

August 23, 2018

Public Disclosure Commission

Evergreen Plaza

711 Capitol Way South, Ste. 206

Olympia, WA 98504

Dear Sir or Madam,

This letter responds to a notice received by Seattle Indivisible on August 14, 2018 regarding a complaint (the complaint) received by the Washington Public Disclosure Commission (PDC) from Dennis Olson (the complainant) on August 7, 2018. According to the notification received from the PDC, the complaint was assigned PDC Case Number 39237. The complaint alleges that Seattle Indivisible:

- Violated RCW 42.17A.205 by failing to register as a political committee;
- Violated RCW 42.17A.235 and RCW 42.17A.240 by failing to report contributions and expenditures (as a political committee); and
- Violated RCW 42.17A.255, RCW 42.17A.260, and RCW 42.17A.305 for failing to report independent expenditures or electioneering communications.

Seattle Indivisible denies all alleged violations. As explained more fully below, the complainant has failed to state evidence sufficient to support any of the violations alleged.

At the outset, we note that the document containing the complaint consists of 45 pages, 44 pages which appear to contain the complaint itself, and a single cover page. This response will contain references to pages within the complaint. All page numbers referred to in this response refer to the page numbers included by the complainant in the upper right-hand corner of the complaint. We also note that the complainant only specifically alleges violations of RCW 42.17A.205 and 42.17A.235, and that even for those allegations, fails to support the allegations made on the first page of the complaint with specific examples of conduct alleged to constitute violations.

The complaint also fails to distinguish allegations made against Seattle Indivisible from those made against other individuals and organizations with which Seattle Indivisible is neither affiliated nor related to, instead concluding the complaint "Whether it was Washington Indivisibles [*sic*], Seattle Indivisible, Indivisible Washington's 8th District, the candidates...it is clear that one or more of these parties broke the law."

In order to respond to the complaint, we have attempted to organize the allegations made by the complainant based on our understanding of what the complainant alleges. Because none of the alleged violations have occurred, we have organized our response by identifying allegations which do not identify conduct by Seattle Indivisible (to which no further response by Seattle Indivisible is needed or

appropriate); a response to the allegation that Seattle Indivisible constitutes a political committee which failed to register; and a response to the allegation that Seattle Indivisible engaged in political advertising and made electioneering communications. As this response shows, Seattle Indivisible has not violated any section of, or requirement in, Chapter 42.17A RCW.

I. Allegations Which Do Not Involve Seattle Indivisible

The complainant includes a number of images which do not involve conduct by Seattle Indivisible. In particular, the images contained on:

- Page 3, image 1, (what appears to show a screenshot of an FAQ posted by “Indivisible WA-8”);
- Page 5;
- Page 10, 1 (what appears to be a screenshot of an email message sent to info@indivisiblekirklandkenmore.com);
- Page 13;
- Pages 20-21;
- Pages 23-27;
- The first image on page 28 (what appears to be a screenshot of contact information for “Indivisible Washington’s 8th District”);
- Pages 29-40;
- 41-42;
- Page 43

do not involve any conduct by Seattle Indivisible. In most cases, the allegations relate to other organizations with similar names such as “Indivisible Washington’s 8th District”, “Covington Indivisible”, and “Eastside Indivisible”. Although each of these organizations appears to have the word “indivisible” in their name, Seattle Indivisible is neither related to or affiliated with any of these other organizations, has not entered into a joint venture or organization with any of these organizations, nor have any transfers of funds occurred between Seattle Indivisible and any of these other organizations.

As such, for the allegations contained on the pages listed above, Seattle Indivisible asserts that the complainant has failed to allege conduct by Seattle Indivisible which could violate any section of Chapter 42.17A RCW. Therefore, Seattle Indivisible asks that the claims contained on those pages be dismissed with regard to Seattle Indivisible as unfounded or frivolous under WAC 390-37-060.

II. Allegations Which Do Not Involve Prohibited Activities

The remaining allegations in the complaint also fail to show that Seattle Indivisible engaged in prohibited activities under Chapter 42.17A RCW. None of the conduct or communications alleged in the complaint involve a violation of Chapter 42.17 RCW. As such, Seattle Indivisible asks that these claims also be dismissed as unfounded or frivolous under WAC 390-37-060.

A. Response to Allegation One: Seattle Indivisible is Not a Political Committee and is Therefore Not Required to Register or Report Under RCW 42.17A.205, RCW 42.17A.235, and RCW 42.17A.240

The complainant’s first allegation appears to be that Seattle Indivisible is a political committee which is required to register under RCW 42.17A.205 and report certain contributions and expenditures under RCW 42.17A.235.

Under RCW 42.17A.205(1), “political committees” are required to file statements of organization with the PDC within a specified timeframe. In addition, political committees are required to file reports of contributions and expenditures under RCW 42.17A.235. The report must contain the elements specified in RCW 42.17A.240.

However, such reports are only required if the organization is, in fact, a “political committee”. A political committee is defined under RCW 42.17A.005(40) as “any person...having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.”

i. Political Committee Test

Thus, as a threshold matter, for an organization to be required to file under RCW 42.17A.205 and/or RCW 42.17A.235, it must:

1. Either receive contributions or make expenditures;
2. In support of, or opposition to,;
3. A candidate or ballot proposition

Furthermore, the Washington State Supreme Court has added a primary purpose requirement to the political committee analysis. Under *State v. Evans* and *Evergreen Freedom Foundation v. Washington Education (WEA)* the support or opposition of candidates or ballot propositions must be the organization’s primary purpose. In *WEA*, the Court of Appeals suggests that one way to determine whether the support or opposition of candidates or ballot propositions is an organization’s primary purpose is to review the organization’s goals and mission to determine whether electoral political activity is the primary means of achieving those goals or just one means to achieve broader, non-political goals.

Seattle Indivisible does not have the characteristics required to be a political committee. The complaint fails to show any incidents in which Seattle Indivisible has received a contribution or made an expenditure in support of, or opposition to, a candidate or ballot proposition. We review each requirement and how it applies to Seattle Indivisible in turn.

RCW 42.17A.005(16) defines a contribution to include:

- (i) *A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;*
- (ii) *An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political or incidental committee, the person or persons named on the candidate's or committee's registration form who direct expenditures on behalf of the candidate or committee, or their agents;*
- (iii) *The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political or incidental committee, or its authorized agent;*
- (iv) *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.*

While an expenditure is defined under RCW 42.17A.005(23) to include:

a payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. "Expenditure" also includes a promise to pay, a payment, or a transfer of anything of value in exchange for goods, services, property, facilities, or anything of value for the purpose of assisting, benefiting, or honoring any public official or candidate, or assisting in furthering or opposing any election campaign. For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made. "Expenditure" shall not include the partial or complete repayment by a candidate or political or incidental committee of the principal of a loan, the receipt of which loan has been properly reported.

Ballot propositions are defined as measures and other propositions and initiatives submitted to the voters of the State of Washington. Candidates are those who have sought nomination to public office. Whether a particular contribution or expenditure is “in support of, or opposition to,” a particular ballot proposition or candidate is measured with regard to the ordinary understanding of those words under *VEC v. PDPC*.

ii. Seattle Indivisible Does Not Possess the Characteristics of A Political Committee

The heart of the complaint appears to be this paragraph on its final page:

Washington Indivisible groups solicited, collected, and expended funds with the stated intent to give specific candidates, initiatives, and a specific party an advantage in an election, including by coordinating with and sharing donors with a major political party, having professionally printed materials, a website, active membership lists, endorsement processes, candidate forums, solicitation of donations, and sales of merchandise for fundraising purposes

However, as established, Seattle Indivisible engaged in no activity that would make it a political committee. It is worth reiterating that the complaint makes allegations against a number of organizations and individuals, including Seattle Indivisible. As a result, while the allegations in this paragraph are broad, the complaint contains no allegation that Seattle Indivisible “solicited, collected, and expended funds with the stated intent to give specific candidates, initiatives, and a specific party an advantage in an election”, “coordinat[ed] with and shar[ed] donors with a major political party”, or had “professionally printed materials...candidate forums...and sales of merchandise for fundraising purposes”. At most then, it appears to allege that Seattle Indivisible had a website, a PO Box, a membership list and solicited donations. Whether the complaint includes allegations of such conduct against entities with similar names, but with which Seattle Indivisible has no affiliation, financial relationship, or control, would not be appropriately addressed in a complaint against Seattle Indivisible or this response. Thus, this response will address only allegations regarding activity by Seattle Indivisible in illustrating why Seattle Indivisible is not a political committee.

The complaint does not clearly allege how or why the complainant believes that Seattle Indivisible received contributions or made expenditures in support of, or opposition to, a candidate or ballot initiative. The complaint itself is broken into two categories, “Political Intent” and “Exhibits of Spending & Fundraising” which appear to allege (respectively):

1. That Seattle Indivisible has “Political Intent” (and implicitly, a membership list) by making various communications;
2. That Seattle Indivisible has a PO Box and raised funds on the internet;

As discussed below, none of the allegations in the complaint rise to the level of making Seattle Indivisible a political committee.

First, many of the communications listed in the first section of the complaint do not make reference to a ballot proposition or candidate, and others do not involve the support or opposition to a candidate or ballot initiative. In particular, the communications reproduced in the following images do not even refer to a candidate or ballot initiative:

- Page 9;
- Page 10, Image 2;
- Page 11;
- Page 12;
- Page 14;
- Page 15;
- Page 16;
- Page 17;
- Page 18;

While the images at:

- Page 4;
- Page 6-8; and
- Page 19

do not take the type of position on any candidate or initiative that could be said to be in support or opposition thereto. Thus, the only communication which even arguably involve a message which could be construed as in support of, or opposition to, a ballot measure or candidate is contained on page 3, image 2.

The image on page 3, image 2 shows a communication related to Initiative 1631 (I-1631). However, nothing in this communication shows any evidence of a contribution or expenditure by Seattle Indivisible. At most, the communication encourages Seattle Indivisible members to consider general political volunteering. There is no allegation that Seattle Indivisible directly engaged in any activity in support of, or opposition to, the initiative itself. As can clearly be seen in the images, Seattle Indivisible did not expend any funds in supporting or opposing I-1631.

Furthermore, nothing in the complaint alleges that Seattle Indivisible actually received contributions or made expenditures that were used in support of, or opposition to, a ballot proposition or candidate. The complaint alleges that Seattle Indivisible:

- Raised funds through an online contribution system at <https://secure.actblue.com/donate/seattleindivisible> (on page 22); and
- That Seattle Indivisible has a PO Box (on page 28);

However, neither allegation alleges that Seattle Indivisible received any contributions or made any expenditures in support of, or opposition to, a ballot proposition or candidate. First, the website for contributions that the complainant includes is incomplete—the full image makes clear that donations will be used for Seattle Indivisible *operational* expenses and not in support of any ballot proposition or candidate, as well as numerous disclosures related to the tax status of the contribution. This is the only instance in which the complaint alleges that Seattle Indivisible received contributions. Therefore, it is clear that Seattle Indivisible did not receive contributions in support of, or opposition to, a candidate or ballot measure. Second, that Seattle Indivisible has a PO Box establishes nothing under Chapter 42.17A RCW. There is no allegation that the PO Box was used in the support of, or opposition to, a candidate or ballot measure (and in fact, there is no reasonable way it could have been, given that the complaint’s allegations regarding Seattle Indivisible are limited to electronic communications). Therefore, the complaint has failed to allege that Seattle Indivisible received contributions or made expenditures in support of, or opposition to, a ballot proposition or candidate.

Furthermore, while the complaint alleges that Tina Podlodowski “directed” donors to give “to the Indivisible groups in Washington state”, which is supported by an article in which Podlodowski is quoted as saying via email that she “won’t tell [potential donors] which candidate to give to. My advice is twofold in that case: either wait and find out more until the donors feels sure, or invest in organizations like the State Party, the local legislative district organizations, or groups like Indivisible”. Thus, the complaint alleges, at most, that Podlodowski made a statement generally encouraging donation to a variety of organizations, one of which could be understood to be Seattle Indivisible, but with no claim that Seattle Indivisible coordinated with, requested, or otherwise communicated with Podlodowski. Therefore, there is no allegation of any conduct by Seattle Indivisible that could require reporting or registration.

Even if the complainant were to allege facts sufficient to establish that Seattle Indivisible received contributions or made expenditures in support of, or opposition to, a candidate or ballot proposition, the complaint would still fail to state evidence sufficient to find that Seattle Indivisible is a political committee. Under *State v. Evans*, an organization’s primary purpose must be the support of, or opposition to, a candidate or ballot initiative to be considered a political committee. Neither of those activities is a primary purpose of Seattle Indivisible. Seattle Indivisible’s primary purpose, expressed in both its Articles of Incorporation and through its activities is the advancement of community welfare through education, community development, and activism. Even if Seattle Indivisible were to incidentally communicate a message in support of, or opposition to, a candidate or ballot proposition, this would not be Seattle Indivisible’s primary purpose.

Finally, although the complaint does not specifically address this issue, Seattle Indivisible also does not “hav[e] the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.” Seattle Indivisible does not expect to receive any such contributions or make any such expenditures. Any expected contributions to and/or expenditures by Seattle Indivisible will be used for activities other than the support of, or opposition to, candidates or ballot propositions.

Thus, none of the communications listed in the complaint express a position in support of, or opposition to, a ballot proposition or candidate. Most of the communications listed do not even mention a ballot initiative or candidate. Even if one or more communications contained in the complaint did, in fact

indicate some level of support or opposition to a ballot initiative or candidate, that activity is clearly not the primary purpose of Seattle Indivisible under *State v. Evans*. Similarly, even if one or more communication by Seattle Indivisible involved support of, or opposition to, a ballot initiative or candidate, the complainant has not alleged facts sufficient to support a finding that Seattle Indivisible received contributions or made expenditures for that purpose. Therefore, it is clear that Seattle Indivisible is not a political committee.

Because Seattle Indivisible is not a political committee, it is not required to file a statement of organization under RCW 42.17A.205 or reports of contributions under RCW 42.17A.235 and 42.17A.240. Therefore, Seattle Indivisible requests that the alleged violations of RCW 42.17A.205, 42.17A.235, and 42.17A.240 be dismissed as unfounded or frivolous under WAC 390-37-060.

B. Response to Allegation Three: Seattle Indivisible Did Not Make Independent Expenditures, Engage in Political Advertising, or Make Electioneering Communications under RCW 42.17A.255, RCW 42.17A.260, or RCW 42.17A.305 and Therefore Did not Fail to File Required Reports

The complaint also alleges that Seattle Indivisible made independent expenditures (RCW 42.17A.255), engaged in political advertising (RCW 42.17A.260) and made electioneering communications (RCW 42.17A.305) and that Seattle Indivisible failed to report those activities to the PDC. Because Seattle Indivisible did not engage in any reportable conduct, it asks that the alleged violations of RCW 42.17A.255, 42.17A.260, and 42.17A.305 be dismissed as unfounded or frivolous under WAC 390-37-060.

Seattle Indivisible did not make any independent expenditures under RCW 42.17A.255. An independent expenditure is “any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17A.220, 42.17A.235, and 42.17A.240.”

As defined previously, an expenditure encompasses a wide variety of financial transactions in which there is no allegation that Seattle Indivisible engaged. As noted above, the only Seattle Indivisible financial transactions identified in the complaint are the solicitation of contributions for operational purposes and the rental of a PO Box, neither of which are in support of, or opposition to, a candidate or ballot proposition. As a result, there is no financial transaction which could be a reportable independent expenditure.

Although the term expenditure is defined to include the term contribution, which includes “[t]he financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising or electioneering communication prepared by a candidate, a political committee, or its authorized agent”, Seattle Indivisible did not make, engage in or finance any such communications. Seattle Indivisible is not, itself, a political committee, nor did Seattle Indivisible finance communications prepared by a candidate. At no point does the complaint allege that any of Seattle Indivisible’s communications were prepared by a candidate.

The complaint also fails to allege that Seattle Indivisible engaged in any form of political advertising triggering a reporting requirement under RCW 42.17A.260. Political advertising “includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, digital communication, or other means of mass communication, used for the purpose of

appealing, directly or indirectly, for votes or for financial or other support or opposition in any election campaign.” Clearly, nothing in any of the communications contained in the complaint involves the appeal for votes or financial support or opposition in an election campaign. Furthermore, none of Seattle Indivisible’s communications appeal for the support or opposition in any election campaign—as described above, the majority of the communications reproduced in the complaint do not make reference to any candidate or ballot proposition, while the remaining communications neither communicate support or opposition to any candidate or ballot proposition nor appeal for such support.

Political advertising requires reporting when “within twenty-one days of an election, [the sponsor of a political advertisement] publishes, mails, or otherwise presents to the public political advertising supporting or opposing a candidate or ballot proposition that qualifies as an independent expenditure with a fair market value of one thousand dollars or more”. As noted above, none of Seattle Indivisible’s activities qualify as independent expenditures or political advertisements. Furthermore, none of Seattle Indivisible’s communications (whether considered individually or the aggregate) has a value of \$1,000 or more. Finally, none of the alleged communications occurred within twenty-one days of an election.¹ Therefore, even if Seattle Indivisible did engage in political advertising, it would still not be reportable under RCW 42.17A.260.

Finally, the complaint fails to allege that Seattle Indivisible made any form of electioneering communication. An electioneering communication is defined as:

any broadcast, cable, or satellite television, radio transmission, digital communication, United States postal service mailing, billboard, newspaper, or periodical that:

(i) Clearly identifies a candidate for a state, local, or judicial office either by specifically naming the candidate, or identifying the candidate without using the candidate's name;

(ii) Is broadcast, transmitted electronically or by other means, mailed, erected, distributed, or otherwise published within sixty days before any election for that office in the jurisdiction in which the candidate is seeking election; and

(iii) Either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market value of one thousand dollars or more.

Seattle Indivisible’s communications fail to all three prongs of this test. None of Seattle Indivisible’s communications identify a candidate for a state, local, or judicial office in a message communicated within sixty days before any election in which a candidate is participating. Furthermore, not only do none of the Seattle Indivisible communications included in the complaint identify a candidate within 60 days of an election in which the candidate is participating,² none of Seattle Indivisible’s communications

¹ The complaint appears to reproduce communications from April 22, 2018 through June 19, 2018. The closest “election” was the primary election held on August 7, 2018

² The only communications which appear to even identify a candidate are:

1. The communication reproduced in the image on page 4, communicated on or about April 22, 2018, which arguably identifies Senators Maria Cantwell and Patty Murray. Neither Senator Cantwell nor Senator Murray participated in an election within 60 days of April 22, 2018;

(whether taken individually or collectively) have a fair market value of \$1,000 or more. Finally, even if any of Seattle Indivisible's communications did identify a candidate, were communicated within 60 days of an election, and were worth \$1,000 or more, the only Seattle Indivisible communications reproduced in the complaint were via email and on Seattle Indivisible's website and both email and website communications are explicitly excluded from electioneering communications under WAC 390-05-505(2)(b). Therefore, Seattle Indivisible has clearly not made any electioneering communications.

III. Conclusion

For the reasons stated above, Seattle Indivisible asks that the complaint be dismissed as unfounded or frivolous under WAC 390-37-060. Seattle Indivisible is clearly not a political committee and has not engaged in any reportable independent expenditures, political advertising, or electioneering communications. Although it does not specifically link alleged violations of Chapter 42.17A RCW to particular conduct by Seattle Indivisible, the complaint has clearly failed to state evidence sufficient to find that Seattle Indivisible violated any section of Chapter 42.17A RCW. Therefore, Seattle Indivisible asks that all of the allegations in the complaint be dismissed as unfounded or frivolous under WAC 390-37-060

Sincerely,

Board of Directors

Seattle Indivisible

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2. The communication reproduced in the image on page 11, communicated on April 30, 2018, which arguably identifies Governor Jay Inslee. Governor Inslee is not participating in an election within 60 days of April 30, 2018;
 3. The communication reproduced in the image on page 12, communicated on May 3, 2018, which arguably identifies Secretary of State Kim Wyman. Secretary of State Wyman is not participating in an election within 60 days of May 3, 2018;
 4. The communication reproduced in the images on page 18, communicated on June 23, 2018, which arguably identifies Governor Jay Inslee. Governor Jay Inslee is not participating in an election within 60 days of June 23, 2018

While none of these communications should be considered the type of communications which could be interpreted to be electioneering communications, they would fail to be electioneering communications anyway by virtue of their timing.