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September 18, 2014

Ms. Kim Strach  
Executive Director  
North Carolina State Board of Elections  
PO Box 27255  
Raleigh, N.C. 27603

RE: Complaint Relating to North Carolina Environmental Partnership and Associated Entities

Dear Ms. Strach,

Attached to this letter is a Form 5200 Notice of Complaint – Failure to Disclose Television or Radio Campaign Advertising. The Complainant is Civitas Institute, and Mr. Francis DeLuca, the President, is the signatory. The Complaint references ads that ran in March and April 2014 and mention specific candidates for the North Carolina General Assembly. The disclaimer for the ads stated that North Carolina Environmental Partnership (“NCEP”) paid for or sponsored the ads. A list of the ads is attached hereto as Exhibit 1 to the Complaint.

NCEP has filed no disclosures relating to these ads, which fall under the definition of “electioneering communications” in NCGS Section 163-278.6(8j). The ads referred to one or more clearly defined candidates for elected office; the ads were transmitted within sixty days of the time set for absentee voting to begin for the May primary; and were televised in each instance in a market exceeding 7,500 households.

There is no organization named “North Carolina Environmental Partnership” listed with the Office of the North Carolina Secretary of State and no such organization or entity has a registration or report on file with the State Board of Elections.

Furthermore, my client is aware that two other entities, the Natural Resources Defense Council (“NRDC”) and the Southern Environmental Law Center (“SELC”) filed registration and reporting forms under 163-278.12C.<sup>1</sup>

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<sup>1</sup> Both organizations did so reluctantly. Both NRDC and SELC sent letters to the Board of Elections in March 2014 protesting being made to register and file reports. They said they filed reports “in the spirit of transparency.” Because the reports failed to comply with the statute, the spirit of transparency is apparently stronger than the practice of transparency.

Although the reports are incomplete and poorly executed, an examination of the dates and times of the ads appears to indicate that either NRDC or SELC actually paid for some or all of the ads included on Exhibit 1, *and not the organization shown as the sponsor on the TV ad disclaimer*. If the ads were jointly sponsored, Section 163-278.39 requires the disclaimer to include the names of all the sponsors.

The ads ran on multiple stations in the Research Triangle Park and Piedmont Triad markets. The disclosure reports filed by NRDC and SELC failed to provide provide the names of the ads, the names of all the legislators mentioned in the ads and the exact dates the ads ran in a particular market. NCEP did not, of course, file any reports at all.

NCGS Section 163-278.39 contains the basic disclosure requirements for advertisements, including electioneering ads, and it requires television advertisements such as the ones on Exhibit 1, to include the statement “Paid for by (Name of Sponsor).” All of the ads listed in Exhibit 1 were “Paid for (or “Sponsored”) by North Carolina Environmental Partnership” – an entity that does not legally exist.<sup>2</sup> 163-278.39(c) makes the misrepresentation of the sponsorship of an advertisement a Class 1 Misdemeanor. Saying that an ad is sponsored by an organization that does not file reports and does not exist is a misrepresentation. Having an entity not listed in the disclaimer report sponsorship of the advertisement is another misrepresentation. Both are violations of North Carolina law and should subject the members of the organization to prosecution and penalties.

Filing their reports with a letter that says they do not believe they should have to file does not excuse NRDC and SELC from filing correctly and complying with the statutes.<sup>3</sup> Whether their protests were valid is now beside the point and does not excuse the shoddy, misleading and incomplete reports that were filed. The reports filed by NRDC and SELC are filed in such a way as to make it impossible to match the expenditures in the reports with ads that actually aired and thus impossible to know the source of the money for the ads, which was likely the goal all along.

It is Civitas’ contention that NRDC, SELC and NCEP (if it exists) have collectively and repeatedly violated state law. They may also be in violation of the state lobbying laws for failing to report the many solicitation ads they have aired. On behalf of Civitas, I request the Board of Elections open an immediate investigation and if proper, turn the matter over to the Wake County District Attorney for prosecution.

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<sup>2</sup> A search of the NC Secretary of State’s website shows no entity with the name North Carolina Environmental Partnership or North Carolina Environmental Partners.

<sup>3</sup> The protests related to the fact that the ads were about serving legislators with no primary opposition. The statute, however, makes no distinction and refers to a “clearly identified candidate” (which those mentioned were) and to “an election for that office.” The State Board has consistently required reports in such instances whether or not there is opposition for the subject of the ad.

If I can provide any additional information, please let me know.

Very truly yours,

Roger W. Knight  
Attorney for Civitas Institute