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**PACIFIC JUSTICE
INSTITUTE**

EDWIN MEESE, III, ESQ.
*Former Attorney General
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President

VIA E-MAIL TO AVOID DELAY

July 14, 2015

Newport Beach City Council
Newport Beach, California
citycouncil@newportbeachca.gov

RE: Special session proposing limits on free speech

Dear City Council Members,

It has come to our attention that you have called a special session on very short notice tonight to address comments made by Councilman Scott Peotter in the wake of the Supreme Court's controversial marriage decision, *Obergefell v. Hodges*.

We are alarmed that the prophetic warnings of the dissenting Justices in *Obergefell* about efforts to silence traditional marriage views are threatening to become a reality so quickly in Orange County. Justice Alito warned that the decision "will be used to vilify Americans who are unwilling to assent to the new orthodoxy." (*Obergefell*, Slip Op. at p. 6 (Alito, J., dissenting)). Further, we were warned that the majority's reasoning "will be exploited by those who are determined to stamp out every vestige of dissent." *Id.*

Newport Beach is surely more tolerant of opposing viewpoints than this resolution suggests. It is absolutely crucial that you maintain free and open political and social dialogue on the foremost questions of the day. The proposed resolution unconstitutionally restrains Councilman Peotter's speech and would be vulnerable in court. The federal Ninth Circuit Court of Appeals, which has jurisdiction in California and throughout the West Coast, has in two major cases sided with local elected officials who opined on hot-button social issues in ways that offended others. In *American Family Association v. City and County of San Francisco*, 277 F.3d 1114 (9th Cir. 2002) conservative groups filed suit after the supervisors issued vitriolic denunciations of their beliefs on homosexuality and even urged local media not to accept their advertising. The Ninth Circuit determined that, even though the speech was very hostile and offensive to the plaintiffs, it was permissible government speech, particularly since it was a non-binding resolution. A few years later, the court issued a similar ruling in *Catholic League for Religious and Civil Rights v. City and County of San Francisco*, 624 F.3d 1043 (9th Cir. 2010). This time, the board had lambasted the Catholic Church and urged the local archbishop not to follow its teachings on homosexuality.

Again, the court turned back the challenge, leaving wide latitude for elected officials to address the issues of the day, even in ways that may offend their listeners. Councilman Peotter's rights are even stronger here, where he clearly speaks for himself and, unlike the passing of a resolution, cannot even take such official actions on his own. The purported risk of misperception that his comments might be accorded official status is illusory and untenable.

We urge you to abandon this ill-conceived, unconstitutional endeavor to chill and censor the speech of an elected official. It is difficult to imagine anything more at odds with the Constitution's guarantee of robust political and social debate, uninhibited by government condemnation or censorship.

Sincerely,



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