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November 4, 2016

Edward F. Murray, III
Wyoming Secretary of State
Suites 600 and 700
2020 Carey Ave.
Cheyenne, Wyoming 82002

Re: *November 2, 2016, Complaint filed by Robert Jennings alleging noncompliance with the Wyoming Campaign Practices Act by the Children's Museum of Cheyenne Tax Committee, and Friends of CMC.*

Dear Secretary Murray:

Thank you for the opportunity to address the recent complaint filed by Mr. Jennings regarding campaign practices and filings by the Children's Museum of Cheyenne (the "Museum"), and Friends of the Children's Museum of Cheyenne ("Friends of CMC"). The undersigned are legal counsel for the Museum and Friends of CMC. Any further correspondence on this issue should be directed to us.

As described below, there is no merit to the allegations in Mr. Jennings' complaint. Both the Museum and Friends of CMC have complied to the best of their ability with the spirit and letter of Wyoming's Campaign Practices Act, and all relevant state and federal laws, with respect to the upcoming Laramie County economic development tax ballot proposition, whereby an economic development sales tax, equal to one-quarter of a cent, would go to support the children's museum project (the "Quarter Cent Tax"). We are happy and eager to cooperate with the Secretary of State in any way you would like to demonstrate this compliance.

Background

To give context to the complaint, the Museum is a Wyoming non-profit corporation that is federally tax-exempt under 26 U.S.C. §501(c)(3). The Museum was formed just over three years ago, and its purpose is to raise funds to build a children's museum in Laramie County. In this short time, the Museum has raised over \$3 million in private donations and grants towards its purpose. Originally, the Museum believed that it could raise the funds needed to construct the children's museum, fund the exhibits and create an endowment from a combination of private donations, grants and public funding. However, with the downturn in Wyoming's economy, the Museum realized it would be necessary to seek additional public funding. The Museum therefore participated in a local petition drive to add the museum as a project to be funded by the

Quarter Cent Tax to the November election ballot in Laramie County. That effort was successful, and Laramie County's voters will vote on the Quarter Cent Tax on November 8.

The Friends of CMC is a Wyoming unincorporated non-profit association. It came into being when several local Cheyenne businesses came together to support the campaign to approve the Quarter Cent Tax.

The Museum's Board sought professional campaign advice when it began considering attempting to place the Quarter Cent Tax on the November ballot. The advisor provided the Board with both verbal advice and written guidance, in the form of a several hundred page "Election Guide", on how to structure the campaign and comply with disclosure and filing requirements throughout the planning and campaign process. The Museum's Board, a group of volunteers from a variety of industries and with scant experience in conducting this type of campaign, relied on the advisor's guidance and diligently followed the advice given in an attempt to comply with the complex Wyoming Campaign Practices Act requirements.

Briefly, the Campaign Practices Act (the "Act") requires organizations supporting ballot propositions to file a Statement of Contributions seven (7) days before the election, and a Statement of Contributions and Expenditures ten (10) days after the election.¹ The Act also requires all campaign literature and campaign advertising by organizations, other than small items, supporting or opposing ballot initiatives to print or announce the name of the organization sponsoring the literature or advertising, and to print or announce the name of the organization paying for the literature or advertising.²

I. The Museum and Friends of CMC have complied with all applicable campaign advertising requirements under the Wyoming's Campaign Practices Act.

None of the allegations in the complaint with respect to the Museum's and Friends of CMC's campaign advertising have any merit. Neither organization is aware of any confusion among Laramie County voters with respect to who is sponsoring or paying for the either organization's campaign advertising or awareness efforts. Both organizations have made their best efforts to be transparent in their campaign efforts, and comply with the Act.

A. There is no confusion that the Museum is the organization sponsoring the Museum's video in support of the campaign.

The video was produced by the Museum to explain its mission, the need for and value of the museum in Laramie County, the amenities it intends to provide, and the support existing in Laramie County for a children's museum. It was posted to the Museum's website,³ and the name of the organization, "Children's Museum of Cheyenne" is stated very clearly at the top of the

¹ Wyo. Stat. §22-25-106(b)(i)

² Wyo. Stat. §22-25-110(a)

³ <http://www.childrensmuseumofcheyenne.org/cmc-home.html>

video. Throughout the video, the video describes the museum in the first person (ie. at 1:02 – “Our new location at 1618 O’Neil will connect the downtown and West Edge...”; at 1:19 – “Our museum will target children from birth to 14 years old...”; at 2:59 - “Our facility will host incredible performance and arts space...”; at 3:15 – “We have been working for three years to make this dream a reality...” At 4:10, the video specifically states that the Museum is the organization behind the video (if there was any doubt before), stating, “Children’s Museum of Cheyenne invites you to partner with us...” Only once does the video mention the ballot proposition (at 4:19 – “Our ask is this – please vote for our future. Please vote for our quarter-cent economic development sales tax...”)

Assuming the video is “campaign advertising”,⁴ it fully complies with the requirements of Section 110(a) of the Act. The video very clearly states the name of the organization sponsoring the campaign advertising at the top of the screen during the entire video (“Children’s Museum of Cheyenne”), and announces it numerous times throughout the video (ie. “the Children’s Museum of Cheyenne invites you to partner with us...” The Museum is the only organization that paid for the video – no other organization contributed to its costs. Therefore, the video clearly states and announces the name of the organization paying for the advertising. The purpose of Section 110(a) is to make sure that voters are aware if an organization besides the one that sponsored the advertising is actually paying for it – in this case, the organization paying for and sponsoring the advertising are the same. Therefore, the video does not violate Section 110(a) of the Act.

B. The Museum’s “mobile museum” was intended to be an educational opportunity for Wyoming children, not sway votes in the campaign.

Contrary to the Complaint’s allegations, the purpose of the Museum’s mobile museum was not to support the ballot proposition, but to “celebrate our beautiful Wyoming by taking children on an inspired-learning journey around the state.” The mobile museum was, in fact, targeted specifically for ages 2-7 with Universal Design so children with disabilities can interact next to their peers: a lacking opportunity in much of Wyoming.” The Museum’s website describes in detail the activities available at the mobile museum, the educational goals, the purpose, and where it can be found. There is no mention of the ballot proposition in the mobile museum description on the website, or in the mobile museum display itself. The traveling museum project was conceived, planned and created before the Quarter Cent Tax was placed on the ballot. Moreover, the mobile museum has thus far made 7 stops throughout Wyoming – three have been in Laramie County (the Wyoming State Museum, the Cheyenne Little Theatre, and Pine Bluffs Trail Days), but four have been outside Laramie County (Green River, Wright,

⁴ In *F.E.C. v. Wisc. Right to Life*, 551 U.S. 449, 469-70 (2007), the Supreme Court held that to determine whether an ad was political in nature, courts must focus on the substance of the communication. In the context of the case, the Court stated an ad is “express advocacy”, “only if the ad is susceptible of no reasonably interpretation other than as an appeal to vote for or against a certain candidate [or proposal].” The video in this case is over four minutes long, and the ballot initiative itself is mentioned for mere seconds. The vast majority of the ad is clearly informational, not political. We therefore question whether this is even “campaign advertising” within the meaning of Section 110(a) of the Act.

Gillette and Sheridan), where there could be absolutely no benefit to the Museum's ballot initiative campaign. There is simply no merit to the Complaint's allegations that the mobile museum was "intended to sway votes", or constituted campaign advertising or campaign literature within the meaning of Section 110(a) of the Act.

The petition to have the Quarter Cent Tax placed on the November ballot was available at the mobile museum displays in Laramie County, as was information supporting the Museum's efforts to get the tax on the ballot. However, that information was completely separate from the mobile museum and any component of its programming. In fact, it would have been difficult and awkward to incorporate the Museum's campaign into the mobile museum, since it was offered in more locations outside Laramie County than inside.

C. The Museum was not required to file reports on its petition activities with the Laramie County Clerk.

The campaign report filing requirements for petitions are particularly confusing, but the Museum has complied with those requirements in good faith. Mr. Jennings alleges that the Museum's video, discussed above, "flagrantly touts" the Museum's expenditures for the petition, and that the Museum's violated Wyoming law by failing to report those activities to the Laramie County Clerk, but fails to cite any Wyoming statute requiring that the Museum report those activities to the Laramie County Clerk. Mr. Jennings seems to have confused the requirements for groups supporting statewide petitions with the requirements dealing with local petitions. For instance, Section 106(b)(iv) of the Act states that organizations supporting or opposing a petition drive shall file a statement of contributions and expenditures within ten days of the petition being submitted to the Wyoming Secretary of State pursuant to Wyo. Stat. §22-24-115. Likewise, Section 106(f) requires that any organization supporting an initiative or referendum petition drive shall file a statement regarding the petition with the Wyoming Secretary of State. However, a local petition drive is submitted to the municipal clerk, not the Wyoming Secretary of State, and Wyo. Stat. §22-24-115, which has been repealed, dealt with statewide petition drives and referenda and has been moved to Wyo. Stat. §§22-23-300 *et seq* and 22-23-401 *et seq*. Local petitions are dealt with under Wyo. Stat. §22-23-1001 *et seq*, and there does not appear to be any requirement in the Act that a group working toward a local petition file any report of contributions, expenditures or activities with the county clerk. If this is a requirement that the Museum missed, it will be happy to correct this error; however, given the confusing state of Wyoming's statutes in this respect (*ie.* Section 106(b)(iv)'s reference to a non-existent statute), the Museum has complied with these requirements to the best of its ability.

D. The Friends of Children's Museum of Cheyenne is an unincorporated nonprofit association formed to support the Museum.

On October 25, 2016, several Cheyenne businesses, firmly believing that a children's museum is right for Cheyenne and that the ballot proposition should succeed, decided to provide support under the name "Friends of CMC". A local graphic designer created a design for the ad as an in-kind contribution, and a local photographer contributed photos (both of which were

reflected on the Friends of CMC's Statement of Contributions) and the ad was provided to the Wyoming Tribune Eagle to run three times – October 26, 2016, November 2, 2016, and November 6, 2016. The ads stated (and will state) the name of the organization sponsoring and paying for the ads - "Friends of CMC". The expenses will be billed to the Friends of CMC.

Friends of CMC is therefore an unincorporated nonprofit association – an unincorporated organization consisting of two or more members joined by mutual consent for a common, nonprofit purpose as described in Wyo. Stat. §17-22-102(a)(ii). It was created by the businesses described above to support the Museum – a Wyoming non-profit corporation and federally tax-exempt entity under 26 U.S.C. §501(c)(3). Contrary to Mr. Jennings' allegations, it is not an alter-ego of the Museum. Moreover, it was not required to file anything with the Wyoming Secretary of State or any other agency to come into existence – Title 17, Chapter 22, of the Wyoming Statutes permit an unincorporated non-profit association to file a statement with respect to its authority to deal with real property, and to file an appointment of registered agent, with the Wyoming Secretary of State. But nothing requires that an unincorporated nonprofit association justify its existence by such filing – like a partnership, it comes into being simply by agreement of its members to act as such.

As an unincorporated nonprofit association, Friends of CMC is an entity separate from its members,⁵ and is a non-profit entity permitted to make First Amendment expenditures supporting a ballot proposition under the Act. It is worth noting that, prior to 1978, Wyoming law expressly prohibited an "organization of any kind...except a political party, political action committee or candidate's campaign committee...directly or indirectly..." from contributing funds to aid in the success or defeat of any ballot proposition.⁶ However, the Wyoming Attorney General opined in 1978 that the law was an unconstitutional prohibition on an organization's right to free speech as it related to ballot propositions,⁷ and Section 102(a) was repealed almost 20 years ago, in 1998. There is, therefore, no requirement that either Friends of CMC, or the Museum, register as a political action committee, and no prohibition on either entity providing support for the Quarter Cent Tax ballot proposition. For this reason, Mr. Jennings' complaint that Friends of CMC has not registered as a political action committee is based on a misunderstanding of applicable law.

However, to prevent any further confusion over its existence, Friends of CMC filed a *Statement of Organization* with the Wyoming Secretary of State on November 3, 2016, along with an *Appointment of Registered Agent*. But, notwithstanding these filings, there should be no doubt that Friends of CMC came into being on October 25, 2016, when the four local businesses named above came together to support the Museum.

III. The Museum and Friends of CMC have complied with all campaign finance disclosures and requirements under the Act.

⁵ Wyo. Stat. §17-22-106(a)

⁶ Wyo. Stat. §22-25-102(a)(1977)

⁷ See 1978 Wyo. Atty. Gen. Op. 192 (August 10, 1978)

Mr. Jennings' complaint further alleges that two organizations – the “Cheyenne Children’s Museum Tax Committee” and “Friends of CMC” - have failed to make the proper campaign finance filings or disclosures under the Act. The Museum admits that the initial Statement of Contributions it filed on November 2, 2016, was confusing – the Statement of Contributions stated that it was filed in the name of the “Children’s Museum of Cheyenne – Tax Committee”, rather than simply under the Museum’s name. There is no separate entity called the “Children’s Museum of Cheyenne – Tax Committee” – this filing was an inadvertent error based on a misunderstanding of the role of the Museum Board’s internal “campaign committee” with respect to reporting. However, the very next day, Museum amended its Statement of Contributions to reflect that the filing was made by the Museum itself, and to ensure that the contributions to its campaign were accurately disclosed. Mr. Jennings was apparently so eager to submit his complaint that he was monitoring the Museum’s filings and fired off the Complaint immediately after the deadline for filings closed. However, had he waited one day, his confusion would have been cleared up.

Likewise, the Friends of CMC filed its required Statement of Contributions on November 3, 2016. The Friends of CMC recognizes that this filing was one day late. For that, it apologizes and has made every effort to resolve any confusion that may have resulted. However, Mr. Jennings' accusation that “neither entity intends to comply with Wyoming campaign finance law” is simply untrue.

IV. The Museum has fully complied with all federal tax-exemption requirements.

As stated above, the Museum is a Wyoming, non-profit corporation and a federally tax-exempt charitable organization under 26 U.S.C. §501(c)(3). Under that section of the Internal Revenue Code, a tax-exempt entity cannot dedicate a *substantial* part of its activities to influencing legislation.⁸ Factors indicating whether a substantial part of a nonprofit’s activities are devoted to the influence of legislation include balancing the objectives and circumstances of the nonprofit and examining whether the influence of legislation is consistent and continuous (please see *Christian Echoes Nat’l Ministry, Inc. v. United States*, 470 F.2d 849, 855-56 (10th Cir. 1972)).

The objectives of the Museum are clearly non-legislative. The Museum was expressly formed in order to construct a children’s museum in Cheyenne, and raise funds to support the museum’s construction and operation. Since 2013, the Museum has independently raised over \$3 million, without legislative support or interference. Additionally, the legislative activity of the Museum has not been consistent and continuous. The Museum was formed as a nonprofit corporation in October 2013 and only began supporting the ballot proposal in September 2016. Of its 36 months of existence, only 2 months at most – 1/18th of the Museum’s existence - have been spent on activities in support of legislation. Therefore, the Museum’s objectives,

⁸ Pursuant to Treasury Regulation 1.501(c), influencing legislation includes contacting or urging others to contact a legislative body for the purpose of supporting or opposing legislation or actively advocating for or against legislation.

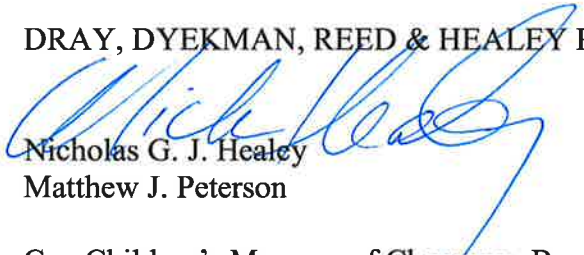
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circumstances, and limited legislative support do not support a finding that the Museum has dedicated a substantial part of activities to influencing legislation. Moreover, only a small fraction of the Museum's assets have been used in support of the campaign - even based on the Museum's initial Statement of Contributions filing, \$19,000, of \$3 million, or 0.63333%, has gone to the campaign. There is thus no merit to Mr. Jennings' accusations with respect to the Museum's use of its tax-exempt assets or status.

In sum, there is no merit to Mr. Jennings' complaint. The Museum sought and relied on professional advice throughout its campaign process to ensure it complied with all relevant campaign financial and advertising requirements under the Act, and has done so. No voter confusion has resulted from the Museum's or Friends of CMC's efforts. The campaign finance and advertising disclosure and filing requirements can be complex, particularly for the volunteer board of a non-profit corporation. However, the Museum and Friends of CMC have made every effort to be transparent regarding their activities and comply with those requirements. We hope that the information we have provided shows you that this complaint can be closed without action by the Wyoming Secretary of State's office, and we are happy to provide further information or answer questions you may have.

Yours truly,

DRAY, DYEKMAN, REED & HEALEY P.C.



Nicholas G. J. Healey
Matthew J. Peterson

Cc: Children's Museum of Cheyenne, Board of Directors
Karen Wheeler, Deputy Wyoming Secretary of State