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Article

***5 CRIMINAL CONSEQUENCES OF SENDING FALSE INFORMATION ON SOCIAL MEDIA**

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If you used a computer in Rhode Island during the last 20 years, chances are you're a criminal because Rhode Island's computer crimes law -- [Section 11-52-7\(b\) of the Rhode Island General Laws](#) -- makes it a crime to transmit untruthful or exaggerated statements.

Specifically, the use of a computer to knowingly transmit *any* false information is chargeable as a criminal offense. Knowingly posting a lie on Facebook, or any other social media, is a crime in Rhode Island punishable by up to one year in prison. Emailing information you know not be true is a crime in Rhode Island. Sending a knowingly false text message is unlawful. [Section 11-52-7\(b\)](#) makes what are everyday occurrences misdemeanors or crimes.

Would the police investigate and charge a person with lying on Facebook? Would the police issue subpoenas, secure search warrants, and use special technology to track down a liar on Facebook? Would the State charge that liar? Would the court convict and sentence him? If the suspect was a police officer, and he purposely created a Facebook page identifying the Facebook profile as that of his police chief, the answer to every one of these questions is yes. Even if the suspect published facts on the alleged user's profile so laughable that every person who saw the profile knew it was a joke, the State of Rhode Island would hunt him down, arrest, prosecute, and sentence him. This actually happened in one recent Rhode Island case charged under the statute.

Is it really criminal conduct to create a parody profile on Facebook, a popular social networking website, where the suspected wrongdoer intentionally misspelled his chief's first and last name, listed fictitious interests to include "Haiti, SpongeBob SquarePants, Milking Cows, Quilting, Sewing, Music, Police officers, and Reggae," so that it was clear from the reactions of his friends that the profile was a joke? [\[FN1\]](#)

Yes. Following his arrest, the officer was charged under the Computer Crimes chapter of the Rhode Island General Laws with violating [section 11-52-7\(b\)](#) for "transmitting false data," specifically false data relating to his chief, "with the knowledge that it was false." [Section 11-52-7\(b\)](#) states that:

Whoever intentionally or knowingly:

1) makes a transmission of false data; or

2) makes, presents or uses or causes to be made, presented or used any data for any other purpose with knowledge of its falsity, shall be guilty of a misdemeanor and shall be subject to the penalties set forth in § 11-52-5. [FN2]

“Data,” as used within the statute, is further defined as:

... any representation of information, knowledge, facts, concepts, or instructions which are being prepared or have been prepared and are intended to be entered, processed, or stored, are being entered, processed, or stored or have been entered, processed, or stored in a computer, computer system, or computer network. [FN3]

While individuals often do not conduct themselves in a socially acceptable manner, criminal prosecution is not always warranted. [FN4] In this case, by criminally charging the police officer with “transmitting false data,” the State violated his First Amendment freedom of expression because the statute is unconstitutionally: 1) overbroad; 2) vague; 3) content-based; and, at the end of the day, the alleged wrongdoer's publication is nothing more than a parody.

Overbreadth

“The overbreadth doctrine arises when a statutory enactment is so broad in its sweep that it is capable of reaching constitutionally protected conduct. The overbreadth doctrine generally applies in the context of First Amendment freedoms and is intended to prevent the imposition of criminal penalties for the exercise of one's constitutional rights.” [FN5] Section 11-52-7(b) is substantially overbroad because it criminalizes speech protected by the First Amendment and Article I, Section 21 of the Rhode Island Constitution, which ensures that “no law abridging the freedom of speech shall be enacted.”

Statutory challenges on overbreadth grounds *6 are unique in that the defendant is not required to hold standing in order to attack the statute. [FN6] Therefore, even if a court finds that a particular defendant's speech is not protected by the First Amendment, he is still able to challenge section 11-52-7(b) on overbreadth grounds. The rationale is that “the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted ... because of the possible inhibitory effects of overly broad statutes.” [FN7]

There exists no basis on which the restrictions set forth in section 11-52-7(b) can be justified, as the statute is substantially overbroad on its face. To determine whether the statute reaches too far, “the first step in overbreadth analysis is to construe the challenged statute.” [FN8] A simple reading of the statute is all that is required to imagine the infinite scenarios of expressive speech that section 11-52-7(b) criminalizes.

The statute encompasses a vast amount of protected speech because it provides no limitation to its scope. [FN9] For example, it does not require anyone to be harmed by the transmission of false data, nor does it require that anyone receiving the data actually mistakenly believe it to be true. In fact, to the contrary, everyone reading it could clearly understand its falsity, but it would still be a crime.

While section 11-52-7(b) punishes falsity, “the First Amendment recognizes no such thing as a ‘false’ idea.” [FN10] The fact that hyperbole, white lies, sarcasm, humor, and exaggeration (all of which are protected forms of speech) are all criminalized under section 11-52-7(b) demonstrates exactly why it is so substantially overbroad. To make matters worse, consider that many of the cellular phones on the market today would easily satis-

fy the statutory definition of a “computer,” [FN11] which could have the profound effect of criminalizing every half-truth or falsehood ever transmitted, perhaps in conversation and almost definitely by text message, when sent through a cell phone.

In effect, every Rhode Island resident who has ever used a computer has likely committed a misdemeanor of-fense under the overly broad language of this statute.

Of course, this is not to say that the State is actually going to begin prosecuting every untrue statement that the State's citizens transmit using computers. For example, entering an Internet chatroom and stating, “The sky is purple,” is undoubtedly a crime under a literal reading of the statute, but it is fair to presume that the offender would be safe from prosecution. However, the fact that the State would never actually punish the conduct does not matter in overbreadth analysis. As the United States Supreme Court has made clear, “We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly The First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*.” [FN12]

The serious concern that [section 11-52-7\(b\)](#) evokes becomes even greater when the speech in question involves issues at the heart of public concern, such as those of political, social, or religious value. Exaggerated statements, satirical works, or parodies based on political, social, or religious figures or issues could all be classified as illegal conduct under [section 11-52-7\(b\)](#) if they contained any false information, even though the United States Supreme Court has continually asserted that these are all protected forms of speech. [FN13] This presents serious constitutional*7 concerns because “the threat of enforcement of an overbroad law may deter or ‘chill’ constitutionally protected speech--especially when the overbroad statute imposes criminal sanctions.” [FN14] “[E]ven minor punishments can chill protected speech.” [FN15]

For a concrete illustration of how this would work, consider the well-known First Amendment case of [Hustler Magazine v. Falwell, 485 U.S. 46 \(1988\)](#). The *Hustler* parody, consisting of a crude fake interview with Pastor Jerry Falwell, clearly stated false information portraying Falwell and his mother as drunk and immoral, even though it was clear to most readers that the interview was fake. The Court held that *Hustler's* fake interview was protected speech under the First Amendment, and *Hustler* was not liable for any harm it may have caused.

Now, take the exact same facts in **Hustler**, but instead of printing the parody interview in a magazine, *Hustler* uploads the interview to their website from a computer in Rhode Island. Because the fake interview contains false data -- namely that Jerry Falwell drinks alcohol to excess and had an incestuous relationship with his mother -- the transmission of the interview onto the *Hustler* website would violate [section 11-52-7\(b\)](#). However, the United States Supreme Court has already held that the *Hustler* interview is constitutionally protected from regulation. Therefore, the fact that *Hustler's* protected speech would be illegal under [section 11-52-7\(b\)](#) proves the statute is overly broad and inhibits protected speech. Placing criminal penalties on that conduct, including up to one year in prison or a \$500 fine, could substantially chill the free expression of constitutionally protected speech over the Internet.

As overbroad as [section 11-52-7\(b\)\(1\)](#) is, [section 11-52-7\(b\)\(2\)](#) is far worse. [Section 11-52-7\(b\)\(2\)](#) imposes criminal liability when one “knowingly ... makes, presents or uses or causes to be made, presented or used *any data for any other purpose* with knowledge of its falsity.” [FN16] Thus, in its broadest form, [section 11-52-7\(b\)\(2\)](#) proscribes conduct where false data is merely made on a computer for *any purpose* (even private use only), without that data ever being transmitted to anyone else.

The statutory definition for “data” is exceptionally broad in its own right and, thus, contributes substantially to the overbreadth of [section 11-52-7\(b\)\(2\)](#). In its broadest sense, the following would qualify as data: “any representation of ... knowledge, facts [or] concepts ... which are being prepared ... and are intended to be entered ... or stored in a computer.” [FN17] Inserting that definition of “data” into [section 11-52-7\(b\)\(2\)](#) (in place of the word itself) demonstrates just how disturbingly overbroad it truly is. Essentially, when one knowingly prepares inaccurate facts and intends to enter them into their own personal computer, a crime has been committed, even before the facts are actually entered or stored. Therefore, while [section 11-52-7\(b\)\(1\)](#) criminalizes “the sky is purple” once it is transmitted over a network, [section 11-52-7\(b\)\(2\)](#) criminalizes the inaccurate fact the moment the first letter is typed on the computer screen, or sooner, with no intent on ever sharing the message with others. This raises not only First Amendment concerns with the statute, but also concerns with the constitutional right to privacy.

Although it does not explain all of the statutory defects, the history of this statute may bring some understanding as to why the General Assembly drafted it *8 with such undeniably overbroad language. [Section 11-52-7](#) was enacted in 1989 and has not been amended since. The definition of “data” in [section 11-52-1](#) has not been amended since 1989 either. These facts are significant because the World Wide Web, which made the Internet easily accessible to the general public for the first time, was not launched until August 1991. In 1989, lawmakers also probably never imagined that telephones would one day qualify as “computers” under the statute's definition. There is no doubt that technological advancements over the past twenty years have significantly expanded the conduct covered by the statute, well beyond the original legislative intent.

By criminalizing any false statement any person makes while using the Internet, the General Assembly has made virtually every Rhode Island resident potentially guilty of a misdemeanor. The statute's main problem is that it puts no limitation on what “false statements” amount to a criminal offense. As it stands, it is clearly substantially overbroad.

Vagueness and Arbitrary Enforcement

The attack on [section 11-52-7\(b\)](#) does not end with overbreadth. This law is unconstitutional because it is vague and susceptible to arbitrary enforcement. “The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement.” [FN18] “Nobody questions the fundamental principle which says that the state may not hold an individual ‘criminally responsible for conduct which he could not reasonably understand to be proscribed.’” [FN19] “This constitutional mandate is founded upon our system's concept of fairness.” [FN20] The vagueness inherent in [section 11-52-7\(b\)](#) violates this concept of fairness and forms a valid basis for declaring this statute unconstitutional.

[Section 11-52-7\(b\)](#) fails to put the public on proper notice of what offenses it prohibits.

[Section 11-52-7\(b\)](#) is unconstitutional because it fails to adequately put the public on notice of what conduct it proscribes. “The standard employed to gauge whether a particular statutory term reasonably *9 informs an individual of the criminality of his conduct is whether the disputed verbiage provides adequate warning to a person of ordinary intelligence that his conduct is illegal by common understanding and practice.” [FN21] It is not the responsibility of Rhode Island citizens to decipher the legislative intent of the General Assembly. The literal meaning of [section 11-52-7\(b\)](#) is that lying or misstating facts on the Internet is a misdemeanor crime, with no

exceptions. There is no other way to construe this statute based on its plain language -- it clearly criminalizes any form of untruth spoken while using a computer.

The Internet contains billions of users and millions of websites. Millions of people use Facebook, and thousands of fictitious and joke profiles are created on the site every day. The public is constantly told not to believe what they read on the Internet because it may be filled with lies and inaccuracies. Therefore, there is no way for Rhode Island residents to be on notice that the “transmission of false data” is a misdemeanor when it occurs within the state, especially when most likely encounter false information on the Internet every day. Even if the public was on notice, they would be continually left to question whether the criminalization of false information when using a computer really stretches as far as it sounds, and where exactly it ends, such that the free expression of ideas would be substantially chilled.

Additionally, “in testing whether a statutory term provides a defendant with fair warning of what the state forbids, we look to its common law meaning, its statutory history, and prior judicial interpretations.” [FN22] Unfortunately, none of these factors provide much assistance in interpreting [section 11-52-7\(b\)](#). The common law provides little guidance on the newly-emerging issues of computers and the Internet and their associated terminology. In addition, the statute has never been mentioned in any prior Rhode Island judicial opinion, nor does any other state have a similar statute with which to draw analogies. It is telling in itself that no other state broadly bans all transmissions of false data/information.

***36 [Section 11-52-7\(b\)](#) fails to properly guide law enforcement and, instead, encourages arbitrary and discriminatory enforcement.**

[Section 11-52-7\(b\)](#) is also unconstitutionally vague because it fails to establish proper guidelines for law enforcement and allows for discriminatory and arbitrary enforcement. The case against our police officer is a clear example of selective enforcement. After all, the police efforts to ferret out the party responsible for creating a false Facebook page of the chief, using search warrants, subpoenas, high-tech wireless Internet access detectors, and other techniques, are more like law enforcement efforts to locate and arrest a dangerous drug dealer.

Although the vagueness doctrine focuses on both actual notice to citizens and arbitrary enforcement, “the more important aspect of vagueness doctrine ‘is not actual notice, but the other principal element of the doctrine which requires the legislature establish minimal guidelines to govern law enforcement.’” [FN23] “[W]ithout explicit standards to guide those who administer the law, there is always the threat of arbitrary and discriminatory enforcement and the inhibiting of the exercise of basic freedoms.” [FN24] “Where the legislature fails to provide such minimal guidelines, a criminal statute may permit ‘a standardless sweep [that] allows policeman, prosecutors, and juries to pursue their personal predilections.’” [FN25]

Just like the general public, police are forced to speculate what constitutes a “transmission” and “false data” under the statute. The police are forced to draw their own line of when they believe an offense is arrestable under [section 11-52-7\(b\)](#), rather than being properly guided by the statute. Here, the police decided that creating a false Facebook page for the chief was criminal whereas, let's say, creating a false Facebook page for a criminal defense lawyer might not be.

Most interesting, and to many most offensive, is the discriminatory effect of the law is further illustrated by the fact that the police are sometimes guilty of violations. Police departments commonly create fake Facebook profiles to investigate criminal suspects and screen their recruits during pre-employment background checks.

Some police departments also set up sting operations online where they falsely represent themselves as a minor to seek out pedophiles and sex offenders. Competent investigators engage in this sort of deception regularly to secure useful information in both criminal prosecution and defense. Yet, these actions by the police and others are illegal under [section 11-52-7\(b\)](#).

Countless fake profiles exist on Facebook falsely purporting to be real or fictitious persons. The reality is that prosecuting every person who creates a fake profile on Facebook would be impossible. Even if it was possible, society would likely strongly oppose the criminalization of that conduct. Here, though, our police officer has been charged criminally for doing something that thousands of other Rhode Islanders are guilty of and for *37 which none would ever be prosecuted.

Without question, our police chief's concern about the fake Facebook profile made in his likeness could be reasonable. However, when a person in a position of power or authority is able to direct the police to investigate a matter that they would not investigate for an ordinary citizen, it is the very definition of arbitrary and discriminatory enforcement. If anything, the chief's position as a public official should make him less protected than the ordinary citizen. [Section 11-52-7\(b\)](#) is so vague it gives law enforcement unfettered discretion to arbitrarily and discriminatorily choose when to enforce the law and, therefore, it is unconstitutional.

Content-Based Restrictions

[Section 11-52-7\(b\) of the Rhode Island General Laws](#) unconstitutionally places a ban on all speech with “false” content, which creates a content-based restriction on speech that cannot survive strict scrutiny. As the Rhode Island Supreme Court has stated, “singular focus on the content of an expressive activity rings First Amendment bells and places the statute squarely within the category of a content-based regulation meriting strict scrutiny.” [FN27] [Section 11-52-7\(b\)](#), therefore, warrants a three-part analysis requiring: 1) an “expressive activity;” 2) a focus on content; and 3) strict scrutiny analysis if the first two points are met.

1. [Section 11-52-7\(b\)](#) Regulates an “Expressive Activity”

The “expressive activity” regulated by the statute is the transmission of data. The term data, by its statutory definition, includes information, knowledge, facts, concepts, and instructions. [FN28] The primary means by which these are expressed is through speech. For example, if information, knowledge, or facts were transmitted through a computer it would almost certainly be transmitted in some form of written speech or other expressive means (like a chart, illustration, or diagram). As a result, an “expressive activity” is at issue and First Amendment analysis is implicated.

***38 2. The Regulation Set Forth in [Section 11-52-7\(b\)](#) is Focused on Content**

A statute is content-based, as opposed to content-neutral, when it “could not be enforced without first determining whether the content of a particular work fell within the regulated category.” [FN29] [Section 11-52-7\(b\)](#)'s regulation on the transmission of data is clearly content-based because it draws a distinction between “false data” and “true data.” [FN30] [Section 11-52-7\(b\)](#) cannot be enforced without first determining whether the content of a transmission falls within the regulated category of *untrue* speech. Specifically, the State must actually determine if the offending content is true or false before it can enforce the statute. Therefore, the statute is based on content.

3. Because [Section 11-52-7\(b\)](#) is Content-Based, It Must Be Strictly Scrutinized

Because of its content-based restriction on expression, [section 11-52-7\(b\)](#) must be reviewed under strict scrutiny. To survive strict scrutiny “the State must show that its regulation is necessary to serve a *compelling state interest and is narrowly drawn* to achieve that end.” [\[FN31\]](#) This burden is overwhelmingly difficult to meet, such that the United State Supreme Court “time and again has held content-based or viewpoint-based regulations to be *presumptively invalid*.” [\[FN32\]](#) The burden is on the State to rebut that presumption.

[Section 11-52-7\(b\)](#) fails strict scrutiny analysis because there exists no compelling state interest in support of the statute, nor is the statute narrowly tailored to meet any conceivable state interest. It is true that the state could validly assert a compelling interest in protecting the public from select types of false speech, such as fraud, defamation, or false and misleading spam email sent from commercial entities. However, [section 11-52-7\(b\)](#) extends further than these unprotected forms of speech. It bans information, knowledge, and facts just for being false. Therefore, the only plausible goal of the statute is to protect the public from “false” information in general being transmitted to them. Considering that some false information is expressly permitted by the First Amendment, [\[FN33\]](#) it is obvious there is no *compelling* interest served by the statute.

Furthermore, the statute broadly places its restrictions on all computer use and most cell phone use, whether it is on ***39** an open network or in private. The public is so dependent on computers and cell phones today, both at work and in their personal lives, a permanent and absolute ban against all false content transmitted in Rhode Island would clearly be well outside the bounds of what constitutes narrow tailoring to meet the state's interest. As a result, the presumption that [section 11-52-7\(b\)](#) is unconstitutional cannot be rebutted.

Parody

Our police officer's false Facebook profile was clearly intended to be a parody. Parody, satire, and humor have long been recognized as protected First Amendment speech. [\[FN34\]](#)

Internet profiles, like the one made by our police officer, have been protected under the First Amendment in several other cases. In **Layshock ex rel. Layshock v. Hermitage School District**, a student created a MySpace profile using the actual name and photograph of his high school principal. [\[FN35\]](#) In the profile, the student posted information that made the principal out to be a drunk, smoker of marijuana, and homosexual. [\[FN36\]](#) The profile was termed a “parody profile,” and it was protected from regulation by the school under the First Amendment. [\[FN37\]](#) The same result occurred in **J.S. ex rel. Snyder v. Blue Mountain School District**, where a middle school student created a far more vulgar and profane MySpace profile making fun of her middle school principal. [\[FN38\]](#)

The Facebook profile at issue here is a parody in the same regard. It created a caricature of the police chief. A caricature, as defined in **Hustler**, is “the deliberately distorted picturing or imitating of a person, literary style, etc. by exaggerating features or mannerism for satirical effect.” [\[FN39\]](#) **Hustler** held that caricatures of a person are protected by the First Amendment no matter how outrageous and offensive they may be to the person caricatured or the public. [\[FN40\]](#) Under that rationale, an online caricature should be protected in the same regard.

Conclusion

Like the technology it was based on in 1989, [section 11-52-7\(b\)](#) is now archaic and obsolete, no longer cap-

able of carrying out its originally intended purpose. With over twenty years of technological advancement since its enactment, it is difficult to look back now and determine *40 what, exactly, [section 11-52-7\(b\)](#) was used for in 1989, or how we can get it to work at all in 2011. The failure to provide limitations or qualifications to the language drafted in the statute has resulted in a law that grows broader and more vague with each successive advancement in technology.

[Section 11-52-7](#) is ripe for a visit by our Legislature. Until it does, any misstatements or falsities contained in this article, prepared on a computer, and transmitted as the statute construes that term, were made without knowledge or intent!

[FN1]. *By the way, if you do not know what a Facebook profile is or who your Facebook friends are, do not despair. After all, neither did the Legislature when it enacted this criminal statute in 1989.*

[FN2]. *R.I. Gen. Laws § 11-52-7(b) (2010).*

[FN3]. *R.I. Gen. Laws § 11-52-1 (2010).*

[FN4]. *See State v. McKenna, 415 A.2d 729, 732 (R.I. 1980) (holding that “distaste for indelicate language” does not alone permit the court to sanction its prosecution).*

[FN5]. *State v. Russell, 890 A.2d 453, 459 (R.I. 2006) (citations omitted).*

[FN6]. *In re Advisory From the Governor, 633 A.2d 664, 674 (R.I. 1993) (citing Broadrick v. Oklahoma, 413 U.S. 601, 612 (1973)).*

[FN7]. *Broadrick, 413 U.S. at 612.*

[FN8]. *United States v. Williams, 553 U.S. 285, 293 (2008).*

[FN9]. *See United States v. Alvarez, 617 F.3d 1198 (9th Cir. 2010) (“All previous circumstances in which lies have been found proscribable involve not just knowing falsity, but additional elements that serve to narrow what speech may be punished”).*

[FN10]. *Hustler Magazine v. Falwell, 485 U.S. 46, 51 (1988).*

[FN11]. *Although the public does not usually consider cell phones to be computers in the traditional sense, the definition of “computer” stated in section 11-52-1 would clearly apply to most cell phones, and perhaps many other instrumentalities of speech as well beyond just what we traditionally think of as a “computer.” Per section 11-52-1, “‘Computer’ means an electronic, magnetic, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, to human instruction, or to permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term ‘computer’ includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device.” R.I. Gen. Laws § 11-52-1 (2010).*

[FN12]. *United States v. Stevens, 130 S. Ct. 1577, 1591 (2010).*

[FN13]. E.g., *Hustler Magazine*, 485 U.S. at 56; *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964) (“Truth may not be the subject of either civil or criminal sanctions where discussion of public affairs is concerned”).

[FN14]. *Virginia v. Hicks*, 539 U.S. 113, 119 (2003).

[FN15]. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 244 (2002).

[FN16]. *R.I. Gen. Laws* § 11-52-7(b)(2) (emphasis added).

[FN17]. See *R.I. Gen. Laws* § 11-52-1 (2010).

[FN18]. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983).

[FN19]. *State v. Authelet*, 385 A.2d 642, 643 (R.I. 1978) (quoting *State v. Levitt*, 371 A.2d 596, 598 (R.I. 1977)).

[FN20]. *Id.* at 644.

[FN21]. *Id.*

[FN22]. *Id.*

[FN23]. *Kolender*, 461 U.S. at 358 (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)).

[FN24]. *Authelet*, 385 A.2d at 644.

[FN25]. *Kolender*, 461 U.S. at 358 (quoting *Goguen*, 415 U.S. at 574).

[FN26]. See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974) (Public officials “have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private citizen”).

[FN27]. *Bouchard v. Price*, 694 A.2d 670, 676-77 (R.I. 1997).

[FN28]. *R.I. Gen. Laws* § 11-52-1 (2010).

[FN29]. *Bouchard*, 694 A.2d at 676.

[FN30]. See *United States v. Alvarez*, 617 F.3d 1198, 1217 (9th Cir. 2010) (analyzing truth and falsity as content-based distinctions warranting strict scrutiny review).

[FN31]. *Id.* at 677 (quoting *Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 502 U.S. 105, 118 (1991)) (emphasis added).

[FN32]. *Hill v. Colorado*, 530 U.S. 703, 769 (2000) (emphasis added).

[FN33]. E.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 341 (1974) (“the First Amendment requires that we protect some falsehood in order to protect speech that matters”); *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964) (“erroneous statement is inevitable in free debate” and “[e]ven a false statement may be deemed to make a valuable contribution to public debate, since it brings about ‘the clearer perception and livelier impression of truth, produced by its collision with error’”).

[FN34]. *See, e.g., Hustler Magazine v. Falwell*, 485 U.S. 46 (1988).

[FN35]. *No. 07-4465, 2011 WL 2305970, at *1 (3rd Cir. June 13, 2011)*.

[FN36]. *Id. at *2*.

[FN37]. *Id. at *1*.

[FN38]. *No. 08-4138, 2011 WL 2305973, at *1 (3rd Cir. June 13, 2011)*.

[FN39]. *Hustler Magazine*, 485 U.S. at 53 (quoting *WEBSTER'S NEW UNABRIDGED TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE* 275 (2d ed. 1979)).

[FN40]. *Id. at 55-56*.

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