THE STATE OF NEW HAMPSHIRE
CIRCUIT COURT

COUNTY OF CHESHIRE DISTRICT DIVISION AT KEENE
8TH CIRCUIT

Docket No. UNKNOWN
STATE OF NEW HAMPSHIRE

V.

TAMI STAINFIELD

REFPLY TO MOTION TO DISMISS

NOW COMES defendant, Tami Stainfield response to counsel Gleason Law Office, PLLC, relating to the STATES Feb 2013 objection to *Motion to Dismiss*. Second request to dismiss the charges against Stainfield for the State Prosecutor was in error when arguing and interpreting State and Federal powers relating to First Amendment and Fourteenth Amendment. Defendant argues for the charges to be dismissed based on premise that the STATE's has not provided any evidence that Stainfield's **intent** was to intimidate or to harm a person. Furthermore,

1. Criminal Threatening Intimidation and Disorderly Conduct

   The State has provided a witness statement that said Stainfield made a threat to kill; however the same statement and others statements affirmed the incident with Stainfield was relating to a Campaign topic of Robotics, where the *SCIENCE* has the ability to injury and harm others which is of Public Interest and Concern.

   The State of New Hampshire is in error when the STATE argued: "[R]egarding the criminal threatening complaint, a verbal threat to kill someone is not political speech, nor protected by the State or Federal constitutional right of free speech. U.S. v Williams, 690 F. 3d 1056, 1061-62 (8th Cir. 2012) ("true threats" are not protected by the First Amendment and the threat is determined from the point of view of a reasonable recipient); see also Virginia v. Black, 538 U.S. 343, 358-59 (2003) (prohibition on "true threats" protects individuals from the fear of violence, from the disruption that fear engenders and from the possibility that the threatened violence will occurred): compare U.S. v Watts, 394 U.S. 705, 708 (1969) ("political hyperbole is not a true threat)." Motion to Dismiss (Feb 2013)

   The United States Supreme Court has in numerous decisions stated threatening speech is protected by the First and Fourteenth Amendments as can inexact, abusive, vehement, caustic speech, in order to protect public debate and dissent on unfavorable topics. In Watts v U.S. , 394 U.S. (1969)

the State of New Hampshire statements were in error for the petitioner's remarks **were a verbal threat** proven by the lower Courts conviction of a State statute, he stated

> I don't want to shoot black people because I don't consider them my enemy, and if they put a rifle in my hand it is the people that put the rifle in my hand, as symbolized by the president, who are my real enemy." Additionally he stated "They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights if L.B.J.

In 1966 Watts was convicted of the 1917 statute which prohibits any person from "knowingly and willfully… [making] any threat to take the life of or to inflict bodily harm upon the President of the United States…" The petitioner **remarks were determined a threat to the statute, however the Supreme Court reversed** and remanded the lower court decision in 1969. The Court held the incident and statements "to be crude political hyperbole which, in light of its context and conditional nature, **did not constitute a knowing and willful threat** against the President within the coverage of 18 U.S.C. & 871 (a)." Furthermore "the statute initially requires the Government to prove a true "threat." We do not believe that the kind of political hyperbole indulged in by petitioners fits within that statutory term. For we interpret the language Congress chose",

> Against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

Supreme Court went on to state the only offense was a "a kind of very crude offensive method of stating a political opposition to the President." *New York Times Co. v. Sullivan,* 376 U. S. 254, 376 U. S. 270 (1964). The language of the political arena, like the language used in labor disputes, *see Linn v. United Plant Guard Workers of America,* 383 U. S. 53, 383 U. S. 58 (1966), is often vituperative, abusive, and inexact. We agree with petitioner that his only offense here was "a kind of very crude offensive method of stating a political opposition to the President." Taken in context, and regarding the expressly conditional nature of the statement and the reaction of the listeners, we do not see how it could be interpreted otherwise." Watts v U.S. , 394 U.S. (1969)

Therefore the **State of New Hampshire is in error of it interpretation of threats** in relationship to Watts v U.S. , 394 U.S. (1969); **for the Supreme Court reversed the conviction of the lower court and concluded the threats of violence as "hyperbole" for the intent (knowing) or willingness was not proven by the State, however the statute remained Constitutional**. Furthermore, the State of New Hampshire statement that ("true threats" are not protected by the First Amendment and the **threat is determined from the point of view** of a reasonable recipient)" is also false.

The 'point of view' in Watts v U.S. (1969) was ***intent and willingness***; in Virginia v Black et al. (2003) ***States burden to prove intent was to intimidate***; in Brandenburg v. Ohio (1969) was ***inciting*** or

producing imminent lawless action; lastly R.A.V v City of St. Paul (1992), *Arkansas Writer's Project, Inc.* v. *Ragland,* 481 U.S. 221, 230 (1987); *Regan* v. *Time, Inc.,* 468 U.S. 641, 648-649 (1984); *Metromedia, Inc.* v. *San Diego,* 453 U.S. 490, 514-515 (1981) (plurality); *Carey* v. *Brown*, 447 U.S. 455, 466-468 (1980) ***State cannot regulate on hostility or favoritism, and disfavored subjects***. In none of these decisions of the Supreme Court did the view of a reasonable recipient determine the point of view of a threat.

In Virginia v Black the United States Supreme Court found that the Virginia's statue against cross burning **is unconstitutional**, on First Amendment grounds however cross burning done with an attempt to intimidate can be limited because such expression has a correlation to violence.

In Virginia v Black et al. the Court argued "We conclude that while a State, consistent with the First Amendment, may ban cross burning **carried out with the intent to intimidate**, the provision in the Virginia statute **treating any cross burning as prima facie evidence of intent to intimidate** renders the statue unconstitutional in its current form" Virginia v Black et al. 538 U.S. 1 (2003) "It may be true that a cross burning, even at a political rally, arouses a sense of anger or hatred among the vast majority of citizens who see a burning cross. But this sense of anger or hatred is not sufficient to ban all cross burnings. 538 U.S. 21 (2003).

"The First Amendment permits a State to ban "true threats," e.g., Watts v. United States, 394 U.S. 705, 708 (per curiam), which encompasses those statement where the speaker means to **communicate a serious expression of an intent to commit and act of unlawful violence** to a particular individual or group of individuals, [Watts]see e.g., id., at 708. The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and the disruption that fear engenders, as we all as from the possibility that the threatened violence will occur. R.A.V., supra, at 388. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of person **with the intent** of placing the victim in fear of bodily harm or death." 538 U.S. 14 (2003).

The Supreme Court decision that a State can only have a statue that bans crossing burning if the State includes in the statute that the **act was done with an intent to intimidate** – the law then leaves doubt and the burden remains on the State to prove the defendant "intent was to intimidate" not political, religious, etc. which is opposite of,

> "The provision [prima facie] permits a jury to convict in every cross burning case in which defendants exercise their constitutional right not to put on a defense. And even where a defendant like Black presents a defense, the provision makes it more likely that the jury will find an intent to intimidate regardless of the particular facts of the case. **It permits the Commonwealth to arrest, prosecute, and convict a person based solely on the fact of cross burning itself**. As so interpreted, it ***would create an unacceptable risk of the suppression of ideas***." 538 U.S. Syllabus 3 (2003) E.g., Secretary of State of Md. v. Joseph H. Munson Co., 467 U.S. 947, 965, n. 13. Furthermore "The act of burning a cross may mean that a person is

> **engaging in constitutionally proscribable intimidation**, or it may mean only that the person is engaged in core political speech." 538 U.S. Syllabus 4 (2003).
>
> Indeed, occasionally a person who burns a cross does not intend to express either a statement of ideology or intimidation. Cross burnings have appeared in movies such as Mississippi Burning, and in plays such as the state adaptation of Sir Walter Scott's The Lady of the Lake. The prima facie provision makes no effort to distinguish among these different types of cross burnings. It does not distinguish between a cross burning done with the purpose of creating anger or resentment and a cross burning done with the purpose of threatening or intimidating a victim" 538 U.S. 20 (2003)

In addition to the above the United States Supreme Court stated "State may regulate only that obscenity which is the most obscene due to its prurient content, so too may a State choose to prohibit only those forms of intimidation that are most likely to inspire fear of bodily harm." 538 U.S 17 (2003)

This consistent interpretation of the law can also be found in the following opinion of the Supreme Court Justices "the constitutional guarantees of free speech and free press do not permit State to forbid or proscribe advocacy of the use of force or of law violation **except** where such advocacy is direct to inciting or producing **imminent lawless action** and is likely to incite or produce such action" Brandenburg v. Ohio, 395 U.S. 444, 447 (1969).

In the case of Stainfield there was no imminent lawless action or intent to intimidate and the State has proved no evidence to counter such conclusions. Furthermore **Stainfield** Campaign website and written policies on robotics and science of the body and the five statements produced by the State confirm the content of Stainfield speech was robotics and support the incident was political content and of public interest, issues and concern.

To address the topic of offensiveness of the words; the Supreme Court in Cohen v California 403 U.S. 15 (1971) Appellant Paul Robert Cohen was convicted of Californian Penal Code &415 which prohibits "maliciously and willfully disturb[ing] the peace in quiet of any neighborhood or person…by…offensive conduct…"

> Cohen was arrested for wearing a jacket bearing the words "fuck the draft" in the corridor of the Los Angles Courthouse.

In affirming the conviction, the Court of Appeal held that "offensive conduct" means "behavior which has a tendency to **provoke others to acts of violence or to in turn disturb the peace**," The Supreme Court reversed the States conviction, stating the "State certainly lacks power to punish Cohen for the underlying content of the message the inscription conveyed. At least so long as there is ***no showing of an intent to incite disobedience*** to or disruption of the draft, Cohen could not, consistently with the First and Fourteenth Amendments, be punished for asserting the evident position on the inutility or immorality of the draft his jacket reflect. Yates v. United States, 354 U.S. 298 (1957). In addition the Supreme Court argued "No individual actually or likely to be present

could reasonably have regarded the words on appellant's jacket as a direct **personal insult**. Nor do we have here an instance of the exercise of the State's police power to prevent a speaker from **intentionally provoking a given group to hostile reaction**. Cf. Feiner v New York, 340 U.S. 315 (1951); Termniello v. Chicago, 337 U.S. 1 (1949).

The United States Supreme Court argued against the lower courts claim that "Cohen's distasteful mode of **expression was thrust upon unwilling or unsuspecting viewers**, and that the State might therefore legitimately act as it did in order to protect the sensitive from otherwise unavoidable exposure to appellants crude form of protest. Of course, the mere presumed presence of unwitting listeners does not serve automatically to justify curtailing all speech capable of giving offense. See, e.g., Organization for a Better Austin v Keefe, 402 U.S. 415 (1971). The court argued,

> The ability of government, consonant with the Constitution, to shut off discourse solely to protect others from hearing it is, in others words, **dependent upon showing** that **substantial privacy interest are being invaded in an essentially intolerable manner**. Any broader view of this authority ***would effectively empower a majority to silence dissidents simply as a matter of personal predilections."*** Cohen v California 403 U.S. 15 (1971) And of note the Court stated "Those in the Los Angeles courthouse could effectively avoid further bombardment of their sensibilities simply by averting their eyes".

Indeed, as Mr. Justice Frankfurter has said in Baumgartner v. United States, 322 U.S. 665, 673-674 (1944)

> [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.

In Cohen the Supreme Court stated "…***the State may not***, consistently with the First and Fourteenth Amendments, make the simple public display here involved of this single four-letter expletive a criminal offense" Cohen v California 403 U.S. 15 (1971)

Lastly the United States Supreme Court as recent as Snyder v Phelps et al (2011) has reaffirmed "As a general matter, we have indicated that in **public debate our own citizens must tolerate insulting, and even outrageous, speech in order to provide adequate breathing space to the freedoms protected by the First Amendment.**" *Boos* v. *Barry*, 485 U. S., at 322 In the case of Snyder v Phelps the picketers peacefully displayed their signs stating, e.g., "Thank God for Dead Soldiers," "Fags Doom Nations," "America is Doomed," "Priest Rape Boys," and "You're Going to Hell" – for about 30 minutes before the funeral began" furthermore the petitioner only saw the signs later during a night time news broadcast. Snyder v Phelps et al, 562 (2011). The Supreme Court held "[S]peech on **public issues** occupies the "highest rung of the hierarchy of First Amendment values" and is entitled to special protection: Connick v Myers 461 U.S. 138, 145. Court affirmed "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and-as it did here-inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have

chosen a different course-to protect even hurtful speech on public issues to ensure that we do not stifle public debate." Snyder v Phelps et al 562, 15(2011).

In conclusion, there is no evidence showing that anyone who saw **Stainfield** was, in fact, violently aroused or that Stainfield intent was to create such a result or outcome. There was no violence or property damage which occurred and State has chosen to regulate one person's speech in favor of others. In the case of Stainfield we continue to question the States favoritism for the State's witness statements over Stainfield equal right to protection and speech. For the State evidence demonstrates that the State has permitted "personally abusive epithets" directed toward Stainfield, therefor regulating one person speech over others. The States concern in the manner in which Stainfield speaks has no meaning, furthermore the "reasonable time, place, or manner restrictio[n] have no merit for the incident was on the sidewalk; length of engagement 2-4 minutes; and there was no disorderly conduct for Stainfield expressed her political views on robotics as others engaged in "who cares" and "personal epithets" directed at Stainfield.

The defendant requests again that both charges are dismissed.

> If there is a bedrock principle underlying the Frist Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." Snyder v Phelps et al 562, 12 (2011).

Date: _____

Signed: _____

Print Name: _____

Notary

Date: _____

Signed: _____

Print Name: _____