IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

SECRETARY OF STATE BEN YSURSA, Plaintiff, vs. EDUCATION VOTERS OF IDAHO, INC., an Idaho Non-Profit Corporation, and its Board of Directors, DEBBIE FIELD, PHIL REBERGER, and MARK DUNHAM, in their official capacities, Defendants.	Case No. CV-OC-2012-19280 ORDER GRANTING INJUNCTIVE RELIEF AS REQUESTED BY THE SECRETARY OF STATE OF THE STATE OF IDAHO

This case is before the Court on the Motion of the Secretary of State of the State of Idaho, Ben Ysursa, requesting a Temporary Restraining Order or Preliminary Injunction declaring that Education Voters of Idaho, Inc. (hereafter, "EVI") is a political committee subject to the requirements of Idaho's Sunshine Initiative and ordering EVI and the Board of Directors of EVI to appoint a political treasurer for their organization who must then file reports of contributions and expenditures made by EVI as required by Idaho laws. The Secretary of State has filed a Verified Complaint and Motion for TRO or Preliminary Injunction. A hearing was held on October 29, 2012, where counsel for both the state and the Defendants ably argued their respective positions.

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FACTS

This action has been brought by the Idaho Secretary of State, Ben Ysursa who is the chief election officer of the State of Idaho. I.C. § 34-201. He is charged by law with the enforcement of the citizen's initiative measure passed in 1974 and referred to as the Idaho Sunshine Initiative. I.C. § 67-6623. Education Voters of Idaho, Inc. (EVI) is an Idaho non-profit corporation which filed its Articles of Incorporation on August 16, 2012. The Defendants, Debbie Field, Phil Reberger, and Mark Durham are EVI's Board of Directors. The registered office's post office box and the street address for EVI is identical to that of another political committee designated as "Parents for Education Reform/Debbie Field" (PER/DF) which supports or opposes certain measures that have been placed on the upcoming general election ballot. EVI has accepted contributions in excess of $500.00 from donors supporting or opposing the ballot measures: Propositions 1, 2 and 3. EVI has not filed campaign finance disclosure forms required by Idaho law with the Secretary of State nor have they appointed a political treasurer as required by law.

A general election is scheduled for November 6, 2012. The Idaho Constitution expressly authorizes the voters to approve or reject any acts passed by the legislature. Idaho Constitution Art. III, § 1. In the November general election, voters are being asked to weigh in on three referenda: Propositions 1, 2 and 3. The Propositions address certain education related laws passed in the last legislative session.

The Defendants admit that they have not filed the reports which the Secretary of State has asserted are required but denies that they are legally required to do so asserting that their status as an Idaho nonprofit corporation relieves them of such an obligation. Defendants also assert the Secretary of State's pursuit of them to require divulging their contributions is selective

enforcement of the law which is a denial of their due process rights under the United States and Idaho Constitutions.

Defendants further state the committee which made expenditures in support of Education Initiatives 1, 2, 3 which appear on Idaho's election ballot for the 2012 general election is Parents For Education Reform which has filed the necessary reports showing Education Voters of Idaho, Inc. as a contributor of over $200,000.00 to this effort and that Education Voters of Idaho, Inc. is an independent 501(c)(4) corporation which is not required to disclose the names of its contributors under the Idaho law.

Defendants further argue that requiring them to disclose the names and contributions made by their contributors would violate Article 1, Sections 1, 2, 9 and 10 of the Idaho Constitution and the First and 14th Amendments to the United States Constitution.

The Defendants seek declaratory relief from the Court asking for a finding that Education Voters of Idaho, Inc. has no duty to disclose under Idaho's Sunshine Law because of its status as a 501(c)(4) social welfare organization, a status for which it has earlier applied with the appropriate federal authorities.

Defendants also seek injunctive relief to prevent the Secretary of State from requiring the disclosures sought which they assert violate their constitutional rights as asserted. They also seek attorney's fees and costs incurred in the action and assert the provisions in 42 U.S.C. § 1983 and 42 U.S.C. § 1988 in support of their positions.

Although Article 1, Section 1 and Article 1, Section 2 are cited, no cases are cited to show any decisions applying these provisions to the issues presented in this case except perhaps the fact that these disclosure requirements were originally enacted by the voters of Idaho pursuant to an initiative process and that Article 1, Section 2, which states in part "All political power is

inherent in the people . . .." has been referenced in several cases in addressing a due process analysis of government actions. However, to the extent it is argued that Article I, Section 2 provides a basis for an attack on the Sunshine Law, the Court rejects that argument. The Sunshine Law as enacted survives under any of the three standards to be used by the Court in evaluating such a law for possible due process violations. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990). Since free speech is a fundamental right, the strict scrutiny test has been considered. The disclosure requirements clearly do not place an undue burden on free speech. *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 130 S.Ct. 876, 175 L.Ed.2d 753 (2010). The statute also satisfies the "means focus" test in that the statutory classifications and definitions and the declared purpose of the statute are clearly in line with the declared purpose of this statute. Under the "rational basis" test the statutory framework is clearly related to a legitimate governmental object as stated in the statement of purpose enshrined in the Sunshine Law as adopted.

As to the asserted due process claim based on selective enforcement to the extent it is considered a part of Article 1, Section 2 the Court also rejects this argument. There has been no showing that the actions of the Secretary of State involve a deliberate and intentional plan of discrimination based upon some unjustifiable or arbitrary classification. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984). Defendants may not like the fact that the Secretary of State has chosen to enforce the law in their case but that does not standing alone constitute a violation of due process under the Idaho law.

THE FIRST AMENDMENT

The First Amendment to the Constitution of the United States provides as follows:

> Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The right of free speech and association embodied in the First Amendment is a broad one. The right, however has never been held to be absolute as Justice Holmes famously stated:

> . . . the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic . . ..
> *Schenck v. United States*, 249 U.S. 47, 51-52, 39 S.Ct. 247, 63 L.Ed. 470 (1919).

In the Context of violations of civil rights in cases decided by the Supreme Court in the 1960's the court made it clear that there was also a distinction between free speech standing on its own merits and actions which involved both free speech and conduct related to free speech. *Brown v. Louisiana*, 383 U.S. 131, 86 S.Ct. 719, 15 L.Ed.2d 637 (1966); *Adderly v. Florida*, 385 U.S. 39, 875 S.Ct. 242, 17 L.Ed.2d 149 (1966).

In *Brown* the Supreme Court struck down an action by Louisiana authorities in which they arrested a group of demonstrators who protested discriminatory practices involving differing service standards for black and white patrons. After pointing out the nature of the demonstration was quiet, respectful and orderly, the Court stated:

> A state or its instrumentality may, of course, regulate the use at its libraries or other public facilities. But it must do so in a reasonable and nondiscriminatory manner equally applicable to all and administered with equality to all. It may not do so as to some and not as to all . . . and it may not invoke regulations as to use — whether they are ad hoc or general — as a pretext for pursuing those engaged in lawful, constitutionally protected exercise of their fundamental rights."

A year after deciding *Brown* the Supreme Court ruled in *Adderley* involving a student civil rights protest that a sheriff's arrest of student protesters who went on to jail grounds and refused to leave did not violate First Amendment Protections. The Supreme Court upheld the

arrests in an opinion written by Mr. Justice Black who made it clear that the right to free speech and assembly was not absolute stating:

> . . . there is no merit to the petitioner's argument that they had a constitutional right to stay on the property, over the jail custodians' objections, because this area chosen for the peaceful civil rights demonstration was not only 'reasonable' but was also particularly appropriate . . .. Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so however and whenever they please. That concept was vigorously and forthrightly rejected in two of the cases petitioners rely on . . . we reject it again.
>
> At footnote 7 in *Adderly*, the court pointed to this language in *Cox v. Louisiana*, 379 U.S. 536, 563, 85 S.Ct. 453, 13 L.Ed.2d 471 (1965):
>
> > " . . . the examples are many of the application by this court of the principle that certain forms of conduct mixed with speech may be regulated or prohibited."
> 379 U.S. at 563 n.7.

The Federal Courts have thus recognized that there is a difference between regulating certain forms of conduct which are clearly intermixed with the right to exercise free speech and conduct which in and of itself constitutes the simple and protected act of free speech under the First Amendment to the U.S. Constitution.

Clearly this and further discussion of cases decided by the United States Supreme Court is necessary in the context of this case because the First Amendment's provisions have been held to apply to the States by virtue of the adoption of the 14th Amendment. That being the case, this Court is bound by the strictures of both the United States and Idaho Constitutions.

Article VI, Clause 2 of the United States Constitution provides as follow:

> This Constitution and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every state shall be bound thereby; any Thing in the Constitution or Laws of any State to the Contrary Notwithstanding.

ARTICLE XXI, Section 20 of Idaho's Constitution states:

> That in behalf of the people of Idaho we, in convention assembled, do adopt the constitution of the United States.

Article 1, Section 3 of the Idaho Constitution states:

> The state of Idaho is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.

These two provisions have been a part of Idaho's Constitution since it was ratified by the people of Idaho in November of 1889.

IDAHO'S FREE SPEECH CLAUSE

The state of Idaho, in its own constitution has also adopted a specific provision related to the people's right to free speech in Article 1, Section 9 of the Idaho State Constitution.

It provides as follows:

> Every person may freely speak, write and publish on all subjects, being responsible for the abuse or that liberty.

Likewise at Article I, Section 10 the right of assembly is also protected in the Idaho Constitution which reads as follows:

> The people shall have the right to assemble in a peaceable manner, to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

The voters of Idaho adopted by initiative on November 5, 1974, a law regulating election campaign contributions and expenditures and regulating lobbyists. I.C. Section 67-6601, et seq. That statute and its requirements as from time to time amended by the Idaho legislature is the statute at issue in this proceeding.

It has been argued that the Secretary of State is enforcing the statute selectively against the Defendants in that he has never argued before that such a committee as EVI would have to

reveal its contributors. However the fact, if true, that the Secretary of State's of action is a new construction of the law is not dispositive. As Chief Justice Holmes stated as early as 1907, "there is no constitutional right to have all general propositions of law once adopted remain unchanged." *Patterson v. Colorado*, 205 U.S. 454, 461, 27 S.Ct. 556, 51 L.Ed. 879 (1907). And in any event this is an argument the Defendants are not in a strong position to make under more modern authority either, " a [party] who engages in some conduct clearly proscribed cannot complain of the vagueness of the law as applied to the conduct of others." *Village of Hoffman Estates v. Flipside, Hoffman Estates*, 455 U.S. 489, 495, 102 S.Ct. 1186, 71 L.Ed.2d 362 (1982) as cited in *Center for Individual Freedom v. Medigan*, ___ F.3d ___, 2012 WL 3930437 (7th Cir.).

From a legal standpoint both slavery and segregation were legal until the emancipation proclamation freed the slaves and segregation was established when separate but equal accommodations were unanimously ruled unconstitutional by the United States Supreme Court in *Brown v. Board of Education*, 347 U.S. 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954).

In fact Idaho has had a long history of requiring public disclosure of political contributions and expenditures.

The Idaho Supreme Court in the case of *Adams v. Landsdon*, 18 Idaho 483, 110 P. 280, 284 (1910) held that a law requiring candidates in a primary election to file ". . . an itemized statement in writing duly sworn to as to its correctness, with the officer with whom his declaration of candidacy or other nomination paper is filed, setting forth each sum of money and thing of value or any consideration whatever, contributed, paid or promised by him or anyone for him, with his knowledge or acquiescence for the purpose of securing or influencing or in any way

affecting his nomination to said office . . .." did not violate the free speech clause contained in Article 1, Section 9 of the Idaho Constitution which reads:

> Freedom of Speech — Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.

While *Citizens United* would clearly invalidate the language in that statute providing that no candidate could spend on his own election an amount greater than 15% or the amount of yearly compensation paid to serve in the office he or she was seeking, *Citizens United* did not hold reporting requirements as to disclosure and contributions of spending were unconstitutional. The Supreme Court has specifically held that reporting requirements and disclosure of contributions and expenditures by political organizations do not violate the First Amendment. *Buckley v. Valeo*, 424 U.S. 1, 60-84, 96 S.Ct. 612, 45 L.Ed.2d 659 (1976).

In *Buckley* the Supreme Court stated:

> [C]ompelled disclosure, on itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment . . . we long have recognized the significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate government interest . . . we have required that the subordinating interests of the state must survive exacting scrutiny. We have also insisted that there be a 'relevant correlation' or a 'substantial relation' between the governmental interest and the information required to be disclosed. *424 U.S. at 64.*

In *Buckley* the court found that the governmental interests of providing the electorate with information, deterring corruption and the appearance of corruption, and gathering data necessary to detect violations were of sufficient magnitude to be validated even though they might incidentally deter some persons from contributing. *424 U.S. at 66-68.*

However, the court also made clear that a disclosure requirement that was overbroad if it were applied outside of the context of regulating the conduct of a candidate or a political

committee could be struck down if the regulation exceeded the clear governmental interests which were sought to be protected by the Act.

The court then went on to point out that the acts at issue in the case before it, the Federal Election Campaign Act of 1971 and related provisions of the Internal Revenue Code of 1954, all as amended in 1974, while they addressed disclosure and required disclosure by groups other than purely political committees or candidates and extended those reporting requirements to individuals and groups that were not, and are not, candidates or political committees, the law did so in only three circumstances:

1.) When they make contributions earmarked for political purposes or authorized or requested by a candidate or his agent, to some person other than a candidate or political committee.

2.) When they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.

3.) When expenditures are of the type that expressly advocate a particular election result.

The court held that the Provisions of the Federal Election Campaign Act of 1971, as amended in 1974, (Sections 608(e) and 434(e) as construed by the court) survived a constitutional challenge on First Amendment grounds whether on a freedom of speech or a freedom of association challenge. *424 U.S. at 74-82.*

While *Citizens United* overruled prior law and held unconstitutional certain provisions of the Federal Election Campaign Act of 1971, it did not overrule the prior holding in *Buckley* relating to disclosure requirements and moreover found requirements for disclosure contained in the Bi-Partisan Campaign Act of 2002 to be constitutional. Indeed the Supreme Court quoted *Buckley* favorably in the *Citizens United* decision. There is no indication whatsoever that the *Buckley* analysis regarding disclosure was in any way rejected by *Citizens United.* In fact

Citizens United specifically upheld disclosure and disclaimer requirements which had been attacked in the case and rejected an argument that disclosure requirements must be confined to speech that is the functional equivalent to express advocacy. In short, *Citizens United* specifically held that speech (in the case of *Citizens United*, corporate speech) could be regulated through disclosure and disclaimer requirements but may not be suppressed altogether.

There is therefore not a bar under U.S. constitutional law, to disclosure and disclaimer requirements which serve a legitimate government purpose mandated by the First Amendment to the United States Constitution.

Nor is there any legal bar constitutionally under the Idaho Constitution barring such a requirement as it relates to sources of funding or expenditure or resources.

IDAHO'S SUNSHINE LAW

Idaho's Sunshine Initiative was a citizen's initiative passed in 1974. It mandates openness in government and requires public disclosure of donors and amounts contributed by any organization which spends more than $500.00 to promote or oppose any legislation. The purpose of the initiative which passed in 1974 was:

(a) To promote public confidence in government;

(b) To promote openness in government and avoiding secrecy by those giving financial support to state election campaigns and those promoting or opposing legislation or attempting to influence executive or administrative actions for compensation at the state level. I.C. § 67-6601.

It applies to all individuals, corporations, associations, or other entities of any type. I.C. § 67-6602(o). It also specifically applies to any "measure" which the Sunshine Initiative broadly defines to mean "any proposal, to be voted statewide, submitted to the people for their approval or rejection at an election, including any initiative, [or] referendum . . .." I.C. § 67-6602(m).

Any person or group which is specifically designated to support or oppose any candidate or measure or who receives contributions and makes expenditures in excess of $500.00 in support or opposition to any candidate or measure in any calendar year is defined as a "political committee." I.C. § 67-6602(p). Political committees are required to appoint a political treasurer and must file reports of their contributions and expenditures with the Secretary of State. They may not receive contributions or make any expenditures until a political treasurer is appointed. I.C. § 67-6603; I.C. § 67-6607. Finally, the citizens' Sunshine Initiative, I.C. § 67-6614, provides:

> **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.** (emphasis added)

Idaho law is clear and unambiguous—there can be no anonymous contributions either in favor of or in opposition to Propositions 1, 2 and 3 by a political committee as defined by the law.

The fact that the federal disclosure laws, apparently by omission, create a "loophole" as to reporting requirements for 501(c)(4) entities through which it appears truckloads of millions of dollars drive through, does not bind either the voters of Idaho or their legislature. The voters may clearly adopt more stringent reporting requirements, less stringent reporting requirements or if they were to so choose no reporting requirements at all as to their own election laws, so long as they do not violate the provisions of the United States or Idaho constitutions.

Clearly under *Citizens United*, no bar under the United States Constitution to reasonable reporting and disclaimer requirements exists as to the Idaho law. In fact the Supreme Court of

the United States adopted by an 8 to 1 majority the following language relating to requirements as to the identity of donors:

> Disclaimer and disclosure requirements may burden the ability to speak, but they "impose no ceiling on campaign-related activities," . . . and "do not prevent anyone from speaking," . . . The Court has subjected these requirements to "exacting scrutiny," which requires a "substantial relation" between the disclosure requirement and a "sufficiently important" governmental interest. (citations omitted).

The *Citizens United* majority held that the government did have a substantial and important governmental interest in providing the electorate information about the sources of election related funding and noted the evidence showing that independent groups running election-related ads often hid "behind dubious and misleading names." 130 S.Ct. at 914. The Ninth Circuit upheld Washington state's sunshine law against a similar attack in *Human Life of Washington, Inc.*, 624 F.3d 990 (2010). Like Idaho, Washington's sunshine law was a voter initiative passed overwhelmingly in the early 1970's. It also required disclosure of those seeking to influence voters on ballot initiatives. The Ninth Circuit rejected the argument that disclosure of the names of the donors and the simple reporting requirements of the sunshine law were an unconstitutional burden on free speech. Citing *Buckley v. Valeo*, 424 U.S.1, 19, 96 S.Ct. 612 (1976), it observed that disclosure requirements in most applications appear to be the least restrictive means of curbing the "evils of campaign ignorance and corruption" and, although disclosure requirements are subject to exacting scrutiny, where there is a substantial relation between a vital governmental interest and the information required to be disclosed, the requirement of disclosure will stand. The Washington disclosure requirements which required appointment of a treasurer and the filing of fairly simple disclosure forms at set periods prior to and following an election were upheld. The Court observed that "[p]roviding information to the

electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment." *Id.* at 1005. The governmental interest was substantial and was advanced by campaign finance disclosure requirements and Washington's disclosure requirements were not unconstitutionally burdensome relative to that substantial government interest. Washington's law, which was similar to Idaho's Sunshine Initiative, was upheld.

In reviewing Idaho case law, as earlier stated Idaho from the early years of its admission as a state in 1890, has found that reporting requirements are not unconstitutional. It has also held that Article 1, Section 9 does not create an absolute right finding that abuses of free speech such as publication of deliberate falsehoods or misrepresentations are not protected. *McDougall v. Sheridan*, 23 Idaho 191, 128 P. 954 (1913); *Robison v. Hotel & Restaurant Employees, Local* 782, 35 Idaho 418, 207 P.132, 27 A.L.R. 642 (1922). Idaho's Supreme Court has also held that the disclosure of confidential sources relied upon by a newspaper reporter in preparing a story that protection of such sources is not protected under Idaho's free speech constitutional provision and that the reporter may be required to reveal those sources. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983). The basis for the rulings was, "compelling and legitimate governmental interest." However, the right of a court to compel the revealing of confidential sources of a newsman or newswoman is not absolute. The court, before issuing such an order, must balance the following facts:

1.) Is there probable cause the newsman has the information sought?

2.) Whether the information sought cannot be obtained by alternative means less destructive of First Amendment rights; and

3.) Whether there is a demonstrated, compelling, and overriding interest in the information.

State v. Kiss, 108 Idaho 418, 421, 700 P.2d 40, 43 (1985).

State v. Kiss cited to both the First Amendment of the United States Constitution and to Article 1, Section 9 of the Idaho Constitution.

Applying the test contained in *Kiss* this Court finds:

1.) There is probable cause to find Education Voters of Idaho possesses the information sought by the Secretary of State. In fact, they admit they have the information.

2.) The information may not be obtained by other means. Education Voters of Idaho is the only entity in possession of the information relating to its contributors and the amounts they have contributed.

3.) There is a demonstrated and compelling overriding interest in the information.

The voters of Idaho themselves have established the interest and how compelling it is by adopting by popular vote the disclosure requirements contained in the law: the interest in free, fair and honest elections free of fraud and deception and the right of the people to know who seeks their vote for a candidate or an issue is at the heart of the electoral process.

I.C. § 67-6601 clearly spells out the purpose for the Sunshine Law.

> **67-6601. Purpose of act.** The purpose of this act is:
> (a) To promote public confidence in government; and
> (b) To promote openness in government and avoiding secrecy by those giving financial support to state election campaigns and those promoting or opposing legislation or attempting to influence executive or administrative actions for compensation at the state level. [Init. Measure 1974, No. 1, § 1; am. 2006, ch. 106, § 1, p. 294.] (emphasis added).

In a Republic, which elects officials and officers through a democratic electoral process, it cannot be reasonably argued that the public purpose of promoting public confidence in the

government and avoiding secrecy by those giving financial support to state election campaigns and supporting or opposing legislation is not a compelling public interest.

STANDARDS FOR INJUNCTIVE RELIEF

Requests for injunctive relief are governed by I.R.C.P. Rule 65. The grounds for injunctive relief are set forth in the rule:

> A preliminary injunction may be granted in the following cases:
>
> (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.
>
> (2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.
>
> (3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

I.R.C.P. Rule 65(e). Any party seeking injunctive relief must show that he or she is likely to prevail on the merits; is likely to suffer irreparable harm if not granted injunctive relief; that injunctive relief would not be inequitable and that injunctive relief would be in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008). Idaho's Sunshine Initiative also expressly authorizes the Secretary of State to seek an injunction in the district court to enforce the law's disclosure requirements. I.C. § 67-6626.

Idaho's Sunshine Law applies to all individuals, corporations, associations, or other entities of any type. I.C. § 67-6602(o). It also specifically applies to any "measure" which the Sunshine Initiative broadly defines to mean "any proposal, to be voted statewide, submitted to

the people" (I.C. § 67-6602(m)) supporting or opposing candidates or ballot measures and how much they are spending. Nothing is more critical to the existence of real democracy and the preservation of the legal framework of the Republic than full, honest information provided to voters who may then do with that information what they will. Understanding who is attempting to influence their decision is part of a voter's analysis of whether he or she agrees with the reasons and goals of those who are attempting to lobby them. Knowledge of who backs or opposes a ballot measure can motivate a voter to look more deeply into the merits of their arguments and try to discern what those who lobby the voters hope to gain or fear to lose. If actions speak louder than words, then the expenditure of resources—money and time—speaks more loudly still. No one doubts that there are voters who are uninterested in those who fund drives to oppose or support candidates or ballot measures but many voters do care. The voters have a right to the most full, most accurate information they can get in spite of the many obstacles placed in their way by those who would prefer to hide behind catchy, vague names. Voters are entitled to know who is standing behind the curtain. Idaho voters passed the Sunshine Initiative to give themselves the right to see who is trying to influence their vote and they authorized the Secretary of State to protect the rights of all Idaho citizens. Nothing has been shown which overrides the strong, substantial interest of the citizens of Idaho in knowing who is seeking to influence them as they exercise their right to vote.

To advance this goal the Idaho Sunshine Law contains this clear and unambiguous language:

> 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. I.C. § 67-6614.

CONCLUSION

1. The Secretary of State has met its burden in establishing the right to injunctive relief since the record establishes that Education Voters of Idaho, Inc. is a political committee subject to the requirements of the Sunshine Initiative, I.C. § 67-6601 *et. seq.* A failure by the Defendants to follow the requirements of the Sunshine Initiative is in violation of the rights of Idaho citizens as provided by law and a failure to grant injunctive relief at this time would permit the law to be violated with impunity and would result in irreparable harm to the voters of Idaho whose rights under the Sunshine Initiative the Secretary of State is charged with protecting. The equities support the Secretary of State's position. The injunction is in the public interest and clearly meets the balancing test set out in *State v. Kiss*, 108 Idaho 410, 421, 700 P.2d 40 (1981) and the requirements of I.R.C.P. 65.

2. Education Voters of Idaho, Inc. and its Board of Directors, Debbie Field, Phil Reberger and Mark Dunham in their official capacities are hereby enjoined both preliminarily and permanently from making any further expenditures or receiving any further contributions until they are in full compliance with the Sunshine Initiative or Sunshine Law, I.C. § 67-6601 *et. seq.*

3. Education Voters of Idaho, Inc. and its Board of Directors and Debbie Field, Phil Reberger and Mark Dunham in their official capacities are ordered to appoint a political treasurer and to certify Education Voters of Idaho, Inc. and its political treasurer to the Office of the Idaho Secretary of State by close of business on Tuesday, October 30, 2012.

4. The Secretary of State is entitled to mandatory injunctive relief as well. Therefore, Education Voters of Idaho, Inc. and its Board of Directors and Debbie Field, Phil Reberger and Mark Dunham in their official capacities and Education Voters of Idaho, Inc. and its treasurer are

to file forthwith all campaign finance disclosure reports required by Idaho law, and in particular by I.C. § 67-6606 and I.C. § 67-6607 no later than 3:00 p.m., Wednesday, October 31, 2012 and must file all required further reports when required or face sanctions.

5. The State may seek such other relief, including penalties, costs and attorney fees as provided by law and equity.

6. The Defendants' Motion to Strike is denied. The verification is sufficient under Idaho Law. *Steiner v. Gilbert*, 144 Idaho 240, 244-245, 159 P.3d 877, 881-882 (2007).

7. The Defendants' request for injunctive relief is denied.

IT IS SO ORDERED.

Dated this 29th day of October 2012.

MIKE WETHERELL
District Judge