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Subject: Response to Grand Jury Report Ventura County Campaign Finance Ordinance

Date: June 6, 2014

From: Ventura County Supervisors Steve Bennett and Kathy Long

We welcome the Grand Jury's interest in the important issue of campaign finance reform. As authors of the County's Campaign Finance Ordinance, we submit the following comments, alphabetically A-F, regarding our considerable disagreements with a number of the Grand Jury's Findings in the report titled, "Ventura County Campaign Finance Ordinance."

Overall we believe the report minimizes the need for a local campaign finance reform law, lacks perspective as to what is needed to accomplish the goals of the law, inappropriately implies the law is too complex, is a one-sided rather than a fair analysis and presentation of the evidence and relies on evidence from a narrow group of stakeholders and others whose testimony should have been evaluated with a healthy degree of skepticism.

A. Given how fundamental our disagreement is with Finding FA-04, it is not surprising that we would also disagree with the other Findings and the narrative of the Grand Jury report.

In Finding FA-04 the Grand Jury report states:

"The changes made in Ordinance 4453, to provide better disclosure, appear to be a solution to a nonexistent problem given the Stipulation results from the past two campaign cycles."

We fundamentally disagree with this finding.

There was only one competitive race covered by the county campaign ordinance in 2012. In that single race:

1. Multiple campaign contributions, each in excess of \$4,000 (more than four times the legal amount that could be given to a candidate), were not properly or timely reported.
2. The Ethics Commission fined two committees a total of more than \$13,000 for improper disclosure.
3. A committee, playing a major role in the campaign, failed to electronically file their information until after the election was over. This denied access to any information on that committee's activities by those who were properly relying on the electronic filings to monitor the campaign.
4. The Treasurer of one committee, when questioned weeks before the election by the initial review attorney about an illegal \$7,000 contribution, did not provide a truthful or accurate response to the investigator prior to the election. That Treasurer only corrected their response after the election was over, thus avoiding negative publicity during the campaign.

A question from an investigating attorney should have triggered a heightened level of due diligence by the violating committee's treasurer. It is a serious violation to provide a false response during an investigation. The public should have been able to rely on the response given to an investigator. Instead the accurate information continued to be hidden and the public was denied accurate information before the election.

Despite all the issues listed above occurring in just the one competitive race of that election cycle, the Grand Jury still produced Finding FA-04 including the statement that "the changes made appear to be a solution to a nonexistent problem." We strongly disagree with Finding-04.

B. The Grand Jury report lacks proper perspective and appropriately objective analysis.

The Grand Jury's use of subjective terms such as "the number of violations was low" raises legitimate questions about the objectivity of the analysis. The single competitive race of the 2012 election cycle led to at least 4 violations and fines totaling \$14,300. Is that evidence of the number of violations being "low"? What if all three Supervisor races had been competitive? Would three competitive races with a total of 12 violations be considered low? How many violations per race qualifies as "low"? How high can the fines be and still have a "nonexistent problem"?

It is challenging to identify and catch campaign violations, and many go undetected. When violations do come to light we should seriously consider them when revising the ordinance.

We believe that when you have maximum individual campaign contribution limits of \$700 and fines of \$14,300 that qualifies as a significant amount of fine activity, particularly considering there was only one competitive race in 2012. We disagree with the Grand Jury

analysis that the number of violations was low and did not justify the changes made to the ordinance.

The Grand Jury report lacks perspective in another important area. The state of California has adopted no campaign contribution limits or expenditure limits for local government campaigns. In fact, in the 2002 election, before we began our series of revisions to the county campaign finance law, candidates were allowed to take unlimited campaign contributions. One candidate received a \$90,000 contribution in 2002.

Meaningful reform called for limits on contributions and expenditures. Encouraging candidates to accept voluntary expenditure limits requires that the candidate be promptly informed if an attack committee has launched a major independent expenditure against that candidate. This requires prompt identification of the expenditures of committees participating in county races. It appears that the Grand Jury report does not consider this key relationship and therefore minimizes the importance of enhanced reporting requirements. They are needed to accomplish appropriate limits on campaign donations and voluntary acceptance of expenditure limits

- C. Any fair reader of the Grand Jury report will summarize that the report asserts that the Ordinance is inappropriately complex. However the report does not identify any specific section of the ordinance that is inappropriately complex. Instead, the report relies on a statement made by a professional treasurer who has a significant history of campaign finance violations.

Two of the committees that were fined in the 2012 election for violating the County ordinance used this same professional Treasurer referenced above. It is noteworthy that the standard used by the Ethics Commission regarding the Treasurer's violations was "intentionally or negligently violated the Ordinance". Does evidence from someone who has intentionally or negligently violated the ordinance qualify as sufficient evidence to conclude the ordinance is inappropriately complex?

It is also noteworthy that, during this same 2012 election cycle, this same Treasurer was fined \$50,000 by the State of California Fair Political Practices Commission for failure to timely report a \$100,000 contribution in a State of California campaign. Overall this treasurer's comments hardly seem like credible evidence that the ordinance, is inappropriately complex. In fact, a search of the FPPC website for "Lysa Ray" reveals four pages of FPPC issues, including multiple warning letters and a \$2,000 penalty for failure to disclose a major contribution in a 2008 local election.

To us, the Grand Jury report does not appropriately consider the need for our local campaign reform ordinance to comply with all of the court rulings that have resulted from almost non-stop challenges to campaign finance reform laws by opponents who want to eviscerate them. No one would like to have the campaign finance reform law be a short one page document more than we would. However, we believe the need to keep the ordinance

on strong legal ground requires it to be written in the manner that it is and that is why some of the best legal experts in the country participated in crafting the ordinance. We do not believe it is inappropriately complex.

The Grand Jury report put significant credence into claims of violators who say they failed to timely file because "they were not aware of some of the County filing requirements." Many people who intentionally violate the law, offer the excuse of ignorance as their defense. It is the easiest defense to offer and it is very difficult to determine who is using the defense of ignorance to cover up an intentional attempt to hide campaign contributions until after the election.

When a professional campaign treasurer claims ignorance of campaign finance law, we should view that claim with healthy skepticism.

It is good for the Grand Jury to point out that more education regarding the law would be helpful and we always support more measures to inform people about the ordinance. However, it is inappropriate to dismiss serious violations as being excusable simply because a claim of ignorance is made.

A call for more education does not eliminate the need for the reforms made to the Ordinance. For example, the treasurer cited above had received warning letters from the FPPC about timely filing yet still failed to timely file in our 2012 county election. Would this Treasurer have changed her behavior if we had offered more education about the Ordinance or does it indicate a pattern of intentionally hiding politically damaging donations before an election?

- D. The Grand Jury report offers a one-sided presentation of information. It does not fairly represent the issues or the process followed by the Board of Supervisors or the Commission Hearings during this last election cycle.

For example, in FA-10 the Grand Jury cites comments of the attorney hired by the County Clerk at taxpayer's expense. This attorney presented an extreme hypothetical example of an application of the ordinance and the definition of violator, and the Grand Jury report repeats his example. Yet the Grand Jury report fails to make any reference to the response offered by the attorney hired by County Counsel. We believe any independent observer of this debate would conclude that County Counsel's attorney won that exchange and was the more credible and experienced attorney when it comes to campaign finance reform laws.

He very effectively countered that hypothetical example, and offered a logical explanation of why the provisions in question had merit yet it is not cited in the Grand Jury report at all.

It is interesting to note that not one positive statement was made about the ordinance, the ordinance changes or the process followed. We welcome constructive criticism, but a one-sided presentation damages the effectiveness of the Grand Jury report. Unfortunately the report reads less like an objective analysis of the facts than the views of an individual or two with an ax to grind.

In addition, the report did not cite even one of the explanations offered for the timeframe the Board of Supervisors followed. We suggested the Grand Jury consider the process we followed in its entirety. The Board of Supervisors had publicly made modifications to the ordinance every two years since the introduction of the revised ordinance in 2002. That time-table is widely known and anticipated by most of the "stakeholders" identified by the Grand Jury.

In 2013, we publicly announced, months in advance, that we would be coming with changes. We invited suggestions. We also publicly announced that we needed to wait to introduce the changes until the last week or two before the start of the next election cycle because the Ethics Commission was hearing a major issue that could have bearing on our decisions.

The Grand Jury report does not put this information into proper balance.

- E. The Grand Jury report identifies an exceedingly narrow definition of stakeholders. It recommends that this narrow group of people have extraordinary influence into the creation of the ordinance and does not adopt a healthy skepticism about some of their testimony. Those stakeholders identified by the Grand Jury are: the Board of Supervisors, the Ethics Commissioners, the Assistant County Counsel, Staff to the Commission, the Clerk to the Commission, the Initial Review and Investigating Attorneys, and staff members who receive and file campaign reports. While we believe these people can offer very valuable input and we welcome their input, we also recognize that their input needs to be considered in light of the accountability that the ordinance places on some of them. Human nature has a tendency to lobby to decrease the amount of accountability one is subject to.

In reality, the most important stakeholders are the citizens at large, people who count on us to create and enforce ordinances that are in the public's best interest. Apparently the Grand Jury does not include these citizens as "stakeholders", not even one who testifies before the Commission.

For example, an Investigating Attorney objected to having shorter timeframes to complete his investigation and did not want to be held accountable by the ordinance.

This is the same attorney who let an investigation drag on for almost two years. The violation he was investigating was straight-forward and the facts clear. The candidate was ultimately fined by the Commission for the violation, but the delay benefited the offending candidate in a variety of ways.

The Grand Jury knew that this investigating attorney let this violation drag on for two years. To us the report fails to consider the inherent conflict this particular attorney has in testifying about reporting timelines that he abused in the past and would be responsible for in the future.

The Grand Jury report places much greater value on the testimony of this investigating attorney from Los Angeles than of a member of the public who testified in direct opposition to the request of the investigating attorney. That person asked for shorter reporting time frames for the investigating attorney and more communication with the complainant. He offered valid reasons for his request.

He took time to get involved in the process, study the ordinance and testify in direct opposition to the investigating attorney. Yet the Grand Jury report does not identify him as a stakeholder or appear to value his input.

To a large extent, the Grand Jury report relies heavily on the testimony of a professional campaign treasurer who has been repeatedly convicted of violating campaign finance reform laws and an attorney who is subject to the tighter reporting timelines and abused that timeline in the past. We believe inappropriate reliance on their testimony causes the report to arrive at some wrong conclusions.

- F. Campaign finance reform is an important issue for not only our county, but our state and nation. Money is corrupting our democratic process. We need strict reporting requirements and vigorous enforcement of those requirements so the public can evaluate the messages they receive during an election campaign. Knowing who is paying for a message significantly increases one's ability to evaluate that message. The timely and proper publication of that information is critical to a democratic process besieged by money.

To the extent that our dialogues with each other have improved the creation and enforcement of good law, we appreciate the Grand Jury's interest.



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