

For Immediate Release  
September 18, 2008  
Contact: Dena Espenscheid, 605-271-8290

#### Brown County taxpayer asks State's Attorney to investigate commission resolution

SIOUX FALLS – The following letter was forwarded to the Yes on 10 campaign office by Chuck Pride. While Mr. Pride is a supporter of Yes on 10, he acted on his own accord to bring to light illegal action taken by the Brown County Commission concerning a resolution passed opposed to Initiated Measure 10.

While the No on 10 campaign yesterday proclaimed that government entities and tax-funded quasi-governmental associations would be campaigning against Initiated Measure 10, this tax-payer is taking action to hold his county accountable and within the confines of the law. Yes on 10 is grateful that citizens like Mr. Pride are serving as watchdogs against abuse of public "service" positions and waste of our tax dollars.

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10 September 2008  
State's Attorney  
Brown County  
South Dakota  
Request Investigation of Violation of State Law by Brown County Commission

Dear State's Attorney,

I write to request that in your capacity of Advocate for the People of Brown County that you investigate a possible transgression of the laws of South Dakota by a political subdivision of the State, namely the Brown County Commission.

The Brown County Commission authored and passed on 5 August 2008, Brown County Resolution No. 63-08 entitled "Opposing Initiated Measure 10". The resolution lists only negative viewpoints and opinions regarding Measure 10 and most clearly advocates a specific partisan political position when it egregiously states "Now, therefore let it be resolved, that Brown County strongly opposes Initiated Measure 10 and urges citizens of South Dakota to vote 'no' on the measure." (Copy available to public from Brown County Auditor Office).

This resolution appear to be in direct violation of:

South Dakota Codified Laws 12-27-20. Expenditure of public funds to influence election outcome prohibited. The state, an agency of the state, and the governing body of a county, municipality, or other political subdivision of the state may not expend or permit the expenditure of public funds for the purpose of influencing the nomination or election of any candidate, or for the petitioning of a ballot question on the ballot or the adoption or defeat of any ballot question. This section may not be construed to limit the freedom of speech of any officer or employee of the state or such political subdivisions in his or her personal capacity. This section does not prohibit the state, its agencies, or the governing body of any political subdivision of the state from presenting factual information solely for the purpose of educating the voters on a ballot question.  
Source: SL 2007, ch 80, § 20.

This resolution does NOT fall under any interpretation of "presenting factual information solely for the purpose of educating the voters on a ballot question.," and obviously is instructing voters both in Brown County and South Dakota to oppose Initiated Measure 10. It further falsely proclaims that "Brown County strongly opposes Initiated Measure #10 " which could only be proved true if there are zero votes cast for Yes on 10 at the general election.

Brown County Commissioners are permitted to voice their opinions as individuals outside their official elected performance of duty. However, for them to collectively use their official elected positions, while convened officially as an elected body, and passing an official resolution clearly lends 'color of authority' to those opinions. Such an act of improperly transposing a partisan political position to an official administrative duty should not be condoned, as disregarding it only encourages future similar acts.

State Law 12-27-20, Expenditure of Public Funds to Influence Election Outcome Prohibited, and I paraphrase the pertinent passages, "The governing body of a county ... may not expend or permit the expenditure of public funds for the purpose of influencing ... the adoption or defeat of any ballot question." By expending taxpayer paid time, materials, publishing, processes and forums the Brown County Commission has clearly expended taxpayer funds and misused their official authority for partisan political purposes.

The Commission and the Clerk of the Commission (Auditor) additionally printed large, expensive posters regarding the resolution with taxpayer money, and displayed them prominently in multiple locations within the county building, a public access government building. Such display further amplified the impression that the content of the Resolution was the official position of the Commission and attempted to influence any person observing the posters. (Photos available).

Brown County Commissioners do not appear to be presenting unbiased factual information to voters for their education, but rather proselytizing a specific, biased and partisan point of view by both passage of Brown County Resolution 63-08 and the further expenditure of taxpayer monies to produce posters and materials promulgating their position. This appears to be a direct violation of 12-27-20.

Further; South Dakota Codified Laws 7-18A-1. Definition of terms., subsection

(4) "Resolution," any determination, decision, or direction of a board of county commissioners of a special or temporary character, made for the purpose of initiating, effecting, or carrying out its administrative duties and functions.

It is almost incomprehensible how the Brown County Commission, by enacting Resolution #63-08 which attempts to influence voter opinion on an election ballot measure is "initiating, effecting, or carrying out its administrative duties and functions," as prescribed by statute or granted by law.

An election is designed for voters to tell their government which measures, constitutional amendments and individuals they wish to have. Any attempt through any medium for any governmental body tell voters how to vote or misrepresent any issue to try and influence voter opinions is wrong.

Ironically, Initiated Measure 10 prohibits tax money from being used for campaigning and government from lobbying. This exemplifies an instant case as to exactly why Initiated Measure 10 has been placed on the ballot.

If an investigation indicates that there is substance to this violation, the State of South Dakota through its Attorney should commence whatever procedure is appropriate. If the violation is proved, then the Brown County Commission should be reprimanded, Resolution #63-08 should be repealed, and another resolution or official apology with admission of wrongdoing by all individual Commissioners and the Commission as a whole published for the record.

I would appreciate a response in writing, and to be kept apprised of any actions in this case. I would appreciate receiving the results of any investigation, and will be available to provide any needed input or evidence in my possession.

Thank You,

Chuck Pride