



United States Government

**NATIONAL LABOR RELATIONS BOARD**

**OFFICE OF THE GENERAL COUNSEL**

Washington, D.C. 20570

VIA CM/ECF

July 25, 2018

Lyle W. Cayce  
Clerk of the Court  
U.S. Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
New Orleans, LA 70130

Re: *Voices for Int'l Bus. and Ed., Inc. v. NLRB*, Fifth Cir. No. 17-60364; Oral argument held on April 5, 2018

Dear Mr. Cayce:

We are writing to respond to Voices' July 23, 2018 letter filed under Rule 28(j), notifying the Court of a recent decision by the Louisiana Division of Administrative Law in *In re Doris Hicks et al.*, 2014-11977-Ethics B (Ethics Adjudicatory Bd. Jun. 27, 2018). In that case, the state ethics board removed the principal of a charter school after the evidence presented during a hearing proved that she had repeatedly engaged in nepotism in violation of the state ethics code.

Contrary to Voices' view, this decision does not support finding that Voices is a political subdivision exempt from the Board's jurisdiction. Rather, it confirms what the Board explained in its brief (pp. 29-30), namely, that the state ethics code narrowly provides for the removal of a school official who is proven after a hearing to have engaged in specific instances of malfeasance. As shown (Board Br. 29-30), such limited removal authority does not offset the critical fact that pursuant to Voices' operating documents, Voices' board of directors is a self-perpetuating entity that controls its members' appointment and removal without

any state involvement, and as such, is not accountable to public officials within the meaning of the second prong of the test set out in *NLRB v. Natural Gas Utility District of Hawkins County*, 402 U.S. 600 (1971). Indeed, the Board has already reasonably rejected the argument for political-subdivision status based on the similar state ethics law in *Hyde Leadership*, 364 NLRB No. 88 (2016). See Board Br. 29-30 (also citing Sixth Circuit's observation in *Kentucky River Cmty. Care, Inc. v. NLRB*, 193 F.3d 444, 451-52 (6th Cir. 1999) that even assuming state had power to remove director for misconduct, this would not persuade court that non-profit entity is run by individuals responsible to public officials as required by prong two). *In re Doris Hicks* is not to the contrary. After all, it does not mention, much less decide, the relevant issue of whether the school was a political subdivision under federal labor law.

Very truly yours,

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cc: all counsel (via CM/ECF)