Judicial Watch

Because no one is above the law!

May 5, 2009

Honorable Margaret Abe-Koga
Mayor
City of Mountain View
500 Castro Street
Mountain View, CA 94041

Re: Day Worker Center of Mountain View

Dear Mayor Abe-Koga:

This letter is in regard to the City of Mountain View's continuing support for the Day Worker Center of Mountain View ("Day Worker Center"). As you know, Judicial Watch, Inc. first communicated our concerns regarding the Day Worker Center to then-Mayor Tom Means by letter dated April 14, 2008.

Since our previous letter, it appears that the City of Mountain View has provided further significant support to the Day Worker Center. This apparently includes (1) additional financial assistance, (2) approval of a conditional use permit (now under appeal before the City Council), and (3) a lease of City property for parking at the Day Worker Center.

A recent news article confirms that you are aware of the concerns set forth in Judicial Watch's previous letter regarding the City's support of the Day Worker Center. The article, however, attributes certain statements to you such as that you believe immigration is "really a federal issue" and that you are "not sure" as to what exactly Judicial Watch recommends regarding the Day Worker Center. *See* Diana Samuels, *San Jose Mercury News*, "Conservative Law Group Watching Day Worker Center" (April 16, 2009). The purpose of this letter is to try to address these questions.

First, it is a common misconception that immigration simply is a "federal issue." In fact, a municipality such as Mountain View is prohibited from taking any actions

which either directly violate federal immigration law or undermine the purposes of federal law. By supporting the Day Worker Center, the City facilitates the employment of illegal aliens at the same time federal law prohibits such employment.
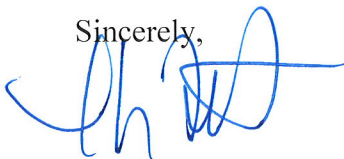
As discussed in our previous letter, federal law unequivocally prohibits the employment of illegal aliens. *See* 8 U.S.C. §§ 1324a(a)(1) and 1324a(h)(3). In addition, as clearly stated by the U.S. Congress, the underlying "purpose" behind these laws is to eliminate "employment as the magnet that attracts aliens here illegally." H.R. Rep. No. 99-682(I), at 46 (1986), reprinted in 1986 U.S.C.C.A.N. 5649, 5650. This is significant because, under the well-established "doctrine of preemption" by federal law, a municipality is prohibited from taking actions which -- whether or not they are otherwise illegal -- undermine or frustrate the purposes of federal law. *Fidelity Fed. Sav. & Loan Ass'n v. De La Cuesta*, 458 U.S. 141, 152 (1982).

A hiring center for day laborers, who are comprised primarily of illegal aliens, facilitates unlawful employment by matching day laborers with the scofflaw employers seeking to hire them. Actions by the City in support of the Day Worker Center "undermine" the purposes of federal immigration law as they encourage the type of employment that federal law seeks to eliminate. Hence, employment of illegal aliens is not merely a "federal issue," as actions by a municipality which simply run contrary to the purposes of federal law are prohibited.

Finally, in regard to possible courses of action by the City in regard to the Day Worker Center, Judicial Watch, and the residents of Mountain View that we are advising, request that the City take all necessary steps to ensure that the Day Worker Center does not facilitate unlawful employment. Toward this end, we suggest that the City require that the Day Worker Center confirm day laborers' eligibility to work in the United States. This can be accomplished by requiring day laborers to provide proof of employment eligibility through proper identification and completion of a federal I-9 compliance form. The City also can require that employers confirm their compliance with federal employment and immigration laws.

We hope this letter resolves your questions. Thank you for your attention to this important matter.

Sincerely,

Thomas Fitton
President