

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

STATE)

V.)

JOHN A. LEIDECKER)

P3-2011-2685A

MOTION TO DISMISS

The defendant is charged in the complaint which is the basis of this case as follows:

Did use a computer to send harassing text messages/emails to Douglas Gablinski for the sole purpose of harassing Douglas Gablinski in violation of 11-52- 4.2.

Complaint in this case.

The statute under which the defendant was charged reads as follows:

(a) Whoever transmits any communication by computer or other electronic device to any person or causes any person to be contacted **for the sole purpose of harassing that person or his or her family** is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500), by imprisonment for not more than one year, or both. For the purpose of this section, "harassing" means any knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, or bothers the person, **and which serves no legitimate purpose**. The course of conduct must be of a kind that would cause a reasonable person to suffer substantial emotional distress, or be in fear of bodily injury. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, evidencing a continuity of purpose. **Constitutionally protected activity is not included within the meaning of "course of conduct"**.

R.I. Gen. Laws Ann. § 11-52-4.2 (Boldface added by the defense).

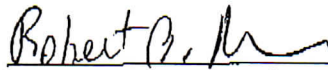
Both the complaint and the statute make clear the high burden the State must satisfy to obtain a conviction under this statute. The State must prove that the "sole purpose" of the alleged communication was to harass.

The facts in this case absolutely undermine any such attempted proof by the State. Mr. Gablinski was a political figure. Mr. Leidecker, though acting individually, was clearly involved in a political dispute with Mr. Gablinski. The messages in question are inherently political in nature.

In addition, the defense has always contended the communications in this case were constitutionally protected activity and the statute in question recognizes that constitutionally protected activity cannot be the basis for a charge.

The real question in this case is whether the adjudication of the issues presented in this motion requires a trial. That is an issue that ultimately may depend upon the response of the State to this motion. In particular, the question this motion raises is what proof, if any, the State can adduce that the sole purpose of the communications in question was to harass. The defense believes the state will not be able to produce such evidence, thereby compelling the granting of the motion to dismiss.

John Leidecker
By his Attorney,



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CERTIFICATION

I hereby certify that a copy of the within motion was mailed and/or delivered to the Office of the Attorney General, Attn: Carole McLaughlin, 150 South Main Street, Providence, RI 02903 on the 27th day of August, 2013.

