

**From:** [Renner, Jamie](#)  
**To:** [Audette, Bob](#)  
**Cc:** [Clark, Charity](#); [Jandl, Lauren](#); [Mishaan, Jessica](#)  
**Subject:** Your Public Records Request  
**Date:** Thursday, February 4, 2021 11:20:35 AM  
**Attachments:** [1-19-21 VT-AGO Notice of Non-Objection re DB Sale.pdf](#)

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Bob:

Yesterday you made a written request pursuant to the Vermont Public Records Act for “any public documents related to the transfer” of assets between Democracy Builders Fund I, Inc., and Type 1 Civilization Academy, Inc. Subsequently, in a telephone conversation, you indicated to me that, for the time being, you were only interested in requesting the document that memorializes my Office’s review of this transfer. Please see the attached.

Regards,  
Jamie

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January 19, 2021

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**Re: Notice of Non-Objection to Democracy Builders Fund I, Inc., proposed transfer of assets to Type I Civilization, Inc.**

Dear Ms. Gorman and Mr. Richardson:

On December 31, 2020, you provided our Office with written notice that your client, Democracy Builders Fund I, Inc. (“Democracy Builders”), a Delaware nonprofit corporation, intends to transfer its Vermont property—the former Marlboro College campus and certain related assets—to Type 1 Civilization Academy, Inc., a Canadian corporation (T1CA), through a sale-leaseback arrangement. We write to indicate that, for the reasons set forth below, our Office has no objection to the proposed transaction.

I. Legal Framework for the Attorney General’s Review

As you are aware, the Office of the Vermont Attorney General (“AGO”) has oversight authority with respect to nonprofit corporations operating in the State of Vermont. *See generally*, Title 11B, Vermont Statutes Annotated (“Nonprofit Corporations”); Title 14, Chapter 120, Vermont Statutes Annotated (“Uniform Prudent Management of Institutional Funds Act” or UPMIFA); Title 14A, Vermont Statutes Annotated (“Trusts”). Where a public benefit

corporation<sup>1</sup> transfers “all, or substantially all,” of its assets<sup>2</sup> to a business corporation, 11B V.S.A. § 12.02(g), the AGO examines primarily:

- Whether the proposed transfer is within the public benefit corporation’s general “power to act.” 11B V.S.A. § 12.02 (“A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property... on the terms and conditions and for the consideration determined by the corporation's board.”); *see also* 11B V.S.A. § 3.03 (authorizing the Attorney General to enjoin corporate action if the corporation lacked the “power to act” in the manner in question);
- Whether the public benefit corporation obtained fair market value for the assets to be transferred. *Cf.* 11B V.S.A. § 11.02(a)(4)(A) (requiring public benefit corporations merging with business corporations to convey assets at least equivalent to the public benefit corporation’s fair market value to another appropriate public benefit corporation upon or before merger);
- Whether the proposed transfer comports with any legal restrictions on the use of the assets to be transferred, pursuant to UPMIFA, state laws governing charitable trusts, or otherwise; and
- Whether the public benefit corporation intends to use the proceeds of the sale in accordance with its charitable purposes per its Articles of Incorporation and Bylaws.

## II. Findings

After reviewing Democracy Builders’ notice to our Office of the proposed transaction and supporting documentation, and based, in part, on related representations by Democracy Builders’ counsel, we have no objection to the proposed transfer in consideration of the above-mentioned factors, as set forth below.

### a. Power to Act

According to Democracy Builders, and as reflected in the legal instruments effectuating the proposed transaction,<sup>3</sup> the primary purposes of the proposed transaction are to (1) raise

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<sup>1</sup> Democracy Builders is a foreign charitable nonprofit organization. However, pursuant to 11B V.S.A. § 15.05(b), “[a] foreign corporation with a valid certificate of authority [to transact business in the State of Vermont]... is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.” While Democracy Builders has not yet obtained a certificate of authority to transact business in Vermont, we treat Democracy Builders as “a domestic corporation of like character”—that is, a public benefit corporation—for the purposes of this review. Democracy Builders has raised no objection to the same.

<sup>2</sup> Democracy Builders proposes to transfer all of its property within Vermont and a substantial portion of its property generally.

<sup>3</sup> Including the parties’ Purchase And Sale Agreement, dated November 30, 2020 (as amended on December 21, 2020, and December 29, 2020); Campus Lease Agreement; Shared Use

capital for Democracy Builders' Vermont educational operations; (2) eliminate Democracy Builders' property management obligations; and (3) develop a "joint venture" between Democracy Builders and T1CA intended to support and augment Democracy Builders' Vermont educational operations, going forward.

In pursuit of these purposes, the Board of Directors of Democracy Builders voted and resolved to undertake the proposed sale-leaseback in accordance with the corporation's Articles of Incorporation and Bylaws, and without conflict of interest per 11B V.S.A. § 8.31. Accordingly, and in light of our further findings below, the proposed transaction is within Democracy Builders' "power to act" pursuant to Vermont state laws.<sup>4</sup>

b. Fair Market Value

Democracy Builders sought and obtained substantial value for the property to be transferred—a value equivalent to what fair market value of said property may be. The town of Marlboro, Vermont, has assessed the relevant properties at a collective value of approximately \$3.7M. In 2018, prior to the current pandemic and related State of Emergency, a Vermont Certified General Appraiser appraised the relevant real property (then Marlboro College) at a value of approximately \$10.4M.

Here, Democracy Builders will obtain approximately \$9.4M from T1CA for the assets to be transferred, including:

- \$2.5M in cash;
- \$2.5M in escrowed pre-paid rent;
- \$2.5M as a mortgage-backed structured donation;
- \$1.5M in T1CA's assumption of certain lease obligations to the Marlboro Music Festival; and
- \$416k in rent abatement.

The AGO has no reason to doubt this consideration as "fair," particularly given the broader context: that Democracy Builders' purpose for selling the property was not simply to maximize sale proceeds, but to secure a "joint venture" in which the purchaser supported Democracy Builder's long-term presence and operations on site.

c. Treatment of Restricted Assets

None of the assets to be transferred are subject to restrictions on use pursuant to UPMIFA or Vermont laws governing charitable trusts. Per the Purchase and Sale Agreement by which Democracy Builders acquired the subject property from Corporation of Marlboro College, Democracy Builders agreed to utilize 130 acres of this property "as an ecological preserve with public access." The proposed transaction binds T1CA to the same commitment. Accordingly, the

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Agreement; Agreement to Purchase Marlboro College Campus, dated December 30, 2020; and Assignment and Assumption of Agreements.

<sup>4</sup> Of note, "the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts." 11B V.S.A. § 15.02(f).

proposed transaction is consistent with the requirements of UPMIFA, state charitable trust laws, and existing “charitable” legal restrictions on the relevant assets otherwise.

d. Use of Sale Proceeds

Finally, Democracy Builders intends to use the proceeds of the proposed sale to fund its Vermont educational operations. Indeed, the sale-leaseback arrangement and underlying “joint venture”<sup>5</sup> reflect the parties’ shared intent for Democracy Builders to continue its Vermont educational operations in a long-term manner.

Moreover, though not required by state law, the assets to be transferred (as distinct from the proceeds to be obtained in consideration for the same) will remain in charitable use. That is, Democracy Builders will lease-back the property to be transferred in order to continue its educational operations for at least 5 years and potentially 15 years or longer. Further, the legal instruments governing the transfer require TICA to assume Democracy Builders’ long-term lease with the Marlboro School of Music, Inc., which includes a “right of first refusal” should the lessor trigger relevant conditions.

Based on the foregoing, our Office has no objection to the proposed transaction.<sup>6</sup>

Regards,



Jamie Renner  
Assistant Attorney General

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<sup>5</sup> As reflected in the parties’ Purchase And Sale Agreement, dated November 30, 2020 (as amended on December 21, 2020, and December 29, 2020); Campus Lease Agreement; Shared Use Agreement; Agreement to Purchase Marlboro College Campus, dated December 30, 2020; and Assignment and Assumption of Agreements.

<sup>6</sup> This Notice of Non-Objection reflects the review of the AGO pursuant to Title 11B, Vermont Statutes Annotated. It does not reflect the review or findings of any other local, state, or federal government agency that may also have legal authority or interest in relation to the proposed transaction.