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July 16, 2015

The Hon. Nellie Gorbea
Secretary of State
State House
Providence, RI 02903

BY FAX AND MAIL

Dear Secretary of State Gorbea:

As you are aware, there has been some controversy over letters that your office sent out last week, suggesting to certain individuals who have been publicly speaking about the proposed PawSox stadium in Providence that they might need to register as lobbyists. David Norton, a recipient of one of those letters as a spokesperson for the group Organizing for Pawtucket, has contacted us with concerns about the correspondence he received from Ms. DiCola at your office, and that is what has prompted this letter to you.

Let me begin by noting that we do not take issue with either the tone of the letters that Ms. DiCola sent or the motivation behind sending them. In light of the well-known dispute you inherited regarding purported non-registered lobbyists involved in promoting the ill-fated 38 Studio legislation, we recognize your office's legitimate interest in making people aware of the state's lobbying law and its potential applicability to them.

At the same time, this type of pro-active approach, if not done carefully, can inadvertently create the types of concerns that Mr. Norton has raised, lending credence, however mistakenly, to claims of intimidation and selective enforcement.

Mr. Norton has noted the great deal of activity and involvement of many people over the proposal to move the PawSox stadium, from both supporters and opponents of the move. In the absence of clear criteria from your office for determining who will get letters suggesting that they may be engaging in reportable lobbying activities, allegations of unfair, selective treatment are almost inevitable. Adopting such criteria would, we submit, be very helpful. In order to further avoid any unintentional chilling of free speech activity, we also believe it is critical that you have clear standards in place for determining the circumstances that prompt a letter of inquiry from your office. Ms. DiCola's letter to Mr. Norton demonstrates the importance of this approach.

That correspondence cited both the legislative and executive lobbying laws. As for the latter statute, it is clearly limited to individuals who receive compensation for their "lobbying" activities. Because we have not seen any news stories or public

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comments about Mr. Norton suggesting that he, or any of the group's members, is being paid for their activities, which they are not, his distress about receiving a letter citing that law is understandable. That distress is made even more palpable by the fact that, even for compensated individuals, the law explicitly excludes from the definition of lobbying the types of rallies that Organizing for Pawtucket and its "members" have engaged in and that have generated the public attention that we assume caught your office's eye.

We can therefore appreciate why a citizen who has been exercising his First Amendment rights to speak out on a highly-contentious political issue might feel intimidated receiving an official letter out of the blue suggesting that his advocacy, and that of the many other "members" advocating with him, might require registration with the government.

As for the legislative lobbying law, we know you share our long-standing concerns about that law's breadth and vagueness, and a bill you introduced this year would have helped ameliorate many problems with it. But precisely for that reason, we think it is essential to be especially careful before intimating to residents that political activity that, on its face, constitutes quintessential free speech advocacy may be reportable lobbying activity. Indeed, the very fact that the legislative lobbying law was cited when there is no pending legislation that Mr. Norton's group is even rallying about only highlights our concerns. Letters like the one sent to Mr. Norton, by seeming to interpret the statute very broadly to cover a wide range of volunteer political activity, could easily have a chilling effect on free speech advocacy, an outcome we know is not what you intend.

In sum, let me emphasize again that we recognize the legitimate motivations underlying Ms. DiCola's letters. However, for the future, we would urge that your office adopt clear and public standards for determining under what circumstances and to whom these letters should be sent, and that they be sent only when there is relatively clear evidence that the conduct prompting your office's interest involves the type of core lobbying activity the law was specifically designed to address.

Thank you in advance for considering our views.

Sincerely,



Steven Brown
Executive Director

cc: Stacy DiCola
David Norton