



David Loy, Legal Director
dloy@firstamendmentcoalition.org
Direct: 619.701.3993

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VIA ELECTRONIC MAIL

Fred Galante, Esq.
Aleshire & Wynder, LLP
18881 Von Karman Ave., Suite 1700
Irvine, CA 92612
Email: fgalante@awattorneys.com

Re: Email to Katie Shapiro

Dear Mr. Galante:

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. I am writing on behalf of FAC to discuss an email I understand you sent to Katie Shapiro on behalf of the City of Cypress.

The email asserted certain statements Ms. Shapiro made in a community Facebook group were “potentially libelous” and suggested she consider whether “to remove the post,” which I understand she did after receiving the email.

I appreciate the press quoted you as stating, “I never said the city had a viable claim against her,” but whatever your intent, the email as written conveyed an implicit threat of liability for defamation, in apparent disregard of settled First Amendment law. As a result, it chilled and infringed Ms. Shapiro’s right to engage in speech on matters of public concern.¹

The email stated Ms. Shapiro was “alleging the City is in violation [of] conflict of interest laws and is somehow acting illegally.” Correct or incorrect, that allegation concerned the City, not any individual. The First Amendment prohibits any claim for “libel on government.” *Rosenblatt v. Baer*, 383 U.S. 75, 81 (1966); *New York Times Co. v. Sullivan*, 376 U.S. 254, 291 (1964).

Critique of government is democracy, not defamation. The email incorrectly suggested that “criticism of government” can be transmuted “into personal criticism, and hence potential libel, of the officials of whom the government is composed.” *New York Times*, 376 U.S. at 292.

¹ I understand you were quoted in the press as suggesting Ms. Shapiro’s statements “about a private law firm and the Boys & Girls Club could damage the reputation of these parties.” However, the email stated it was written at “the City’s request,” not that of any nongovernmental party. Any question whether any such party was defamed would be for that party to address rather than the City of Cypress.

Even assuming Ms. Shapiro made a false and defamatory statement of fact “of and concerning” an identifiable public official, *Blatty v. New York Times Co.*, 42 Cal. 3d 1033, 1044 (1986), the email offered no reason to believe any such official could prove by clear and convincing evidence that she knew her statement was false or acted with reckless disregard for the truth, as the First Amendment requires.² *New York Times*, 376 U.S. at 279–80.

The email to Ms. Shapiro asserted she “fail[ed] to verify any of the facts or law.” I take no position whether that is correct, but “mere failure to investigate” or “gross or even extreme negligence” are insufficient to show reckless disregard for the truth. *Christian Research Institute v. Alnor*, 148 Cal. App. 4th 71, 90 (2007); see also, e.g., *Pippen v. NBCUniversal Media, LLC*, 734 F.3d 610, 614 (7th Cir. 2013) (holding failure to conduct “cursory investigation” by contacting plaintiff or searching “bankruptcy court dockets” was insufficient to show reckless disregard for truth of statement that plaintiff had “declared bankruptcy”).

For political speech especially, the First Amendment “afford[s] a wide berth to the free exchange of ideas,” with courts bearing in mind that “[h]yperbole, distortion, invective, and tirades are as much a part of American politics as kissing babies and distributing bumper stickers and pot holders.” *Issa v. Applegate*, 31 Cal. App. 5th 689, 704 (2019).

If the City wished to dispute Ms. Shapiro’s claims or explain “why her statements were incorrect,” as you were quoted in the press, it was free to do so, but the implicit threat of liability for defamation crossed the line from dialogue to intimidation, even if unintentionally. On behalf of FAC, I ask the City of Cypress to honor the First Amendment by refraining from making or implying any such threat in the future.

Sincerely,

FIRST AMENDMENT COALITION



David Loy
Legal Director

² In the interest of brevity, this letter does not address other elements of defamation, such as whether (a) Ms. Shapiro made any substantially false assertions of fact or merely stated nonactionable opinions, (b) her statements were defamatory, or (c) her statements were protected by the common interest or any other privilege.