Sandy*  
4 *Pensler Mocks President Trump Just Like a Democrat*" ("*Liberal Sandy Pensler*"). The  
5 Complaint also alleges that Outsider PAC coordinated this advertisement with the James  
6 Committee through the use of a common vendor, Grand River Strategies, Inc. ("Grand River").  
7 Thus, the Complaint alleges that Outsider PAC made, and the James Committee accepted and  
8 failed to report, excessive and prohibited in-kind contributions.

9 For the reasons discussed below, we recommend that the Commission find reason to  
10 believe that Outsider PAC violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b) by making  
11 and failing to report excessive and prohibited in-kind contributions when it republished James  
12 Committee campaign materials. We also recommend that the Commission take no action at this  
13 time regarding the allegations that Outsider PAC and the James Committee violated the Federal  
14 Election Campaign Act of 1971, as amended (the "Act") by coordinating the Outsider PAC  
15 advertisement.

## 16 II. FACTUAL BACKGROUND

17 John James was a candidate in Michigan's 2018 Republican Senate primary election.<sup>1</sup>  
18 John James for Senate, Inc., is his principal campaign committee.<sup>2</sup> Outsider PAC is an IEOPC

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<sup>1</sup> John James, FEC Form 2, *Statement of Candidacy* (July 20, 2017); see also *2018 Michigan Election Results*, MI Dep't of State, [https://mielections.us/election/results/2018GEN\\_CENR.html](https://mielections.us/election/results/2018GEN_CENR.html) (Nov. 26, 2018).

<sup>2</sup> John James *Statement of Candidacy*; John James for Senate, Inc., FEC Form 1, *Statement of Organization* (Amend. Oct. 4, 2018). James won the primary election against Sandy Pensler and was the Republican nominee in the general election, where he lost to incumbent Senator Debbie Stabenow.

1 that registered with the Commission on May 16, 2018.<sup>3</sup> Outsider PAC made independent  
2 expenditures totaling \$857,875 during the 2018 election cycle in support of James or in  
3 opposition to James's opponents.<sup>4</sup>

4 Grand River is a "full-service corporate, political, issue campaign and public relations  
5 firm" founded by Jamie Rose and Stu Standler and based in Lansing, Michigan.<sup>5</sup> Both the James  
6 Committee and Outsider PAC reported making disbursements to Grand River during 2018.<sup>6</sup> An  
7 internal Grand River memorandum submitted with the Outsider PAC Response states that Grand  
8 River consultant Stu Sandler provided services to the James Committee, while consultant Jamie  
9 Rose provided services to Outsider PAC.<sup>7</sup> The Respondents do not dispute the allegation that  
10 Grand River was involved in the production and broadcast of the James Committee's "*Liberal*  
11 *Sandy Pensler*?" advertisement or Outsider PAC's "*Difference*" advertisement.

<sup>3</sup> Outsider PAC, FEC Form 1, *Statement of Organization* (May 16, 2018). As an IEOPC, Outsider PAC accepts unlimited contributions from individuals and sources that are otherwise prohibited for authorized campaign committees. Outsider PAC accepted contributions from corporations. *See, e.g.*, Outsider PAC, 2018 October Quarterly Report, FEC Schedule A *Itemized Receipts* at 9-10 (Oct. 15, 2018) (Huron Valley Steel Corporation, \$10,000 contribution; Muskegon Energy Company, \$25,000 contribution).

<sup>4</sup> Outsider PAC, FEC Filings, <https://www.fec.gov/data/committee/C00678920/?tab=filings>. Specifically, Outsider PAC spent \$607,187.50 on communications in support of James, \$241,500 on communications in opposition of Sandy Pensler, James's primary opponent, and \$9,187.50 on communications in opposition of Senator Debbie Stabenow. *Id.* In total, Outsider PAC spent just over \$1.4 million during the 2018 election cycle. *Id.*

<sup>5</sup> Grand River Strategies, [www.grandriverstrategies.com](http://www.grandriverstrategies.com).

<sup>6</sup> Outsider PAC made three disbursements totaling \$40,000 for the purpose of "Political Strategy Consulting"—Jul. 11, 2018, for \$10,000; Oct. 11, 2018, for \$20,000; and Nov. 3, 2018, for \$10,000—to Grand River Strategies during the 2018 election cycle. Outsider PAC, *FEC Filings* at <https://www.fec.gov/data/committee/C00678920/?tab=filings>. The James Committee made six disbursements totaling \$85,500 for the purpose of "Strategy Consulting"—Mar. 29, 2018, for \$7,500; Apr. 6 2018, for \$7,500; June 1, 2018, for \$15,000; Aug. 16, 2018, for \$15,000; Oct. 23, 2018, for \$22,500; and Dec. 4, 2018, for \$15,000—to Grand River Strategies during the 2018 election cycle. John James for Senate, Inc., *FEC Filings* at [https://www.fec.gov/data/disbursements/?committee\\_id=C00651208&two\\_year\\_transaction\\_period=2018&recipient\\_name=GRAND+RIVER+STRATEGIES&data\\_type=processed&min\\_date=01%2F01%2F2017&max\\_date=12%2F31%2F2018](https://www.fec.gov/data/disbursements/?committee_id=C00651208&two_year_transaction_period=2018&recipient_name=GRAND+RIVER+STRATEGIES&data_type=processed&min_date=01%2F01%2F2017&max_date=12%2F31%2F2018).

<sup>7</sup> Outsider PAC Resp. (Sept. 18, 2018), Attach. (May 25, 2018, Grand River Memorandum).

1 On July 10, 2018, the James Committee uploaded the “*Liberal Sandy Pensler*”  
2 advertisement to its YouTube channel.<sup>8</sup> After a disclaimer, the advertisement begins with a  
3 picture of James’s opponent, Sandy Pensler (shaded in red) and the caption “Liberal Sandy  
4 Pensler” and then shows three short video clips of Pensler criticizing then-Republican  
5 presidential candidate Donald Trump at an informal event.<sup>9</sup> Each video clip is accompanied by  
6 captions that summarize Pensler’s verbal criticisms: “I do not like Trump’s personal style,”  
7 “Trump doesn’t know right from wrong,” and “Trump speaks at a Fourth Grade level.”<sup>10</sup> The  
8 Complaint alleges, without citing any support, that the video footage from the Pensler event used  
9 in the James Committee advertisement was “taken by [the] James campaign and then shared with  
10 the independent committees.”<sup>11</sup>

11 Four days later, on July 14, 2018, Outsider PAC uploaded the “*Difference*” advertisement  
12 to its YouTube channel.<sup>12</sup> The Outsider PAC ad starts with what appears to be the same picture  
13 of Pensler used in the James Committee ad (shaded in blue rather than red) and the same initial  
14 opening caption “Liberal Sandy Pensler.”<sup>13</sup> The first ten seconds of the ad show two of the three  
15 same Pensler video clips used in the James Committee advertisement.<sup>14</sup> The Outsider PAC ad

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<sup>8</sup> Compl. at 1. See also *Liberal Sandy Pensler Mocks President Trump Just Like a Democrat* (“James Committee Ad, YouTube”), John James, YouTube (July 10, 2018) <https://www.youtube.com/watch?v=CMlyZVQv1tw>.

<sup>9</sup> James Committee Ad, YouTube.

<sup>10</sup> *Id.*

<sup>11</sup> Compl. at 1.

<sup>12</sup> Compl. at 1. *Difference*, Outsider PAC, YouTube (“Outsider PAC Advertisement, YouTube”) (July 14, 2018) <https://www.youtube.com/watch?v=wJIti5BorBE&feature=youtu.be>.

<sup>13</sup> Outsider PAC Advertisement, YouTube.

<sup>14</sup> *Id.*

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1 includes captions with verbatim quotes of what Pensler says about Trump in the video (“I don’t  
2 like his [Trump’s] personal style” and “I can’t speak at a Fourth Grade level like he [Trump]  
3 does”) that are similar, but not identical, to the James Committee ad.<sup>15</sup> After the first ten  
4 seconds, the Outsider PAC ad contains twenty seconds of footage praising James’s military  
5 service and his support for President Trump, and concludes by expressly advocating “John James  
6 for United States Senate.”<sup>16</sup> This ad reportedly was broadcast on television in July 2018, when  
7 Outsider PAC spent \$857,875 supporting James or attacking Pensler.<sup>17</sup>

8 The Complaint alleges that the advertisements run by the James Committee and Outsider  
9 PAC use “nearly identical language and graphics” and argues that, given the short time between  
10 the publication of the advertisements as well as the similarity between the two videos, Outsider  
11 PAC must have had access to the James Committee’s original source video footage.<sup>18</sup> The  
12 Complaint alleges that the Outsider PAC advertisement was a republication of James Committee  
13 campaign materials and was also coordinated with the James Committee via a common vendor.<sup>19</sup>

14 The James Committee argues that, absent coordination, even if Outsider PAC did  
15 republish committee campaign materials, only Outsider PAC would be required to disclose an  
16 in-kind contribution — and that the James Committee would not have violated the law by failing  
17 to report the republication.<sup>20</sup> The James Committee also denies any coordination with Outsider

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See <https://twitter.com/davideggert00/status/1018852084714745857>. See also Outsider PAC, FEC Filings at <https://www.fec.gov/data/committee/C00678920/?tab=filings>.

<sup>18</sup> Compl. at 1.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 3.

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1 PAC and claims that, although the advertisements contained some of the same “publicly  
2 available” footage of Pensler’s remarks about President Trump, the ads otherwise were  
3 significantly different.<sup>21</sup> The James Committee Response does not address the allegation that it  
4 was responsible for shooting the original video of Pensler. The James Committee contends that  
5 “utilization of a common vendor does not automatically result in coordination, and the complaint  
6 sets forth no examples of conduct that would result in coordination under the Act.”<sup>22</sup> The James  
7 Committee also asserts that “Grand River has a firewall policy in place which is designed to  
8 prevent the flow of information between its employees and agents who work separately for the  
9 [James] Committee and other outside entities.”<sup>23</sup>

10 Outsider PAC denies that it republished James Committee campaign materials or  
11 coordinated the ad with the James Committee.<sup>24</sup> Outsider PAC avers that the footage of Pensler  
12 speaking at the event was publicly available on the internet, and that it obtained the footage it  
13 used from an April 20, 2018, *Daily Caller* article.<sup>25</sup> Outsider PAC contends that it did not obtain  
14 the video from either the James Committee or from Grand River employees working for the

<sup>21</sup> Committee Resp. at 1 (Sept. 13, 2018). *Id.*

<sup>22</sup> *Id.* The James Committee Response does not include Grand River’s purported firewall policy or provide specific information regarding the policy or Grand River’s compliance with the policy.

<sup>23</sup> *Id.*

<sup>24</sup> Outsider PAC Resp. at 1.

<sup>25</sup> Outsider PAC Resp. at 3; see also Henry Rodgers, *Exclusive: Republican Senate Candidate Questions Trump’s Wealth, Says He Speaks Like a Fourth Grader*, DAILY CALLER (Apr. 20, 2018) [http://dailycaller.com/2018/04/20/sandy-pensler-trump-fourth-grader/?utm\\_medium=social](http://dailycaller.com/2018/04/20/sandy-pensler-trump-fourth-grader/?utm_medium=social). The video in the article referenced by Outsider PAC, however, contains only the “fourth grade” comment — approximately five seconds of video. It does not contain the introductory photograph and caption of Pensler, nor does it contain the remainder of the footage used in the Outsider PAC ad, specifically the video clip regarding Pensler’s criticism of Trump’s “personal style.”



1 report an expenditure, unless the dissemination, distribution, or republication of the campaign  
2 material is a coordinated communication under Commission regulations.<sup>31</sup>

3 The information in the record supports the conclusion that the advertisement that  
4 Outsider PAC uploaded to YouTube on July 14, 2018, and which reportedly was broadcast on  
5 television, republishes a portion of the James Committee ad that was uploaded to YouTube on  
6 July 10, 2018. Specifically, the two ads contain: (1) the same opening photo (with different  
7 color shading) of Pensler accompanied by the caption "Liberal Sandy Pensler"; (2) ten seconds  
8 of the same video footage showing Pensler criticizing President Trump; and (3) similar captions  
9 regarding Pensler's criticism of Trump.<sup>32</sup>

10 Although Respondents argue that other differences between the ads negate a finding of  
11 republication, that argument is unpersuasive. The prohibition on republication applies whether  
12 the republication is in whole or in part. The Commission has previously determined that  
13 materials are republished under the Act even when the republished portion is only an incidental

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<sup>31</sup> 11 C.F.R. § 109.23(a)

<sup>32</sup> James Committee Advertisement, YOUTUBE; Outsider PAC Advertisement, YOUTUBE. Both ads also include different photos of James in a military uniform with disclaimers that state that the use of the uniform does not indicate endorsements by the Department of Defense or the Department of the Army. *Id.*



1 part of the communication or the value of the republication is *de minimis*.<sup>33</sup> In such cases, the  
2 incidental or *de minimis* nature of the republication is considered in determining the appropriate  
3 Commission response to the violation, not whether a violation has occurred. In this matter, the  
4 portion of the James Committee ad that was republished by Outsider PAC is more than  
5 incidental or *de minimis*. The first ten seconds of the Outsider PAC ad — which is more than  
6 one third of the advertisement — uses the same photograph, opening caption, video, and audio  
7 footage as the James Committee ad attacking Pensler. In addition, the message of the Outsider  
8 PAC advertisement mimics the message of the James Committee advertisement.

9 Respondents' contention that the underlying footage of Pensler criticizing President  
10 Trump was publicly available also fails to establish that no republishing occurred.<sup>34</sup> The  
11 Outsider PAC "*Difference*" ad was only aired after the James Committee used the same footage  
12 in its "*Liberal Sandy Pensler*" ad. Moreover, although Outsider PAC states that it obtained  
13 video footage from a publicly available *Daily Caller* article, that article contains only a portion  
14 of the video from the advertisements.<sup>35</sup> It does not contain the introductory photograph and  
15 caption of Pensler, nor does it contain the remainder of the footage used in the Outsider PAC ad,  
16 specifically the video clip regarding Pensler's criticism of Trump's "personal style."<sup>36</sup> The  
17 Commission's republication regulation focuses on the further dissemination of campaign

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<sup>33</sup> See MUR 5743 (Betty Sutton) (Commission admonished a committee after determining that a republished candidate photo was incidental and likely had a *de minimis* value); MUR 5996 (Tim Bee) (Commission exercised prosecutorial discretion to dismiss the allegation that a group republished photo of a candidate that comprised two seconds of a 30-second ad, and was downloaded at no charge from candidate's publicly available website).

<sup>34</sup> The Committee does not address whether they filmed the video in question, and we have no further information regarding the original source of the video.

<sup>35</sup> See *supra* note 25.

<sup>36</sup> *Id.*

1 materials, wherever obtained — whether directly from the candidate's campaign or indirectly  
2 from a public source.<sup>37</sup> In its 2003 rulemaking, the Commission specifically rejected a request to  
3 adopt a "public domain" exception to republication, explaining that "virtually all campaign  
4 material that could be republished" may be considered in the public domain, and therefore such  
5 an exception could "swallow the rule."<sup>38</sup>

6 Outsider PAC does not claim to have been unaware that the James Committee  
7 advertisement contained the same photograph, captions and footage. Nor does Outsider PAC  
8 claim that its decision to use the same photograph, captions, and footage was totally independent  
9 of the James Committee's use of that same material in its ad.

10 By republishing a portion of the James Committee advertisement, Outsider PAC made an  
11 in-kind contribution to the James Committee.<sup>39</sup> Accordingly, there is reason to believe that  
12 Outsider PAC violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b), by making an in-kind  
13 contribution as a result of republishing campaign materials and by failing to properly disclose the  
14 cost as a contribution to the James Committee.

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<sup>37</sup> See, e.g., MUR 5743 (Betty Sutton) (candidate photo obtained from publicly available campaign website); MUR 5672 (Save American Jobs) (video produced and used by candidate's campaign subsequently hosted on association's website); MUR 5996 (Tim Bee) (candidate photo obtained from candidate's publicly available website). Further, the "publicly available source" safe harbor applies to whether republished campaign materials constitutes a coordinated communication, *see* 11 C.F.R. § 109.21(d)(2), (d)(3), not whether campaign material was republished under 11 C.F.R. § 109.23.

<sup>38</sup> Coordination and Independent Expenditures E&J, 68 Fed. Reg. at 442-43.

<sup>39</sup> See 11 C.F.R. § 109.23(a).

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1           **B. The Commission Should Take No Action at this Time Regarding the Allegation**  
2           **that Outsider PAC Coordinated its Communication with the James Committee**  
3           **Through a Common Vendor**  
4

5           Political committees are required to report all contributions made and received.<sup>40</sup> Any  
6 person who is otherwise prohibited from making contributions or expenditures under any part of  
7 the Act or Commission regulations is prohibited from paying for a coordinated communication.<sup>41</sup>  
8 IEOPCs are prohibited from making direct or in-kind contributions to candidates and their  
9 authorized committees.<sup>42</sup> Federal candidates and their authorized committees may not  
10 knowingly accept an excessive or prohibited contribution.<sup>43</sup>

11           Under the Act, “coordinated” means made in cooperation, consultation, or concert with,  
12 or at the request or suggestion of, a candidate or a candidate’s authorized committee.<sup>44</sup> The  
13 Commission’s regulations provide a three-part test for determining when a communication is a  
14 coordinated expenditure, which is treated as an in-kind contribution.<sup>45</sup> The communication  
15 must: (1) be paid for by a third party; (2) satisfy one of five “content” standards listed in  
16 11 C.F.R. § 109.21(c); and (3) satisfy one of six “conduct” standards listed in 11 C.F.R.

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<sup>40</sup> 52 U.S.C. § 30104(a), (b).

<sup>41</sup> 11 C.F.R. § 109.22.

<sup>42</sup> See 52 U.S.C. §§ 30116(f), 30118(a); Advisory Op. 2010-11 (Commonsense Ten) at 2-3; see also FEC Press Release (Oct. 9, 2014), <https://www.fec.gov/updates/fec-approves-final-rules-on-independent-expenditures-and-electioneering-communications-by-corporations-and-labor-organizations-interim-final-rule-and-anprm-in-response-to/>; FEC Agenda Document 14-53-A, Final Rules on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations (Oct. 8, 2014), [http://www.fec.gov/agenda/2014/documents/mtgdoc\\_14-53-a.pdf](http://www.fec.gov/agenda/2014/documents/mtgdoc_14-53-a.pdf). Outsider PAC accepted corporate contributions. See, e.g., Outsider PAC, 2018 October Quarterly Report, FEC Schedule A *Itemized Receipts* at 9-10 (Oct. 15, 2018) (Huron Valley Steel Corporation, \$10,000 contribution; Muskegon Energy Company, \$25,000 contribution).

<sup>43</sup> 52 U.S.C. §§ 30118(a), 30116(f).

<sup>44</sup> 11 C.F.R. § 109.20(a); see also 52 U.S.C. § 30116(a)(7)(B)(i).

<sup>45</sup> 11 C.F.R. § 109.21(a)-(b).

1 § 109.21(d).<sup>46</sup> All three prongs must be satisfied for a communication to be considered  
2 coordinated.<sup>47</sup>

3 Respondents do not dispute that the Outsider PAC advertisement satisfies the payment  
4 and content prongs. First, Outsider PAC funded the advertisement in question. Second, the  
5 Outsider PAC ad satisfied the content prong by expressly advocating the election of “John James  
6 for United States Senate” and against James’s opponents.<sup>48</sup>

7 Even though the payment and content prongs are satisfied, there is currently insufficient  
8 information to determine whether the conduct prong of the coordination regulations is met.  
9 Respondents do not deny the allegation that they used the same common vendor for the creation  
10 and distribution of the advertisements in question. They do, however, dispute that the use of a  
11 common vendor resulted in coordination because both point to a purported firewall that they say  
12 qualifies for the Commission’s “safe harbor” provision.

13 Under the Commission’s regulations, the “common vendor” conduct standard is satisfied  
14 if all of the following are true: (1) the person paying for the communication employs a  
15 commercial vendor<sup>49</sup> to “create, produce, or distribute” the communication; (2) that vendor,  
16 including any owner, officer, or employee, has provided certain delineated services to the  
17 candidate referred to in the communication (or that candidate’s opponent) during the 120 days

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*; *see also* Coordinated and Independent Expenditures E&J, 68 Fed. Reg. at 453. The candidate’s campaign committee must report such a coordinated in-kind contribution as both a contribution received and as an expenditure. 11 C.F.R. §§ 109.20(b), 109.21(b).

<sup>48</sup> *See* 52 U.S.C. § 30101(17) (definition of “independent expenditure”); 11 C.F.R. § 100.22 (definition of “expressly advocating”); 11 C.F.R. § 109.21(c)(3) (express advocacy content standard, incorporating the definition of “public communication” at 11 C.F.R. § 100.26); Factual & Legal Analysis at 13, MUR 6888 (Republican National Committee).

1 preceding the communication;<sup>50</sup> and (3) the vendor uses or conveys to the payor non-public  
2 information about the campaign's "plans, projects, activities, or needs," or uses or conveys to the  
3 payor non-public information previously used in providing services to the candidate, and that  
4 information is material to the creation, production, or distribution of the communication.<sup>51</sup>

5 The Commission established a "safe harbor" provision, which provides that the common  
6 vendor conduct standard is not met if a commercial vendor has established and implemented a  
7 written firewall policy that prevents the sharing of material information.<sup>52</sup> A firewall policy  
8 satisfies this "safe harbor" if it (1) is designed and implemented to prohibit the flow of  
9 information between employees or consultants providing services for the person paying for the  
10 communication and those employees or consultants currently or previously providing services to  
11 the candidate who is clearly identified in the communication, or that candidate's authorized  
12 committee, the candidate's opponent, the opponent's authorized committee, or a political party  
13 committee; and (2) is described in a written policy distributed to all relevant employees,  
14 consultants and clients.<sup>53</sup> This safe harbor does not apply if specific information indicates that,

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<sup>49</sup> "Commercial vendor" means any persons providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods or services. 11 C.F.R. § 116.1(c).

<sup>50</sup> The relevant services are: (A) development of media strategy, including the selection or purchasing of advertising slots; (B) selection of audiences; (C) polling; (D) fundraising; (E) developing the content of a public communication; (F) producing a public communication; (G) identifying voters or developing voter lists, mailing lists, or donor lists; (H) selecting personnel, contractors or subcontractors; or (I) consulting or otherwise providing political or media advice. 11 C.F.R. § 109.21(d)(4)(ii).

<sup>51</sup> 11 C.F.R. § 109.21(d)(4)(i)-(iii).

<sup>52</sup> 11 C.F.R. § 109.21(h).

<sup>53</sup> *Id.* § 109.21(h)(1)-(2).

1 despite the firewall, material information about the candidate's campaign plans, projects,  
2 activities or needs was used or conveyed to the person paying for the communication.<sup>54</sup>

3 Respondents both assert that Grand River implemented a firewall policy that satisfies the  
4 safe harbor regulation. Outsider PAC included with its response the May 25, 2018, internal  
5 Grand River Memorandum indicating that staff should restrict the flow of information.

6 Although a copy of the Grand River Memorandum was provided, neither Respondent provided  
7 any affidavits or statements that would establish Grand River employees complied with the  
8 firewall policy.<sup>55</sup> The absence of such statements is significant here, as Respondents do not  
9 address the allegation that the Pensler footage was created by the James Committee and provided  
10 to Outsider PAC for use in its advertisement. The fact that Grand River was involved in media  
11 work for both the James Committee and Outsider PAC, and that each had advertisements that ran  
12 within four days of each other and used the same photograph, video footage, and similar captions  
13 and messaging, raises questions as to whether material information may have been shared

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<sup>54</sup> *Id.* § 109.21(h).

<sup>55</sup> See MUR 6916 (Democratic National Committee) (the Commission concluded that the vendor in question was not a "common vendor" but declared that if it was, they would be protected by the "safe harbor" because the vendor supplied a copy of its written firewall policy, along with an affidavit from its CEO regarding compliance with the policy); MUR 6120 (White) (the Commission found no reason to believe as to a coordination allegation where the media vendor had in place a firewall to prevent the sharing of information between agents for the committees at issue, and the vendor submitted a sworn declaration describing efforts to comply with the policy); see also MUR 5999 (Freedoms Watch) (Freedom Watch denied that there was a "common vendor" as described by the regulations and based on the time period in question, but, even so, submitted their own firewall policy that was signed by the vendor, and the vendor submitted an affidavit describing its compliance efforts); but see MUR 5506 (Castor for Senate and EMILY'S List) (Commission found no reason to believe that EMILY'S List coordinated with Castor for Senate where: (1) the vendor was Women Vote!, a project within Emily's list, (2) no available information indicated that Respondents shared information; and (3) Respondents asserted that employees, volunteers, and consultants were barred, as a matter of policy, from interacting with party committees or with candidates or officeholders — Emily's List did not submit a written policy or affidavits regarding compliance, but the Commission determined that its response disputing the allegations was sufficient).

1 through Grand River.<sup>56</sup> These circumstances suggest that material information may have flowed  
2 in a manner contrary to the terms of the Grand River firewall policy.

3 Given that the recommendation that the Commission find reason to believe as to Outsider  
4 PAC's republication of the James Committee advertisement, it is possible that an investigation  
5 into that allegation may produce further information that could be used to assess the coordination  
6 allegations, including whether or not the conduct standard is met. Accordingly, we recommend  
7 that the Commission take no action at this time regarding the allegation that Outsider PAC and  
8 Julie Dozier in her official capacity as treasurer violated the Act by making and failing to report  
9 a coordinated in-kind contribution to John James for Senate, Inc.; and also take no action as to  
10 the allegation that John James for Senate, Inc., and Timothy Caughlin, in his official capacity as  
11 treasurer, violated the Act by accepting and failing to report coordinated in-kind contributions  
12 from Outsider PAC.<sup>57</sup>

13 **IV. INVESTIGATION**

14 We propose an investigation to ascertain the value of Outsider PAC's republication of  
15 James Committee campaign materials. Although we will attempt to obtain the information  
16 needed to complete the record by voluntary means, we recommend that the Commission  
17 authorize the use of compulsory process.

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<sup>56</sup> As previously noted, the Respondents do not dispute the allegation that Grand River was involved in the production and broadcast of the James Committee's "*Liberal Sandy Pensler*" advertisement or Outsider PAC's "*Difference*" advertisement. Compl. at 1.

<sup>57</sup> If, during the course of our investigation, we learn that Grand River or the James Committee and Outsider PAC shared information regarding the creation and publication of these advertisements, we will make recommendations as to the coordination allegation at that time.

**V. RECOMMENDATIONS**

1. Find reason to believe that Outsider PAC and Julie Dozier in her official capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30118(a), and 30104(b) by republishing campaign material prepared by John James for Senate, Inc.;
2. Take no action at this time as to the allegation that Outsider PAC and Julie Dozier in her official capacity as treasurer violated the Act by making and failing to report a coordinated in-kind contribution to John James for Senate, Inc.;
3. Take no action at this time as to the allegation that John James for Senate, Inc., and Timothy Caughlin, in his official capacity as treasurer, violated the Act by accepting and failing to report coordinated in-kind contributions from Outsider PAC;
4. Approve the attached Factual and Legal Analysis;
5. Approve the use of compulsory process; and
6. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

3/18/19  
Date

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