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February 27, 2017

Lawrence L. Hafetz, Chief Deputy  
Office of the County Counsel  
County of Los Angeles  
648 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012-2713

Re: Use of Los Angeles County Sheriff's Department Name on Measure "S" Mailer

Dear Mr. Hafetz:

I am responding to your letter of February 24, 2017, on behalf of the Coalition to Preserve LA, the proponents and supporters of Measure S on the upcoming March 7, 2017, election ballot. There is no merit to the demands made in your letter, and we are dismayed at the apparent efforts of your office to censor the free speech rights of the proponents of Measure S and thereby to influence the outcome of the election on this local ballot initiative.

First, to dispense with the legal aspects: The mailer at issue does not violate the statute that you cited in your letter — California Business and Professions Code section 17533.6. That law, by its plain terms, prohibits the use of "a seal, insignia, trade or brand name, or any other term, symbol, or content that reasonably could be interpreted or construed as implying any federal, state, or local government . . . connection, approval, or endorsement of any product or service, including, but not limited to, any financial product, goods, or services . . ." Even assuming that the mere use in the mailer of the name of the "County of Los Angeles" or the "Los Angeles County Sheriff's Department" could be considered as using the County's "trade or brand name," there is absolutely nothing in the mailer that could be interpreted or construed as implying any County government "connection, approval, or endorsement" of Measure S.

More importantly, even if the mailer could somehow be read to imply an endorsement of Measure S by the County or the Sheriff's Department (which it in no way does), the statute on its face applies only to the "endorsement of any *product or service*" — that is, to a commercial product, not to a ballot measure. As the courts have made clear in numerous related contexts, statutes such as Business and Professions Code section 17533.6 apply to and regulate *business advertisements* that propose commercial transactions, not political speech. (See, e.g., *O'Connor v. Superior Court* (1986) 177 Cal.App. 3d 1013; *Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322; see generally *Rubin v. Green* (1993) 4 Cal.4th 1187.) It seems that you are aware of this limitation, for in your letter you selectively paraphrased the statute, neglecting to mention that it is expressly limited to an endorsement or approval of a

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“product or service, including, but not limited to, any financial product, goods, or services.” As should be apparent, a political campaign is not a commercial product, good, or service.

In short, the proponents of Measure S are engaged in political speech. In contrast to the purely “commercial speech” that is regulated by the Business and Professions Code, this political speech — including the mailer at issue — is fully protected by both the United States and California Constitutions. (See, e.g., *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939.) Whether or not the proponents of Measure S decide to further utilize this particular mailer (which is unlikely, given the closeness of the election and the existence of newer campaign material) is irrelevant, as it is protected speech that is not restricted by and does not violate Business and Professions Code section 17533.6.

Indeed, given that the cited statute so clearly does not apply to political speech, and given that the Measure S proponents’ political speech is so obviously protected by the First Amendment, the actual underlying motive for sending your letter (and providing it to the media — free speech for thee, but not for me?) must be questioned. In light of the political establishment’s satisfaction with the status quo and its opposition to Measure S, your letter can be seen as an effort to silence the proponents of Measure S and/or to portray them in a negative light, with the ultimate result of influencing the outcome of the initiative. In order to counter any such perception, the proponents of Measure S demand that your office publicly withdraw your cease and desist demand and refrain from further engaging in partisan politics.

Very truly yours,



Fredric D. Woocher