

June 11, 2010

VIA E-MAIL

Mr. David G. Wager
Wager and Company
6065 Hillcroft, Suite 309
Houston, Tx 77081

Re: Texas Green Party Nominating Petitions

Dear Mr. Wager:

This is to follow up on our telephone conversation yesterday regarding the Texas Green Party, its nominating convention and the in-kind contribution from my client, Take Initiative America ("TIA") to the Texas Green Party's nominating costs. There are 4 important points that I wish to make for your consideration:

1. Take Initiative America is a *nonprofit* corporation, established to promote grassroots citizens involvement in the policy and political process *through* petitioning – a protected First Amendment right. The organization does not support or oppose candidates of any party.
2. Texas law requires the Texas Green Party and other minority and independent parties to obtain signatures in order to field candidates. That is something neither the Democrats nor the Republicans are required to do.
3. Texas law *allows* corporations to contribute to a political party's nominating costs – which is what Take Initiative America has done by paying for and obtaining signatures to enable the Texas Green Party to field candidates. That is *exactly* what the law allows the Democrats and Republicans to do as well: corporations are permitted to contribute to the major parties' nominating costs. The difference is that, unlike the Texas Green Party, neither the Democrats nor the Republican are required to obtain signatures as part of their nominating process.
4. Take Initiative America is not required to disclose its donors because it is NOT a political organization as that term is defined by the Internal Revenue Code nor is it a political committee as that term is defined in Texas campaign finance law. Its major purpose is *not* to engage in supporting or opposing candidates and it protects the right of citizens to participate in the political and policy process through the organization *without* being subjected to harassment and abuse that is often the result of donor disclosure.

The following explanation more fully discusses each of these points and the legal authorities for each statement.

1. Take Initiative America is a non-profit corporation, exempt from taxation under the Internal Revenue Code. As I indicated in our conversation, Take Initiative America is a not-for-profit Missouri corporation, which has received tax exempt status from the Internal Revenue Service ("IRS") as a 501(c)(4)

Mr. David Wager

June 11, 2010

Page 2

social welfare grassroots citizens organization. The purpose of the organization is to promote citizen involvement in the political and public policy process through ballot initiatives and ballot access. The right to petition is a right protected under the First Amendment to the United States Constitution – and only through aggressive petitioning capability are independents and minor parties allowed access to participate in the political process. Take Initiative America does NOT support or oppose particular candidates for office for *any* political party. Rather, its mission is for the purposes of assisting citizens in their political and policy participation through utilizing the direct petitioning process. This allows for maximum involvement of all citizens in *their* democracy. Take Initiative America activities are entirely focused on states, not federal issues or candidates because it is at the state level that the petitioning right is set forth by law.

2. Texas law requires the Texas Green Party and other minority and independent parties to obtain signatures in order to field candidates.

With regard to my client's involvement in the ballot qualifying efforts of the Texas Green Party, the Texas law *requires* the Texas Green Party to obtain signatures in order to even be able to field a slate of state candidates for office in 2010. While both the Democratic and Republican parties are entitled to nominate candidates for office through a primary, the Green Party is obligated to nominate by convention and then only after an arduous process of signature gathering. See Tex. Elec. Code §§181.001-007. In other words, the Texas law imposes on minority parties and independents an additional step in its nominating process to which the major parties are not subject.

3. Texas law *allows* corporations to contribute to a political party's nominating costs – which is what Take Initiative America has done by paying for and obtaining signatures to enable the Texas Green Party to field candidates.

The Texas law specifically states that a political party in the state of Texas is permitted to accept corporate contributions to the state party provided that the contributions are spent *only* for administrative overhead or “to administer a primary election or convention”. See Tex. Elec. Code §257.002.

Because the Texas law requires the Texas Green Party and other minor parties to engage in signature gathering in order for candidates nominated at a party convention to be legally certified as eligible to appear on the general election ballot, corporate contributions necessary to the *nominating* process are permissible under Texas law. Further, because the fielding of candidates is the core function of a political party, the expense of gathering signatures to obtain ballot access may be fairly characterized as an “operating cost” under the statute. The operative provisions of the Texas election code are as follows:

“§ 253.104. Contribution to Political Party

(a) A corporation or labor organization may make a contribution from its own property to a political party to be used as provided by Chapter 257.

§ 257.002. Requirements Relating to Corporate or Labor Union Contributions

(a) A political party that accepts a contribution authorized by Section 253.104 may use the contribution only to:

Mr. David Wager

June 11, 2010

Page 3

- (1) defray normal overhead and administrative or operating costs incurred by the party; or
- (2) administer a primary election or convention held by the party.”

Accordingly, Take Initiative America is allowed under Texas law to contribute directly or in-kind to the Texas Green Party’s *nominating and ballot qualification* costs, which are not in support of or opposition to *any* particular candidate for office, but rather are part of the administrative requirements in order to the Texas Green Party’s convention to even be able to submit candidates to the state for certification. Texas law prohibits corporate contributions *to candidates* but not to political parties if used for the statutorily permissible purposes, which specifically includes the qualifying process for the party to be able to nominate candidates for the ballot. Both the Democratic and Republican parties may (and do) accept corporate contributions for this purpose. As long as the Texas Green Party duly reports the in-kind contribution in the amount(s) provided by Take Initiative America, *the in-kind contribution from Take Initiative America is completely legal and within the framework of the Texas statutes.*

4. Take Initiative America is not required to disclose its donors because it is NOT a political organization as that term is defined by the Internal Revenue Code nor is it a political committee as that term is defined in campaign finance law.

Take Initiative America operates exclusively under the provisions of the Internal Revenue Code with respect to disclosure of its donors. Congress has established in Code section 6104(d)(3)(A) of the Internal Revenue Code specific exceptions to the disclosure requirement(s) applicable to the Form 990 annual returns filed by 501(c)(4) organizations such as Take Initiative America, to-wit:

“(A) Nondisclosure of contributors, etc.

“In the case of an organization which is not a private foundation (within the meaning of section 509(a)) or a political organization exempt from taxation under section 527, paragraph (1) shall not require the disclosure of the name or address of any contributor to the organization.” 26 USC § 6104(d)(3)(A).

Take Initiative America is very protective of its confidential donor and other financial information because the law specifically provides for such protection and because there are often abusive and harassing tactics employed against donors to unpopular causes and issues. The Supreme Court in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) has recognized the First Amendment right of political ‘speakers’ to be able to engage in the policy process anonymously.

In addition, Take Initiative America does not have as its major purpose (or for that matter, *any* purpose) the goal of supporting or opposing candidates for office. Because Take Initiative America does not support or oppose, it does not trigger registration as a political committee under Texas campaign finance law or filing as a political organization under the Internal Revenue Code.



FOLEY & LARDNER LLP

Mr. David Wager

June 11, 2010

Page 4

Take Initiative America is a grassroots organization dedicated to using the petitioning process to facilitate the exercise of protected First Amendment rights in the political and policy arena. That is its primary purpose and interest in this and all other matters and projects.

My representation of Take Initiative America is in keeping with my personal belief that more citizen involvement, rather than less, is key to our country's future. My work for five years as counsel to the national term limits movement taught me the importance of the "right to petition". That important public policy issue resulted almost exclusively from citizen petitioning efforts across the country. Ultimately, we lost the battle for congressional term limits in the United States Supreme Court, but we nonetheless engaged 22 million Americans in signing petitions calling for term limits for Members of Congress. Whether you agree or disagree with the issue isn't the point: what matters is that citizen involvement through the petitioning process matters. That is what Take Initiative America is all about and that is why I represent the organization.

Please find enclosed a copy of the Letter of Determination of Exempt Status as a 501(c)(4) organization received by Take Initiative America from the Internal Revenue Service as proof of the nonprofit status of the organization.

Please contact me if you have questions or wish to further discuss these issues. I can be reached at (202) 295-4081.

Sincerely,

/s/ Cleta Mitchell

Cleta Mitchell, Esq.
Counsel, Take Initiative America

CMI:cmi

Enclosure