

January 3, 1990

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL  
RESTRICTIONS ON CAMPAIGN "HIT PIECES"/ELECTIONS WORKSHOP  
JANUARY 12, 1990

It is our understanding that the Mayor and Council desire to discuss adoption of an ordinance prohibiting publication of "hit pieces" just prior to an election at the upcoming elections workshop.

Outright prohibition of campaign mailers, be they "fair comments" or "hit pieces," constitutes an unconstitutional prior restraint on political speech. *Near v. Minnesota*, 283 U.S. 697 (1931). The City of San Diego has in the past tried less restrictive means to accomplish the same ends.

In particular, the City used to have a "Campaign Fairness Ordinance" that in part required registration of campaign material with the City Clerk at least twenty-four (24) hours prior to publication (San Diego Municipal Code section 27.3004(a)). A copy of the former ordinance is attached. In a Report to the Mayor and City Council on April 25, 1975 (copy attached), the City Attorney strongly recommended repeal of Section 27.3004(a), because of a ruling in a California Supreme Court case, *Wilson v. Superior Court*, 13 Cal. 3d 652 (1975). In the *Wilson* case, the California Supreme Court overturned a lower court's injunction prohibiting publication of possibly deceptive and misleading campaign material regarding an incumbent officeholder. The holding and reasoning of the *Wilson* case continue to be valid today. Therefore, we continue to recommend strongly that the City not require registration of campaign mailers prior to election, because that mechanism constitutes a form of prior restraint on constitutionally protected speech.

In addition to the constitutional "prior restraint" issues inherent in a registration requirement, there are serious problems of enforceability in ordinances that are designed to curb publication of campaign "smear materials" or "hit pieces," such as the City's former "Campaign Fairness Ordinance." The severe enforcement problems were discussed at length in a Report

to the Mayor and Council by the City Attorney dated March 19, 1974. The ordinance was repealed in 1979. If the City Council were to direct preparation of a similar ordinance today, it would have to be carefully drafted to meet the concerns raised in that

report.

Respectfully submitted,  
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City Attorney

CCM:jrl:040(x043.1)

Attachments

RC-90-2