

Genser & Watkins LLP
Attorneys at Law

February 11, 2010

Honorable Gayle McLaughlin
Mayor, City of Richmond
450 Civic Center Plaza
Richmond, CA 94804

Re: Richmond Chamber of Commerce

Dear Mayor McLaughlin:

I represent the Richmond Chamber of Commerce and its President, Judy Morgan. This letter is a demand that you retract your threat of a lawsuit over Ms. Morgan's editorial and for an apology for your attempt to suppress their exercise of their right to free speech.

Nothing in Ms. Morgan's editorial was defamatory under any reading of the law. In fact, the editorial was the exercise of the most fundamental freedom enshrined in the Bill of Rights of the United States Constitution: that of liberty to criticize elected officials. It is only your threat of legal action that is wrongful, and it is you who is at risk of legal liability.

A claim for defamation may arise only from a statement of fact that is false, not from a statement of opinion nor from a true statement of fact. From a legal point of view, the only portion of Ms. Morgan's editorial that would be a statement of fact which could be defamatory is her statement that you supported Measure T. That, of course, is true, and, so, cannot be defamatory. While Ms. Morgan and the Chamber of Commerce believe that the rest of her editorial is also true, it is also a privileged statement of opinion which cannot support a cause of action.

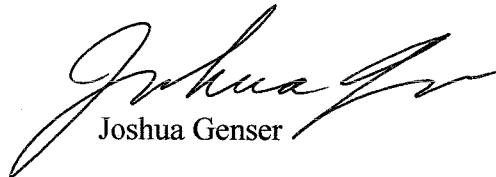
Your threat of legal action, on the other hand, is a clearly unlawful attempt to suppress Ms. Morgan's freedom of speech. Precisely to prevent such tactics by public officials, the United States Supreme Court ruled in *New York Times v. Sullivan* that public figures, like elected officials, must prove actual malice in order to maintain a cause of action for defamation. The almost complete disappearance of libel and slander actions by elected officials following that decision attests to the near impossibility of satisfying that burden of proof.

The State of California has gone even further to protect its citizens from the use of the courts to suppress free speech, by passing laws to prevent so-called SLAPP suits, or Strategic Lawsuits Against Public Participation. Now, if a lawsuit is brought against a defendant who is exercising his or her constitutional rights of free speech, assembly or petition, the plaintiff may be forced to demonstrate the probable success of the lawsuit, and failure to so demonstrate probable success means that the lawsuit is dismissed and the plaintiff is ordered to pay the defendant's attorneys' fees.

Rest assured that, if you ever bring a lawsuit against anyone arising from public criticism of the way you do (or don't do) your job as Mayor of the City of Richmond, it will be defended vigorously and, after it is dismissed, you will be sued for malicious prosecution.

Presuming, however, that your intemperate threat was made in some heat of emotion and in ignorance, the Chamber of Commerce and Judy Morgan would be satisfied with a public retraction and apology.

Very truly yours,



Joshua Genser