Save the Children
Action Network™

July 6, 2017

Mr. Tony Perkins
State of Washington - Office of the Attorney General
1125 Washington Street SE
Olympia, WA 98504-0100

Re: Response of Save the Children Action Network

Mr. Perkins:

Your office recently forwarded a Notice of a citizen action complaint by Mr. Glen Morgan against a "Save the Children PAC." Although no such entity exists, I write today to respond to accusations made by Mr. Morgan that appear to concern Save the Children Action Network ("SCAN"), a national non-profit organization headquartered in Washington, D.C. that serves as the social-welfare arm of the public charity Save the Children.[1]

Mr. Morgan alleges that "Save the Children PAC" should have registered as a political committee with the Washington State Public Disclosure Commission ("Commission") because contributions were made to political campaigns in the state.[2] Mr. Morgan misstates the applicable legal standard. Making one or more contributions is not sufficient to trigger a political committee registration obligation. The Commission has been clear that an entity is required to register as a Washington State political committee only when: (1) it "accepts contributions specifically for use in election campaigns" in the state[3]; or (2) its "primary purpose is to attempt to influence elections" in the state.[4]

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[1] In an attachment, the Notice references a rule governing out-of-state committees at Wash. Admin. Code § 390-16-049. This administrative rule, however, is not applicable to SCAN, since the organization maintains a "corporate registered agent in Washington State." Wash. Admin. Code § 390-16-049(2)(a). *See also* Save the Children Action Network, Washington Secretary of State Corporations Division Registration, available at https://www.sos.wa.gov/corps/search_detail.aspx?ubi=603498041.

[2] Notice at 2.

[3] Wash. State Pub. Disclosure Comm'n, *Political Committee Definition* (2017), https://www.pdc.wa.gov/learn/publications/political-committee-instructions/basic-information/political-committee-definition.

[4] Wash. State Pub. Disclosure Comm'n Interpretation 07-02 (2007), available at https://www.pdc.wa.gov/learn/index-of-interpretations-by-subject/primary-purpose-test-guidelines. *See also* Wash. State Pub. Disclosure Comm'n, *Political Committee Reporting Guide* (2017) (noting that "[a]n organization that spends existing funds to influence the outcome of an election should review the Primary Purpose Test Guidelines to determine whether the organization must register as a political committee"), available at https://www.pdc.wa.gov/learn/publications/political-committee-reporting-guide.

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As discussed below, SCAN does not meet either of these criteria and was therefore not required to register as a Washington State political committee.

SCAN Was Not a Political Committee Because It Did Not Accept Contributions for Use in Washington State Elections

As mentioned, an entity may potentially trigger political committee status if it "accepts contributions specifically for use in election campaigns,"[5] which occurs when contributions are received that are designated by the donor for Washington State elections or when contributions are received that result from fundraising efforts that include a reference to influencing Washington State elections.[6] As a national organization, however, SCAN does not accept or raise funds for any specific jurisdiction. SCAN also did not accept any donations designated for Washington State elections or reference any plan to influence Washington State elections in the course of soliciting donations. SCAN's contributions to political committees in Washington State were derived exclusively from its general treasury funds. SCAN is therefore not a political committee, as Mr. Morgan alleges

SCAN Was Not a Political Committee Because Influencing Washington State Elections Is Not Its "Primary Purpose"

Again, an entity may potentially trigger political committee status if its "primary purpose" is to influence Washington State elections.[7] In determining an entity's "primary purpose," the Commission reviews its stated organizational purposes and its operational activities.[8]

SCAN is not organized for the primary purpose of influencing elections in Washington State. SCAN was established as a non-profit entity qualified for tax-exempt status under Section 501(c)(4) of the Internal Revenue Code, which stipulates that SCAN and other 501(c)(4)s must

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[5] Wash. State Pub. Disclosure Comm'n, *Political Committee Definition* (2017), https://www.pdc.wa.gov/learn/publications/political-committee-instructions/basic-information/political-committee-definition.

[6] *See, e.g.,* Wash. State. Pub. Disclosure Comm'n Investigative Memo. Case 14266 (2017) (finding that an entity was not a "receiver of contributions" where it did not solicit funds related to Washington elections), available at https://www.pdc.wa.gov/sites/default/files/compliance_case_files/WA%20Federation%20of%20State%20Employees%20Investigative%20Review%20Memo%20%28PDC%20Case%2014266%29.pdf; Wash. State. Pub. Disclosure Comm'n Order of Dismissal Case 11-019 at (2012) (finding that an entity did not qualify as a political committee because "no evidence showed that [it] received campaign contributions to support or oppose candidate or ballot measures in Washington's 2012 election").

[7] Wash. State Pub. Disclosure Comm'n, *Political Committee Definition* (2017), https://www.pdc.wa.gov/learn/publications/political-committee-instructions/basic-information/political-committee-definition.

[8] *See, e.g.,* Wash. State. Pub. Disclosure Comm'n Investigative Memo. Case 12270 (2017) (concluding that an entity whose stated goals did not include supporting Washington State ballot measures or candidates and whose spending on Washington State elections was relatively small did not have a "primary purpose" of influencing state elections), available at https://www.pdc.wa.gov/sites/default/files/compliance_case_files/SEIU%20775%20Investigative%20Review%20Memorandum%20%28PDC%20Case%2012270%29.pdf.

exist "for the promotion of social welfare"[9] (i.e. "the common good and general welfare of the people of the community")[10] and may *not* engage "primarily" in "direct or indirect participation or intervention in political campaigns."[11] SCAN adopted and used this same legal standard in the document that established it, specifying that SCAN "is a nonprofit organization organized and operated exclusively for social welfare purposes within the meaning of section 501(c)(4) of the Internal Revenue Code of 1986."[12] SCAN was not organized to be a political committee in any state. Instead, SCAN, as a complement to its public-charity affiliate Save the Children, was established for the purpose of educating the public about issues affecting children and advocating for the prioritization of children's interests in legislation and other governmental actions across the United States.

SCAN is also not operated for the primary purpose of influencing elections in Washington State. SCAN's activities in the state have focused intently on forming coalitions and on educational efforts to support the implementation of early-education programs.[13] SCAN does periodically spend general treasury funds on Washington State elections, but these expenditures are only a narrow slice of SCAN's broader activities. The Notice, for example, makes much of some contributions to Washington State committees during the 2015-2016 election cycle, and yet SCAN's total spending on Washington State elections represents less than 2 percent of SCAN's $14.8 million overall budget during that time period.

Because SCAN is neither organized nor operated for the primary purpose of influencing Washington State elections, it is not a political committee as alleged by Mr. Morgan.

Conclusion

Mr. Morgan's assertion that SCAN should have registered as a Washington State political committee is incorrect and based on a misunderstanding of Washington law and SCAN's activities. As explained above, SCAN is a national non-profit organization engaged in education and advocacy efforts to improve the lives of children across the country. SCAN has not accepted any funds designated for Washington State elections, and influencing Washington State elections is not its primary purpose. SCAN was not and is not required to register as a political committee in the state. And contrary to the Notice's claim, SCAN's Washington State activity was appropriately disclosed to the public. We therefore request that your office disregard the Notice and dismiss the underlying citizen action.

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[9] 26 U.S.C. § 501(c)(4).

[10] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i).

[11] 26 C.F.R. § 1.501(c)(4)-1(a)(2). *See also* I.R.S. Rev. Rul. 81-95, 1981-1 C.B.332.

[12] SCAN Bylaws at Art. III.A., attached hereto.

[13] Save the Children Action Network, *Investing in Kids – Investing in Washington's Future* (2016), available at https://savethechildrenactionnetwork.org/wp-content/uploads/2016/11/WA-One-Pager-11316.pdf.

Please contact me if you have any questions concerning this matter.

Sincerely,

Paul Ciaramitaro
Senior Director
Save the Children Action Network

Enclosure: As Stated

Cc: Mr. Peter Lavallee, Executive Director, Washington State Public Disclosure Commission