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February 6, 2014

The Hon. Peter Kilmartin  
Attorney General  
150 South Main Street  
Providence, RI 02903

BY FAX AND MAIL

Dear Attorney General Kilmartin:

I am writing in response to yesterday's news stories regarding your office's investigation of a Facebook page posted late last year that satirizes Rep. Scott Guthrie. While we are pleased that Asst. Attorney General Gendron recognized that the satire did not constitute criminal activity, we were very concerned to also read that you considered this determination to be only an "initial assessment," and that you are still reviewing the matter for possible criminal prosecution.

Any continued suggestion that the Facebook page at issue might constitute criminal "harassment" can only cast a pall over the exercise of First Amendment rights and the lawful ability of members of the public to criticize or caricature public officials – even if done in crude or impertinent fashion. We therefore respectfully request that you take immediate action to formally close this matter.

According to Det. Harris's police report, AAG Gendron recognized both the limits of the "harassment" statute and the First Amendment implications of the postings at issue, and "determined that there is insufficient evidence to go forward with charges at this time." The report further indicates that Rep. Guthrie was so notified. A review of the reported excerpts from the Facebook site at issue and Detective Harris's report makes abundantly clear the correctness of that determination. While it may be discourteous and even offensive, the Facebook page is not by any stretch of the imagination a criminal enterprise. Satirizing public officials, however coarsely, constitutes a well-worn application of free speech rights.

Indeed, as you are aware, the courts have set a very high standard for public officials to pursue even *civil* actions against political invective. If the broadsides on this Facebook page constitute unlawful "harassment," then The Daily Show, the Colbert Report, and dozens of other political web sites engage in criminal activity every day. But, of course, that is not what the First Amendment allows. To give context to the broad reach of the First Amendment in this regard, it is worth noting that the United States Supreme Court had no trouble concluding that a parody suggesting that a well-known man of the cloth engaged in a "drunken incestuous rendezvous with his mother in an outhouse" was protected free speech. *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988).

As the U.S. Supreme Court noted in that case:

“The sort of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office . . . Such criticism, inevitably, will not always be reasoned or moderate; public figures as well as public officials will be subject to vehement, caustic, and sometimes unpleasantly sharp attacks. . . . But in the world of debate about public affairs, many things done with motives that are less than admirable are protected by the First Amendment.” Id. (citations omitted)

There are serious First Amendment implications any time a criminal investigation is conducted based on protected free speech activity in the political realm. We appreciate Rep. Guthrie’s concerns, but whatever legal remedies may or may not be available in this case, criminal prosecution is not, and should not be, one of them. Continuing to hold out that possibility by keeping a case like this open for additional review sends a troubling message of its own to those seeking to exercise their right to criticize public officials. Because of the implications of keeping this case open, any need for additional review should be categorically rejected. We urge you to do so.

Thank you in advance for considering this.

Sincerely,

Steven Brown  
Executive Director