

Request to have Rebuttal to Arguments in Favor of Charter Amendment Measure 3 Stricken

Madam Acting City Clerk Esparza,

This is a formal request to have the Rebuttal to Arguments in Favor of Charter Amendment Measure 3 completely removed from the ballot guide. Its content, lies and disparagement are completely inappropriate for the purpose of a ballot argument under the Elections Code. The "essential purpose" of a ballot argument "is to give the voters information concerning the measures on the ballot." (*Hart v. Jordan* (1939) 14 Cal.2d 288, 292.) It is not, as the Rebuttal argument does here, to attack proponents of the ballot measure, spread false information about the proponents of the ballot measure, or to make misstatements of the law. False or misleading statements must be removed from the ballot argument. (Elec. Code, § 9295.) Personal and ad hominem attacks are inconsistent with the purpose of the ballot argument and must be stricken. (*Patterson v. Board of Supervisors* (1988) 202 Cal.App.3d 22, 32.) Additionally, issues that are irrelevant to the ballot measure must be stricken. (*Ibid.*) We therefore believe that the entire argument may be removed.

Short of striking the entire argument, there are several specific provisions that we request be removed.

- 1) Remove all references to Councilmember Bolton and Kalmick. References to the signatories of the argument in favor are not relevant. The good name, motive, or qualification of the proponents is not "an argument for or against this particular issue." (*Patterson*, supra, 202 Cal.App.3d at p. 34.) References to opposing candidates are not permitted with respect to candidate statements. (Elec. Code, § 13308.) References to proponents of the measure are even less relevant and therefore not appropriate.
- 2) "(NOT licensed attorneys)" – This statement is not relevant, as set forth above. As to Councilmember Bolton, it is false. Councilmember Bolton is in fact a licensed attorney in the Commonwealth of Virginia and in the District of Columbia. Additionally, it is misleading as to both Councilmembers Bolton and Kalmick as it applies – See Appendix
- 3) "INDEPENDENCE of the City Attorney" – This statement is false and misleading. The City Attorney's office is not an independent department of the City of Huntington Beach. It is the corporate attorney's office of the municipal corporate board – the City of Huntington Beach – for which the City Council functions as the "board of directors.". City Charter Section 304 (b) states "The City Council shall have control of all legal business and proceedings and all property of the legal department, and may employ other attorneys to take charge of or may contract for any prosecution, litigation or other legal matter or business." The City Attorney is not independent of the City Council. The City Council is

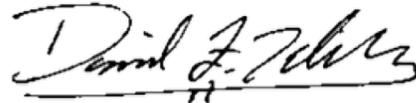
the client of the City Attorney. The California Rules of Professional Conduct set forth clearly the allocation of authority between attorney and client. A “lawyer shall abide by a client’s decisions concerning the objectives of representation” and “consult with the client as to the means by which they are to be pursued.” (Cal Rules of Prof. Conduct, rule 1.2(a).) “At the outset of, or during a representation, the client may authorize the lawyer to take specific action on the client’s behalf without further consultation. . . . The client may revoke such authority at any time.” (*Id.*, cmt. [2].) It is therefore clear that the City Attorney cannot operate without the direction of the City Council. Please also see Rebuttal to Arguments Against Charter Amendment 3 drafted by the City Attorney from 1978-2002 who states the same. The penultimate sentence of Mr Peterson’s rebuttal also supports removal of this statement. “All decisions were made BY THE CITY COUNCIL..”

- 4) “In 2021, City Council secretly and ILLEGALLY hired (violation of Section 309, City Charter)..” – This statement is false, misleading, and irrelevant. In addition to the above regarding the authority of the City Council, it is clear that the City Council’s actions in hiring outside counsel were proper. Again, the California Rules of Professional Conduct demonstrate that the City Attorney could not undertake a representation to review the handling of a matter by the City Attorney’s Office. “A lawyer shall not, without informed written consent from each affected client . . . represent a client if there is a significant risk the lawyer’s representation of the client will be materially limited . . . by the lawyer’s own interests.” (Cal. Rules of Prof. Conduct, rule 1.7(b).) A “conflict of interest requiring informed written consent under paragraph (b) exists if there is a significant risk that a lawyer’s ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer’s other responsibilities, interests, or relationships, whether legal, business, financial, professional, or personal.” (*Id.*, cmt. [4].) “A lawyer shall not . . . acquire an . . . other pecuniary interest adverse to a client, unless” he has obtained informed written consent of the client.” (California Rules of Professional Responsibility, rule 1.8.) “A lawyer has an ‘other pecuniary interest adverse to a client’ within the meaning of this rule when the lawyer possesses a legal right to significantly impair or prejudice the client’s rights or interests without court action.” (*Id.*, cmt. [1].) Here, there was a significant conflict that made disqualification of the City Attorney’s office required. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275.) The review of the City Attorney’s work was related to a case where the City Attorney himself was a defendant who continued to advise the City Council on the matter. Moreover, the review was of the City Attorney’s Office’s handling of that matter and its relationship with the outside counsel that it employed. The City Attorney’s ability to objectively recommend actions to the City Council was therefore hopelessly conflicted because of the City Attorney’s personal, financial, and political interests. And because the entire office’s handling of the matter was subject to review, that conflict existed with respect to all of the City Attorney’s deputies. (See City Charter, § 304(b) [“The City Council . . . may employ other attorneys to take charge of or may contract for any prosecution, litigation or other legal matter or business.”]). Furthermore, even if the claims were true, the hiring of a law firm is irrelevant. Even if the substance of the report is relevant, the contracting for it is not relevant to the issue before the voters.

- 5) “attorney Craig Steele, who is a progressive POLITICAL activist...” – Is false and irrelevant. Craig Steele is a long time City Attorney at the prestigious Richards Watson and Gershon firm for almost his entire legal career. He is a registered Republican. We could find no “activist” activity in his bio posted on RWG’s website.. Again, it is also irrelevant.
- 6) “favorite of LONG-TIME FAMILY FRIEND Councilmember Kalmick.” - This is false, misleading, and irrelevant. Mr. Steele is not a friend of Councilmember Dan Kalmick of Huntington Beach nor Mayor Joe Kalmick of Seal Beach. Councilmember Kalmick met Craig Steele for the first time around April of 2021 during a phone call with former Huntington Beach City Manager Oliver Chi. Dan Kalmick’s only interactions with Mr Steele have been in relation to legal matters concerning the City of Huntington Beach and Mr Gates. Mr Steele coincidently is the City Attorney for the City of Seal Beach and was the City Attorney prior to Mayor Joe Kalmick getting elected in February of 2019 (due to a run off). Mayor Joe Kalmick’s only interaction with Mr Steele is during City Council meetings and on legal matters pertaining to the City of Seal Beach. They are not friends. To cast that relationship as “LONG-TIME” or “FAMILY FRIEND” is a not based in fact and is not truthful or accurate. – See Appendix for letter from Mayor Joe Kalmick
- 7) “City Council secretly paid Steele \$50,000...” “...with no contract to produce.” – This is false. See attached staff report. The staff report clearly states that \$35,577 was not paid to Steele but Richards Watson and Gershon nor was done in secret. See attached cover page of the Craig Steele report which states that “This task was assigned to us [RWG] under a pre-existing legal services agreement between the City and RWG.” This authority was granted to the City Manager by Council direction pursuant to section 401 and 304(b) of the City Charter.
- 8) “a highly political body of non-lawyers..” – This is false, misleading, and irrelevant. Councilmember Bolton is an Attorney. Moreover, the current makeup of the City Council is not relevant to the question before the voters.
- 9) “Although highly critical of Mr. Gates, non-attorneys Bolton/Kalmick...” – This is false. Councilmember Bolton is an Attorney.
- 10) “make a number of false claims against Mr. Gates, which are not true.” - This is false and irrelevant. Other than this statement being a Yogi Berra-ism, in that, yes, false claims are generally not true – We do not reference Mr Gates by name or title.
 - a. “the City Attorney’s office has interpreted our City’s Charter to permit it to act in a manner contrary to state law and norms of professional responsibility for attorneys” – See California Bar Rules Chapter 1.13
 - b. “the City Attorney’s Office also tried to thwart this independent review...” – See attached letter from Derek Cole – attorney hired by Mr Gates. At the conclusion

Mr Cole threatens legal action – “City Attorney Gates advises he will be required to seek immediate judicial relief to protect the integrity of his Office”

11) The last sentence of this rebuttal negates the argument in #3 above.

A handwritten signature in black ink that reads "Dan Kalmick". The signature is written in a cursive style with a horizontal line underneath the name.

Dan Kalmick
City Councilmember

A handwritten signature in black ink that reads "Rhonda Bolton". The signature is written in a cursive style.

Rhonda Bolton
City Councilmember