

April 12, 2018

VIA ELECTRONIC MAIL

Mayor Troy D. Edgar (tedgar@cityoflosalamitos.org)
Mayor Pro Tem Warren Kusumoto (wkusumoto@cityoflosalamitos.org)
Council Member Mark A. Chirco (mchirco@cityoflosalamitos.org)
Council Member Richard D. Murphy (rmurphy@cityoflosalamitos.org)
Council Member Shelley Hasselbrink (shasselbrink@cityoflosalamitos.org)

Los Alamitos City Council
3191 Katella Ave.
Los Alamitos, CA 90720

Re: Demand Letter Regarding Proposed Ordinance No. 2018-03

Dear Mayor Edgar, Mayor Pro Tem Kusumoto, and Council Members Chirco, Murphy, and Hasselbrink:

We are writing to notify you that if the Los Alamitos City Council votes to enact proposed Ordinance No. 2018-03 (Adding Chapter 9.30 Constitution of the United States Compliance), we intend to file a lawsuit against the City of Los Alamitos for its clear violation of the City's constitutional and legal obligations to follow the California Values Act, Cal. Gov't Code §§ 7282 *et seq.*

The Los Alamitos City Council has attempted to justify Ordinance No. 2018-03 based on an erroneous assertion that “the California Values Act may be in direct conflict with Federal Laws and the Constitution of the United States.” Ordinance No. 2018-03. However, such a justification is expressly forbidden by the California Constitution and binding precedent from the California Supreme Court.

Indeed, the California Supreme Court has rejected the precise action that the City Council is attempting to take here. In *Lockyer v. City & County of San Francisco*, 33 Cal. 4th 1055 (2004), the Court rejected San Francisco's argument that county clerks could issue marriage certificates in violation of state law on the basis of a directive from the Mayor that the state law in question was unconstitutional. *Lockyer* held that “a local executive official who is charged with the ministerial duty of enforcing a state statute exceeds his or her authority when, without any court having determined that the statute is unconstitutional, the official deliberately declines to enforce the statute because he or she determines or is of the opinion that the statute is unconstitutional.” *Id.* at 1066-67.

The City Council claims “that it is impossible to honor our oath to support and defend the Constitution of the United States and to be in compliance with [the California Values Act].” Ordinance No. 2018-03. That argument too has been rejected by the California Supreme Court. The Court has stated that “a public official faithfully upholds the Constitution by complying with

the mandates of the Legislature, leaving to courts the decision whether those mandates are invalid. A public official does not honor his or her oath to defend the Constitution by taking action in contravention of the restrictions of his or her office or authority and justifying such action by reference to his or her personal constitutional views.” *Id.* at 1100 (internal quotation marks omitted).

Furthermore, Article III, Section 3.5 of the California Constitution also prohibits the City of Los Alamitos from “refus[ing] to enforce a statute, on the basis of it being unconstitutional” or “on the basis that federal law or federal regulations prohibit the enforcement of such statute” “unless an appellate court has made a determination that such statute is unconstitutional” or “that the enforcement of such statute is prohibited by federal law or federal regulations.” No court has made any determination that the California Values Act is unconstitutional or prohibited by federal law. Therefore, Ordinance No. 2018-03 is, on its face, a violation of Article III, Section 3.5 of the California Constitution.

If the City Council enacts Ordinance No. 2018-03 and purports to exempt itself from the California Values Act, the City of Los Alamitos will thus be in clear violation of these California constitutional and legal mandates. The faithful application of the Values Act is a matter of “statewide concern” and it “has long been recognized that the home rule provisions of the Constitution do not place the police departments of charter cities beyond the reach of state laws addressing matters of statewide concern, even where such laws intrude upon local regulation.” *See Baggett v. Gates*, 32 Cal. 3d 128, 146 (1982).

Based on these and other arguments, we intend to file a lawsuit and request that the Court issue a writ of mandate, as well as declaratory and injunctive relief, compelling the City of Los Alamitos to comply with the California Constitution and the California Values Act, and finding Ordinance No. 2018-03 in violation of the California Constitution and California law. We also plan to seek costs, attorneys’ fees, and sanctions for the City of Los Alamitos’ violation of the California Constitution and California law. We strongly urge you to reject Ordinance No. 2018-03, and spare the city’s taxpayers the considerable funds that will be spent defending an ordinance that is plainly unlawful. If you have any questions, please feel free to contact me at sahmed@aclusocal.org or (213) 977-5284.

Sincerely,



Sameer Ahmed, Staff Attorney
ACLU of Southern California

Michael Kaufman, Senior Staff Attorney
ACLU of Southern California

Jennie Pasquarella, Director of Immigrants’ Rights
ACLU of California

Jessica Karp Bansal, Litigation Director
National Day Laborer Organizing Network

Melissa Arbus Sherry
Latham & Watkins LLP

Samir Deger-Sen
Latham & Watkins LLP

Will Friedman
Latham & Watkins LLP

Amanda Brown-Inz
Latham & Watkins LLP

CC: Los Alamitos City Attorney Michael S. Daudt (mdaudt@wss-law.com)