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May 14, 2026

Via Email and USPS Certified Mail

Mr. Robert Smullen
LOB 635
Albany, NY 12248
Email: smullenr@nyassembly.gov

Mr. Adam Fusco
Fusco Law Office
P.O. Box 7114
Albany, NY 12224
Email: afusco@fuscolaw.net

**Re: Final Demand for Compensation, Apology, and to Retract the False,
Malicious, Defamatory, and Lewd Statements about Anthony Constantino**

Dear Mr. Smullen:

This law firm serves as litigation counsel for Congressional candidate Anthony Constantino (“hereinafter referred to as “Constantino”). This final retraction demand is being sent on his behalf so that you immediately retract, apologize for, and provide compensation for the injury caused by the multiple false, malicious, defamatory, disparaging, and inflammatory statements made by you about Constantino. On March 25, 2026, you were placed on notice that your statements—made through various modes of communication—had significantly harmed the reputation of Constantino.

It bears emphasizing that you began your campaign by falsely stating that Constantino was running for office for the purpose of distracting the public from delinquent and unpaid taxes. Constantino had no unpaid taxes at the time you made that statement, and he spent significant resources to prove it. Since then, you have continued to publish false, malicious, and defamatory statements about Constantino, and have refused to delete prior statements that have wrongly denigrated his reputation. Your conduct is deliberate, intentional, and calculated. Given that you refuse to meaningfully resolve these disputes, Constantino is left with no choice but to pursue all available legal rights and remedies to recover the overwhelming financial and reputational harm that you have caused him. This is your final opportunity to resolve this matter by retracting your false, malicious, and defamatory statements about Constantino, publicly apologizing to him, and compensating him for the overwhelming harm caused.



A. The false, malicious, and defamatory statements published about Constantino.

Since receiving the first retraction demand, you have continued to promote across your social media platforms—and e-mail blasts—false, malicious, and defamatory statements about Constantino, including the following:

1. *Statements from E-mail Blast Paid for by Robert Smullen for Congress dated April 2, 2026.*

- “[H]e BROKE FEDERAL LAW!!”¹
- “Not only did he repeatedly break the law, but he is also using donors’ hard-earned money to profit from blatant, disgusting antisemitism.”²
- “I’m not antisemitic, like he is. I’m not a fraudster, like he is. I’m not an unconvicted felon, like he is.”³

2. *Statements From <https://therealanthonyconstantino.com/> Paid for by Robert Smullen for Congress.*

- “[Constantino] [p]romotes and profits off of antisemitism.”⁴
- “Caught using Campaign Funds to prop up business.”⁵
- “Anthony Constantino does not just tolerate the Left’s agenda. He profits from it and lends these dangerous and radical individuals a platform to spread their hate.”⁶
- “Anthony Constantino is a con....”⁷

¹ A true and correct copy of an email paid for and distributed by Robert Smullen for Congress is attached hereto as Exhibit “A.”

² See Ex. A.

³ *Id.*

⁴ *The Real Anthony Constantino*, Robert Smullen for Congress, <https://therealanthonyconstantino.com/> (last visited May 7, 2026).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*



3. *Statements from Text Message Blast dated on or around May 7, 2026.*

- “[Constantino] [h]ired a murderer to knock on innocent New Yorkers’ doors”
- “[Constantino] [c]alled USMC Veterans ‘f-cking cowards’”
- “[Constantino] [c]alled cops ‘racist.’”

All of these statements about Constantino are provably false, malicious, and defamatory. These false, malicious, and defamatory statements go far beyond mere insults directed at Constantino. Instead, the statements pass off as fact the proven lies that Constantino promotes antisemitism, used campaign funding for his personal business, and that he has broken federal law, none of which is true. Given that each of your statements is demonstrably false, it is evident that you made these malicious and defamatory statements with reckless disregard for their truth and with deliberate calculation to harm Constantino’s reputation. The plain language of these false and defamatory statements is *prima facie* evidence of your reckless disregard for their truth.

B. Applicable law.

Under New York law, words are defamatory when they tend “to expose the plaintiff to public contempt, ridicule, aversion, or disgrace.” *Technovate LLC v. Fanelli*, 49 Misc. 3d 1201(A), 2015 WL 5554547, at *3 (N.Y. Civ. Ct. 2015) (quoting *Rinaldi v. Holt, Reinhart & Winston*, 42 N.Y.2d 369, 379, cert. denied 434 U.S. 969 (1977)). It is well established that words that “imply criminal activity, or tend to injure a party’s trade, occupation or business” are per se defamatory. *See id.* Your false, malicious, and defamatory statements easily meet these standards because they both imply criminal activity and were deliberately calculated attacks, motivated by ill will and malicious intent, to inflict significant financial and reputational harm upon Constantino.

You cannot escape liability by disguising your false, malicious, and defamatory statements as an expression of your opinion. New York law makes clear that such a defense will not shield you from liability. *See Silsdorf v. Levine*, 59 N.Y.2d 8, 16, 449 N.E.2d 716 (1983) (“[A]lthough expressions of opinion are constitutionally protected, ***accusations of criminal or illegal activity, even in the form of opinion, are not***[.]”) (emphasis added) (internal citations omitted.).

Any attempt to label these false, malicious, and defamatory statements as hyperbole, satire, or simply a joke will not fare any better. *See Arrigoni v. Velella*, 110 A.D.2d 601, 603, 488 N.Y.S.2d 184 (1985) (stating that once the court determines that the words complained of are reasonably susceptible of defamatory connotation, “it becomes the jury’s function to say whether that was the sense in which the words were likely to be understood by the ordinary and average reader.”); *see also Frank v. Nat’l Broad. Co., Inc.*, 119 A.D.2d 252, 257, 506 N.Y.S.2d 869 (1986) (recognizing that although statements that are “patently humorous, devoid of serious meaning or intent and impossible of being reasonably understood otherwise” do not rise to the level of defamation, “a person shall not be allowed to murder another’s reputation in jest” as “one’s reputation can be as effectively and thoroughly destroyed with ridicule as by any false statement



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of fact.”). Any reasonable juror will interpret your false, malicious, and defamatory statements for what they are: deliberate, calculated attacks on Constantino. Therefore, you lack any viable defense.

C. Demand.

Your continued tortious will not be tolerated. Constantino hereby demands that you: (1) immediately issue a full and fair retraction of the false, malicious, and defamatory statements in this retraction demand, and any and all other false, malicious, and defamatory statements about Constantino in as conspicuous a manner as they were originally published; (2) immediately issue an apology to Constantino; (3) cease publishing any further false, malicious, and defamatory statements about Constantino; and (4) compensate Constantino with a sufficient sum to resolve any claims related to the false, malicious, and defamatory statements in this retraction demand and across all other platforms.

Moreover, please allow this letter to serve as notice to you, your companies, affiliated entities, subsidiaries, employees, and any other person acting on behalf of or in concert with you, to preserve any and all evidence related in any way to the false, malicious, and defamatory statements in this retraction demand and across all other platforms, and any other statements that you have published regarding Constantino. By way of this letter, you are hereby directed not to destroy, conceal, or alter any paper or electronic files, physical evidence, and/or other data relating in any way, no matter how remote, to your false, malicious, and defamatory statements in this retraction demand about Constantino, and/or the circumstances leading to their dissemination, including, but not limited to: (1) any communications between you and any third party in any way related to your false, malicious, and defamatory statements regarding Constantino; (2) all alleged sources for your false, malicious, and defamatory statements regarding Constantino; (3) any documents and data relating to communications between you and any such third parties or sources regarding your false, malicious, and defamatory statements regarding Constantino; and (4) any documents relating to your false, malicious, and defamatory statements regarding Constantino.

I understand that many records and files are maintained electronically. However, this letter specifically requests that all paper and hard-copy originals be maintained and preserved in their original format. By the same token, electronic documents and the storage media on which they reside may contain relevant, discoverable information beyond that which may be found in printed documents. Therefore, even where a paper copy exists and has been preserved, please preserve and maintain all electronically stored documents in their original native format, including all metadata. This preservation demand specifically encompasses any and all electronic documents, including, but not limited to, all word-processed files, emails, spreadsheets, all databases, log files, and any other electronically stored and/or generated documents or files.

If you do not comply with the above by **May 19, 2026, at 5:00 p.m. EST**, Constantino will



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enforce his legal and equitable rights, all of which are expressly reserved and are not waived, including by filing legal action for substantial damages.

PLEASE GOVERN YOURSELF ACCORDINGLY.

Very truly yours,

/s/Alejandro Brito

ALEJANDRO BRITO

Friend,

Once again, my unhinged, unstable opponent is venturing into uncharted waters in his campaign.

This time, he BROKE FEDERAL LAW!!

Constantino's sticky ad spending problem

By JASON DEEFERMAN, NICK REISMAN, MADISON FERNANDEZ, and CHRIS SOMMERFELDT
10/10/2024 05:09 AM EDT

Anthony Constantino spent HUNDREDS OF THOUSANDS OF CAMPAIGN DOLLARS TO PROMOTE HIS PRIVATE BUSINESS!

This is a FELONY!

And what makes it even worse is he's putting hundreds of thousands of dollars that grassroots supporters donated towards advertising his business that profits off THESE stickers:



Gas pump sticker

Not only did he repeatedly break the law, but he is also using donors' hard-earned money to profit from blatant, disgusting antisemitism.

He SHOULD drop out of this race IMMEDIATELY. But, he won't.

So it's up to us to stop him from ever becoming a U.S. Congressman.

I'm running for Congress against him. I'm not antisemitic, like he is. I'm not a fraudster, like he is. I'm not an unconvicted felon, like he is. I'm not mentally unstable, like he is.

I'm just a USMC Veteran who served abroad. I'm just a former White House appointee, having served with President Trump. I'm just a regular, Red-White-Blue-Loving American who wants to help people like you in D.C.

But my campaign relies on contributions from grassroots supporters (and anything donated to my campaign will NOT be used for my own personal benefit, like Anthony does.)

[Will you donate \\$15 before midnight to help me defeat Anthony Constantino?](#)

Thank you,
Robert Smullen

Paid for by: Robert Smullen for Congress

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You are receiving this email because you are interested in updates from Smullen for Congress.

Our mailing address is:
Robert Smullen for Congress
PO Box 1, Clonesville, NY 13023

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**EXHIBIT
A**