

Donald E.J. Kilmer, Jr.

Attorney At Law

Defending Life, Liberty and Property

1645 Willow Street • Suite 150
San Jose, California 95125
Telephone (408) 264-8489
Facsimile (408) 264-8487
Email: don@dclawoffice.com
www.dclawoffice.com

July 9, 2009

Via: U.S. Mail and Facsimile

Kirk D. Yake
WARD & HAGEN, LLP
440 Stevens Avenue, Suite 350
Solana Beach, California 92075

Fax: (858) 847-0105

Re: Demand by Kathy Lynch to Cease and Desist Activities Protected by the First Amendment.

Dear Mr. Yake:

Please take notice that my firm represents Mr. Bill Wiese. I am in receipt of a letter dated July 1, 2009 that was addressed to Mr. Gene Hoffman and my client.

I have contacted my associates in the National Rifle Association and the magazines that you referenced in demand #5 do not print ads such as the ones you describe. Nor can you reasonably expect a third party to bear some burden as part of a settlement in a private lawsuit. This demand is a futile gesture.

Your remaining demands are equally futile because Ms. Lynch has no case.

I have already spent time and resources checking on whether there is a good faith factual basis for all the statements of opinion made by Mr. Wiese. There are.

I am sure that the discovery phase of any ensuing litigation, including the production of all of Ms. Lynch's client files, along with third-party deposition subpoenas issued to her clients, testimonial depositions of legislative aides and her competitor lobbyists will fill in the details nicely. In other words, the litigation will be time-consuming, costly and unlikely to yield a result that would be cost-effective for your client.

All of this makes your threat to file a lawsuit an empty gesture because this case would be a text book example of one that would be ripe for a special motion to strike under California Code of Civil Procedure § 425.16 *et seq.* Please be reminded that a plaintiff who loses a special motion to strike under that code section pays attorney fees and costs to the successful defendant. In other words, your client can pay you, and pay me, to find out if Mr. Wiese's statements (on their face without reference to any alleged malice or lack of malice) are protected by the First Amendment.

Please consider this letter notice that Ms. Lynch must take all reasonably prudent steps to preserve all potential discovery materials, including but not limited to: all hard copy correspondence, accounting records (business and personal), e-mails, electronic copies of all documents received or created by her office (including all meta-data and hard-disk root directory data), phone logs and regulatory filings.

Two last points:

1. Your client is not a private individual. As a lobbyist she is a limited purpose public figure as defined in *Anderson v. Liberty Lobby*, 477 U.S. 242 (1986). See also: *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974). Criticism of her work as a lobbyist, including questions about her motivations for supporting or opposing various bills is core First Amendment speech; which means that the case would be litigated under the substantive law and evidentiary standards of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) and *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988).
2. I personally know Ms. Lynch to be a tough and aggressive lobbyist. We have some clients in common. [Bail Bondsman and Gun Show Promoters] I also know that lobbyists (and politicians) often make compromises that result in the trading of some minor interests of one set of clients (constituents) against the minor interests of another set of clients (constituents). Sometimes these interests are not so minor to those effected by the trade-offs. Logrolling can stir up factions among the citizenship who become displeased with the result. Lobbyists get fired, politicians lose elections. This is the system we have. It's called the marketplace of ideas. Some ideas, like Mr. Wiese's, get pretty rough. But Ms. Lynch did not build Lynch & Associates and keep it operational for over twenty years in Sacramento by having thin skin.

Trash-talking our politicians and lobbyists is a national sport. I don't see a jury awarding damages to either one of these groups for being accused of the practice of logrolling and/or being called a tumor; especially when the medical definition of tumor (uncontrolled growth of cells that interferes with healthy cell development) is probably how most people view the entire legislative process anyway.

Your offer to have my client "Cease and Desist" exercising his First Amendment rights is rejected.

Cordially,



Donald Kilmer
Attorney for Bill Wiese

cc: Bill Wiese

TRANSMISSION VERIFICATION REPORT

TIME : 07/09/2009 16:55
NAME : LAW OFCS DON KILMER
FAX : 4082648487
TEL : 4082648489
SER.# : 000F7J147084

DATE, TIME 07/09 16:54
FAX NO./NAME 18588470105
DURATION 00:00:37
PAGE(S) 03
RESULT OK
MODE STANDARD
ECM

The Law Offices of Donald Kilmer
1645 Willow Street, Suite 150
San Jose, CA 95125-3030
(408) 264-8489
Fax: (408) 264-8487

FAX COVER SHEET

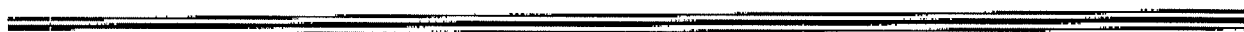
To: Kirk Yake
WARD & HAGEN, LLP
Fax Number: (858) 847-0105

From: Law Offices of Donald Kilmer

Client/Matter: Demand by Kathy Lynch to Cease and Desist Activities Protected by the First Amendment

Date: July 9, 2009

DOCUMENTS	NUMBER OF PAGES*
letter	2
cover	1
total	3



The Law Offices of Donald Kilmer

1645 Willow Street, Suite 150

San Jose, CA 95125-3030

(408) 264-8489

Fax: (408) 264-8487

FAX COVER SHEET

To: Kirk Yake

WARD & HAGEN, LLP

Fax Number: (858) 847-0105

From: Law Offices of Donald Kilmer

Client/Matter: Demand by Kathy Lynch to Cease and Desist Activities Protected by the First Amendment

Date: July 9, 2009

DOCUMENTS	NUMBER OF PAGES*
letter	2
cover	1
total	3

NOTICE: The information contained in this facsimile is confidential and may also contain privileged attorney/client communication or attorney work product. The information is intended only for the use of the individual or entity to whom it is addressed. If you are not the intended recipient, the use, dissemination or distribution of this communication is prohibited. If you have received this facsimile in error, notify my office immediately by telephone. Thank you very much.

The Law Offices of Donald Kilmer

* NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE CALLY IMMEDIATELY AT (408) 264-8489.