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## Newsroom: Horwitz on Cyberstalking Decision

Roger Williams University School of Law

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# Newsroom

## Horwitz on Cyberstalking Decision

Professor Andrew Horwitz explains to Lawyers Weekly why a union leader's "harrassing" emails to a politician were protected under the First Amendment.

**From Rhode Island Lawyers Weekly:** "[Cyberstalking charge cannot survive 1st Amendment claim](#)" by Pat Murphy



**August 14, 2014:** The First Amendment barred the conviction of a union leader charged with cyberstalking for sending a number of “harassing” emails to a state representative during his unsuccessful campaign for reelection in 2010, a Superior Court judge recently decided in a case of first impression.

A District Court judge had found teachers’ union executive John A. Leidecker guilty of cyberstalking then-state Rep. Douglas W. Gablinske, D-Bristol.

But Superior Court Judge Susan E. McGuirl overturned the conviction, ruling from the bench that Leidecker’s emails, which mocked Gablinske’s positions on school funding and bridge tolls, were protected political speech. [...]



**Professor Andrew Horwitz of the Roger Williams University School of Law agreed** that Leidecker had engaged in protected speech.

“It’s not easy to draft legislation that involves restriction of speech without running afoul of the First Amendment,” **the criminal law professor said.**

“The First Amendment obviously gives us a lot of latitude in terms of the speech we engage in, in particular when you are dealing with public officials, people who have put themselves into the public arena by running for office.” [...]

### **Online impersonation statute**

**Horwitz said** that the state cyberstalking law has particular utility in domestic violence cases.

“The statute that was used in this case does a pretty good job in those cases,” **he said.** “It talks about behavior — repeated and constant forms of behavior — that is harassing, bothering, threatening or intimidating. That covers the person who calls 20 times in five minutes. That’s what we ought to be prohibiting in a cyberstalking statute.”

**He said** the weakness of the prosecution’s case against Leidecker was underscored by the fact that the state’s brief in the Superior Court failed to include any substantive constitutional arguments defending the conviction.

“I was astounded to see the attorney general’s brief, which really said nothing other than, ‘It’s up to you judge, you figure it out,’” **Horwitz said.** [...]

*For full story, click [here](http://rilawyersweekly.com/blog/2014/08/14/cyberstalking-charge-cannot-survive-1st-amendment-claim/). <http://rilawyersweekly.com/blog/2014/08/14/cyberstalking-charge-cannot-survive-1st-amendment-claim/>*