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August 28, 2018

Tabatha Blacksmith
Compliance Coordinator
Public Disclosure Commission
711 Capitol Way S. #206
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RE: Indivisible Kirkland (39225)—Alleged Violations of RCW 42.17A
SCBIL File No. 8013-003

Dear Ms. Blacksmith:

On behalf of Indivisible Kirkland, we are hereby responding to the allegations raised by David Johnson in the above-referenced matter.

Mr. Johnson's allegations are absolutely unfounded, as described herein, and appear to be based upon a complete misunderstanding of Washington campaign finance laws. Indivisible Kirkland has not violated any laws. We therefore believe that the allegations in this complaint should be dismissed outright as unfounded and/or frivolous.

About Indivisible Kirkland, A Community Organization.

Indivisible Kirkland's mission, as stated prominently on its website,¹ is to support "a community where [] all voices are heard, where hate has no place, where the sick and struggling are supported, where the planet is treated as precious, and where democracy is strong." It does so by "actively engag[ing] with the community: with our elected officials, with other organizations, with sister Indivisible groups, with businesses, and with concerned citizens looking for support." This mission is broad and nonpartisan, and is determined by the principles of its members. Indivisible Kirkland focuses on the principles of inclusion, respect, truth, peace, and democracy in order to achieve its mission.

Indivisible Kirkland's website serves many purposes. It provides the organization's mission statement and principles; it provides a one-stop location for publicly-available information, such as contact information for elected officials, current events and actions organized by others (using publicly-available information), useful resources, a contact form for Indivisible Kirkland leadership; and it allows members to donate to the organization for internal organization-building activities.

¹ See <http://www.ikwa.info/>.

In fact, sharing information with Indivisible Kirkland's membership about opportunities for them to be involved in the democratic process is *not* Indivisible Kirkland's primary purpose, and is only one small means to achieving its broad mission statement and values. Indivisible Kirkland has also engaged in the following activities, just to name a few:

- i Worked with numerous community groups and stakeholders to create a gun safety action plan for Kirkland;
- i Held a candidate forum for the 2017 Kirkland City Council and Lake Washington School District Board members in which it invited all candidates to attend—regardless of political position;
- i Collected health care related stories to share with Washington's US Senators to use when considering their votes on healthcare bills;
- i Participated in Crossing Kirkland in 2017, as well as City Hall for All, in order to build community connections;
- i Hosted a community potluck for Welcoming Week in 2017;
- i Assembled food boxes for Nourishing Networks to help feed students during school breaks;
- i Helped fight summer hunger by serving lunches to hungry students at Kingsgate Library;
- i Hosted a movie night for members to watch "An Inconvenient Sequel";
- i Hosted a Veterans' Day service project in 2017 at the Shoreline Veterans' Center; and
- i Invited speakers on diverse topics to educate our membership, including Kurt Triplett, Kirkland City Manager, discussing local government; Kathy Sakahara, from the League of Women Voters, discussing Advocacy 101; Uzma Butte discussing the history of Islam; and Cindy Black, from Fix Democracy First, discussing dark money in politics.

Indivisible Kirkland does *not* make contributions to candidates, spend money to benefit candidates, or raise money to be used to support candidates in any way. Indivisible Kirkland has never turned away a candidate asking to list an event on its calendar, and has never refused to meet with candidates. In fact, Indivisible Kirkland works closely with *all* of the Kirkland City Council Members, who comprise a diverse political background. For example, when holding its 2017 candidate forum, Indivisible Kirkland leadership followed the guidelines delineated by the League of Women Voters in order to ensure a nonpartisan forum.

The Allegation That Indivisible Kirkland Is A Political Committee Engaged In Reportable Activity Is Frivolous And Unfounded And Must Be Dismissed.

Mr. Johnson summarily asserts that Indivisible Kirkland is "organizing campaigning activities" that are reportable to the PDC, citing RCW 42.17A.205 for the assertion that Indivisible Kirkland must file a statement of organization and file reports for its activities.

A political committee's obligation to report its financial activity to the PDC is borne from the Legislature's desire to allow citizens to understand how campaigns and candidates are funded. Requiring political committees to report their expenditures and contributions allows the public to better understand what groups or individuals have a financial stake in the success of a candidate, campaign or ballot initiative. *See State v. Evergreen Freedom Foundation*, 1 Wn. App. 2d 288, 310, 404 P.3d 618 (2017) ("Disclosure requirements operate by requiring organizations to reveal their identity to allow the public to identify the source of funding that influences elections . . .").

Given that the purpose of the Fair Campaign Practices Act (FCPA) is to allow citizens to "follow the money," the FCPA's reporting requirements apply *only* to entities that are in fact "political committees." However, RCW 42.17A.005(40) clearly defines "political committee" as any entity "having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition." Contributions are defined in RCW 42.17A.005(16)(a) as things of value, as expenditures made in support (or in opposition to) candidates, as financing electioneering communications, and as sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event. And Expenditures are defined in RCW 42.17A.005(23) as payments, gifts of money or anything of value.

In interpreting this provision, Washington courts have held that an entity may become a political committee in one of two ways. First, an entity becomes a political committee when the entity "expects to receive or receives contributions toward electoral goals" ("contribution prong"). *Utter v. Bldg. Indus. Ass'n of Washington*, 182 Wn.2d 398, 398 P.3d 953 (2015). The other way in which an entity comes within the reach of the statute's reporting obligations is if one of the entity's primary purposes is to "affect, either directly or indirectly, government decision making by supporting or opposing candidates or ballot propositions" ("expenditure prong"). *Id.* at 423 (quotation marks omitted). By the plain language of the FCPA, an entity that does not fall within the definition of a "political committee," is under no obligation to report its financial activity or otherwise comply with the reporting requirements imposed on political committees. *See State v. (1972) Dan J. Evans Campaign Comm.*, 86 Wn.2d 503, 507-08, 546 P.2d 75 (1976).

Such is the case here. Indivisible Kirkland is not a political committee, as it has no expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition. In fact, it has *not* received any contributions or made any expenditures in support of, or opposition to, any candidate or any ballot proposition. Any funds it receives from its members go to internal activities and support for operations, *not* to influence the election or opposition of any candidate. Although Mr. Johnson summarily concludes that Indivisible Kirkland is a political committee, the attachments he includes in support do *not* show support such a conclusion—because Indivisible Kirkland is *not* a political committee.

Moreover, a contrary finding, *e.g.*, concluding that Indivisible Kirkland was required to file reports with the PDC, would raise serious constitutional implications. As detailed above, when the Act's constitutionality was challenged under the First Amendment, the court in *Human Life of Washington v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) upheld the validity of the statute's reporting requirements citing the government's important interest of "providing the electorate with information as to where political campaign money comes from and how it is spent by the candidate." *Id.* (quotation marks omitted). Where, as here, the entity alleged to have neglected to file reports has not made *any* expenditures in support of any candidate or ballot proposition during the relevant period, the government's interest in reporting dissipates. Imposing cumbersome reporting requirements upon Indivisible Kirkland in these circumstances would chart a course toward unconstitutional waters.

Indivisible Kirkland supports the values of democracy and of an educated electorate, and supports its membership by providing access to publicly-available information. None of this is reportable in any way.

Conclusion

We ask that the PDC decline Mr. Johnson's invitation to join in his fruitless expedition to pursue Indivisible organizations in Washington State that are *not* involved in receiving contributions or making expenditures. We believe that it would be appropriate for the PDC to dismiss Mr. Johnson's allegations outright, and respectfully ask your office to so conclude.

If you have any questions, or if there is anything we can do to be of further assistance to you, please do not hesitate to contact us.

Sincerely,



Laura Ewan

Counsel for Indivisible Kirkland