



IDAHO EDUCATION ASSOCIATION

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October 24, 2012

VIA HAND DELIVERY

Michael S. Gilmore
Deputy Attorney General
Idaho Attorney General's Office, Civil Litigation Division
P.O. Box 83720
Boise, Idaho 83720-0010

Re: *Reports of Contributions and Expenditures by
Idaho Code § 67-6607*

Dear Mr. Gilmore:

I am writing in response to your October 22nd letter. I want to thank you for the opportunity to clarify the position of the Idaho Education Association ("IEA") as to its obligations under Idaho Code § 67-6601, et seq. ("Sunshine Law"). It has ever been the intent of the IEA to be fully compliant with all laws that pertain to the organization. Likewise, the IEA fully intends to adhere to all applicable laws in relation to campaign disclosures.

In order to better understand the matters at issue, it is important to understand the background of the IEA. The IEA's mission is to advocate the professional and personal well-being of its members and the vision of excellence in public education, the foundation of the future. The IEA's core values are:

1. Public Education: Preserving the foundation of our democracy;
2. Justice: Upholding fair and equitable treatment for all;
3. Unity: Standing together for our common cause; and
4. Integrity: Stating what we believe and living up to it.

Throughout its history the IEA has occasionally participated in political activities, but these activities are the exception rather than the rule. Typically, any political activities are carried out by the separate political action committee of the IEA. The vast majority of the activities the IEA is involved in revolve around training, advocacy, and working with Idaho school districts to improve the education of Idaho children. The IEA represents its members' interests in relation to a number of issues among which are teacher certification standards, PERSI, the Idaho Professional Standards Commission. The IEA is funded through membership dues paid by Idaho teachers, administrators, and education support personnel. The IEA is an organization controlled and run by Idaho educators. The IEA was in existence for 120 years prior to this year's election, and will continue to strive to improve public education after this election.

In relation to the Sunshine Law, your October 22, 2012 letter declares that the Secretary of State's Office has come to the conclusion that "[O]rganizations that 'bundle' donations for contributions to other political committees are themselves political committees." Your letter goes on to discuss contributions made by the IEA to Vote No on Propositions 1, 2, and 3 ("Vote No"), concluding that, "These contributions make the Idaho Education Association itself a political committee under Idaho Law." These assertions are made without legal analysis or discussion.

At the outset, the conclusion in your letter appears to be based on a misunderstanding of the facts. IEA did not, as the letter asserts, "bundle" any donations made by others for the purpose of supporting Vote No. Rather, IEA's contributions to Vote No were made entirely out of IEA's own general treasury funds. These general treasury funds consist largely of the dues paid by our members. Such dues are paid as a condition of IEA membership and are not solicited or earmarked as contributions to Vote No or any Idaho political committee.

Insofar as your position is that these membership dues paid to IEA as a condition of membership are "bundled" donations that qualify IEA as a political committee, the IEA strongly disagrees. The plain language of the applicable statute defining a "political committee" very clearly does not apply to the IEA. Idaho Code § 67-6602(p) defines a "political committee" to exist in two situations, as follows:

- (1) Any person specifically designated to support or oppose any candidate or measure; or
- (2) Any 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. Any entity registered with the federal election commission shall not be considered a political committee for purposes of this chapter.

Id.

The reasons why the IEA is not a political committee under this definition are threefold. First, under Idaho Code § 67-6602(p)(1), an entity does not qualify as a "political committee" unless it meets both prongs of the statutory definition—that is, it must "receive[] contributions" *and* "make[] 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." The IEA does not dispute that it satisfied the second prong of this definition by "mak[ing] expenditures" in an amount that exceeds the statutory threshold. It has not, however, satisfied the first prong of the definition because it has not "receive[d] contributions" as defined by the Sunshine Law. The dues that IEA members pay as a condition of membership are not "contributions" for purposes of the Sunshine Law because they are not specifically made "in support of or in opposition to any candidate, political committee or measure." Idaho Code § 67-6602(c). Members' dues support all of IEA's operations and activities, and members must pay

the same amount of dues regardless of whether the IEA makes large, small, or no ballot measure expenditures at all in any given year.

Second, the position set forth in the letter is incompatible with the provision of the Sunshine Law that imposes certain disclosure requirements on nonbusiness entities that, like the IEA, make ballot measure expenditures but do not qualify as "committees." Idaho Code § 67-6606 applies to any nonbusiness entity that (1) is domiciled in the state and (2) gives more than \$1,000 to a ballot measure committee. These entities must disclose any donor or member whose contributions or dues to the entity exceed \$500 in a calendar year. The IEA is not required to report under this provision, however, because annual member dues are less than \$500.

Your letter implicitly asserts that any nonbusiness entity that expends more than \$500 on ballot measure contributions necessarily qualifies as a committee. This cannot be true -- not only for the reason identified above -- but also because it would entirely defeat the purpose and existence of the less-demanding disclosure requirements for nonbusiness entities contained in Idaho Code § 67-6606. *See Farber v. Idaho State Ins. Fund*, 147 Idaho 307, 310 (2009) (noting that a statute must be read to "give effect to all the words and provisions of the statute so that none will be void, superfluous, or redundant"). The overall scheme and structure of the Sunshine Act clearly show that the disclosure requirements for "political committees" and "nonbusiness entities" are meant to be mutually exclusive. Otherwise, virtually every political committee in the state would currently be out of compliance with Idaho Code § 67-6606 as a nonbusiness entity that has failed to submit a set of disclosures that would add nothing to the information already disclosed in the committee's periodic reports. Surely such an absurd result should be rejected. *See Stonebrook Const., LLC v. Chase Home Finance, LLC*, 152 Idaho 927, 932 (2012) (Statutory constructions "that would lead to absurd or unreasonably harsh results are disfavored.").

Third, the State should interpret the Sunshine Law's definition of "committee" in light of the well-settled doctrine of constitutional avoidance. *See Miller v. Idaho State Patrol*, 150 Idaho 856, 864 (2011) (noting that statutes must be read "so as to avoid unnecessary constitutional questions"). Accordingly, the state should avoid any interpretation of the Sunshine Law that requires entities to organize, register, and report as committees -- even if their major purpose is not influencing elections.¹ As discussed above, the IEA is not an entity that has as its major purpose to support or oppose political candidates or measures. The IEA as an organization has a broad scope of purpose encompassing the education of Idaho children and teacher working conditions, as well as many other non-political activities. As such, the State should avoid the constitutional issues that would inevitably arise from requiring an entity like the IEA from registering as a political committee.

¹ *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (construing the term "political committee" in the Federal Election Campaign Act to apply only to entities whose "major purpose" was influencing federal elections because, without the limiting construction, there would be constitutional "vagueness problems . . . [if] 'political committee' is defined only in terms of amount of annual 'contributions' and 'expenditures.'"). *See also Minnesota Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, (8th Cir. 2012) (en banc) (striking down, on First Amendment grounds, a Minnesota law that subjected virtually any entity engaged in political speech to the regulatory burdens of organizing, registering, and reporting as a PAC).

Although the IEA strongly disagrees with any assertion that it falls within the definition of a "political committee," for the reasons discussed above, the IEA does acknowledge that it may be within the definition of a "nonbusiness entity" pursuant to Idaho Code § 67-6602(n). A "nonbusiness entity" is defined as:

[A]ny group (of two (2) or more individuals), corporation, association, firm, partnership, committee, club or other organization which:

- (1) Does not have as its principal purpose the conduct of business activities for profit; and
- (2) Received during the preceding calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten percent (10%) of its total receipts for such year.

According to this statutory definition, the IEA is likely a "nonbusiness entity." As a nonbusiness entity, the IEA would be required to comply with Idaho Code § 67-6606 in those instances where in any calendar year expenditures in support or opposition of one or more candidate or measure exceed one thousand dollars. As discussed above, these conditions will occasionally occur.

In an effort to ensure that the IEA is fully compliant with its disclosure requirements under the law, the IEA will declare itself as a nonbusiness entity pursuant to Idaho Code § 67-6602(n). Further, the IEA will promptly file a statement pursuant to Idaho Code § 67-6606. To that end, the IEA would like an opportunity to meet and confer with the Secretary of State's Office as to the content of this statement.

The IEA has been a part of the education landscape of Idaho since 1892. In its 120 year history, the IEA has helped shape the landscape of education for countless generations of Idahoans. The IEA was here before this current election, and will be here afterward pursuing the best for Idaho students and its public schools. It has ever been the intent of the IEA to follow the law and we as an organization are committed to maintaining that practice. Thank you for giving the IEA the opportunity to clarify its position on these important issues.

Very truly yours,



Paul J. Stark
General Counsel
Idaho Education Association

cc: Hon. Ben Ysursa