



CITY OF GLENDALE CALIFORNIA REPORT TO CITY COUNCIL

June 27, 2006

AGENDA ITEM

Report: Discussion of request for the Attorney General or Secretary of State to conduct an investigation to determine if an offensive campaign mailer in connection with the campaign for the 43rd Assembly District was in violation of state law, and discussion of other options.

- (1) Resolution calling for investigation by state authorities
- (2) Motion directing staff

COUNCIL ACTION

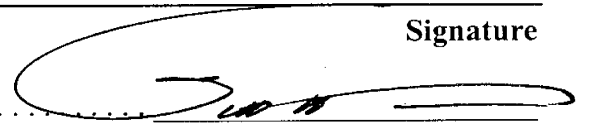
Public Hearing [] Ordinance [] Consent Calendar [] Action Item [X] Report Only []

Approved for June 27, 2006 calendar

ADMINISTRATIVE ACTION

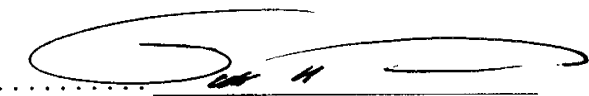
Submitted

Scott Howard

Signature



Prepared

Scott Howard



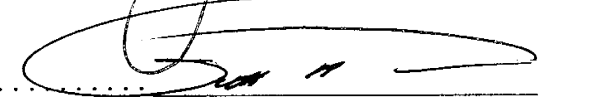
Approved

James E. Starbird



Reviewed

Scott Howard



RECOMMENDATION

Staff has no recommendation regarding the request for a state investigation, or other options the city council may have to address issues of an offensive campaign mailer which was circulated throughout the community during the 43rd Assembly District primary election campaign.

SUMMARY

Council members have requested a report on calling for an investigation by the state Attorney General and/or

Secretary of State into a campaign mailer and related telephone campaign¹ and whether same were in violation of state law. The “mailer”, by all accounts was a negative form of ethnic or “race” politics which has been widely condemned . In addition to calling for a state investigation into whether the “mailer” and author(s) or architect(s) thereof violated state law, other council members have requested a review of options to address the “mailer” issue, absentee ballot issues, and campaign site monitors for local elections. The absentee ballot, site monitors and other related local election matters will be consolidated with a report on local election campaign financing, revolving door, and other local election and campaign issues in the next few months.

Issues involving local jurisdiction over a mailer which was circulated as part of a state primary election campaign, the first amendment limitations on addressing the issue of the content of written or telephonic campaign materials, the ability of the city council to censure or condemn the “mailer” as a campaign tactic, or the authors or architects thereof, or any person or group with a connection thereto, and other options will be addressed in this report.

FISCAL IMPACT

Dependent on the direction of the city council. For example should the council wish to conduct a local review or investigation, there may be a need for outside consultants at a cost which has not been ascertained at this time.

BACKGROUND

During the statewide primary campaign leading up to the June 6, 2006 election, a campaign “mailer” was distributed in connection with the campaign for the 43rd Assembly District, a state office. Suffice it to state without repeating the contents here, the “mailer” by all accounts was offensive and has been described as despicable. It has been widely condemned. The author of the mailer was noted on a return address as the California Latino Leadership Fund - Oakland, California. It has been noted and alleged that the “Fund” is an Independent Expenditure Committee [see Gov’t Code sections 82013, 82031, 82036.5, and 84101(c)]

REQUEST FOR INVESTIGATION BY STATE AGENCIES

There have been multiple calls for an investigation to determine the origin, authors or architects of the “mailer” and whether the individuals or groups responsible acted in violation of the law.

At least one request has been made inviting the Attorney General and Secretary of State to investigate. Since the matter of the “mailer” involved a statewide election, and more particularly an election for a state assembly district seat, requesting the Attorney General (jurisdiction over state laws; see Cal. Constitution Art. 5 Sec. 13) and Secretary of State (jurisdiction over Political Reform Act and campaign committees/disclosure requirements) to conduct an investigation is well within the purview of the city council. A resolution requesting such an investigation is attached for your consideration.

DISCUSSION OF OTHER OPTIONS REGARDING THE MAILER

In addition to the aforementioned, there have been requests to assess other options regarding the “mailer”.

One such option is the ability of the city council as a body to censure the individual or group which was in any way involved with any aspect of the “mailer”, including, but not limited to, preparation, strategizing/discussing its development, condoning, approving, funding, directing, controlling, or agreeing to its content,

¹ For ease of discussion, both the mailer and telephone campaign will collectively be referenced as the “mailer”.

to send it, or otherwise use it.

CENSURE

Censure is a formal resolution which is usually used to reprimand a member of an administrative or legislative body for specified conduct (Blacks Law Dictionary 5th Ed.). It would have little tangible legal effect² other than to create a formal and permanent record of collective action by the city council.

Since censure is a formal process, generally all that is required is fair notice and an opportunity to be heard (*Little v. City of North Miami Beach* 805 F.2d 962 (11th Cir.86)-the person censured is entitled to due process) .

For censure to have effect it generally requires violation of some law, procedure, policy or rule (*Braun v. City of Taft* (84) 154 CA3d 332) . However, when speech or other constitutionally protected activity is involved the ability to censure becomes more murky.

In *Richard v. City of Pasadena et al* (889 F. Supp.384, 1995) the court determined that censure of a council member for speech under a vague ordinance relating to courteous, fair treatment, was improper. Although the central issue was attorney's fees, Judge Paez noted the ordinance under which Richard was censured was vague and that the terms courteous, responsive and impartial could be subject to infinite interpretation until the Pasadena city council clarified the ordinance by adopting a resolution noting that the terms were intended to apply to conduct, not speech.

It is clear that the "mailer" was political in nature and was delivered in the context of a campaign for political office. No matter how despicable or deplorable the "message", no matter the motives, or who or what was involved, campaign literature (or speech) is a core first amendment value (*Beilenson v. Superior Court* (96) 44 C.A.4th 944 - "Constitutional guarantee of free speech has its fullest and most urgent application to the conduct of campaigns for public office and thus, those engaged in political debate are entitled not only to speak responsibly but to speak foolishly and without moderation" @ pg.950). There is an argument that one could contend the proposed censure applies to conduct and the speech is only incidental or secondary (*United States v. Gilbert* (9th Cir. (87) 813 F.2d 1523@ pg.1529), in which case any censure would apply to conduct, not speech and since the "speech" aspect would be incidental, any arguable restriction on speech would not be constitutionally invalid.

There is also an argument that even if the censure was directed toward speech, it could be upheld if the censure was directed at a policy maker. The theory underlying this contention is that since a policy maker can be removed from office due to speech which undermined the Commission on which the policy maker held a position (*Lumpkin v. Brown* (9th Cir. (97) 109 F.3d 1498), a much milder form of "punishment" such as censure would be upheld.

Finally, even if directed toward speech there is a line of thought which contends that mere censure without loss of tangible privileges is not subject to constitutional challenge (In the *Richard* case the councilman was originally censured without challenge. It was only after a later censure which included removal of rose bowl tickets and other privileges that the challenge was brought). In *Scott v. McDonnell Douglas Corp* (74) 37 CA 3d 277 the court found a written letter which condemned the city manager in strong terms was nothing more than criticism or censure and that such "speech" was absolutely privileged under Civil Code section

²We are assuming no loss of tangible privileges would result. Other than the compensation provided by Charter, and reimbursement for out of pocket expenses in the performance of official duties, council members receive no "privileges" or perks" .

47(a) (the so called executive privilege for publication etc.. made in the proper discharge of an official duty in a legislative proceeding).

CONDEMNATION OR OTHER SIMILAR ADMONISHMENT

The council as a collective body, could lawfully issue a condemnation of the “mailer” and all those who were involved therewith as a general statement. Should the council desire, as a collective body, to condemn a named individual, the discussion regarding censure would be applicable.

Any individual council member, at any time, may issue a brief individual condemnation of the “mailer” or anyone connected thereto (Gov’t Code section 54954.2) without proof. So long as the condemnation or criticism is made as part of a legislative proceeding (council meeting) it should be absolutely privileged (*Copp v. Paxton* (96) 45 CA4th 829, and *Scott*, supra. However, compare *Frisk v. Merrihew* (74) 42 CA3d 319) which distinguishes *Copp* (opinion vs fact and application of actual malice standard).

As a result of these ever shifting sands, this office recommends that should the council decide to pursue either the path of censure of condemnation/criticism same be done without malice (reckless disregard for the truth - see *Beilenson*, supra).

FACT FINDING INVESTIGATION

Legislative power of inquiry along with the process to enforce it is an essential and appropriate auxiliary legislative function (*McGrain v. Daugherty* (27) 273 U.S. 135; *Barenblatt v. United.States.* (59) 360 U.S. 109; and *Connecticut Indemnity Co. V. Superior Court* (00) 23 Cal. 4th 807).

The only limitation is that a legislative investigation must be related to and further a legitimate purpose of the legislative body (*Watkins v. United States* (57) 354 U.S. 178).

There is an argument that any investigation into the “mailer” solely regarding its authorship and those who were connected thereto would not further a local legislative purpose. The “mailer” was distributed in connection with a statewide primary election campaign for a state office. Certainly the ability to issue subpoenas (see Gov’t Code section 37104) would be highly questionable (see *Connecticut Indemnity* supra - issuance of legislative subpoenas by a city must, among other things, serve a valid legislative purpose).

Although the city might be limited with regard to an investigation solely into the “mailer”, the city could conduct an investigation and use its subpoena authority to conduct a fact finding investigation into an area where a valid local legislative concern exists. The council has requested a report on local campaign reform, which includes financing elections, campaign contribution limits, absentee ballots, and the limits of the ability to regulate “election or site monitors”. This report will be extensive and although the city attorney and others will accumulate information and provide same to the council, the council can determine that it would like to investigate these and other related issues including campaign “mailers” and the legal ability to regulate them or request changes in state law relating to same.

There is little question that the city has the authority to investigate and seek information regarding local election issues to assist in determining whether to amend the Municipal Code to modify or change the way elections are conducted or to seek state legislation if necessary. In addition, the council could include the necessity to assist the community to heal as a result of the rifts which the “mailer” created. Again, it is

important to note that an investigation cannot properly be an end in itself. It must be related to and must further a legitimate purpose of the legislative body (*Connecticut Indemnity*, supra).

In determining whether to embark on a fact finding or other similar investigation, it is important to note that as it pertains to the “mailer” in question, there is some uncertainty as to whether the council will be able to uncover any more information than that which could be uncovered by state authorities or others. For example, the media has noted that Assemblyman Hector De La Torre and Assemblyman Albert Torrico are gathering information to report to the Latino Caucus (see Capitol Weekly article, attached). In addition, the same article traces the “mailer” and has done some analysis of the “Fund’s” history and connections to donors etc.

Finally, should the council determine to embark on an investigation of local election issues, with a focus on campaign “mailers”, this office might advise that you retain an outside consultant, whether a law firm with expertise in elections matters, including investigatory expertise, or some other similarly qualified firm, group or individual.

It should be noted that this office expresses no opinion regarding the wisdom of pursuing any of the aforementioned options. It is, and should be solely a decision of the council whether to pursue any of the options outlined herein.

The City Attorney and City Manager will be available to respond to questions or concerns regarding this item.

EXHIBITS

Capitol Weekly article “Ethnic Tensions Mark Democratic Primaries”

Ethnic tensions mark Democratic primaries

By Anthony York
(published June 15th, 2006)

Political mailers bankrolled by the Latino Caucus, which linked Democratic Assembly candidate Paul Krekorian to a terrorist and played the race card against Democratic contender Mike Eng, are being denounced by community leaders and Caucus members who say they want to know who approved the attacks.

Capitol sources said that the job of the vice chairman of the Latino Caucus, Assemblyman Joe Coto, D-San Jose, may be on the line.

Several Caucus members met Tuesday across the street from the Capitol at private offices in the 11th and L Building to discuss the mailers, which were funded with independent-expenditure (IE) money. They are trying to figure out how to limit political fallout from some of the nastiest hit pieces in this year's primary campaign.

"It's an affront to us, especially because we for so long have been the victims of this kind of crap," said Assemblyman Hector De La Torre, D-Southgate. He and Assemblyman Albert Torrico, D-Newark, have launched an investigation into the flyers.

A mailer aimed at Paul Krekorian blasts his endorsement from the Armenian National Committee (ANC), insinuating that the group is allied with suspected terrorists. But critics say the ANC is a mainstream group, and the mailer unfairly attacks Armenians. In Assembly District 49, white and Latino voters received a mailer listing Mike Eng's Asian endorsers, with the tag line: "Mike Eng. He's not like us."

Both Krekorian and Eng faced competitive primaries against candidates backed by the Latino Caucus. Krekorian defeated Glendale Councilman Frank Quintero. Eng defeated Alhambra City Councilman Dan Arguello.

During the 2004 election cycle, it was the Latino Caucus blasting the Republican Party and the Chamber of Commerce-backed JobsPAC for hit pieces they said had racist overtones. Among them was a Republican Party-funded mail piece used against Juan Arambula in the closing days of the 2004 campaign.

At the time, Speaker Fabian Núñez compared the GOP mailer to hate mail. "I had thought California had moved beyond the time when candidates used racist election propaganda to divide our community," he said.

Latino Caucus chairwoman Martha Escutia, D-Whittier, also blasted those GOP mailers. "All I can assume, as a lawyer, is it was temporary insanity," Escutia said in 2004. "But I can tell you, as a Latina, that these types of

EXHIBIT

attacks will not ever happen again on my watch."

But now, those same charges are being levied against the very Latino Caucus that Escutia chairs. Escutia did not return calls for this story.

"I don't see any difference between what JobsPAC did against us and these pieces," said Torrico. "I'll tell you, it's an embarrassment. It's an embarrassment for me as a Latino Caucus member as an Asian American. It should be an embarrassment to all of us."

A number of Latino Caucus members say they had no idea the mail pieces were being financed using Latino Caucus money. In the 43rd Assembly District, the mail piece linking Krekorian, who is of Armenian descent, to a terrorist suspect, was bankrolled by a group called the California Latino Leadership Fund.

The anti-Krekorian mailer was produced by political consultant Sandi Polka, who has close ties to Senate President Pro Tem Don Perata.

Torrico said some of the responsibility for the mailer lies with Coto, the vice chairman of the Latino Caucus.

"It was part of the fund-raising effort of [San Jose Assemblyman] Joe Coto. He's been the principal fundraiser for the Latino Caucus. I have not been involved with that," said Torrico.

De La Torre said he and Torrico are "going to be doing the information gathering and get back to the group. When Joe Coto comes back, we'll be sharing that information with him and see if he can enlighten us further." Coto was on vacation this week and did not attend Tuesday's meeting. He was not available for comment for this story.

Krekorian said he spoke with several members of the Caucus, including Frommer, who expressed their outrage of the mailer. "The one exception was Sen. Escutia," he said. "She spoke with me and seemed to be offended that I had suggested a linkage between the Latino Caucus and this fund."

Krekorian added, "It's pretty clear to me that this is not something the whole caucus decided to do. I've gone to great lengths to tell people this has nothing to do with Armenians vs. Latinos or Armenians vs. the Latino Caucus at all. Certainly, whoever was responsible for this attack needs to be held accountable. People who prepared the mailer, who authorized the sending of the mailer and who provided the funding for the mailer should be held accountable."

While paperwork filed with the secretary of state's office does not formally link Coto to the Leadership Fund PAC, Coto led the fund-raising effort for the Latino Caucus this cycle. His fund-raiser, Julie Sandino, received \$30,000 in payments from the Latino Leadership Fund PAC. In the first part of this year, Coto paid Sandino more than \$31,000 in consulting fees.

The Latino Leadership Fund received major funding last year from the San Manuel Band of Mission Indians. While other business groups like Ameriquest Mortgage and Johnson & Johnson each ponied up \$25,000 to the PAC, the tribe gave the group \$295,000 late last year.

"San Manuel has had a long relationship with the Latino Caucus. I believe this Latino leadership fund is a part of that in a loose way," said tribal spokesman Jacob Coin. "We try to keep a working relationship with the caucus."

While Coin pointed out the tribe had no say in how the money was spent, he shrugged off the mail pieces as part of the rough and tumble of California politics. "Unfortunately, some times these things do happen. We had no role in however they chose to use the money. It's a right to participate that we value dearly and we support that right."

But Torrico says campaign-finance laws encourage the use of IE committees, which create plausible deniability for candidates and those involved in deep-pocketed IE campaigns.

"People talk about clean money, they want publicly financed campaigns, and I tell them I'm for all that. But until you amend the U.S. Constitution to ban IEs, it's a waste of time and effort. There are so many examples of so many IEs costing candidates races and running extremely negative campaigns."

In Krekorian's race, the controversial mail piece was followed by a pre-recorded call that went out to a number of Democratic voters in the district.

"What does Paul Krekorian have in common with a convicted terrorist?" the call asked. "Plenty. Convicted terrorist Mourad Topalian received an award from the ANC then plead guilty to weapons and explosives charges. Now Paul Krekorian has accepted the ANC's endorsement. Krekorian is even working with the ANC to get their books into public libraries. There's no place in our community for a group that hands out awards to terrorists. And there's no place in our state Assembly for Paul Krekorian."

The call and mailer were blasted by ANC leaders. "Unfortunately, during this campaign, ugly anti-Armenian racist acts were committed against Paul Krekorian, the ANC, and our community," said ANC board member Zanku Armenian.

The consultant who produced the anti-Krekorian mailer defended the piece Wednesday.

"The piece was about an organization and who they go around pinning medals on and what candidates go around soliciting their support," said Paul Hefner, who worked with Polka's consulting firm on the mail piece. "I think what's overblown is the reaction. It's the oldest trick in the book. What no one's explained is why it's OK for an organization to hand out awards to somebody whose mug shot is on the FBI's Web site."

Hefner dismissed criticisms that Krekorian's ethnicity had anything to do with the mailer. "This has nothing to do with anybody's ethnicity or anything else," he said. "It has to do with the way people conduct themselves."

Last year, the ANC honored Sen. Jackie Speier, D-Hillsborough, as their woman of the year, an honor she touts on her campaign Web site.

The ANC also supported a bill by Sen. Charles Poochigian, R-Fresno, remembering the Armenian Genocide. The bill passed 36-0 off the Senate floor and 75-0 in the Assembly. The ANC also gave a \$1,000 donation to the Democratic State Central Committee earlier this year.

The Latino Leadership Fund employed a number of different consultants to run IE campaigns in races featuring Latino candidates. Leo Briones, husband of Escutia, was hired by the PAC to run an IE campaign for Orange County Supervisor Lou Correa. Briones's Centaur North Strategic Communications received more than \$89,000 from the leadership fund to pay for mail pieces

on Correa's behalf.

The committee gave more than \$42,000 to Glazer Communications to support Renee Chavez in her losing campaign against Ed Hernandez. Chavez's campaign was run by Briones.

In Monterey Park, another IE-funded mail piece raised charges of racism. The piece, funded by a group called the North-South-East Coalition to Reform Local Government, blasted the husband-wife duo of Assemblywoman Judy Chu her husband, Mike Eng, who won the primary in the race to succeed her. The mail piece morphed Chu's face into Eng's and used the tag line, "Mike Eng: He's Not Like Us."

But who paid for the anti-Eng piece is unclear. The North-South-East Coalition has failed to file paperwork with the secretary of state's office, even though every IE committee is required to do so within 10 days of forming. A spokeswoman from the secretary of state's office said the committee first formed in 2003, but never has filed any campaign reports.

Anthony York is Editor of Capitol Weekly.

RESOLUTION NO. _____

RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE SUPPORTING A CALL FOR INVESTIGATION OF OFFENSIVE CAMPAIGN MAILER AND RELATED AUTOMATED PHONE SOLICITATION TARGETING MEMBERS OF THE GLENDALE COMMUNITY DURING THE CAMPAIGN FOR THE 43RD ASSEMBLY DISTRICT

WHEREAS, during the primary election campaign for the 43rd Assembly District a mailer commonly known as a negative "hit piece" was sent to targeted households in the City of Glendale; and

WHEREAS, the organization indicated as the author or sender of the mailer is listed as the California Latino Leadership Fund with an address in Oakland, California; and

WHEREAS, the mailer along with a similar message delivered through an automated campaign solicitation was a despicable form of race or ethnic politics, inflaming ethnic tensions in the community; and

WHEREAS, accusations and counter-charges about the origins of the mailer, and the involvement of one political campaign or another in its authorization, preparation, funding, or direction or control, in possible violation of state law have been raised; and

WHEREAS, such a disruptive mailer which has the effect of inflaming ethnic tensions in the Glendale Community calls for an investigation to determine the true origin thereof and whether any campaign committee or candidate was involved in authorizing, preparing, funding, directing, or controlling the mailer in violation of state law; and

WHEREAS, an unbiased investigation by the Attorney General

and/or Secretary of State with findings regarding the aforesaid mailer and automated phone solicitation could help calm ethnic tension, assist the community with the healing process, and send a message to candidates, campaign committees, and Independent Expenditure Committees that state agencies will keep a watchful eye on possible elections improprieties.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE, CALIFORNIA:

SECTION 1. That the Council hereby supports a call for an independent investigation by the State Attorney General and/or Secretary of State to determine who authorized, prepared, funded, or had direction or control of the despicable "hate hit piece" mailer which, along with a related automated phone solicitation created ethnic tension within the Glendale Community and may have violated state election and campaign laws.

SECTION 2. The City Clerk is directed to send copies of this Resolution to The Honorable Attorney General Bill Lockyer and The Honorable Secretary of State Bruce McPherson urging their respective agencies to commence an investigation as requested herein.

Adopted this _____ day of _____, 2006.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM



CITY ATTORNEY

DATE 6-22-06

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) SS

I, ARDASHES KASSAKHIAN, City Clerk of the City of Glendale, certify that the foregoing Resolution No. _____ was adopted by the Council of the City of Glendale, California, at a regular meeting held on the _____ day of _____, 2006, and that same was adopted by the following vote:

Ayes:

Noes:

Absent:

Absent:

City Clerk

MOTION

Moved by Council Member _____, seconded by Council Member _____, that with regard to the issues and options related to a campaign "mailer" and/or general local election campaigns as more particularly outlined in the staff report dated June 27, 2006, the Council hereby directs staff as follows:

Vote as follows:

Ayes:

Noes:

Absent:

Abstain:

APPROVED AS TO FORM



CITY ATTORNEY

DATE 6-22-06