



April 26, 2018

The Honorable Ash Kalra
California State Assembly
State Capitol Building, Room 5160
Sacramento, CA 95814

Reply to: Alice Fredericks
Chair, Legislative Committee
MCCMC Tiburon Town Hall
1505 Tiburon Blvd
Tiburon, CA 94920

**RE: AB 3121 (Kalra) Evidentiary Privileges: Union Agent-Represented Worker Privilege
Notice of Opposition (*As Amended*)**

Dear Assembly Member Kalra:

The Marin County Council of Mayor and Councilmembers (MCCMC) must respectfully oppose your Assembly Bill (AB) 3121, which expands the current evidentiary privilege against disclosure of communications to also include union agent-represented worker communications. The evidentiary privilege is, by design, narrow in scope to protect the confidentiality and integrity of relationships, both professional and familiar in nature, where highly sensitive and deeply personal information is exchanged. Some examples include spousal privilege, confidential marital communications privilege, physician-patient privilege, psychotherapist-patient privilege, clergyman-penitent privilege, as well as attorney-client privilege.

The idea that the relationship between an organized union representative and a union member is similar in nature to the examples above is misguided. Governor Brown shares this concern; in 2014, AB 729 (Hernandez), which is nearly identical to this measure, was vetoed. The Governor's message in part read:

I am returning Assembly Bill 729 without my signature. This bill would establish an evidentiary privilege to prohibit the disclosure of confidential communications between represented employees and their union agents. I don't believe it is appropriate to put communications with a union agent on equal footing with communications with one's spouse, priest, physician or attorney.

The issue of workplace discrimination and harassment has been significantly elevated as a concern throughout California since occurrences and allegations of sexual harassment and discrimination – some long-standing and widespread – have been made public. Now more than ever, local government employers must judiciously investigate allegations of workplace misconduct including sexual harassment and discrimination. To investigate properly, it is imperative that a public employer have the ability to interview all potential parties and witnesses to ascertain the facts and understand the matter fully. Such investigations are needed to uphold the public's trust and to ensure the safety and well-being of both public employees and the public.

Unlike other privileges that apply to both sides of the litigation or proceedings such as the attorney-client privilege, AB 3121 only protects the union agent and represented worker communication. It does not equally protect the management-employee communication, or communications between members of management regarding labor union disputes or grievance issues.

This measure is not only misguided, it also creates legal and operational challenges for public agencies while establishing a new, one-sided level of evidentiary privilege for union employees.

Respectfully,

Alice Fredericks, Chair
Legislative Committee
Marin County Council of Mayors and Councilmembers

cc:

The Honorable Ash Kalra, California State Assembly

Senator McGuire

Assembly member Levine

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