V I R G I N I A :

IN THE GENERAL DISTRICT COURT FOR FAIRFAX COUNTY

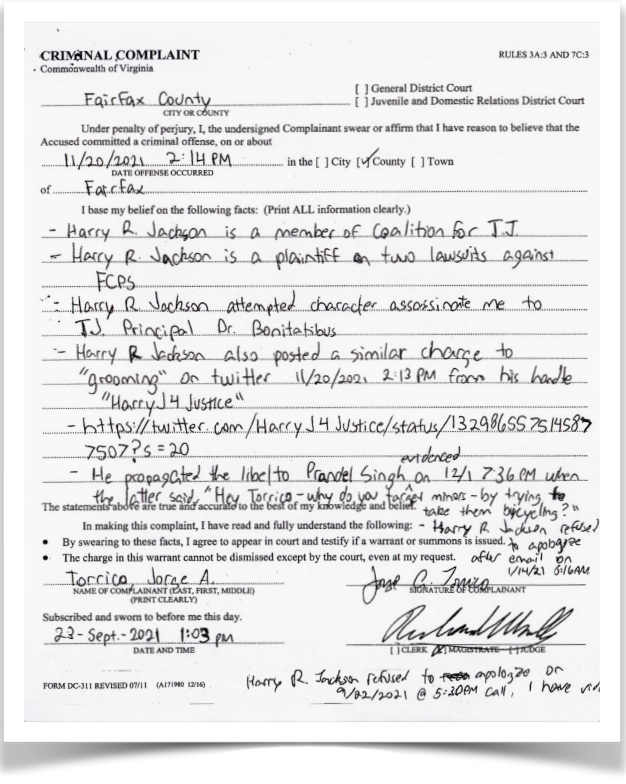
COMMONWEALTH OF VIRGINIA	Case No(s):	GC22027489-00 GC22027492-00
v.		GC22006569-00 GC22006570-00
JACKSON, HARRY RANDALL	Adjudication:	04/22/2022

MOTION TO DISMISS

Comes now defendant, by and through counsel, and moves for dismissal, with prejudice, of all charges against him pursuant to the First Amendment, the Fifth Amendment, and the Fourteenth Amendment of the United States Constitution.

I. Background

On September 22, 2021, complainant Jorge Antonio Torrico visited the Fairfax County Magistrate's office and alleged that Harry Jackson "attempted character assassinate me" to a school principal — by use of words that are not described in the sworn complaint — which were allegedly posted on the social media platform Twitter. Jorge Torrico added that Harry Jackson apparently



CRIMINAL COMPLAINT
Commonwealth of Virginia
RULES 3A:3 AND 7C:3

Fairfax County
CITY OR COUNTY
[ ] General District Court
[ ] Juvenile and Domestic Relations District Court

Under penalty of perjury, I, the undersigned Complainant swear or affirm that I have reason to believe that the Accused committed a criminal offense, on or about
11/20/2021 2:14 PM
DATE OFFENSE OCCURRED
in the [ ] City [✓] County [ ] Town
of Fairfax

I base my belief on the following facts: (Print ALL information clearly.)
- Harry R. Jackson is a member of Coalition for T.J.
- Harry R. Jackson is a plaintiff on two lawsuits against FCPS
- Harry R. Jackson attempted character assassinate me to T.J. Principal Dr. Bonitatibus
- Harry R Jackson also posted a similar charge to "grooming" on twitter 11/20/2021 2:13 PM from his handle "Harry J4 Justice"
- https://twitter.com/Harry_J4_Justice/status/1329865575145877507?s=20
- He propagated the libel to Prandel Singh on 12/1 7:36 PM when the latter said, "Hey Torrico - why do you target minors - by trying to take them bicycling?"

The statements above are true and accurate to the best of my knowledge and belief.

In making this complaint, I have read and fully understand the following:
- By swearing to these facts, I agree to appear in court and testify if a warrant or summons is issued.
- The charge in this warrant cannot be dismissed except by the court, even at my request.

Torrico Jorge A.
NAME OF COMPLAINANT (LAST, FIRST, MIDDLE) (PRINT CLEARLY)

SIGNATURE OF COMPLAINANT

Subscribed and sworn to before me this day.
23-Sept.-2021 1:03 pm
DATE AND TIME

[ ] CLERK [X] MAGISTRATE [ ] JUDGE

FORM DC-311 REVISED 07/11 (A171980 12/16)

Harry R. Jackson refused to ~~recite~~ apologize on 9/22/2021 @ 5:20PM call, I have no

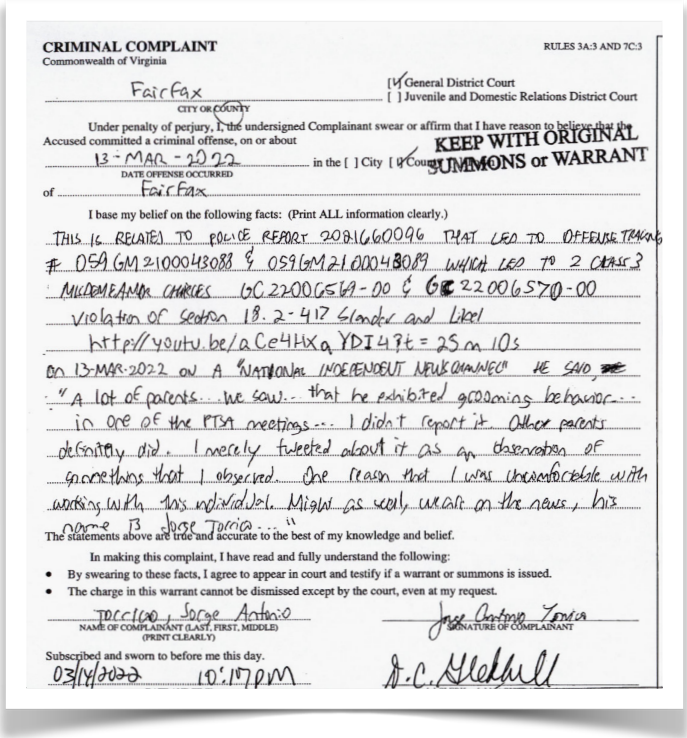
evidenced
to apologize after email on 1/14/21 8:16AM

"propagated the libel" when another man, Prandel Singh, asked Mr. Torrico why it is that he targets minors by asking them to go bicycling.

The Fairfax County Magistrate issued two Class 3 misdemeanor Summons against Harry Jackson based on this complaint, citing Va. Code Section 18.2-417.

On March 14, 2022, Jorge Torrico returned to the Fairfax County Magistrate's Office. This time, Jorge Torrico alleged that he was victimized by a YouTube video in which Harry Jackson apparently stated, "a lot of parents… we saw… that he exhibited grooming behavior… in one of the PTSA meetings… I didn't report it. Other parents definitely did. I merely tweeted about it as an observation of something that I observed. One reason that I was uncomfortable with working with this individual. [Illegible] we are on the news, his name s Jorge Torrico."

In a separate Complaint, Jorge Torrico claimed that these same statements of concern about his "grooming behavior" were posted by Mr. Jackson on Twitter.



CRIMINAL COMPLAINT
Commonwealth of Virginia
RULES 3A:3 AND 7C:3

Fairfax
CITY OR COUNTY
[✓] General District Court
[ ] Juvenile and Domestic Relations District Court

Under penalty of perjury, I, the undersigned Complainant swear or affirm that I have reason to believe that the Accused committed a criminal offense, on or about
13-MAR-2022
DATE OFFENSE OCCURRED
in the [ ] City [✓] County of Fairfax

KEEP WITH ORIGINAL SUMMONS or WARRANT

I base my belief on the following facts: (Print ALL information clearly.)
THIS IS RELATED TO POLICE REPORT 202166O096 THAT LED TO OFFENSE TRACKING # 059GM2100043088 & 059GM2100043089 WHICH LED TO 2 CLASS 3 MISDEMEANOR CHARGES GC22006569-00 & GC22006570-00
Violation of Section 18.2-417 Slander and Libel
https://youtu.be/aCe4HxaYDI4?t=25m10s
ON 13-MAR-2022 ON A "NATIONAL INDEPENDENT NEWS CHANNEL" HE SAID, "A lot of parents… we saw… that he exhibited grooming behavior… in one of the PTSA meetings… I didn't report it. Other parents definitely did. I merely tweeted about it as an observation of something that I observed. One reason that I was uncomfortable with working with this individual. Might as well, we're on the news, his name is Jorge Torrico…"

The statements above are true and accurate to the best of my knowledge and belief.

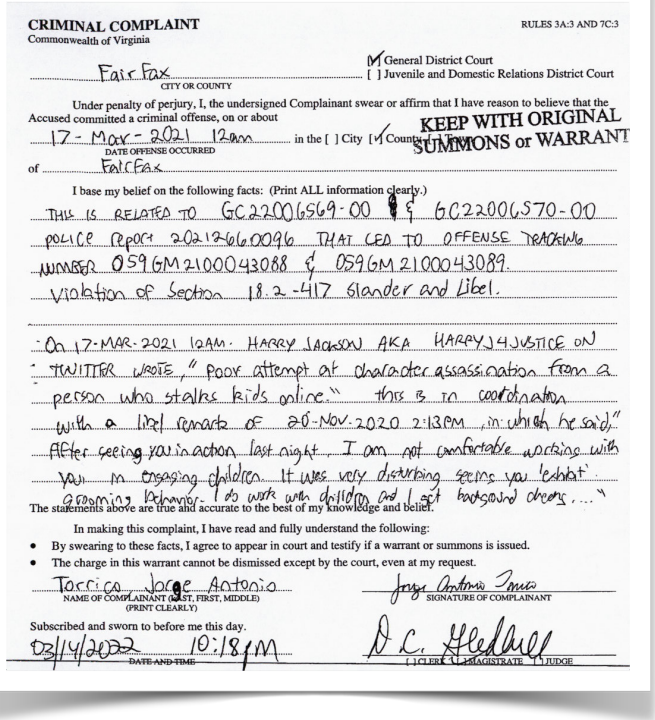
In making this complaint, I have read and fully understand the following:
- By swearing to these facts, I agree to appear in court and testify if a warrant or summons is issued.
- The charge in this warrant cannot be dismissed except by the court, even at my request.

Torrico, Jorge Antonio
NAME OF COMPLAINANT (LAST, FIRST, MIDDLE) (PRINT CLEARLY)

Jorge Antonio Torrico
SIGNATURE OF COMPLAINANT

Subscribed and sworn to before me this day.
03/14/2022 10:17PM
DATE AND TIME

D.C. Hedrick
[ ] CLERK [✓] MAGISTRATE [ ] JUDGE



CRIMINAL COMPLAINT
Commonwealth of Virginia
RULES 3A:3 AND 7C:3

Fairfax
CITY OR COUNTY
[✓] General District Court
[ ] Juvenile and Domestic Relations District Court

Under penalty of perjury, I, the undersigned Complainant swear or affirm that I have reason to believe that the Accused committed a criminal offense, on or about
17-MAR-2021 12AM
DATE OFFENSE OCCURRED
in the [ ] City [✓] County of Fairfax

KEEP WITH ORIGINAL SUMMONS or WARRANT

I base my belief on the following facts: (Print ALL information clearly.)
THIS IS RELATED TO GC22006569-00 & GC22006570-00
POLICE REPORT 202166O096 THAT LED TO OFFENSE TRACKING NUMBER 059GM2100043088 & 059GM2100043089.
Violation of Section 18.2-417 Slander and Libel.

On 17-MAR-2021 10AM. HARRY JACKSON AKA HARRYJ4JUSTICE ON TWITTER WROTE, "POOR attempt at character assassination from a person who stalks kids online." this is in coordination with a libel remarks of 20-NOV-2020 2:13PM, in which he said" After seeing you in action last night. I am not comfortable working with you in engaging children. It was very disturbing seeing you exhibit grooming behavior. I do work with children and I get background checks…"

The statements above are true and accurate to the best of my knowledge and belief.

In making this complaint, I have read and fully understand the following:
- By swearing to these facts, I agree to appear in court and testify if a warrant or summons is issued.
- The charge in this warrant cannot be dismissed except by the court, even at my request.

Torrico, Jorge Antonio
NAME OF COMPLAINANT (LAST, FIRST, MIDDLE) (PRINT CLEARLY)

Jorge Antonio Torrico
SIGNATURE OF COMPLAINANT

Subscribed and sworn to before me this day.
03/14/2022 10:18PM
DATE AND TIME

D.C. Hedrick
[ ] CLERK [✓] MAGISTRATE [ ] JUDGE

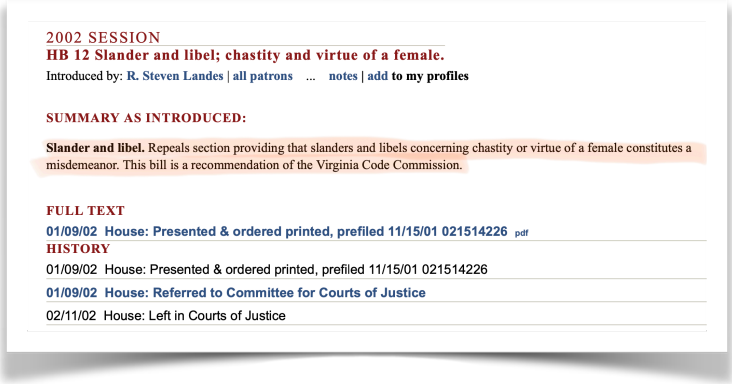
The Fairfax County Magistrate issued two additional Class 3 misdemeanor Summons against Harry Jackson based on these two complaints, again citing Va. Code Section 18.2-417.

The criminal allegations in each of the four Complaints are based on feelings of insult in response to words that are alleged to have been stated outside the Complainant's presence.

II. Statutory Backgrounds

Va. Code Section 18.2-417 was enacted back in 1950 as Va. Code Section 18.1-256, which criminalized the slander and libel of the chastity or virtue of a female. The law remained on the books despite Supreme Court precedent set in the 1970s regarding the criminalization of speech protected by the First Amendment (discussed *infra*).

In 2002, a Bill was introduced in the Virginia House of Representatives attempting to repeal this code section. The summary as introduced described the law as a "section providing that slanders and libels concerning chastity or virtue of a female constitutes a misdemeanor." It was noted that the bill to repeal the code section was recommended by the Virginia Code Commission. The Bill did not make it to a vote.



2002 SESSION

HB 12 Slander and libel; chastity and virtue of a female.

Introduced by: R. Steven Landes | all patrons ... notes | add to my profiles

SUMMARY AS INTRODUCED:

Slander and libel. Repeals section providing that slanders and libels concerning chastity or virtue of a female constitutes a misdemeanor. This bill is a recommendation of the Virginia Code Commission.

FULL TEXT

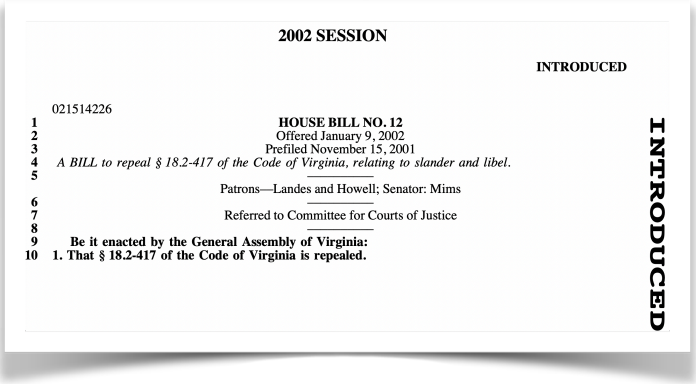
01/09/02 House: Presented & ordered printed, prefiled 11/15/01 021514226 pdf

HISTORY

01/09/02 House: Presented & ordered printed, prefiled 11/15/01 021514226

01/09/02 House: Referred to Committee for Courts of Justice

02/11/02 House: Left in Courts of Justice



2002 SESSION

INTRODUCED

021514226

HOUSE BILL NO. 12

Offered January 9, 2002

Prefiled November 15, 2001

A BILL to repeal § 18.2-417 of the Code of Virginia, relating to slander and libel.

Patrons—Landes and Howell; Senator: Mims

Referred to Committee for Courts of Justice

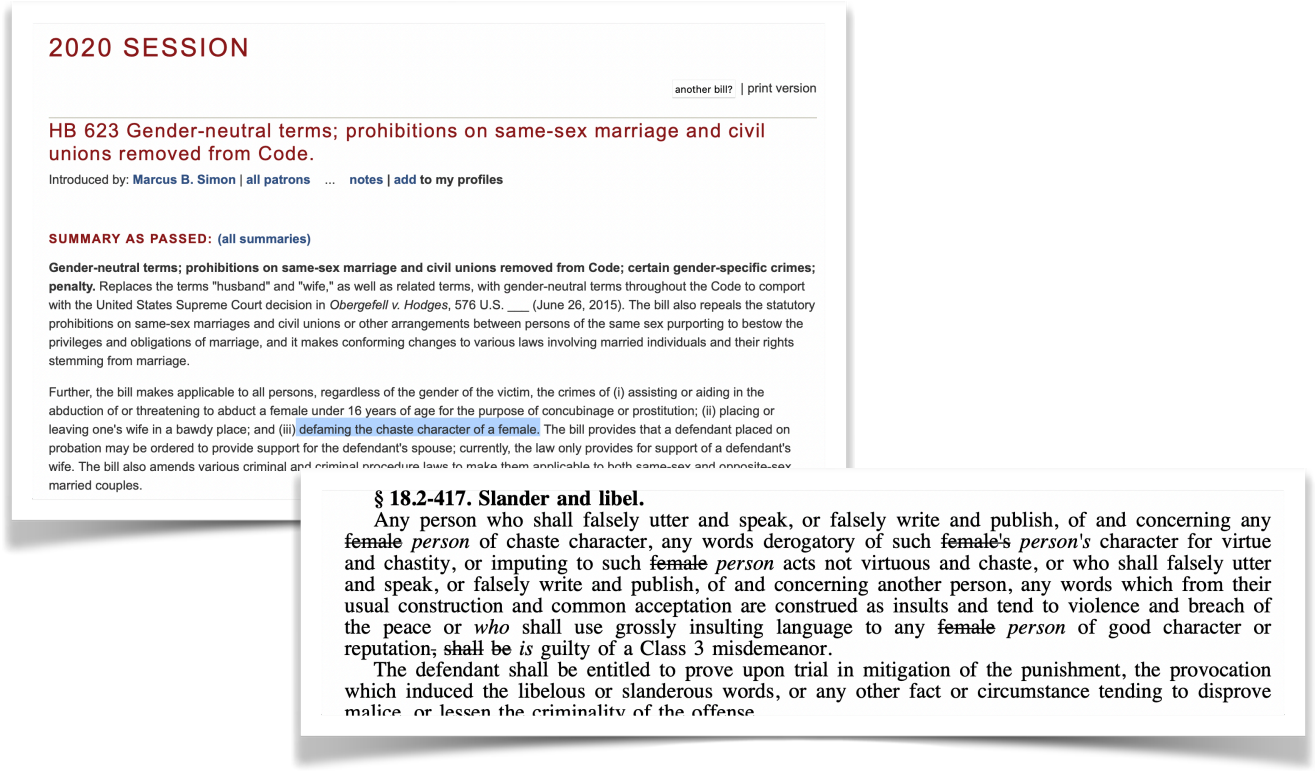
Be it enacted by the General Assembly of Virginia:

1. That § 18.2-417 of the Code of Virginia is repealed.

INTRODUCED

In 2020, the Virginia State Legislature enacted sweeping "gender-neutral terms" reform in the Virginia Code, erasing the word female from the Code of Virginia. The word *female* was

replaced with the word *person*. Va. Code Section 18.2-417 was specifically addressed in the reform and included in the sweeping reform, described in the Bill that sought the change as "defaming the chaste character of a female."



2020 SESSION

another bill? | print version

HB 623 Gender-neutral terms; prohibitions on same-sex marriage and civil unions removed from Code.

Introduced by: Marcus B. Simon | all patrons ... notes | add to my profiles

SUMMARY AS PASSED: (all summaries)

Gender-neutral terms; prohibitions on same-sex marriage and civil unions removed from Code; certain gender-specific crimes; penalty. Replaces the terms "husband" and "wife," as well as related terms, with gender-neutral terms throughout the Code to comport with the United States Supreme Court decision in *Obergefell v. Hodges*, 576 U.S. ___ (June 26, 2015). The bill also repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage, and it makes conforming changes to various laws involving married individuals and their rights stemming from marriage.

Further, the bill makes applicable to all persons, regardless of the gender of the victim, the crimes of (i) assisting or aiding in the abduction of or threatening to abduct a female under 16 years of age for the purpose of concubinage or prostitution; (ii) placing or leaving one's wife in a bawdy place; and (iii) defaming the chaste character of a female. The bill provides that a defendant placed on probation may be ordered to provide support for the defendant's spouse; currently, the law only provides for support of a defendant's wife. The bill also amends various criminal and criminal procedure laws to make them applicable to both same-sex and opposite-sex married couples.

§ 18.2-417. Slander and libel.

Any person who shall falsely utter and speak, or falsely write and publish, of and concerning any ~~female~~ *person* of chaste character, any words derogatory of such ~~female's~~ *person's* character for virtue and chastity, or imputing to such ~~female~~ *person* acts not virtuous and chaste, or who shall falsely utter and speak, or falsely write and publish, of and concerning another person, any words which from their usual construction and common acceptation are construed as insults and tend to violence and breach of the peace or *who* shall use grossly insulting language to any ~~female~~ *person* of good character or reputation~~, shall be~~ *is* guilty of a Class 3 misdemeanor.

The defendant shall be entitled to prove upon trial in mitigation of the punishment, the provocation which induced the libelous or slanderous words, or any other fact or circumstance tending to disprove malice, or lessen the criminality of the offense.

The intent of the original chastity law was clear from the language used by the legislature to describe this law — this code section criminalized the libel and slander related to chastity, to a female's virginity. This code section was never intended to cover conduct other than defamation of chastity. *To address words provoking a breach of the peace, the legislature enacted Va. Code section 18.2-416 back in 1950 (originally enacted as Va. Code 18.1-255), at the same time as enacting the chastity code section.*

After the erasure of special protections for females from the Code of Virginia, code section 18.2-417 became facially confusing. Neither the Fairfax County Magistrate nor the

complainant appeared to realize that Harry Jackson was being Summoned under an old code section enacted to vigorously protect a female's chaste reputation.

The magistrate dove into the center of the code section and picked phrasing outside of the context of chastity to fit the narrative presented by the complainant, "falsely utter and speak, falsely write and publish… any words which from their usual construction and common acceptation are construed as insults and tend to violence and breach of the peace…"

The Summons' issued for Mr. Jackson, therefore, read as the criminalization of protected writings or statements, First Amendment speech — ignoring the face-to-face fighting words requirement of constitutionally-permissible criminalization. Of note, Va Code Section 18.2-416, the actual code section intended to penalize conduct related to speech, has been narrowly interpreted to comport with constitutional requirements laid out by the Supreme Court in the 1970s.

III. The First Amendment, Fourteenth Amendment, and Constitutionally Protected Free Speech

In 1971, the Supreme Court issued a most poetic opinion in *Cohen v. California*, deciding that a state statute infringed on freedom of expression guaranteed by the First and Fourteenth Amendments of the United States Constitution. *Cohen v. California*, 403 U.S. 15 (1971) ("one man's vulgarity is another's lyric"). The Court distinguished between "fighting words" and free speech, describing fighting words as "inherently likely to provoke a violent reaction." *Cohen*, 403 U.S. at 20 (citing *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942)). As long "as the

means are peaceful, the communication need not meet standards of acceptability." *Id*. at 25; *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971).

The following year, the Supreme Court decided *Gooding v. Wilson,* 405 U.S. 518 (1972). The Supreme Court addressed facially invalid state laws that criminalize free speech. A "statute must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression." *Gooding,* 405 U.S. at 522. As such, legislatures may not criminalize on a *per se* basis the use of vulgar or offensive words. In order to pass constitutional muster, words "by their very utterance" must "inflict injury or tend to incite an immediate breach of the peace." *Id.* (quoting *Chaplinsky*, 315 U.S. at 571-72); *Lewis v. City of New Orleans,* 415 U.S. 130, 132 (1974). The parties, therefore, must be face-to-face when the fighting words are uttered. *Gooding,* 405 U.S. at 523.

Following these Supreme Court decisions, the Virginia Supreme Court decided *Mercer v. Winston*. 199 S.E.2d 724 (1973). Interpreting the Virginia code section currently codified as 18.2-416, the **Virginia Supreme Court limited the constitutionally-permissible application of this law to "personal, face-to-face, abusive and insulting language likely to provoke a violent reaction and retaliation."** *Mercer,* 199 S.E.2d at 727. The court specifically excluded "mere opprobrious words or abusive language." *Id*. In 1992, the Virginia Court of Appeals clarified that "when the parties are not 'face-to-face,' it is inconsistent with *Mercer* and, therefore, unconstitutional." *Hershfield v. Commonwealth*, 417 S.E.2d 876 (1992) (ruling that a fence and distance between two individuals precluded the ability for the complainant to have an immediate, violent reaction).

While Va. Code Section 18.2-417 has never been litigated, based on the Court's very narrow interpretation of constitutionally-permissible criminal restrictions on the First Amendment in the sister code section, Va. Code Section 18.2-416, the conduct proscribed under Va. Code Section 18.2-417 would be deemed unconstitutional because the law does not require the speech to be personal or face-to-face, it expands to writings and statements made outside the complainant's presence. And, the words that violate the code section just need to be "construed as insults," as opposed to being so abusive and insulting so as to provoke a violent reaction and retaliation, as is required by *Mercer*. Va. Code Section 18.2-417 is thus facially invalid.

Va. Code Section 18.2-417, as written and as charged, criminalizes nonviolent freedom of expression. The law unconstitutionally gives power to individuals who *feel insulted* the ability to seek redress in criminal court. In *Cohen*, the Supreme Court specifically warned about laws like this, "effectively empower[ing] a majority to silence dissidents simply as a matter of personal predilections." *Cohen*, 403 U.S. at 21. "Of course, the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense." *Id.* (explaining, "we are often `captives' outside the sanctuary of the home and subject to objectionable speech"). After all, "[o]ne of the prerogatives of American citizenship is the right to criticize public men and measures—and that means not only informed and responsible criticism but the freedom to speak foolishly and without moderation." *Baumgartner v. United States*, 322 U. S. 665, 673-674 (1944).

Statements made on Twitter, YouTube, or to a third party — while they may be unpleasant to a complainant, they are permitted under the Constitution. This court has no power to criminally penalize the defendant for the complainant's feelings of offense. See *Cohen*, 403

U.S. at 25 ("governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual"). Prosecution under Va. Code 18.2-417 runs "a substantial risk of suppressing ideas," specifically risking "the censorship of particular words as a convenient guise for banning the expression of unpopular views." *Cohen*, 403 U.S. at 26. Instead, courts should uphold and promote the freedom of speech and expression. "The constitutional right of free expression is powerful medicine in a society as diverse and populous as ours. It is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us." *Cohen*, 403 U.S. at 24.

Furthermore, as the words alleged in this case were stated through the distance of digital media, not in person while face-to-face, it would be impossible for the complainant to have an immediate, violent reaction, as is required by *Mercer*. See *Hershfield v. Commonwealth*, 417 S.E.2d 876 (1992) (ruling that a fence and distance between two individuals precluded the ability for the complainant to have an immediate, violent reaction).

IV. Even False Statements Protected

While not alleged in any Complaint, each of the four Summons issued to Defendant include a reference to "falsely" making a statement. False statements, however, are nonetheless protected under the First Amendment. *United States v. Alvarez*, 132 S.Ct. 2537 (2012) ("the threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements, thereby 'chilling' a kind of speech that lies at the First Amendment's heart"). In

order for a false statement to fall outside First Amendment protections for a criminal prosecution, "the statement must be a knowing and reckless falsehood." *Id*. at 2539.

Va. Code 18.2-417 does not require that a false statement be made *knowingly and recklessly*, therefore falling short of the *mens rea* requirement for constitutionally-sound criminalization of free speech. As written, Va. Code 18.2-417 is a strict-liability offense that unconstitutionally places the burden on the defendant to prove his innocence. The requirement for a defendant to prove that he should be entitled to exercise his protected, constitutional right to speech renders the statute facially invalid. Freedom of expression and freedom of speech are presumed by both the Constitution of the United States and Article I, Section 12 of the Constitution of Virginia, not the converse.

The allegations in the Complaint appear on their face as statements of opinion, statements of concern about observed conduct. Opinions are squarely protected by the First Amendment. *Cantwell v. Connecticut*, 310 U.S. 296 (1940) ("The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged"); *Williams v. Garraghty*, 249 Va. 224, 233 (1995). Vulgar, offensive, disgraceful, and opprobrious speech is constitutionally protected. *Cohen v. California*, 403 U. S. 15, 18-22 (1971); *Terminiello v. Chicago*, 337 U. S. 1, 4-5 (1949); *Gooding v. Wilson,* 405 U.S. 518, 520 (1972); *Lewis v. New Orleans*, 415 U.S. 130, 134 (1974). As are "harsh," "hyperbolic," and "extremely derogatory" opinions — these are "absolutely privileged" under the First Amendment. *McCafferty v. Newsweek Media Grp., Ltd*., 955 F.3d 352, 35-58 (3d Cir. 2020). Calling someone names, or even saying they are things like "racis[t]" or "creepy," is absolutely protected under our constitution, even from civil liability. *Id.*; see also

Rapaport v. Barstool Sports, Inc., 18-cv-8783 (NRB), 2021 WL 1178240, at *19 (S.D.N.Y. Mar. 29, 2021) (a statement that person was a "creepy herpes riddled failure" was protected by First Amendment).

V. Void for Vagueness and Overbreadth

The legislature's gender language amendments have rendered Va. Code Section 18.2-417 void for vagueness under the due process requirements of the Fifth and Fourteenth Amendments. What used to be known as a law pertaining to the defamation of a woman's chastity now appears to be broadly interpretable.

A statute is void for vagueness if its prohibitions are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104 (1972). Laws must "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Id*. at 108. Furthermore, the law must be written so as to prevent arbitrary and discriminatory enforcement. *Id*.

By replacing the word *female* with the word *person*, the code section intended to protect the chaste character of a *female* is rendered unconstitutionally ambiguous. Is Va. Code Section 18.2-417 a chastity law, which specifically deals with *female* virginity and virtuous character? Can a *person* who is not a female be of chaste character under the law? Is the law even broader than that and includes the criminalization of feelings of insult by any member of society? Can a male who feels insulted by another male pursue a criminal prosecution under this statute? The confusing gender-neutral language in a statute designated to protect a physical characteristic of females inevitably leads to arbitrary and discriminatory enforcement.

And, since the prohibited activity under the statute affects constitutionally-protected free speech, as discussed *supra*, the law must be struck when it is overbroad. Where a statute affects First Amendment freedoms, it operates to inhibit the exercise of those freedoms, and overbroad analysis becomes relevant in addition to vagueness analysis. *Grayned,* 408 U.S. at 109, 114-116. A criminal statute is overbroad in violation of the First and Fourteenth Amendments, and therefore facially invalid when it is "not limited to words which 'by their very utterance inflict injury or tend to incite an immediate breach of the peace." *Lewis v. New Orleans,* 415 U.S. 130, 133 (1974) (holding a statute as overbroad in violation of the First and Fourteenth Amendments, and therefore facially invalid, when it "plainly has a broader sweep than the constitutional definition of 'fighting words.'").

The *Lewis* opinion outlined the overbreadth analysis as a review of state law to determine whether the statute was limited to prohibiting language that by its "very utterance" would "inflict injury or tend to incite an immediate breach of the peace." 415 U.S. at 133. If the statute "is susceptible of application to protected speech, the section is constitutionally overbroad and therefore is facially invalid." *Id*. at 134.

As discussed in Section III *supra*, the conduct covered by Va. Code Section 18.2-417 includes constitutionally-protected activity and is therefore overbroad under the *Lewis* analysis.

VI. Conclusion

The charges against Harry Jackson must be dismissed.

Va. Code Section 18.2-417 is constitutionally invalid on its face, void for vagueness, and overbroad.

Furthermore, prosecution under Va. Code Section 18.2-417, for words spoken or written, not made personally face-to-face, words incapable of producing an immediate violent reaction due to the nature of the distance between the parties — would be unconstitutional under First Amendment analysis.

Date: March 31, 2022

Respectfully submitted,
By Counsel:

_____

Marina Medvin, Esq.
Counsel for Defendant
MEDVIN LAW PLC
916 Prince Street
Alexandria, Virginia 22314
Tel: 888.886.4127
Email: contact@medvinlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2022, a true and accurate copy of the foregoing pleading was hand-delivered to the Commonwealth's Attorney's Office.

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_____

Marina Medvin, Esq.