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March 5, 2018

BY HAND

Francis V. Kenneally, Clerk
Supreme Judicial Court
for the Commonwealth
One Pemberton Square, Suite 1400
Boston, MA 02108-1724

**Re: *1A Auto, Inc. and 126 Self Storage, Inc. v. Michael Sullivan, Director,
Office of Campaign and Political Finance, SJC-12413***

Dear Mr. Kenneally:

This office represents defendant-appellee Michael Sullivan, Director of the Office of Campaign and Political Finance ("OCPF"), in the above-referenced appeal, scheduled for argument tomorrow, Tuesday, March 6, 2018. I write in response to an amicus brief conditionally filed on February 21, 2018 by Common Cause and Free Speech for People, Inc. I am including 17 copies of this letter for distribution to the Court.

The amicus brief raises, for the first time, important concerns about the compatibility of OCPF's Interpretive Bulletin ("IB") 88-01 with the statute it interprets, G.L. c. 55, § 1. It also raises important concerns about whether IB-88-01, as a standard or requirement of general application, should have been promulgated as a regulation pursuant to G.L. c. 30, §§ 2 and 3.

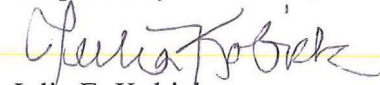
Because the plaintiffs now purport to reframe their claims, it is difficult to say whether or how Interpretive Bulletin 88-01 bears on this case. In the Superior Court, and initially in this Court, the plaintiffs based their equal protection claim and the underinclusivity argument of their First Amendment claim on "the government's selection of a \$15,000 union/non-profit contribution limit," a limit which derives solely from IB-88-01. See Brief of the Plaintiffs-Appellants, at 22 (internal quotation marks and brackets omitted); see also id. at 10, 30-32. In their reply brief, however, the plaintiffs state that IB-88-01 "is not an issue in this case and this Court can resolve the claims presented here without considering IB-88-01." Reply Br. of the Plaintiffs-Appellants, at 18 n. 7. In opposing the Motion for Leave to File the Amicus Curiae Brief, the plaintiffs further assert that "IB-88-01 is irrelevant," and that "[t]he inability of businesses to control a PAC that makes candidate contributions is the core of Plaintiffs-Appellants' First Amendment claim." Plaintiffs-Appellants' Opposition to Motion for Leave to File Amicus Curiae Brief, at 3.



If the plaintiffs have waived any reliance on IB-88-01's interpretation of the term "political committee" in G.L. c. 55, § 1—under which unions and other non-profit organizations may contribute \$15,000 annually before they are deemed a political committee—their First Amendment and equal protection claims are now presented quite differently. As reframed, the claims must depend solely on the differences in the treatment of corporations and non-corporate entities in the text of the statute. The question then is whether the statutory scheme, on its face, violates the Constitution where corporations are barred from contributing to political candidates under G.L. c. 55, § 8, while non-corporate entities are subject to contribution limits as "political committees" under G.L. c. 55, §§ 1 and 6. For all the reasons stated in OCPF's brief, the Legislature's decision to bar corporate contributions, while limiting (but not barring) contributions from non-corporate entities, is wholly consistent with the First Amendment and Equal Protection Clause. See Brief of the Defendant-Appellee, at 32–37, 40–46.

If, however, the Court determines that it should have the benefit of a definitive construction of G.L. c. 55, § 1, following a chapter 30A rulemaking (with notice and public comment) before deciding these constitutional claims (including the extent to which unions and non-profit organizations are "political committees" subject to the contribution limits of G.L. c. 55, § 6), it should remand the case to the Superior Court with appropriate instructions to OCPF to take up the question.

Respectfully Submitted,



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