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Feb 19, 2015

VIA EMAIL ONLY

State Of Nevada
Office of The Attorney General
100 North Carson Street
Carson City, Nevada 89701

Attention: Deputy AG Kevin Benson

Re: Tony Dane, Dane & Associates, Inc., CRC PAC

Dear Mr. Benson:

We are in receipt of your letter dated February 17, 2015 and hereby respond to it. You and Attorney General Laxalt seem to be suffering from the same misunderstanding – or intellectual dishonesty - that Blogger John Ralston suffered from when he wrote the story subject of your letter. Please allow us to clear this up for you both. Is your inquiry based solely on the opinions or reports of a blogger? We find this a bit strange as well.

First, I will briefly note that the Citizen Outreach case may well be applicable here. Indeed as was noted in the Citizen Outreach decision, Nevada law was amended in 2011. NRS 294A.0025 now defines "express advocacy" and explicitly states that magic words are not required. The definition of "Express Advocacy" was expanded to such an extent that it is absurdly overbroad, vague and ambiguous to such a degree that it is unconstitutional. The inhibitory effect of this law is manifest in its own language and by the fact that the language of the statute was amended in response to a Nevada Supreme Court case which struck down the prior version.

I quote the absurdly broad language defining 'Express Advocacy" contained in the amended version of NRS 294A.0025 below:

> Advocates expressly or expressly advocates means that a communication, taken as a whole, is susceptible to no other reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate or group of candidates or a question or group of questions on the ballot at a primary election, general election or special election. A communication does not have to include the words vote for, vote against, elect, support or other similar language to be considered a

> communication that expressly advocates the passage or defeat of a candidate or a question. NRS 294A.0025

Perhaps you can define for us and for the public just what "no other reasonable interpretation" means in this statute and in whose discretion such a fundamental finding of "reasonable interpretation" lies.

Will you say that the Attorney General or other prosecutor or the police based on probable cause have the right to arrest or otherwise harass people or Political Action Committees simply for stating that a legislator or other public official is in the wrong and should be corrected? Please inform us.

It seems that NRS 294A.0025 was amended only to supply lifetime tenure in elective positions to career politicians such as the Governor of Nevada and the Attorney General. If anyone criticizes them – using a PAC they will be prosecuted for their "express advocacy" whether the criticism calls for people to vote one way or another at all. This is truly disgusting and truly un-American. Is this your position? If we are wrong, please inform us as to what Attorney General Laxalt's position is. We'll keep it in mind next time he wants to run for some government office.

The law, as is so often the case, is unenforceable as written. Please see the U.S. Supreme Court Case of: Aptheker v. Secretary of State, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed.2d 992 (1964)

> Since this case involves a personal liberty protected by the Bill of Rights, we believe that the proper approach to legislation curtailing that liberty must be that adopted by this Court in NAACP v. Button, 371 U.S. 415, 83 S.Ct. 328, 9 L.Ed.2d 405, and Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093. In NAACP v. Button the Court stated that:
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> '(I)n appraising a statute's inhibitory effect upon such rights, this Court has not hesitated to take into account possible applications of the statute, in other factual contexts besides that at bar. Thornhill v. Alabama, 310 U.S. 88, 97—98, 60 S.Ct. 736, 84 L.Ed. 1093; Winters v. New York, supra, 333 U.S. (507), at 518—520, 68 S.Ct. (665) at 671—672 (92 L.Ed. 840). Cf. Staub v. City of Baxley, 355 U.S. 313, 78 S.Ct. 277, 2 L.Ed.2d 302. * * * The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but **upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application**. Cf. Marcus v. Search Warrant, 367 U.S. 717, 733, 81 S.Ct. 1708, 1717, 6 L.Ed.2d 1127. These freedoms are dilicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions.' 371 U.S., at 432—433, 83 S.Ct., at 337. Emphasis Added.

While the Attorney General may not yet have attempted to prosecute Mr. Dane or his entities for the Hambrick "Star Wars" mailer or contemporaneous robo calls we apprehend that he may do so in the future.

Such a prosecution would be nothing more than further efforts to silence Mr. Dane's and other's political advocacy and would be unlawful and unconstitutional. Apparently our new Attorney General

feels it is his job to silence political debate, to silence those who do their civic duty by encouraging citizens to exert pressure on legislators. That is truly unconstitutional and un-American.

Please see the following cases:

Musser v. Utah, 333 U.S. 95, 97 (1948). "The vagueness may be from uncertainty in regard to persons within the scope of the act . . . or in regard to the applicable tests to ascertain guilt." Id. at 97. "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warnings. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." Grayned v. City of Rockford, 408 U.S. 104, 108-09 (1972), quoted in Village of Hoffman Estates v. The Flipside, 455 U.S. 489, 498 (1982).

The "Star Wars" flyers or any robo calls did nothing but advocate that citizens reach out to their legislator and tell them to do the right thing. Furthermore as you should know the "Star Wars" flyers and any auto-phone calls put out by CRC PAC, did not clearly identify a candidate or group of "candidates or a question or group of questions on the ballot at a primary election, general election or special election." No election or balloting was taking place at the time of the mailer or calls. Is it Attorney General Laxalt's intent to ignore these elements of the law as well? If so, does the law mean anything to your offices?

Please tell us how you plan to render the election requirement of this absurdly overbroad and unconstitutional statute meaningless? For whom or what would these calls and mailers be advocating? Does Attorney General Laxalt have any idea why he is pursuing this, or is the obvious harassment and intimidation of Mr. Dane his only goal?

Does Attorney General Laxalt suggest by this investigation that Citizens who advocate that legislators take positions with which the Citizens agree has broken this unconstitutional law?

It is true that since CRC PAC received more than $1,000 in contributions, its report was required irrespective of whether the mailer was an expenditure. And, as you state in your letter, CRC PAC **did** report pursuant to law and has done nothing unlawful. See NRS 294A.140.

As your letter states, CRC PAC did make a report, showing a contribution of $200,000 from Dane & Associates, Inc. You say this gave rise to the allegation in the complaint of a potential conduit contribution in violation of NRS 294A.112.

It seems your inquiry is based solely on a statement made by a blogger named John Ralston. During Mr. Dane's discussions with John Ralston he mentioned that he, through his company Dane & Associates, had several or many clients all over the country. Please know, that having clients who pay for political consulting services from Dane & Associates, LLC. in no way was meant to say or equate with those clients making donations to CRC PAC or directing CRC PAC in any way related to the "Star Wars" Flyers or relating to Chris Edwards taking bribes in exchange for his legislative vote, or having anything to do

with Nevada Politics at all. Apparently this is the fundamental misunderstanding held by Mr. Ralston, you and Attorney General Laxalt.

In our first response we cited the U.S. Supreme Court case of Citizens United v. FEC to remind the Attorney General of Nevada that the law allows Dane & Associates, LLC to make donations to political candidates and Political Action Committees such as CRC PAC. Dane & Associates, LLC made such a donation to CRC PAC and reported it as required by the unconstitutional statutes of Nevada requiring such reports. We are of the opinion that these statutes unconstitutionally chill free speech. They are the law for the time being and Tony Dane, Dane & Associates, LLC. and CRC PAC followed the law in all instances.

Dane & Associates, LLC takes clients from several jurisdictions, and Nevada, being the small, poor state that it is, makes up a very small portion of Dane's business. Dane & Associates, LLC had earnings from those clients. Dane & Associates, LLC made a $200,000.00 donation to CRC PAC this was reported pursuant to law. Such laws mandating reports are an abridgement of free speech as well. None the less, Dane & Associates followed the unconstitutional dictates of the law and reported the corporate donations to the Secretary of State.

Dane & Associates, LLC had earnings from clients' payments of fees for consulting work done in several jurisdictions. Dane & Associates, LLC used some of these earnings to make a donation to CRC PAC. That is perfectly legal under both Nevada and Federal Law.

There were no conduit donations and you have no evidence even tending to show that there were. This is political harassment plain and simple and a serious breach of Mr. Dane's and Dane & Associates First Amendment rights to free speech – especially Core Political Speech.

We do confirm that Dane & Associates, Inc is no longer registered as an active Nevada Corporation, and state that it "has set up its structure outside the State of Nevada."

We did make a mistake when we informed you that Dane & Associates, Inc. had a corporate registration in Virginia. Dane & Associates, LLC. is a **Delaware Limited Liability Company**. Mr. Dane moved his corporation to Delaware when the tax and fee structure in Nevada became excessively burdensome to it.

Please find copies of corporate filings for Dane & Associates, LLC in the State of Delaware attached. Dane & Associates, LLC does not do business in Nevada. It does have clients who are Nevada residents but those individuals or entities have reached out to Dane in Virginia. Dane & Associates, LLC does not, therefore, need to have a business license in Nevada.

Thank you for your assistance.

Sincerely,

David Otto & Affiliates, PC

/s/ David J. Otto

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David J. Otto, Attorney at Law