



COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL

648 KENNETH HAHN HALL OF ADMINISTRATION
500 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012-2713

TELEPHONE
(213) 974-1801
FACSIMILE
(213) 626-7446
TDD
(213) 633-0901

MARY C. WICKHAM
County Counsel

April 17, 2019

The Honorable Lorena Gonzalez, Chair
Assembly Appropriations Committee
State Capitol, Room 2114
Sacramento, California 95814

Re: Opposition to AB 1306 (Garcia)

Dear Assembly Member Gonzalez:

The Los Angeles County Office of the County Counsel opposes AB 1306 by Assembly Member Cristina Garcia. AB 1306 will expand the powers of the FPPC to civilly and administratively prosecute any public official including elected officials, individuals who are appointed, and employees or consultants of a local entity.

This newly created expansion of authority to the FPPC is duplicative of existing laws and will add additional and unnecessary costs to the State's general fund. For the reasons stated herein, we oppose AB 1306.

AB 1306 Will Unnecessarily Create Severe Fiscal Impacts For FPPC

AB 1306 would create an added fiscal impact to the State. The FPPC has no experience in the investigation and prosecution of cases of this type. Consequently, additional training will be needed for all the investigators and case attorneys in the enforcement division. This cost is estimated at \$50,000 or more. Additionally, given the sharp increase in the number of open cases since 2015, and the current backlog, existing resources will be insufficient to take on this additional case load. Even a single additional enforcement attorney and investigator will add over \$300,000 to the cost of the bill, with average salary and benefits for each position. These costs, which will be ongoing State costs, exceed the \$150,000 annual cost for measures which are subject to the Suspense file.

AB 1306 is Duplicative of Existing Law

The costs identified above that would be incurred under AB 1306 are entirely unnecessary because currently the Attorney General and local District

Attorneys effectively and efficiently handle these prosecutions with highly-trained investigators and attorneys. Moreover, there are four statutes that authorize the Attorney General and District Attorneys to prosecute individuals who misuse public resources in connection with campaign activity: Government Code sections 8314 and 54964, Education Code section 7054, and Penal Code section 424.

AB 1306 Should be Held Due to an Existing Lawsuit that Challenges FPPC's Authority to Promulgate Campaign Communication Regulations

In August 2018, and on behalf of its members, and in response to an FPPC enforcement action against the County arising out of the County's efforts in 2017 to educate the voters regarding a ballot proposition to address homelessness, the California State Association of Counties (CSAC) and California School Board Association (CSBA) filed a declaratory relief action in the Los Angeles Superior Court to invalidate FPPC's campaign communication regulations. CSAC is a nonprofit corporation consisting of all 58 California counties. Its primary purpose is to represent counties before the Legislature, administrative agencies, the federal government, and the courts. CSBA is a nonprofit corporation composed of the governing boards of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. CSBA supports local school board governance and advocates on behalf of school districts and county offices of education.

CSAC and CSBA have set forth two major challenges to FPPC's regulations. First, FPPC lacked the authority to promulgate regulations restricting campaign communications because the power to determine whether such communication is unlawful, advocacy or educational in nature has historically belonged to the courts and the FPPC cannot usurp the power of the courts in this regard. Second, and more importantly limiting the method of mode of communication in the manner sought by the FPPC, e.g. total prohibition on the use of electronic media, radio and television, violates public entities' First Amendment rights to communicate with its citizens.

Currently, there is no trial date in the lawsuit; however, the parties anticipate the Court will set a trial date for some time in late 2019 or early 2020. Given the uncertain legal validity of FPPC's regulations, the County contends that the author should hold the bill pending the Court's adjudication of the matter.

Additionally, if AB 1306 were to become law it is likely to result in further litigation when implemented, if the FPPC follows its previous actions in promulgating unconstitutional regulations.

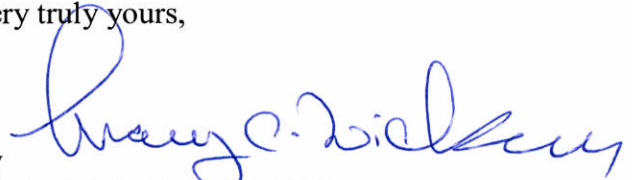
The Honorable Lorena Gonzalez, Chair
April 17, 2019
Page 3

Given the unnecessary costs that will be incurred, coupled with the pending lawsuit which may invalidate the regulations in their entirety, we respectfully urge your opposition to AB 1306.

Thank you for your consideration in this important matter.

Very truly yours,

By



MARY C. WICKHAM
County Counsel

MCW:RC:db