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March 15, 2012

Via Facsimile & First Class Mail

Fair Political Practice Commission
Zachery P. Morazzini, General Counsel
428 J Street, Suite 620
Sacramento, CA 95814-2329

Re: Support of Petition to Amend Regulation 18705.5, and in opposition to the letter of A. Aiko Yamakawa, of the law firm of Procopio, Cory, Hargreaves and Savitch, LLP.

Dear Mr. Morazzinni:

I submit this letter as comment on the proposed amendment to California Code of Regulations, title 2, section 18705.5 ("Regulation 18705.5) as submitted by Ash Pirayou of Rutan and Tucker and identified on the March 15, 2012 meeting agenda for the California Fair Political Practices Commission ("FPPC"). Our office serves as legal counsel to various political activists, some elected and others not. One of those activists we represent is Kathleen Sterling.

In part we submit this comment to address the comments of lawyer A. Aiko Yamakawa, of the law firm of Procopio, Cory, Hargreaves and Savitch, LLP. Ms. Yamakawa's firm presently represents Tri-City Healthcare District, which operates the Tri-City Medical Center (TCHD). Kathleen Sterling is an member of the board of directors of TCHD. She was elected to her third term by the constituents in that District, and has served on the board for more than a decade.

By way of background, Ms. Yamakawa's firm represented TCHD in connection with two lawsuits against my client Kathleen Sterling. I represent Director Sterling in her defense of those the two TCHD lawsuits. The first lawsuit involved TCHD's unsubstantiated request for eight (8) restraining orders to prevent workplace violence, brought according to Code of Civil Procedure section 527.8, in a consolidated case entitled *Tri City Healthcare District v. Kathleen Sterling*, filed in the Superior Court of California, for the County of San Diego, Case No. 2011-00052069. The Procopio firm represented TCHD at the trial.

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After four days of trial, the Court found that the claims of TCHD did not merit relief, and entered judgment against TCHD on all eight petitions. Ms. Yamakawa's colleagues were very upset by the ruling and vowed further efforts against Director Sterling. Indeed, Director Reno, the leader of the faction of the board presently controlling TCHD even, outlandishly, proclaimed that the trial judge had been **bribed**.

TCHD and Procopio's legal machinations did not end with the restraining order efforts. Ms. Yamakawa's firm has made appearances on behalf of TCHD in another civil suit, e.g., *Tri City Healthcare District v. Kathleen Sterling*, Superior Court of California, for the County of San Diego, Case No. 2011-00052050. i.e., in which among other things, TCHD accused Director Sterling of "Injury to Business Reputation and Dilution". That claim, in the abstract, sounds serious. But, a few searches on the Youtube.com website and a review of the videos posted of that organization's board meeting will reveal the comedy of any suggestion that TCHD's business reputation could be injured.¹ The Superior Court determined that claim TCHD brought, among others, was a "Strategic Lawsuit Against Public Participation," and struck it according to Code of Civil Procedure section 425.16. The remainder of the civil case is stayed pending Tri-City's appeal of the restraining order cases.

But, germane to this inquiry: Ms. Yamakawa's firm successfully lobbied the San Diego County District Attorney's office to initiate prosecution against my client Kathleen Sterling in *People v. Kathleen Sterling*, Superior Court of California, County of San Diego Case No. CN 284943. The People brought charges of Bribery, e.g., Penal Code section 86, against Director Sterling, which were **dismissed** at the preliminary hearing. The only remaining charge against Director Sterling is brought according to Government Code section 87100, a misdemeanor. That remaining charge is based upon a tortured, and improbable interpretation of the regulations of the Fair Political Practices Commission.

Director Sterling, is a conscientious, civic-minded activist. She has been elected by her constituents to serve on a board that controls the operation of an agency that has nearly a one Billion dollar budget. Her efforts to monitor the operation of the agency have been derailed, as she is pursued over a misdemeanor charge arising from a vote on a committee appointment with a stipend of some \$100 per meeting. Meanwhile, contractors friendly with Procopio, dominant board members of TCHD, and its executive Larry B. Anderson, have received lucrative contracts worth millions of dollars without proper oversight.

¹ "Tina Jillings calls out Tri City Medical Center Board of Director Rose Marie Reno." <http://www.youtube.com/watch?v=axPknhw3oH4>. The attorney participating in the meeting, depicted in the video, is a colleague of Ms. Yamakawa at the Procopio law firm.

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In sum, the seemingly artful and articulate presentation by Procopio's Ms. Yamakawa must be read in the context of her Firm's representation of the TCHD board and its leader Larry B. Anderson, and a use of Government Code section 87100 that the Legislature could not have intended.

Ms. Yamakawa's suggestions must be considered in light of what have already been determined to be unjust efforts to stifle Kathleen Sterling's speech.

The present wording of the FFPC regulations lead to absurdities and abuse. Unfortunately, there will always be lawyers that will capitalize on ambiguities. Regulations should be written in a manner that do not lead to unintended consequences or lend to abuse. The suggested change in the language proposed by Ash Pirayou of Rutan and Tucker should be adopted. The addition to that language suggested by A. Aiko Yamakawa and the Procopio group should be rejected for what it is: sabotage of a reform by inserting further ambiguity.

Very truly yours,



Scott A. McMillan

