



GRIFFIN ROWE

Matt Griffin ■ Russell Rowe ■ John Griffin

Daniel H. Stewart
Koch & Scow, LLC
Counsel for The Committee to
Elect Suzette LeGrange
11500 S. Eastern Ave., Suite 210
Henderson, NV 89052

**VIA ELECTRONIC MAIL
& HAND DELIVERY**

Re: Demand for Councilman Ross to Cease and Desist

Mr. Stewart:

I have been retained by Councilman Steve Ross to represent him and respond to your correspondence of March 22, 2013. A more detailed explanation is provided below, but in sum I find no actionable conduct against Councilman Ross based upon my review of the campaign literature, and I have advised him of the same. Threats of defamation and libel lawsuits will not obstruct our communications of Mrs. LaGrange's record.

Not long ago, "[a] libeled American [preferred] to vindicate himself by steadily pushing forward his career and not by hiring a lawyer to talk in a courtroom." Z. Chafee, Government and Mass Communications 106-07 (1947). Unfortunately, this no longer seems to be true, as evidenced by your demand for Councilman Ross to cease his speech. Mrs. LaGrange has thrust herself into the political process and she has herself profited from media communications. We are not swayed by your threat of legal action, and will defend vigorously against any attempt to litigate for political gain rather than legal vindication. Nevada's elections have seen a growing number of defamation claims filed only days before elections, only to have them abandoned before a court can make a final determination in the matter. This unfortunate development is a burden to the free exercise as well as the judiciary.

To establish a prima facie case of defamation, a plaintiff must prove: (1) a false and defamatory statement by defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. See *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993). It is well settled that the First Amendment to the United States Constitution prohibits a public official from recovering damages for a defamatory falsehood relating to her official conduct unless she proves that the statement was made with "actual malice"-

that is, with knowledge that it was false or with reckless disregard of whether it was false or not. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). In *Curtis Publishing v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967), the Supreme Court extended these constitutional limitations to cases involving plaintiffs who are "public figures." The Nevada Supreme Court has recognized that candidacy for a public office makes a person a "public figure," and as such, the public figure must show that a statement has been issued with knowledge of its falsity or reckless disregard as to whether the statement was true or not. *Miller v. Jones*, 114 Nev. 1291970 P.2d 571 (1998).

In your correspondence, you allege that statements from Councilman Ross' campaign are defamatory, insofar as they allege that Mrs. LaGrange has been involved the support of toll roads on US 95. Specifically, you take issue with statements that Mrs. LaGrange has been a leader of NAIOP and its lobbying efforts in support of a measure that would institute a toll road on US 95. According to its own website, NAIOP is a Commercial Real Estate Development Association which is responsible for advancing responsible commercial real estate development and advocates for effective public policy. See http://www.naiopnv.org/naiop_about_us/index.php.

I trust your client has informed you of the positions she has held with NAIOP. According to Mrs. LaGrange's own *LinkedIn* page, from 2004 to 2009, she was a member of the Board of Directors of the Southern Nevada Commercial Real Estate Development Association (NAIOP). See *LinkedIn*, "Suzette LaGrange" <http://www.linkedin.com>. In addition, pursuant to an April 2012 outline of the responsibilities of members of the Board of Directors for NAIOP Southern Nevada, Board Members are required to "keep informed about the activities and programs of the Chapter and assist with the activities and programs." Mrs. LaGrange was "expected" to "assist the Chapter in its lobbying and public affairs' activities." (*NAIOP Southern Nevada*, "Board of Directors' Responsibilities," April 10, 2012. http://www.naiopnv.org/naiop_files/bcnaojc_naiop_article.pdf). Since 2011, Mrs. LaGrange has been a member of NAIOP's Government Affairs division.

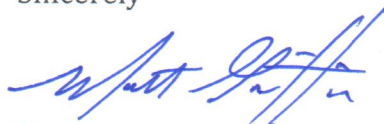
Further, during the 2009 Nevada Legislative Session, when Mrs. LaGrange was a member of the Board of Directors, NAIOP supported AB 524, which would have authorized the Department of Transportation to establish a demonstration project for the development of a toll road. According to news sources about AB 524, the plan would have converted existing lanes on Interstate 15 and U.S. 95 into toll roads and allowed a private company to operate the toll roads. See *NAIOP Southern Nevada Chapter*, "NAIOP Government Affairs News," April 17, 2009, <http://www.naiopnv.org>; *Las Vegas Sun*, "[Toll Road Outrage](#)," April 12, 2009). "One of NAIOP's primary objectives" of the 2009 Session this "was to support the Nevada Department of Transportation's Pioneer Project for Managed Lanes to ease Congestion along I-15 and US95." *Id.*

As this research demonstrates, Mrs. LaGrange was officially charged with assisting and furthering the goals of NAIOP, a public policy organization advocating for the passage

of AB 524. Since defamation is the publication of a false statement of fact, a charge of defamation will fail if the statements are true, as here. You have the exceedingly high bar of showing "actual malice," which can only be proven when a statement is published with knowledge that it was false or with reckless disregard for its veracity. *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 70657 P.3d 82 (2002). My client believes now, as he did at the time that these statements were published, that these statements are accurate.

As such, be advised that we have no intention of abandoning our speech solely because it pertains to issues that Mrs. LaGrange prefers were not part of the public discourse. Instead of frivolous litigation, Mrs. LaGrange is free to refute these statements through her own campaign, and we will not obstruct her right to do so. If she insists on pursuing legal action, we welcome the opportunity to depose Mrs. LaGrange to determine which of the sources cited above, and the many others on which we rely, are false.

Sincerely



Matthew M. Griffin