

Member, Board of Supervisors
District 9



City and County of San Francisco

DAVID CAMPOS

December 10, 2009

The Honorable Dennis J. Herrera, Esq.
City Attorney, City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Dear Dennis:

As you know, it has been more than a year and a half since a broad coalition of community members began their tireless work for passage of civil rights legislation that restores basic due process rights to undocumented children in San Francisco. This civil rights legislation, which your office approved as to form, was duly enacted by the Board of Supervisors after eight members of the Board overrode Mayor Gavin Newsom's veto. Even though the due process amendment to the City of Refuge Ordinance is supposed to become effective today, December 10, Mayor Newsom has indicated that he will not implement it, because he believes that the legislation does not comply with federal law, even though you and your office reviewed the legislation and approved it as to form.

I don't have to tell you that Mayor Newsom's decision to unilaterally ignore legislation that was duly enacted by the Board is nothing short of unprecedented. Nor do I have to tell you that, if allowed to stand, Mayor Newsom's unilateral decision would have ramifications that go beyond the issue of sanctuary. It would undermine the democratic process that is at the heart of our system of government, the very process that so many members of our community have put their faith and energy into for the last eighteen months. It also would establish the dangerous precedent that a mayor can disregard legislation that the Board properly passed. To say that this would undermine the Board's authority is an understatement. This is to say nothing of the fact that it would mean that undocumented children would continue to lack basic rights in San Francisco.

As a fellow member of the State Bar of California, I am at a loss over what legal justification Mayor Newsom would have for his decision to unilaterally ignore an ordinance that was properly passed after a long, extensive, and transparent legislative process. We may have a strong-mayor system of government, but it is not a monarchy. The fact that Mayor Newsom believes that the legislation is illegal does not change things. As you know, the California Supreme Court has made it clear that, having taken an oath of office to "support and defend" the state and federal Constitutions, "a public official 'faithfully upholds the Constitution by complying with mandates of the Legislature, leaving to courts the decision whether those mandates are invalid.'" Lockyer

v. City & County of San Francisco, 33 Cal. 4th 1055, 1100 (2004) (citations omitted). As is made clear in Lockyer and the line of cases that address the issue, a fundamental principle of our system of government is that properly enacted legislative mandates are presumed to be legal unless illegality is clearly shown, and that such presumption means that doubts should be resolved in favor of a mandate's validity. In other words, a mayor may not disregard a duly enacted law unless the "invalidity" of the law is "patent" or "clearly established[.]" Id. at 1103.

Clearly, that is not the case here, where you and your office approved the underlying legislation as to form. As you noted in your August 20, 2009 memorandum to the Mayor and the Board, the legislative authority of the Board includes the prerogative to introduce legislation that may incur legal challenges or present complex legal issues, but by approving legislation, your office is signifying the Board is within the limits of their legislative authority, and that the City can make legally cognizable arguments to support adoption of the legislation. As a former Deputy City Attorney, I appreciate the enormous responsibility assigned to your office in evaluating and approving legislation sponsored by other City officials. I know firsthand how seriously your office takes this responsibility, and I know that you would not have approved this legislation if you did not believe you could defend it.

In light of the unparalleled chain of events that have brought us to this juncture, I am writing to you pursuant to Section 6.102(4) of the Charter, which states that "[t]he City Attorney shall . . . [u]pon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County." As a duly elected member of the Board of Supervisors, I therefore respectfully request that you issue a written opinion on whether Mayor Newsom has the authority to unilaterally refuse to implement the duly-enacted civil rights legislation at issue, where such legislation was reviewed and approved as to form by you and your office. For the reasons briefly outlined above, I respectfully submit that California law is clear, and Mayor Newsom lacks such authority.

Much hangs in the balance over your decision. The residents of San Francisco have placed their trust in the democratic system; in the constitutional value of due process; in us, the public officials they elected to represent them. We thus should not allow distortions of the democratic process to go unchecked. Given all that is at stake, I respectfully ask that you issue your written legal opinion as soon as possible. Thank you for your attention to this matter.

Sincerely yours,


David Campos
District 9 Supervisor