

Flores, Jarrod (ETH)

From: St.Croix, John
Sent: Sunday, March 15, 2015 11:19 PM
To: Chatfield, Garrett (ETH); Argumedo, Catherine (ETH)
Subject: Fw: Supervisor Farrell Forfeiture Hearing
Attachments: Farrell 2.docx

From: michael garcia <michaellgarcia@sbcglobal.net>
Sent: Sunday, March 15, 2015 10:01 PM
To: St.Croix, John
Cc: James Sutton
Subject: Supervisor Farrell Forfeiture Hearing

Mr. Saint Croix,

I have attached a letter that if procedure allows, I would very much appreciate having presented to President Hur and the other Commissioners prior to the Hearing on Forfeiture for Supervisor Farrell.

Thank you.

Michael L. Garcia
Michael L. Garcia
750 Eucalyptus Dr.
San Francisco, Ca 94132
phone & fax 415-564-8099
cell phone 415-806-2987

March 16, 2015

San Francisco Ethics Commission
25 Van Ness Avenue
Suite 220
San Francisco, CA

Honorable Commissioners:

I am writing you today as a San Francisco resident and former President of the San Francisco Ethics Commission. I have followed the forfeiture proceedings relating to the Mark Farrell for Supervisor 2010 Committee (the “2010 Committee”) over the course of the past three months, and for the arguments below, I strongly urge the Commission to drop all action against the 2010 Committee and, by relation, Supervisor Farrell.

Before I continue, in the interest of full disclosure, in 2012 I ran for Supervisor in District 7 and my Campaign Consultant was Chris Lee.

First and foremost, on its face it would be inherently inequitable in any form or fashion to hold the 2010 Committee liable for this forfeiture request. My understanding is that the California Fair Political Practices Commission (“FPPC”) conducted a comprehensive investigation for over two and a half years, in which Supervisor Farrell and his campaign team fully cooperated and after which the FPPC specifically DID NOT name either the 2010 Committee or Supervisor Farrell as a respondent and further specifically exonerated Supervisor Farrell from any knowledge of his consultant’s actions. To subsequently hold the 2010 Committee liable for forfeiture without any additional proceedings or findings of fact to the contrary flies in the face of common sense and eliminates any pretense of due process.

Since Supervisor Farrell was specifically found not to have knowledge of his consultant’s actions, the only possible rationale to hold the 2010 Committee liable in any manner is coupling Chris Lee’s actions, no matter how far outside the bounds of the law, with the 2010 Committee as a result of his consulting contract with the 2010 Committee. However, this line of reasoning does not hold – Chris Lee’s actions were not only unknown to and unauthorized by Candidate Farrell but specifically in contravention of the law and therefore outside the scope of his employment with the 2010 Committee. There was a reasonable expectation on the part of Candidate Farrell that Campaign Consultant Lee would act in Good Faith—that Lee would exercise a duty of loyalty to Farrell and would use reasonable care to serve and protect the interests of Farrell. This establishes Lee as Farrell’s fiduciary. Through his actions Lee not only violated Campaign Finance Laws, he also breached his fiduciary duty to Farrell. To hold Farrell (found to be non-culpable by the FPPC) responsible for the actions of Lee would be manifestly unjust.

Second, forfeiture is an inappropriate tool in this matter. The hair-splitting notion that Lee’s illegal coordination with the Independent Expenditure Committee and his concurrent activities with the 2010 Committee constitute a single committee that is therefore, due to Lee’s illegality vis-à-vis the two committees, subject to this honorable commission’s consideration of forfeiture is flawed. It is flawed because Lee, having breached his fiduciary duty to Farrell, is in effect no longer representing the interests of either Farrell or the 2010 Committee (which closed in 2013) and so neither Farrell nor the 2010 Committee should be liable for Lee’s actions. Is this Commission contemplating having Farrell pay the

forfeiture out of his pocket and subrogate against the complicit Lee? Is Supervisor Farrell being penalized for lack of supervision or having made a poor hiring choice?

Third, and perhaps definitively, written in law is a four year statute of limitations on any enforcement actions at the Ethics Commission, and the forfeiture request happened outside the four year window of Chris Lee's actions, which are the only actions in question, as no one has disputed that everyone else in connection with the 2010 Committee, in particular Supervisor Farrell, acted within the limits of the law and had no knowledge of Mr. Lee's actions. To pierce the statute of limitations on a "flyer" would not only be violative the law, but also risk the reputation of the Ethics Commission itself, which I know each of you is deeply invested in and which we all care deeply about.

My reading of the facts is congruent with the findings of the FPPC—Mark Farrell has clean hands in this matter. There are certain elements of this case that cause me concern. That is, I hesitate to suggest that on some level politics is playing a role in this matter, but it seems, chillingly, to be possible.

Since leaving the Ethics Commission I have not had reason to involve myself with any current matter before the Ethics Commission, but I believe this is an extreme case that fully warranted comment from a former member. I urge the Commission to drop this matter – as President of the Ethics Commission, I would never have voted to condone such extreme action.

Thank you for taking the time to read my comments. I am available to the Ethics Commission if I can be of any further assistance in this matter.

Sincerely,

Michael Garcia

San Francisco resident and former President, San Francisco Ethics Commission

Cc: John St. Croix, Ethics Commission Executive Director

James R. Sutton

Supervisor Mark Farrell

San Francisco Chronicle