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June 12, 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:

As you are aware, 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 two separate occasions—March 25, 2026, and May 14, 2026—you were placed on notice that your false and malicious statements had significantly harmed the reputation of Constantino.

Throughout the course of your campaign you have continued to publish false, malicious, and defamatory statements about Constantino, and you have refused to delete prior statements that have wrongly denigrated his reputation despite being put on notice that your statements lacked any factual support and indeed were blatantly false. Your decision to disregard Constantino’s prior attempts to resolve these issues supports the contention that your conduct is deliberate, intentional, and calculated. As a result, 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.

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

On June 2, 2026, you hosted a press conference (the “Press Conference”)—seemingly for the sole purpose of disparaging Constantino’s character and reputation—wherein you accused Constantino of the following:



- “weaponizing the memory of [your] son;”¹ and
- ***working with a number of people accused of crimes*** that range from stealing \$3,000.00 from a youth baseball league to ***murder, petition fraud and inappropriate contact with a child;***²

Notably, during the Press Conference, you placed print-outs of screenshots from Facebook where outside parties accused you of using the passing of your son as a political prop and proceeded to refer to Constantino as “despicable,” clearly intending to attribute those comments to Constantino and disparage his character. These false, malicious, and defamatory statements go far beyond mere insults directed at Constantino.

Given that each of your statements is demonstrably false—and that Constantino has repeatedly notified you of their falsity—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. 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. 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. Vellella*, 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

¹ A true and correct copy of the article titled *Smullen blasts Constantino for behavior in NY-21* is attached hereto as Exhibit “A.” (https://www.nny360.com/top_stories/smullen-blasts-constantino-for-behavior-in-ny-21/article_8c7018b5-9f6f-593d-8dfc-4a4d9189be89.html).

² *Id.*



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 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.

B. 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 **June 17, 2026, at 5:00 p.m. EST**, Constantino will 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

Exhibit A

https://www.nny360.com/top_stories/smullen-blasts-constantino-for-behavior-in-ny-21/article_8c7018b5-9f6f-593d-8dfc-4a4d9189be89.html

Smullen blasts Constantino for behavior in NY-21

By ALEX GAULT, agault@wdt.net

Jun 2, 2026


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Assemblyman Robert J. Smullen, R-Meco, prepares for a press conference sharing new criticisms of Anthony Constantino, his opponent for Congress in NY-21. Alex Gault/Johnson Newspapers

ALBANY — Assemblyman Robert J. Smullen, Constantino’s hand after a recent television c NY-21. On Tuesday, he explained why, and ga him.

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From a hotel conference room in downtown Albany, surrounded by large print-outs of things Constantino and his allies have said about and to him, as well as news clippings and selections from a lawsuit Constantino was involved in over 12 years ago, Smullen said Constantino had stepped over the line for discussing his son’s death.

Next to him were print-outs of screenshots his campaign had taken from Facebook, where associates of Constantino wrote that Smullen was using his 14-year-old son’s death in a vehicle accident in 2024 as a political prop.

Constantino was not the direct author of the posts Smullen was mentioning, and in a video posted to social media on Tuesday night after an initial version of this article was posted online, Constantino responded.

He pointed out that he was not the author of the posts that Smullen was referencing, and said this claim from the Assemblyman was a lie.

“This is totally false, I’ve said nothing about his son,” Constantino said. “Trust me, I lost my father when I was only seven. I know the bond between father and son.”

Constantino said he has never spoken about the death of Smullen’s child, and would never, and said he was concerned that Smullen would say he had.

“I’ve said nothing about this man’s son, I wis even know why he would say this. I don’t kno character that he would lie so egregiously to nature came out of my mouth, nor did I type happen.”

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Immediately to Smullen’s right at Tuesday morning’s press conference, a print-out of a text message Constantino sent to him on May 20 was on display.

“You are a truly evil person that I must protect America from,” Constantino wrote to Smullen in a text sent at exactly 9 p.m. on May 20. “Your pathological lying is disturbing and the way you conduct your self is devoid of any dignity.”

Constantino also threatened a lawsuit before doubling down on his rhetoric.

“You are evil and I will protect my country from you,” he concluded.

At the time, Smullen filed a police report and requested from the state police that Constantino be barred from continuing to contact him, as reported by the Albany Times Union.

On Tuesday in Albany, Smullen said it was all a clear indication of Constantino’s character, and part of the reason he refused to shake his hand last Friday.

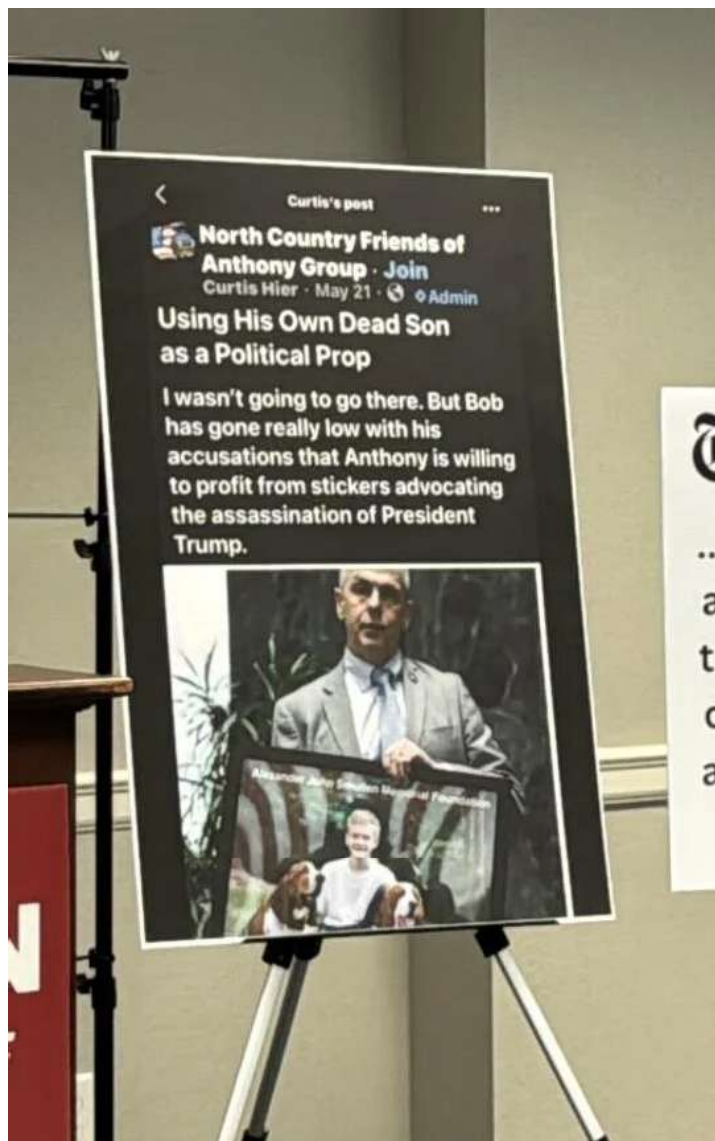
“I will never, not for one second, ever shake the hand of a man who would say such things about my son,” he said. “Weaponizing the memory of my son is despicable.”

Later on, he said that Constantino calling him evil was another reason not to interact with the man.

“Would you shake hands with someone who l


The rhetorical battle in the Republican primary more and more personal, vindictive and aggressive

had been fighting to be the GOP pick for a special election that never happened last year, has been



A screenshot of a post in a Constantino-aligned FaceBook page attacking Assemblyman Robert Smullen for discussing the death of his son. Alex Gault/Johnson Newspapers

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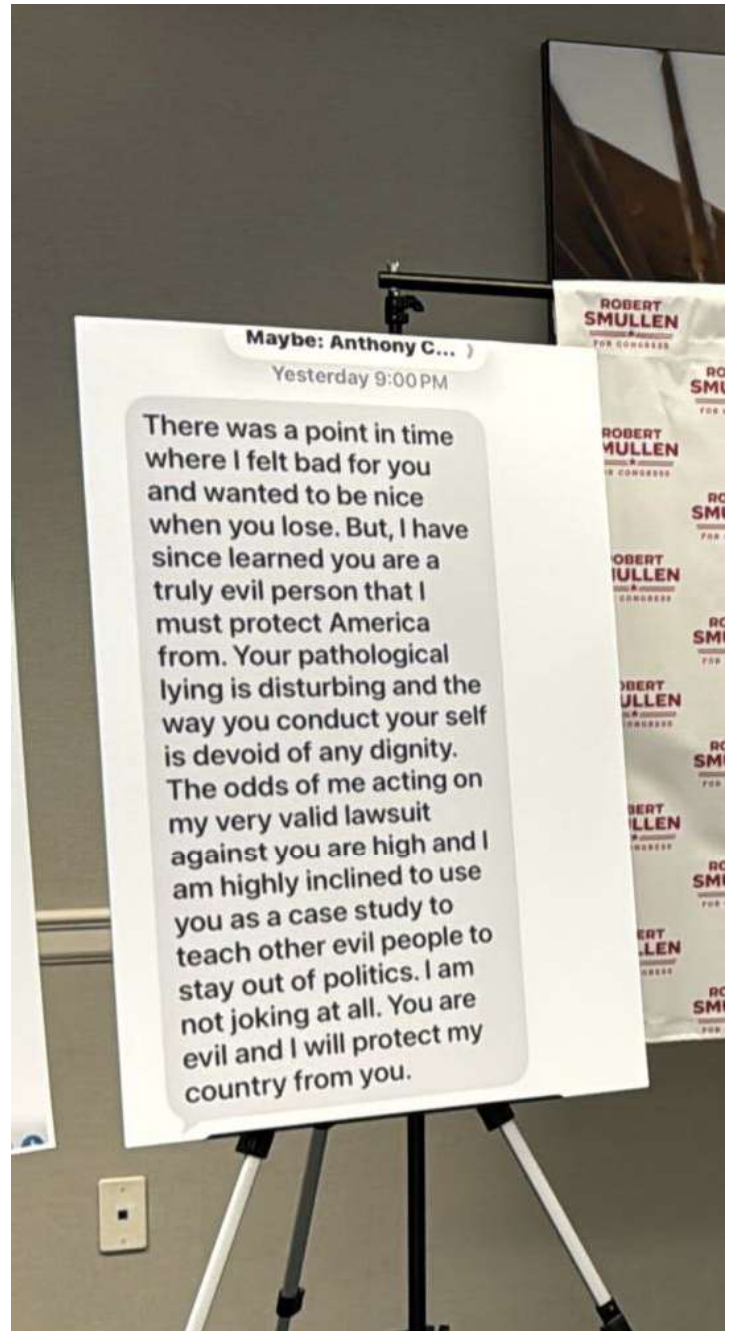
fervently trying to claim the party's nod for almost a year and a half now.

In the special election, he insisted he was the best pick and threatened to run an independent candidacy if local Republican leaders didn't nominate him for the race. When the special election was called off and U.S. Rep. Elise M. Stefanik, R-Schuylerville, instead opted not to run for reelection to Congress, Constantino immediately jumped into the race.

Since Smullen announced his candidacy, Constantino has been increasingly critical; he's come up with rude nicknames, combed through Smullen's previous public life for mistakes, like his 2018 felony arrest, and now is asserting that Smullen has gratuitously lied about him, bringing on an attorney who worked on President Donald J. Trump's personal suits against major media companies to pursue legal action against him.

For his part, Smullen has sought to dig up and publicize much of Constantino's past mistakes. In February, in the same hotel conference room where he held his press conference this week, Smullen unveiled a website dedicated to all the research his campaign had dug up on Constantino's past.


He has pointed out that Constantino was previously a registered Democrat and on Tuesday consistently referred to Constantino as a "life



A printed-out screenshot of a text that Anthony T. Constantino sent to Robert J. Smullen, his opponent in the race for the Republican nomination in NY-21, at a press conference held by Smullen in downtown Albany on Tuesday morning. Alex Gault/Johnson Newspapers

company has printed some stickers that don't showed off another one that was critical of th

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Smullen has pointed out how Constantino’s campaign has worked with and works with a number of people accused of crimes that range from stealing \$3,000 from a youth baseball league to murder, petition fraud and inappropriate contact with a child. On Tuesday, Smullen had a printed quotation from a recent New York Times profile of Constantino that pointed out those associations.

And Smullen has pointed out how Constantino tends to get personally involved with voter outreach efforts for his campaign by calling and getting verbally aggressive with local voters. The Smullen campaign has shared a recorded voicemail message from Constantino to an unidentified voter in the district; in the call, Constantino appears to have taken issue with the voter sharing a post from Smullen’s campaign critical of Constantino’s company.

“I think your behavior needs to be corrected immediately,” Constantino said in the voicemail to a voter. “Please call me and let me know if you’re going to fix your behavior, and if not, let me know who else thinks similarly to the way you do, because I don’t appreciate Republicans, fake Republicans smearing local businesses like my own.”

He concluded by saying the voter would have “big problems” with him if they did not stop criticizing his business.


Lately, Smullen has taken the position that everything Constantino has done, the behavior he’s demonstrated in interactions with voters and the way he reacts to criticism all indicate that Constantino is unfit for the office of a congressman.

“If this is how lifelong Democrat Anthony Constantino runs his campaign, if this is how lifelong Democrat Anthony Constantino runs his business, what happens if he becomes a member of Congress?” Smullen said.

Despite all the criticisms that Smullen has of Constantino, and the fact that most of the state and local Republicans have endorsed Smullen if they’re endorsing at all, Constantino still has a significant amount of money and the endorsement of Trump. He has said that he is the best candidate based off his close allegiance to the president, and after his campaign adviser and well-known political fixer Roger J. Stone paid Trump a personal visit in late April, the president chose to endorse Constantino.

Since then, Constantino has released a new s
campaigned at sports events across NY-21 an
“Taxpayers Rights” line in the November elec
most recently has repeatedly criticized him fo

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“His refusal to shake my hand says it all,” Constantino said in his first statement on the matter shortly after the debate. “I knew I won the debate but still wanted to be respectful. If he can’t shake my hand, he’ll never be able to work with people in Washington or with foreign leaders.”


He then referenced the lack of a handshake in eight more posts on X, formerly Twitter, before the end of the next day.

The Watertown Daily Times did not directly reach out to the Constantino campaign for comment on this article; Constantino has threatened to sue the newspaper and this reporter specifically if any attempts to contact his campaign or his staff are made.

Alex Gault

Learn more about your privacy options

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