



David Loy, Legal Director  
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February 5, 2024

**VIA ELECTRONIC MAIL**

Mr. John Ortega  
President  
Orange Unified School District Board of Education  
1401 North Handy St.  
Orange, CA 92867  
Email: [jortega@orangeusd.org](mailto:jortega@orangeusd.org)

Re: Orange Unified School District Board of Education meeting, January 18, 2024

Dear Mr. Ortega:

The First Amendment Coalition (“FAC”) is a nonprofit public interest organization dedicated to advancing free speech, more open and accountable government, and public participation in civic affairs. On behalf of FAC, I ask that you retract the following statements that threaten freedom of speech.

At the Orange Unified School District (“OUSD”) Board of Education meeting on January 18, 2024, you referred to certain flyers related to a recall campaign that contained “school photos.” You said, “That is completely inappropriate spreading misinformation about OUSD sponsoring such a thing,” and stated, “We are looking at this from a legal perspective.” Orange Unified School District, *OUSD School Board Meeting – January 18, 2024*, at 3:36:56–3:38:50, Youtube (Jan. 18, 2024), [https://www.youtube.com/watch?v=w\\_O5A7v-dlE&t=13045s](https://www.youtube.com/watch?v=w_O5A7v-dlE&t=13045s).

FAC takes no position on the recall itself, but your veiled threats of legal action against core political speech undermine the First Amendment and attack the foundation of democracy. A “major purpose” of the First Amendment is “to protect the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). Therefore, the First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office.” *FEC v. Ted Cruz for Senate*, 142 S. Ct. 1638, 1650 (2022) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

No reasonable person would perceive that OUSD is taking a position on the recall campaign merely because a flyer supporting the recall includes an image of a school building or its logo. If a political advertisement contained an image of the White House, Capitol, or Supreme Court, no reasonable person would believe that the federal government approved the advertisement. The same is true for OUSD. In addition, I understand the flyers were largely identified as being on behalf of concerned “parents” or “families” of students, or “friends” of the schools in question, making it abundantly clear that they do not purport to speak on behalf of OUSD.

It is not clear that OUSD can possess a protectible copyright interest in school building logos or images, but even if it could, the use of such logos or images for political advocacy would be protected as fair use. See *NRA of Am. v. Handgun Control Fed'n of Ohio*, 15 F.3d 559, 562 (6th Cir. 1994); *City of Inglewood v. Teixeira*, No. CV-15-01815, 2015 U.S. Dist. LEXIS 114539, at \*8–34 (C.D. Cal. Aug. 20, 2015); *County of Santa Clara v. Superior Ct.*, 170 Cal. App. 4th 1301, 1331–33 (2009).

It is also not clear that OUSD possesses any trademark rights over school logos or images, but even if it did, no such right was infringed or diluted because no reasonable person would be confused about the source or origin of the flyers' message and the flyers are political rather than commercial. See *Wash. State Republican Party v. Wash. State Grange*, 676 F.3d 784, 795 (9th Cir. 2012); *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 900–07 (9th Cir. 2002); *MasterCard Int'l Inc. v. Nader 2000 Primary Comm., Inc.*, No. 00 Civ. 6068, 2004 U.S. Dist. LEXIS 3644, at \*5–15, \*22–28 (S.D.N.Y. Mar. 8, 2004); *Am. Fam. Life Ins. Co. v. Hagan*, 266 F. Supp. 2d 682, 689–701 (N.D. Ohio 2002).

Accordingly, your unfounded threat of legal action chills political speech and threatens the very foundations of the First Amendment. It should be repudiated immediately to assure the public that its First Amendment rights will be fully respected and upheld.

Sincerely,

FIRST AMENDMENT COALITION



David Loy  
Legal Director

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