

September 14, 2010

MARC J. RANDAZZA  
 Licensed to practice in  
 Massachusetts  
 California  
 Arizona  
 Florida

JESSICA S. CHRISTENSEN  
 Licensed to practice in  
 California

JONATHAN M. RICCI  
 Licensed to practice in  
 Michigan  
 Ontario, Canada  
 U.S. Tax Court

JASON A. FISCHER  
 Licensed to practice in  
 Florida  
 U.S. Patent Office

J. MALCOLM DEVOY  
 Licensed to practice in  
 Wisconsin

www.randazza.com

**Miami**

2 S. Biscayne Boulevard  
 Suite Number 2600  
 Miami, FL 33131  
 Tel: 888.667.1113  
 Fax: 305.437.7662

**Boston**

P.O. Box 5516  
 Gloucester, MA 01930  
 Tel: 978.865.4101  
 Fax: 305.437.7662

**San Diego**

3969 Fourth Avenue  
 Suite Number 204  
 San Diego, CA 92103  
 Tel: 888.667.1113  
 Fax: 305.437.7662

**San Francisco**

444 Hyde Street  
 Suite Number 34  
 San Francisco, CA 94109  
 Tel: 888.667.1113  
 Fax: 415.520.0614

**Toronto**

1137 Centre Street  
 Suite Number 201  
 Toronto, ON L4J 3M6  
 Tel: 888.667.1113  
 Fax: 416.342.1761

Via Email and Fax  
 ldannheisser@townofsurfsidefl.gov  
 305-861-1302

Lynn M. Dannheisser  
 Town of Surfside  
 9293 Harding Avenue  
 Surfside, FL 33154

*Re: Your Letter of August 20*

Dear Ms. Dannheisser:

We are in receipt of your letter dated August 20, 2010, which editorializes your misconceptions of our nation’s constitution and memorializes your inability to distinguish between the vowels “a” and “o.” Given the complete lack of legal citation or other authority in your letter, we thought that you might benefit from the following presentation of the current prevailing legal standard, so that you might better advise and represent your client.

Despite your obvious distaste for it, courts in this country have time and time again recognized anonymous speech as falling squarely within the protections of the First Amendment to the United States Constitution. *See Watchtower Bible & Tract Soc’y v. Vill. of Stratton*, 536 U.S. 150, 160, 166-67 (2002); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 199-200 (1999); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995); *Talley v. California*, 362 U.S. 60, 64-65 (1960). Quoting U.S. Supreme Court Justice John Paul Stephens specifically, “[a]nonymity is a shield from the tyranny of the majority.” *McIntyre*, 514 U.S. at 357. It is wholly irrelevant whether you agree that the publishers and contributors of WhoControlsSurfsideFlorida.blogspot.com and SaveSurfside.com are justified in believing they will be persecuted if they come forward. If they choose to remain anonymous, that is their decision to make, not yours, not Commissioner Kopelman’s, or any other member of the Surfside Town Commission. *See id.* at 342 (“[A]n author’s decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.”).

As a fundamental right guaranteed by the U.S. Constitution, our clients' freedoms of speech, press, and petition – each at issue here – cannot be taken away or limited in any way based on what you personally perceive as “abuse.” On the contrary, those rights can only be taken away after our clients have been afforded due process of law. *See* U.S. CONST. AMEND. IV. We would be more than happy to accept service of process on their behalf, if you feel that you have a legitimate cause of action.

It has not been lost on anyone reading this exchange, or even Mayor Dietch's latest email campaign, that none of you has done anything other than generally allege that “lies” have been told. Unless you are ready to be more specific than that, then you will continue to be frustrated, both by our clients' ability to discredit and with your inability to put an end to it. If the claims made by your anonymous critics are as irrational and unsupportable as you claim, then it should be a trivial thing to present sufficient facts to prove their falsity.

Given the substance of your letter, one might guess as well that you are not familiar with the proud history that anonymous political speech has in this country. Thomas Paine, Benjamin Franklin, Alexander Hamilton, John Jay, and James Madison, to name just a handful, all participated in creating our form of government through anonymous publications. *See, e.g.,* The Federalist Papers (1787-88). Casting the net farther than our Framers, we find distinguished French authors such as Voltaire (Francois Marie Arouet) and George Sand (Amandine Aurore Lucie Dupin), and British authors such as George Eliot (Mary Ann Evans), Charles Lamb (sometimes wrote as “Elia”), and Charles Dickens (sometimes wrote as “Boz”). The simple fact is that, throughout history, anonymous publications have “played an important role in the progress of mankind.” *Talley*, 362 U. S., at 64.

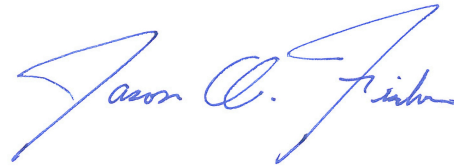
It is also clear from your response that you have a fundamental misconception about the application of the First Amendment to government officials. It seems that you are not aware that, when acting in their official capacity, the speech rights of public employees are necessarily limited. *See Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (“When a citizen enters government service, the citizen by necessity must accept certain limitations on his or her freedom.”). Commissioner Kopelman's remarks cited in our last letter represent a prime example of why he cannot be allowed to just say whatever he feels like, whether he had reason to be angry or not. Threats of politically motivated investigations are, by their very nature, designed to silence opposition.

We spoke with a representative for the State Attorney's office, by the way, who assured us that Kopelman has not filed any complaint with that office – raising the question of why he felt the need to make such threats. If things are as bad as you claim, why has he not followed through?

The First Amendment, like all guarantees of freedom in the Constitution, protects citizens against government oppression – not government against citizen oversight. While it may seem to you and your compatriots that this is an inequitable state of affairs, it is nonetheless part and parcel to the job you have signed up for.

As a final point, we are obviously not affiliated in any way with Randazzo's Little Italy restaurant in Coral Gables. Though we are well acquainted with that establishment's quality cuisine. We presume that you were simply trying to make some kind of joke – one which nobody found particularly amusing, but one which was quite illustrative of the clear failure on your part to appreciate the seriousness of the charges that are being leveled against your employer. We trust that, should you continue to advise Town Commission on matters of constitutional compliance, you will crack fewer jokes and more volumes of case law.

Best regards,



Jason A. Fischer

Cc: Mayor Daniel Dietch  
Vice Mayor Joe Graubart  
Commissioner Marta Olchyk  
Commissioner Michael Karukin  
Commissioner Edward Kopelman  
Town Manager Gary L. Word  
Town Clerk Debra E. Eastman  
Helen C. Fu, Harvard Online Media Legal Network  
Marc John Randazza, Esq.