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October 19, 2012

The Honorable Ben Ysursa,
Idaho Secretary of State
450 N. 4th Street
P.O. Box 83720
Boise, ID 83720-0080

12 OCT 19 AM 10:29
SECRETARY OF STATE
STATE OF IDAHO

Re: Education Voters of Idaho, an Idaho nonprofit Corporation

Dear Secretary Ysursa:

As has been evidenced by your conversations with my client and with my co-counsel, Susan Buxton, to date, we disagree with your assessment of the status of Education Voters of Idaho, Inc. (EVI).

Like you, we are frustrated by the chain of events which led us here. Also like you, it is our hope that this matter can be resolved amicably in a way that both parties find acceptable. That is why, per your request, Education Voters of Idaho ceased participation in advocating for the ballot measures when this dispute arose, despite the fact that this dispute has substantially impaired the organization's ability to fulfill its mission of advocating for education reform. EVI will continue to advocate for education reform outside of the ballot measures and cannot be barred from those activities.

In the interest of an amicable resolution, we request clarification from your office. It appears that Parents for Education Reform (PFER) meets your requirements for disclosure if it refunded to EVI all contributions EVI made during the 2012 election cycle. In that event, pursuant to Idaho Code §67-6607, all contributions and expenditures by PFER would be accounted for in future Campaign Financial Disclosure Reports. Please advise us, in writing, if this course of action is acceptable to you for complete resolution of this matter. Education Voters of Idaho continues to maintain its status as a social welfare organization and denies that it can be classified as a political committee, for the reasons outlined in the paragraphs below.

In response to your recent request, EVI has asked me to provide the rationale showing why the organization is not a Political Committee. For the reasons set out below, EVI is not a Political Committee subject to the reporting requirements of Idaho Code §67-6607

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and, as such, will not be filing an additional report. Moreover, EVI is entitled to continue to pursue the mission for which it was established.

As you are aware, Education Voters of Idaho, Inc. is an Idaho nonprofit corporation organized as a social welfare organization under IRC § 501(c)(4). Its corporate purposes as set out in its Application for Recognition of Exemption under § 501(c)(4) and its Articles of Incorporation are not defined by or limited to the support for or opposition to any particular ballot measure. EVI's mission is the promotion of Idaho education reform in general, through public education and advocacy. EVI receives funds from its donors for EVI's use in fulfilling its entire mission, not for the support for or opposition to a particular measure.

From its own corporate funds, EVI decides how best to use its resources to fulfill its corporate mission. In this case, EVI made a contribution of its corporate funds to PFER, an Idaho political committee. That contribution was duly reported by PFER in its Campaign Financial Disclosure Report filed on October 12, 2012 on page 1 of Schedule A, identifying the source of the funds, EVI. The report filed by PFER not only satisfies the reporting requirements of Idaho Code §67-6607, but is virtually identical with respect to the identity of donors to the reporting filed on the same date by "Vote No on Proposition 1,2,3" at pages 2 and 10 of Schedule A, and pages 1-11 of Schedule C. In that report, contributions by the National Education Association of \$1,062,674.00, and by the Idaho Education Association of \$280,200.77, were reported without any further information provided as to the source of these entities' funds. Apparently, your office considers these entities to be the only source of these funds.

Social Welfare Organizations, such as EVI, have fundamental Constitutional rights that must be respected by all government agencies, including your office. The Supreme Court has recognized that the First Amendment applies to corporations, *e.g.*, *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14, and has extended this protection to the context of political speech, see, *e.g.*, *NAACP v. Button*, 371 U.S. 415, 428-429. A corporation involved in political action is entitled to no less protection under the First Amendment than an individual exercising the same rights. Action against EVI disregards these Constitutionally protected rights, and instead, treats EVI differently than an individual who makes a similar contribution to a political committee. Your demands that EVI be treated as a political committee, solely because it made that contribution, constitutes action that disregards EVI's rights and singles out my client.

The Constitutional implications of your actions are significant. My client's First Amendment right to Freedom of Association and Freedom of Speech have been chilled and severely infringed by the unwarranted demands and threats of legal action made by your office. My client has ceased its lawful participation in constitutionally-protected political activity based on those threats, and thus has already suffered irreparable and immediate harm. At a critical time, EVI has been completely removed from the public discourse on issues of Idaho education reform.

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Although Idaho Code § 67-6602 defines a political committee in the alternative as "[a]ny person who receives contributions and makes expenditures in an amount exceeding five hundred dollars (\$500) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures," your office has never applied it to organizations that do nothing more than make a contribution to a political committee. To do so would result in a wholesale violation of the First Amendment rights held by any non-individual donor to a political committee. If your office were to treat as a political committee, all organizations that make a contribution to a political committee, the Idaho Education Association and National Education Association would clearly have to be treated as political committees. You have declined to do so and, to our knowledge, have made no demand on either of them to file disclosures. This raises a very serious question.

Apart from the proponents and opponents of Propositions 1, 2, and 3, we can point to many other examples of donor entities that have not been treated by your office as political committees, even though they have made large donations to political committees. To my knowledge, your office has not made any demand for disclosure reporting on any of those entities, with respect to their contributions to political committees. We believe your office is well-aware of the identity of those entities.

Idaho Code § 67-6614 provides that in filing its reports, a political committee must identify the source of the contribution. It states: "No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one (1) person through an agent, relative or other person in such a manner as to conceal the identity of the source of the contribution." Your office has consistently taken the position that each of the entities I have referenced above was the 'source' of the contributions made to their respective donee political committees. For your office now to take a contrary position with EVI, and EVI alone, is clear evidence of discriminatory intent and political motivation in violation of EVI's constitutional rights. Further, statements attributed to your office alleging that EVI's incorporation date makes it subject to 67-6614 is wholly without merit, and the incorporation date does not subject EVI to scrutiny.

The actions of your Department have already deprived my client of its right to participate in the political process at a critical time. These actions have also unreasonably subjected EVI, and its principals, to public derision and defamed them. EVI's properly-reported donation to a duly organized political committee has been characterized as a sham, even though the report was no different than every other report you have reviewed and approved. EVI's conduct, wholly consistent with the actions of any number of respected Idaho public interest groups, has been described by your office as unfair, deceptive and illegal. This is defamation. As you know, my client has done nothing more than exercise its legal right to donate to a political committee, just as all of the other entities I have referenced above did.

Resolution of our dispute must be based on fundamental fairness. My client has not demanded or expected any special consideration from your office. Education Voters of


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Idaho, Inc. demands only that it be treated in the same way that your office has treated every other entity that has made a donation to a political committee. Your decision to selectively enforce an overbroad definition of a political committee for the sole purpose of exorcising Education Voters of Idaho, Inc. from the political process is unconstitutionally discriminatory.

We are at a dangerous precipice. If you pursue this unwarranted course of action against EVI, the law requires that you take the same course against every purported violator of the law. Idaho Code § 67-6623(d) provides that "it shall be [the Secretary of State's] duty: (d) To make investigations with respect to statements filed under the provisions of this act, and with respect to alleged failures to file any statement required under the provisions of this act, and upon complaint by any person with respect to alleged violations of any part of this act."

My client hopes that we can resolve this matter swiftly and without judicial proceedings. However, EVI will not abandon its corporate mission. EVI stands by its fundamental Constitutional rights and intends to continue promoting education reform for many years to come. If necessary, we are prepared to defend those rights, and establish the validity, though we hope and expect that a resolution will avoid such action.

Very Truly Yours,



Christ T. Troupis

cc: client