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Office of the
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Elections Division

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February 13, 2015**VIA FAX 775-684-5718**

Nevada Secretary of State
Scott F. Gilles
Deputy Secretary for Elections
Nevada State Capitol
101 N. Carson Street, Suite 3
Carson City, Nevada 89701-3714

Attention: Deputy Attorney General Kevin Benson

**Re: Alleged Violation of Election Law
File C15-01 SOS**

Dear Messrs. Gilles and Benson:

This office represents Tony Dane and the entities mentioned below in the above referenced matter.

We have your letter to Tony Dane, Dane and Associates, CRC PAC, dated February 2, 2015. Neither Tony Dane, nor any of the entities mentioned in your letter have broken any laws.

None of these entities were required to disclose donors to the Secretary of State regarding the flyers or mailers subject of your letter.

PAC's do not have to disclose their donors as long as they do not seek votes for or against a person or issue. The CRC PAC mailer simply stated that both John Hambrick and Chris Edwards had gone to the "Dark Side" and need to be brought back into the Light. However the campaign filings of CRC PAC showed both Dane & Associates and Tony Dane as donors.

For your edification we supply you with language from a recent Nevada Supreme Court case which is captioned: CITIZEN OUTREACH, INC., Appellant, vs. STATE OF NEVADA BY AND THROUGH ROSS MILLER, ITS SECRETARY OF STATE. This is a Supreme Court

Ruling which prohibited prosecutions of the kind countenanced by your letter. This case held that "Magic Words" seeking votes for or against a particular issue or candidate must appear on the face of any material which are supposedly subject to the provisions of NRS 294A.004(2). So far this decision is unpublished and is not to be used precedentially. However, we believe that if you were to continue with prosecuting this complaint that you would be met with the same decision as Citizen Outreach, Inc.

We quote the decision at length below:

The magic words test may be easy to avoid, see *Furgatch*, 807 F.2d at 863, but it is also a bright-line rule that is easy for potential speakers to understand and for the State to enforce. See *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963, 969 (8th Cir. 1999) (stating that Buckley adopted a bright-line rule "Eto avoid uncertainty, and therefore invalidation of a regulation of political speech"). Moreover, a majority of courts in 1997 had adopted the magic words test—the Ninth Circuit was the exception. See, e.g., *Christian Action Network*, 110 F.3d at 1050-51. Therefore, the conclusion that NRS 294A.004(2) (2009) only included as express advocacy communications containing magic words is not unreasonable and will not lead to absurd results. See *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 477, 168 P.3d 731, 738 (2007) (stating that this court avoids interpretations of statutes that cause absurd results).

Perhaps the 1997 Legislature intended express advocacy to include more communications than those that contain magic words, but this intent was not clear—from either the language of NRS 294A.004(2) (2009) or its legislative history—when Citizen Outreach distributed its flyers. See *State Farm Mut. Auto. Ins. Co.*, 116 Nev. at 294, 995 P.2d at 485 (stating that this court considers legislative history when interpreting an ambiguous statute). When it comes to the exercise of First Amendment rights, any "tie goes to the speaker, not the censor." *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 474 (2007). As a result, we conclude that basic principles of fundamental fairness require us to construe NRS 294A.004(2) (2009) narrowly, limiting it to only those communications that contain magic words of express advocacy. See *Thomas v. Nev. Yellow Cab Corp.*, 130 Nev. , 327 P.3d 518, 521 (2014) (stating that this court construes statutes to comport with the constitution when reasonably possible); *Carrigan v. Comm'n on Ethics*, 129 Nev. , 313 P.3d 880, 884 (2013) (stating that due process requires laws to provide fair notice of what conduct is prohibited).

Because it is undisputed that Citizen Outreach's flyers do not contain magic words of express advocacy, the flyers were not subject to regulation under Nevada's campaign practices statutes that were effective in 2010.

Because it is, or should be at any rate, undisputed that the flyers or mailings subject of the referenced complaint do not contain magic words of express advocacy, the flyers or mailings were not and are not subject to regulation under Nevada's campaign practices statutes.

No person directed Dane or his entities to produce the mailers and calls. Mr. Dane did that of his own volition.

Further, your letter intimates that Mr. Dane or one of the subject entities is suspected of violating NRS 294A.112. Which states:

Making or assisting in making contribution in name of another person prohibited; accepting contribution made by person in name of another person prohibited; making contribution to committee for political action with knowledge and intent to circumvent contribution limit prohibited.

1. A person shall not:

- (a) Make a contribution in the name of another person;
- (b) Knowingly allow his or her name to be used to cause a contribution to be made in the name of another person or assist in the making of a contribution in the name of another person;
- (c) Knowingly assist a person to make a contribution in the name of another person;
- (d) Knowingly accept a contribution made by a person in the name of another person; or
- (e) Make a contribution to a committee for political action with the knowledge and intent that the committee for political action will contribute that money to a specific candidate which, in combination with the total contributions already made by the person for the same election, would violate the limitations on contributions set forth in this chapter.

2. As used in this section, "make a contribution in the name of another person" includes, without limitation:

- (a) Giving money or an item of value, all or part of which was provided or reimbursed to the contributor by another person, without disclosing the source of the money or item of value to the recipient at the time the contribution is made; and
- (b) Giving money or an item of value, all or part of which belongs to the person who is giving the money or item of value, and claiming that the money or item of value belongs to another person.

Neither Mr. Dane, nor any of the entities mentioned in your letter violated this statute in any way. The referenced media reports in no way show that any of the subject entities of Mr. Dane violated the law.

Your attention is called to the United States Supreme Court decision: Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. 310 (2010). "If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." Your letter and your agency are attempting to unlawfully stifle Mr. Dane's and the subject entities free speech rights.

Citizen's United held that the First Amendment protects associations of individuals in addition to individual speakers, and that the First Amendment does not allow prohibitions of speech based on the identity of the speaker. Corporations, are associations of individuals, therefore corporations have speech rights under the First Amendment. Because spending money is essential to disseminating speech limiting a corporation's ability to spend money is unconstitutional because it limits the ability of its members to associate effectively and to speak on political issues.

While Citizens United addresses Federal Campaign law it will, should litigation lead there, be construed to protect Nevada's speakers on political issues from the over reach in the statutes subject of this case.

Your letter also brings up that Dane & Associates is no longer registered as a Nevada Corporation. This is correct. Dane & Associates has several clients in Nevada but has set up its structure outside the State of Nevada. Those clients have reached out to Dane & Associates in Virginia. Its state of residence in no way limits Dane & Associates, Tony Dane or CRC PAC from speaking in Nevada.

If you have questions please call, write or email. Email is the most effective way to reach me.

Thank you for your attention to this matter.

David Otto & Affiliates, PC

By: 

David J. Otto, Attorney at Law