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The Honorable Andrew Do
Chairman
Orange County Board of Supervisors
333 W. Santa Ana Blvd
Santa Ana, CA 92701

February 26, 2018

Re: Item S32A Restrictions on Public Funding of Mass Mailings

Chairman Do:

I am writing an open letter to you, my Board colleagues, and the general public regarding the Public Funding of Mass Mailings. It is widely accepted that public agencies and their elected leaders have a civic responsibility to communicate with constituents. Likewise, our constituents request clarifications about our policy decisions. My Board office has a consistent track-record in working with County staff to ensure the integrity of our public communication. In doing so, our communication has resulted in a well-served and informed constituency in the Fifth District. I oppose the restrictions highlighted in Item S32A because it would inhibit healthy interaction with our constituents, which would consequently exacerbate the Public's confidence in civic institutions. As we seek reasonable policy changes, I am fully committed to the highest ethical and legally-compliant constituent communication.

In 2016, the Fair Political Practices Commission (FPPC) resolved 1,803 cases throughout the state. Only 13 fully investigated cases occurred in Orange County and none involved any public official at the County of Orange. If there are concerns related to past events and mailings, the FPPC and/or District Attorney's offices are the appropriate venues to address those issues. The subjects of any allegations are entitled to due process. Moving forward, we should not let false pretenses and mere allegations drive our public policy decisions. Out of courtesy to Vice Chair Nelson's genuine concerns regarding mass mailing and events, I am more than willing to further discuss the issues thoughtfully.

Better Options for Approval and Implementation

A ballot measure is neither the most effective nor efficient manner to implement mass mailing restrictions. According to the Registrar of Voters, an additional ballot measure will cost approximately \$160,000 in printing, postage, translation, and staff time. There are several alternatives

to ensure compliance with the Mass Mailing Act: (1) ordinance by Board of Supervisors, (2) resolution by Board of Supervisors, and/or (3) Board direction to staff. There is no reason to expend a significant sum to secure voter approval when the Board of Supervisors can directly implement administrative policies with greater expediency and effectiveness.

Focus Board Discussion on Additional Requirements

In review of Item 32A, I encourage the Board to evaluate the additional requirements exclusively and redact all redundant provisions from the proposed ordinance. Many of the requirements set forth in Item 32A mirror the Mass Mailing Act (Gov. Code Sections 89001-89003) almost word for word. The additional requirements in-concept are analyzed in the subsections below.

Additional Requirement #1

Require any announcement sent to a County elected officer's constituents concerning a public meeting state that the meeting is directly related to the County elected officer's incumbent County governmental duties, is to be held by the County elected officer, and that the County elected officer intends to attend the meeting.

Existing law requires that any announcement must be directly related to incumbent governmental duties¹. This additional requirement is redundant and should be removed from our evaluation.

Additional Requirement #2

Such public meeting must have a clearly stated public purpose prominently displayed on the announcement. An announcement of a "meet and greet" or gathering alone without a clearly stated public purpose would be prohibited.

The clearly stated public purpose is a new requirement that affects the actual practice of governing. For example, town hall meetings may address a range of constituent concerns such as homelessness, public safety, transportation, infrastructure, land use, and so forth. It would be impractical to list every subject and any broader description of a stated purpose is subject to interpretation. Moreover, many publicly announced meetings require us to listen to an array of concerns as opposed to advocating a point of view. The legitimate civic responsibility to listen to constituents is made illegitimate under the proposed ordinance. I would advise removing this requirement from consideration.

Additional Requirement #3

Outlaw the reference to more than one elected official except in specified circumstances for announcements of constituent meetings and County events.

There are no other Mass Mailing Act provisions that speaks to this issue other than the requirement that use of an elected official's name must be directly relate to their incumbent governmental duties.

¹ Gov. Code Section 89002(a)(9)(A)(i)

In practice, there are many examples of projects that are coordinated between multiple public officials and public agencies. Participation by public officials as a guest, panelist, or invitee may not accurately depict their shared responsibilities in a project, service, or event.

Additional Requirement #4

Prohibit the reference to candidates for public office in announcements of constituent meetings or County events.

While I am not opposed, the definition of “publicly declared candidate” requires clarification because candidates can announce for office and their official filing may occur in August. I will support a definition that outlines more specific criteria.

Additional Requirement #5

Ban the use of mass mailings to announce constituent meetings or County events held in private residences.

Constituent meetings and County events need to be distinguishable. I support the ban of public funding for mass mailings for County events at private residences as a separate administrative policy related to risk management.

In contrast to County events, constituent meetings may require notification and the presence of a public official at a private residence. For example, my office has addressed concerns about erosion in Aliso Creek within the City of Lake Forest. The homeowners association, City, and County lacked an adequate venue to host a discussion forum and tour the OC Flood Control facility. Additionally, a sequence of constituent meetings that requires the noticing of 200 or more concerned citizens would be in violation of the proposed ordinance. Clearly, there are legitimate scenarios where the proposed ordinance would inhibit substantive public outreach.

Additional Requirement #6

Require County Counsel's approval for legal compliance of final design and mailing list criteria of constituent meeting or County event announcements before such announcements may be produced or sent.

The fundamental role of County Counsel is to provide legal guidance to the Board of Supervisors. As much as we have relied on County Counsel's advice, their role is not to regulate the Board of Supervisors. This restriction erodes the chain of command within the County of Orange's public administration. As I have stated before, there are appropriate regulatory agencies that enforce the Mass Mailing Act and Political Reform Act. The record clearly shows that FPPC conducts thousands of investigations, in which Orange County's modern political culture is considered compliant.

While I understand the legitimate concerns raised by our colleagues, I believe there are reasonable and more effective solutions. With the appropriate measures, we can achieve consistency through comprehensive training and best practices. I propose that our Board consider the following recommendations:

Proposed Motion

- 1) Direct County Counsel to develop a best practices guide issued to all County public officials who conduct mass mailings.
- 2) Direct County Counsel to develop a best practices checklist, which will provide clear standardization in the review process and serve to document overall compliance.
- 3) Direct staff to prepare a resolution or ordinance that requires County public officials to seek County Counsel advice on all mass mailings.
- 4) Direct staff to prepare a resolution or ordinance that prohibits the funding of mass mailers that specify an appearance by a County elected officer at a private residence for the purpose of a County event.
- 5) Direct County Counsel to develop mandatory training on the Mass Mailing Act for all County elected officers and staff who intend to conduct mass mailings.

Thank you for your time and thoughtful consideration.

Respectfully,



LISA BARTLETT

County Supervisor, Fifth District
Orange County Board of Supervisors

Cc: Orange County Board of Supervisors
Frank Kim, County Executive Officer
Leon Page, County Counsel