

No. 321061

**COURT OF APPEALS
OF THE STATE OF WASHINGTON**

FILED

FEB 10 2016

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

JACK WOODROW LINDELL, Respondent,

v.

RICHARD EUGENE BOCOOK, Petitioner.

OPENING BRIEF

Jeffry K. Finer
Attorney for Petitioner Richard Bocook

West 35 Main • Suite 300
Spokane, WA 99201
509 464-7611
WSBA No. 14610

TABLE OF CONTENTS

Identity of Petitioner	1
Decision Below	1
Assignment of Error & Issues Presented	4
Bocook’s Statement of the Case	5
a. Proceedings below	5
b. Facts	8
I. Washington State’s Anti-SLAPP statute is triggered by suit seeking “civil liability” not “civil damages”; thus, because Lindell ultimately sought to impose civil liability in the form of \$50,000 in fees for work that included an overturned temporary ban on Bocook’s attending city council sessions, the anti-SLAPP statute is applicable.....	12
II. The news articles and opinion published in the local paper are relevant and admissible to show that Bocook had in fact touched on matters of broad public interest; they were not offered for the truth of the author’s particular statements and the superior court’s rejection of the attachments was an abuse of discretion	18
Conclusion	15

TABLE OF CASES

Bailey v. State, 147 Wn.App 251 (2008) 14-15
Emmerson v. Weilep, 126 Wn.App. 930, 936 (2005) 5, 14
Henderson v. Tyrrell, 80 Wn.App. 592 (1996) 17
Henne v. City of Yakima, 182 Wn.2d 449 (2015) 12-13
Lowe v. Rowe, 173 Wn.App. 253, 261 (2012) 14
Suggs v. Hamilton, 1522 Wn.2d 74 (2004) 14

Statutes Cited

RCW 4.24.500 5, 14, 15
RCW 4.24.510 5, 13, 14, 15
RCW 4.24.525 8
RCW 10.14.080(7) 13

Other Authorities Cited

*A Cure for a Public Concern”: Washington’s New Anti-SLAPP
Law*, 86 WASH L. REV. 663, 644 (2011) 13

A. IDENTITY OF PETITIONER

Petitioner Richard Bocook is party in interest below who has been subject of Respondent's two year anti-harassment order.

B. DECISION

This appeal challenges the scope and purpose of a portion of an ex-parte temporary anti-harassment order filed in the Spokane County District Court on October 30, 2012 (hereafter referred to as the "Temporary Order"). Appendix A.

C. ASSIGNMENT OF ERROR and ISSUES PRESENTED FOR REVIEW

Petitioner Bocook makes the following assignments of error:

- a. The Superior Court erred in determining that Bocook did not prevail, in part, by successfully overcoming the overbroad scope of Lindell's temporary no-contact order, which barred Bocook from access to his post office box at the downtown Federal Post Office, from access to the Federal Courthouse next door, and from attendance at Spokane City Council meetings across the street..
- b. The Superior Court erred in determining that the State's Anti-SLAPP statute does not extend to cases of "civil liability" but was limited only to cases involving "civil damages." The lower court's error is in direct conflict with state law.

- c. The Superior Court erred in refusing to accept the Declaration of Danette Lanet and its three attachments.

The Issues are as follows:

1. The original temporary order restricted Bocook from a large portion of downtown Spokane. It prohibited him from attending federal court, his post office box, and from City Hall. Lindell specifically obtained these restrictions in his temporary order and Bocook was successful in having those specific restrictions removed.

Was Bocook therefore, in part, successful in defending against the temporary anti-harassment order such that fees should not have been awarded to Lindell for that portion of work billed by his five-member legal team? See Assignment a.

2. Bocook argued that the request for attorneys' fees and costs in effect sought to impose "civil liability" on him for his speech activities in front of the Spokane City Council, as addressed in RCW 4.24.510 ("anti-SLAPP"). The lower court held that *Emmerson v. Weilep*, 126 Wn.App. 930, 936 (2005) exempts injunctions from the anti-SLAPP statutory scheme because RCW 4.24.500 explicitly refers to "civil damages." The unambiguous language in RCW 4.24.510, however, states that the

statutory scheme governs suits seeking “civil liability.”

Was the lower court incorrect in determining that the anti-SLAPP statute cannot apply to injunctive relief — even where the moving party seeks “civil liability” in the form of fees and costs? See Assignment b.

3. Lanet filed three news articles and editorials regarding the tensions between downtown street kids and local businesses. This submission was to support Bocook’s good faith belief that the kids were being mistreated and to support the proposition that the issue was of public concern. The lower court misperceived this and found that the articles were irrelevant and hearsay.

Was Lanet’s declaration improperly kept from consideration in the record for the proposition that Bocook held a good faith belief that there was a matter of public concern over the treatment of downtown street kids and Spokane businesses. See Assignment C.

D. STATEMENT OF THE CASE

Proceedings below. On October 30, 2012, Lindell (through counsel) sought an ex-parte temporary no-contact order against Bocook. Appendix A;

Administrative Record “CP 001”.¹ Lindell explicitly complained about false and

¹ The record from the district court has been provided to this court and it is treated

harassing statements made by Bocook during open sessions of the Spokane City Council. Appendix A, “CP 010-11” (Declaration of Jack Lindell). Lindell expressly stated that these statements were untrue, harassing and disparaging. As a result of that order, on October 30, 2012, Bocook was temporarily barred from being within 2 blocks of Lindell’s employment at River Park Square and the Thomas Foley Federal Courthouse, which restriction also included the downtown public library, post office, and Spokane City Hall. See Appendix B, CP 9.

Bocook appeared and challenged the Temporary Order, including its overbroad geographic scope, and the district court judge modified the Temporary Order to allow Bocook’s to attend City Council sessions at Spokane City Hall; the final modified version is hereafter referred to as the “Permanent Order.” Appendix C. Bocook challenged the permanent order before the Superior Court which rejected his arguments by written order on November 26, 2013. Appendix D (Facts and Conclusions of the Superior Court).

During the Superior Court appeal, Lindell’s attorneys moved for attorneys

as an administrative record. At the Superior Court level the pertinent documents were designated Clerks Papers and were bates stamped. For convenience, Bocook here provides the original clerk’s papers citations, with their leading zeros (“001”, “002”, etc), to assist identifying the district court’s record and to locate the appropriate pages in the Appendices. Bocook notes that the set of clerks papers for this appeal are bates stamped *without* the leading zeros.

fees and Bocook unsuccessfully challenged a portion of the award. In addition, Bocook renewed his arguments that his original successful challenge of the Temporary Order's overbroad geographic restrictions, coupled with Lindell's recent demand for attorney's fees, triggered the State's Anti-SLAPP statute RCW 4.24.510.

Bocook sought review by the Court of Appeals (Division III) and Supreme Court. On April 4, 2014, the appellate court Commissioner upheld the Superior Court's order approving the Permanent Order on the merits but ordered a briefing schedule for the fee issues raised for the first time at the Superior Court. Appendix E, and see page 8 for reservation of the issues regarding attorney's fees.

Jurisdiction for this appeal of the fee issues arises from the Commissioner's order. Bocook moved for modification of the Commissioner's ruling and permission to file an amicus brief. On the Court of Appeals denied modification on August 20, 2014. Appendix F. On July 30, 2015, the Supreme Court refused to accept review. Appendix G.

In accordance with the Commissioner's Order, Appendix E, page 8, Defendant-Petitioner Bocook now addresses the Superior Court's rejection of his challenge to the attorney's fees and his invocation of the protection of the State's Anti-SLAPP statute. Bocook argues below that Lindell's tactic at the Superior

Court level to impose civil liability over Bocook for Lindell's attorney's fees of \$51,327.00 ripens the Anti-SLAPP provisions of RCW 4.24.510 and .525(d) and (e).

Facts of the Case. Jack Lindell was, at the time of filing his anti-harassment petition, the head of security at River Park Square and a contract security guard at the adjacent Federal Courthouse along the western edge of downtown Spokane. RP 4 (1/18/13). Richard Bocook has been a long-time activist for street musicians, and local activist for the homeless — especially street kids — in Spokane. See District Court Record, CP 0084 filed January 16, 2013, Affidavit of Professor Weiser); RP 57, 59-61 (original evidentiary hearing).

In 2011, Bocook became aware of complaints by street kids and others that the security team at River Park Square was mistreating them. Bocook began a steady public protest against Lindell. RP 32:15 to 34:25, 55, 60, 63, 79. This included amplified complaints, direct accusations of misconduct, organized chalk drawings on the sidewalks adjacent to River Park Square, and advocacy to the public regarding Lindell's conduct towards street kids. See District Court Record CP 0026, 0020.² Lindell viewed the accusations and advocacy as a threat to his

² Notwithstanding the Court of Appeals ruling, at page 6 of the slip opinion (see Appendix A-87), there was zero testimony that Bocook was ever present at Lindell's residence. The Court of Appeals gloss on the record is wholly

well-being and outside the allowable limits for political speech. Appendix A, District Court Record CP 001-0062. Lindell resisted Bocook's activities at River Park Square by, for instance, taking the chalk at a sidewalk drawing event, RP 34-35, 63 (testimony of 1/18/13), by alleging Bocook assaulted a co-worker (investigated by police and no action taken). The record shows a "tit-for-tat" dispute in which both parties made allegations of indecent behavior against the other. Compare the District Court Records: Affidavit of Lindell's, Appendix A, "CP 009-0012" and Affidavit of Michael Lyons "CP 0098" at paragraph 6.

On October 30, 2012, Lindell obtained through River Park Square's counsel an ex-parte, temporary anti-harassment order against Bocook. Appendix A, District Court Record CP 003-004. . Lindell's petition specifically complained about remarks Bocook had made at open session of the Spokane City Council. Appendix A, District Court Record, CP "0010", "0011". This order effectively barred Bocook from a major portion of downtown Spokane. Its 2-block radius barred Bocook from going to Lindell's employment at both the downtown mall and adjacent federal courthouse, and also barred him from his post office box, and from attending City Council meetings across the intersection from the mall

On January 18, 2013, the parties had an evidentiary hearing before

unsupported. See also ruling by Supreme Court rejecting the suggestion that Bocook knew the location of Lindell's home. Appendix G, at 12 n. 5.

Commissioner Chin to determine whether to make the temporary order permanent

The district court's oral decision included the observation that Bocook's speech activities were irrelevant. RP 91:4. According to the court, Bocook had singled out Lindell for criticism, RP 91:16-22. The court noted that Bocook's conduct and remarks did not constitute a "true threat" under the law, nevertheless his behavior was not protected. RP 92-93.

Modification to the restraint's geographic scope. The district court, however, held that the temporary order's two-block restriction was too broad and narrowed the restriction to 100 feet and allowed Bocook access to his post office box, to City Hall, to the federal courthouse, and to "permitted" events.³ District Court Record, Appendix C "CP 00147"; RP 95:10 to 96:20, 97-98.

Superior Court and Cost Bill. Bocook appealed to Superior Court, which held argument. On October 4, 2013, Lindell presented a cost bill for attorney's fees and costs amounting to over \$49,000 for work performed by five attorneys under assignment from River Park Square. CP 87. Bocook did not challenge the hourly rates. District Court Record, memorandum filed 11/15/13, "CP 0009."

Bocook argued that he had partially prevailed insofar as the original

³ Due to scrivener's error, the first permanent order was amended on February 1, 2013 RP 100-105. Appendix C is the final Permanent Order.

temporary order was reduced by more than one-half its geographic coverage and that Bocook, solely as a result of opposing the original order, was permitted access to court and City Hall.

On November 26, 2013, the Superior Court entered its decision upholding the amended Permanent Order of February 1, 2013. Appendix D. Bocook concedes that this ruling is the law of the case except as to the language in the Superior Court's Conclusions of Law at paragraphs 4 and 5 which relate to the fee and Anti-SLAPP issues preserved by the Court of Appeals' Commissioner's ruling. Appendix D at 2 and Appendix E at 8; see also Appendix G at 14-15 (issue of fees and anti-SLAPP application were subject to appeal before the court of appeals).

On November 26, 2013, the Superior Court entered its written findings and conclusions as well as the judgment against Bocook, including fees and costs of \$51,327.26. Appendix D. Bocook timely filled a notice seeking discretionary review. The Court of Appeals issued its ruling on April 4, 2014, denying discretionary review but preserving the issues that arose for the first time at the Superior Court level. Appendix E, page 8. Bocook sought discretionary review at the Supreme Court, which was joined by amicus Pen Center for First Amendment (per Professor Eugene Volokh). The Supreme Court Commissioner denied Bocook's and amicus's request for discretionary review in a lengthy decision based

upon mootness and the conclusion that the lower court's ruling did not warrant review under Rap 13.5(b). See Appendix G at 12.

E. ARGUMENT

I. Washington State's Anti-SLAPP statute is triggered by suit seeking "civil liability" not "civil damages"; thus, because Lindell ultimately sought to impose civil liability in the form of \$50,000 in fees for work that included an overturned temporary ban on Bocook's attending city council sessions, the anti-SLAPP statute is applicable.

Washington State has a carefully crafted statute whose purpose is to protect the free speech rights of its citizens from meritless attack. This was summarized in the recent decision by the State Supreme Court in *Henne v. City of Yakima*, 182 Wn.2d 447 (2015).

A SLAPP suit is suit is designed to discourage a speaker from voicing his or her opinion. [Citation omitted]. A commonly used example of such suits is a defamation suit, where the plaintiff brings the suit to silence the defendant through the stress and expense of litigating, and not because the plaintiff has a legitimate claim of defamation. [Footnote 2, citing Tom Wyrwich, *A Cure for a Public Concern*: *Washington's New Anti-SLAPP Law*, 86 WASH L. REV. 663, 644 (2011)]. Both Congress and state legislatures have recognized the potential threat to free speech-especially the free speech of those lacking financial resources-posed by such lawsuits, and both have enacted laws to discourage them.

Henne v. City of Yakima, 182 Wn.2d at 449.

Here, Richard Bocook seeks to apply the Anti-SLAPP statute to his successful defense of his right to address his duly elected representatives, as

guaranteed under the State and Federal constitutions and as specifically exempted from the anti-harassment statute. United States Constitution, amendment 1; Washington State Constitution, article 1, section 5; RCW 10.14.080(7); *Suggs v. Hamilton*, 1522 Wn.2d 74, 83-84 (2004) (“Suggs is left with an order chilling all of her speech about Hamilton”). Mindful that he has lost his original appeal, and that his face-to-face communications with Mr. Lindell were subject to restraint, Bocook here asserts only that his suppressed right to address the Spokane City Council during the period that the Temporary Order barred Bocook’s attendance at city council meetings. Because this was an improper restraint, Bocook prevailed at least as to that issue. Because the \$50,000 plus fee award included the time and effort of a multitude of lawyers even for the overbroad restraint, the award’s total is invalid. And because the overbroad restraint and fee demand resulted in a strategic litigation attack against Bocook’s right to address his elected representatives, that portion of the temporary order — coupled with the fee demand — triggers Bocook’s rights under the Anti-SLAPP statute.

Initially, the restraint on Bocook’s attendance at city council meetings did not invoke the Anti-SLAPP statute. The issue under RCW 4.24.510 was not ripe during the majority of the litigation below insofar as it was solely an injunction without any civil liability component. Accordingly, Bocook briefed the state’s anti-

SLAPP statute to the lower courts (District Court Record, memorandum of 1/16/13, page 15) and noted that Lindell had, up to that point, only sought injunctive relief. Ultimately, however, Lindell put forward a claim to make Bocook liable for Lindell's \$50,000 of attorneys' fees. These fees were charged by the five separate attorneys who consulted on behalf of Lindell's no-contact order. At that stage, when Lindell turned his no-contact order into a proceeding seeking a money judgment for fees, the Anti-SLAPP question becomes ripe.

On November 26, 2013, the Superior Court, sitting as an appellate tribunal, held that injunctive relief categorically did not trigger the anti-SLAPP provision and cited *Emmerson v. Weilep*, 126 Wn.App. 930, 936 (2005). *Emmerson*, however, is in conflict with *Lowe v. Rowe*, 173 Wn.App. 253, 261 (2012) which held that the legislature's "intent statements" in RCW 4.24.500 do not control over the "express language of an otherwise unambiguous statute." See also, *Bailey v. State*, 147 Wn.App. 251, 260-63 (2008). Thus, the *Lowe* court held that RCW 4.24.500's general intent statement (requiring "good faith" reports to officials) did not control over the more specific language used in RCW 4.24.510 where the statute makes no such requirement.

Bocook argues by analogy that the use of the term "civil damages" in RCW 4.24.500's intent statement is likewise not controlling over the term "civil liability"

in RCW 4.24.510. Although the issues regarding the Permanent Order are decided and final (and thus law of the case) Bocook's arguments in this appeal have not been subject to ruling by the Court of Appeals. This is so because the Court of Appeals, noted that Lindell's request for fees did not arise until the Superior Court level. Therefore, the Court surmised that the matter of a fee reduction against Lindell's attorneys (in view of Bocook's partially prevailing by successfully reducing the original temporary order's geographic overbreadth) and the application of the anti-SLAPP statute was not proper for review under the rules governing discretionary appeal. Appendix E at 7-8.

Thus, Bocook has a prima facie case under the Anti-SLAPP provisions. That provision reads:

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, * * * is immune from civil liability for claims based upon the communication to the agency or organization regarding any matter reasonably of concern to that agency or organization. A person prevailing upon the defense provided for in this section is entitled to recover expenses and reasonable attorneys' fees incurred in establishing the defense and in addition shall receive statutory

damages of ten thousand dollars. Statutory damages may be denied if the court finds that the complaint or information was communicated in bad faith.

RCW 10.24.510. The present elements are: (a) communication to local government, (b) of a complaint or information, (c) in good faith. Here Bocook's reports to the City Council, while untutored and raw, are not abusive or harassing. Appendix A, District Court Record, CP "0010", "0011". Further, the remarks by Bocook in the fall of 2012 were readily rooted in the ongoing and worsening conditions in downtown Spokane between businesses and street kids. See Declaration of Danette Lanet, CP 97 and attachments A, B, and C, CP 98-118 (collectively referred to by the lower court as Court Rec. 22).

II. The news articles and opinion published in the local paper are relevant and admissible to show that Bocook had in fact touched on matters of broad public interest; they were not offered for the truth of the author's particular statements and the superior court's rejection of the attachments was an abuse of discretion.

The lower court's ruling excluding Lanet's declaration and attachments, CP 97-118, was plainly wrong. See Facts and Conclusions at CP 128. The superior court judge determined that the news articles were "not relevant" to the issue of attorneys fees. CP 128, finding 3. This is indirectly true, but the documents were

OPENING BRIEF • Page 17

relevant to Bocook's having raised a matter of public interest with the City Council, and that issue went to his anti-SLAPP challenge. By cabining the relevancy to fees and not to the question of Bocook's good faith concern regarding the treatment of street kids at River Park Square and downtown at large, the lower court misperceived the submissions' purpose and thereby applied the wrong test, abusing its discretion. Where a statement is offered not for its truth but for the effect or basis for belief on the listener, the statement may be relevant and admissible even over hearsay objections. *See Henderson v. Tyrrell*, 80 Wn.App. 592, 620 (1996) (statement's effect on listener are relevant and admissible provided that the listener's state of mind is in issue). Since Bocook's state of mind about the situation of street kids and reactions by business owners downtown is relevant to his good faith remarks to the City Council, the fact that these issues were in local media is relevant.

Next, the lower court found that the declarant, Ms. Lanet, had no "personal knowledge of the publications" and determined that the articles were therefore inadmissible. This too is without legal basis. She stated in her affidavit that the copies were true and correct. Perhaps the court meant that Ms. Lanet herself did not write the articles or preform the interviews. Even so, the articles were submitted to show that the matters therein were of public interest, not that the

matters were necessarily true or false. Their being of public interest is established by the fact of their publication and number, and the proximity of the publications to the events of this suit and the issues raised by Mr. Bocook. Therefore, the articles' truth as to any particular point is not relevant and Ms. Lanet's affidavit properly put the evidence before the court for its consideration. What was relevant was Bocook's good faith in his complaints. *Henderson, id.* In combination with the affidavit of Wiser, District Court Record "CP 0082-0091", the correct basis for determining Lanet's submission was misapprehended and the evidence erroneously rejected.

F. CONCLUSION

Richard Bocook respectfully requests that this matter be remanded to the Superior Court with instructions to modify the attorney fee award to reduce the time expended on restraining Bocook from attending the City Council sessions and to address the Bocook's anti-SLAPP claims.

DATED THIS 11th day of February, 2016.



Jeffrey K. Finer

Counsel for Petitioner Bocook

APPENDIX

PETITION FOR ANTI-HARRASSMENT PROTECTION ORDER..... A
TEMPORARY ANTI-HARRASSMENT ORDER..... B
AMENDED ANTI-HARRASSMENT ORDER C
FINDINGS OF FACT/CONCLUSIONS OF LAW & ORDER..... D
COMMISSIONER’S RULING E
ORDER DENYING MOTION TO MODIFY COMMISSIONER’S RULING F
RULING DENYING REVIEW..... G

CERTIFICATE OF SERVICE

I, Danette Lanet, certify that on the 10 day of February, 2016, I caused a true and correct copy of the foregoing *Opening Brief* to be served, via USPS on the following:

Richard L. Mount
Matthew Mensik
Witherspoon, Kelley
422 W. Riverside, Suite 1100
Spokane, WA 99201

Dated this 10 day of February, 2016.


Danette Lanet

APPENDIX A

FILED
OCT 30 2012
 SPOKANE COUNTY DISTRICT COURT

**SPOKANE COUNTY DISTRICT COURT
 STATE OF WASHINGTON**

JACK LINDELL Petitioner 1 (Protected Person)	12-12-77 Date of Birth
Petitioner 2 (Protected Person) <small>(do not list minor here, only use if married to Petitioner 1 & seeking protection)</small>	Date of Birth
And/or ON BEHALF OF MINORS LISTED IN TABLE BELOW	
v.	
RICHARD BOCOOK Respondent (Restrained Person)	7-29-57 Date of Birth

CASE NO. 12720693

**PETITION FOR ANTI-HARASSMENT
 PROTECTION ORDER RCW 10.14**

Judge Walker's Courtroom 3
 Public Safety Building
 1100 W. Mallon, 2nd Floor, Spokane, WA, 99260
 E-mail: JGerke@spokanecounty.org
 Phone (509) 477-2953

1. I am petitioning for an order of protection against Unlawful Harassment for myself and/or minor(s) listed below.
2. I am the victim of unlawful harassment committed by Respondent, as described below.
 I am the parent or guardian of child(ren) under age 18 and seek to restrain a person age 18 years or over from contact with my child(ren) because contact is detrimental, as described below.
3. The harassment took place in this judicial district – Spokane County.
 Respondent lives in this judicial district – Spokane County.

4. Identification of minors I am requesting be protected by the order:

Name: First, Middle initial, Last	AGE/DOB	Race	Sex	How is Minor Related to:		List who Child Resides with
				Petitioner	Respondent	

7. Other court cases or any other protection, restraining or no-contact orders involving me, the minors and the Respondent must be listed HERE:

CASE NAME AND NUMBER	COURT/COUNTY	Other Information

REQUEST FOR TEMPORARY ORDER (effective until full hearing): AN EMERGENCY EXISTS (must describe below.) I need a temporary restraining order issued immediately without notice to the Respondent until a hearing to avoid great irreparable harm.

I request a Temporary Protection Order that will: (check each box in left column that applies)

I ALSO REQUEST A FULL PROTECTION ORDER following a hearing THAT WILL: CHECK BOXES

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RESTRAIN Respondent from committing acts of unlawful harassment against me and/or the minors named above.
-------------------------------------	-------------------------------------	---

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RESTRAIN Respondent from having any communication or contact with me and/or the minors named above including but not limited to nonphysical contact through telephone calls, texting, mail, e-mail, fax, or by any means, electronic or otherwise, directly, indirectly or through third parties regardless of whether the third party knows of the Order (except for mailing court documents as authorized by law). (Communication includes "wire communication" & "electronic communication" as defined in RCW 9.73.260.)
-------------------------------------	-------------------------------------	---

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RESTRAIN Respondent from harassing, following, keeping under physical or electronic surveillance, cyberstalking (as defined in RCW 9.61.260), from using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of me and/or the minors named above.
-------------------------------------	-------------------------------------	---

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RESTRAIN Respondent from entering or being within <input type="text" value="1 Block"/> (distance) of any known location of <input checked="" type="checkbox"/> me, <input type="checkbox"/> the minors named above.
-------------------------------------	-------------------------------------	---

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RESTRAIN Respondent from entering or being within <input type="text" value="2 Blocks"/> (distance) of <input checked="" type="checkbox"/> me, <input type="checkbox"/> the minor(s) Residence: <input type="text"/> <input checked="" type="checkbox"/> If you want your address to remain confidential don't list it above and check this box.
-------------------------------------	-------------------------------------	--

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	RESTRAIN Respondent from entering or being within <input type="text" value="2 Blocks"/> (distance) of <input checked="" type="checkbox"/> me, <input type="checkbox"/> the minor(s): <input type="checkbox"/> If you want to keep information confidential, don't list it below and check this box. Workplace: <input type="text" value="River Park Square and Thomas Foley Federal Courthouse in Spokane"/> School: <input type="text"/>
-------------------------------------	-------------------------------------	--

<input type="checkbox"/>	<input type="checkbox"/>	OTHER: <input type="text"/>
--------------------------	--------------------------	-----------------------------

<input checked="" type="checkbox"/>	<input type="checkbox"/>	REMAIN EFFECTIVE longer than one year because Respondent is likely to resume acts of unlawful harassment against me if the order expires in a year (Must fill out applicable section below.)
-------------------------------------	--------------------------	--

<input type="checkbox"/>	<input type="checkbox"/>	REQUIRE the Respondent to pay the filing fee and costs of this action of \$ <input type="text"/>
--------------------------	--------------------------	--

DECLARATION OF JACK LINDELL

I, JACK LINDELL, declare as follows:

1. I am over the age of 18 years and am competent to be a witness. I have personal knowledge about what is written in this Declaration.

2. I am the Chief of Security for River Park Square. River Park Square is a shopping center located in downtown Spokane, Washington. I have been River Park Square's Chief of Security for approximately six years. I am also a contract security officer for the U.S. Department of Homeland Security. In my DHS capacity I work near the U.S. Federal Building that is located in downtown Spokane.

3. For the past year, an individual by the name of Richard Bocoock has positioned himself in front of the main entrance of River Park Square. Mr. Bocoock goes by the name Harpman Hatter. Mr. Bocoock harasses me. Richard calls me a "child molester," "wife beater," and says that I "like young men." Mr. Bocoock has, in an extremely loud (*i.e.*, at the top of his lungs) voice has called me a "pervert," "thief," "corrupt person," "racist," an individual who "likes young boys," a member of the "Gestapo," and "Goon Squad." At times he calls me those words by using a microphone. Mr. Bocoock has called me these words in front of people who visit River Park Square. Mr. Bocoock has called me these words in front of my family. Mr. Bocoock directs those words at me, and no one else. Lately, Mr. Bocoock has said, "you're gonna get what's coming."

4. Just recently, on October 15, 2012, Richard walked past the courthouse, where I was working as part of my DHS job. I was outside with a coworker, Josh Hansen, and Mr.

Bocook said "how many boys have you sexually harassed lately Jack." Mr. Bocook said this over and over as people were walking by.

5. Mr. Bocook writes, on the sidewalk outside the main entrance to River Park Square, that I am "corrupt" and that River Park Square should "fire" me because of my alleged corruptness. Richard also writes, on the sidewalk near my DHS work site, that I am "corrupt." Attached to this declaration as Exhibits A and B are true and correct copies of pictures of the words that Mr. Bocook wrote on the sidewalk in front of River Park Square and my DHS work location about me.

6. What follow are other specific instances in which Mr. Bocook harassed me:

7. On August 11, 2012, I worked a 4 p.m. to 12 a.m. shift at River Park Square. My shift required that I patrol the exterior of the shopping center. Richard Bocook was located outside the shopping center on the route that I patrolled. Each time I passed Mr. Bocook he called me names such as "pervert," and "thief" and said that I was "going to get mine." He repeatedly called me a "woman beater" and stated that I "like young men." I called 911 to report Mr. Bocook's harassment but was informed by Sergeant Lee, of the Spokane Police Department, that the police were not going to respond or make a report. Each time Mr. Bocook called me those names I received discouraging looks from many of the people who were present.

8. On September 14, 2012, I was posted outside the south entrance of River Park Square. I was posted there until 9:00 p.m. for the purpose of guarding a large slab of concrete that was just poured. At 4:39 p.m. Mr. Bocook arrived and began calling me many of the names that are mentioned above.

9. On September 17, 2012, my co-worker, Mike Austin, at the federal courthouse ran into Mr. Bocoook. Mr. Bocoook told him that Bocoook was going to make a complaint against me.

10. For the past year Mr. Bocoook has posted upsetting and worrisome comments and remarks about me on his Facebook page. True and correct copies of excerpts of Mr. Bocoooks Facebook postings are attached hereto as Exhibit C. The Facebook postings contain the following comments:

11. On Facebook Mr. Bocoook labeled me as a "corrupt security supervisor of River Park Square." (See Exhibit C pg. 1-2)

12. On Facebook Mr. Bocoook alleges "a strong pattern of corruption between Jack Lindell and the Spokane Police." (See Exhibit C pg. 3)

13. On Facebook Mr. Bocoook encouraged people to "going oner [sic] to the Courthouse on Riverside and talking directly to Homeland Security" about my alleged "corrupt methods." (See Exhibit C pg. 8)

14. On Facebook Mr. Bocoook, under a photo of me stated, "his time is coming." (See Exhibit C pg. 5)

15. On Facebook Mr. Bocoook stated:

So, one thinks of libel and slander, what the creepy security supervisor has done to me and others is slander, by making false statements to try and defame, but when I or others say he is a chalk thief, well he is, and so many other things the creepy Jack Lindell has done. Like following young men to bathroom and making sexist remarks, to many witnesses on that one. (See Exhibit C pg. 6)

16. On Facebook Mr. Bocoook urged his "supporters" "to call the newspaper and keep mentioning Jack Lindell name until somebody questions hin [sic] and catches him in his lies." (See Exhibit C pg. 9)

17. On Facebook Mr. Bocoook said "if you knew someone like that creepy security supervisor of Riverpark square Jack Lindell was making sexual harassment remarks to your sons or daughter or nephews or nieces." (See Exhibit C pg. 11)

18. On Facebook Mr. Bocoook states "what do you think jack lindell is doing when he follows young to the bathrooms and peaks thru the doors is? or filming young womens breast and thighs is? after they ask him to stop he keeps doing it? or makes degrading sexist remarks and denies he says it?" (See Exhibit C pg. 12)

19. On Facebook Mr. Bocoook states that I "trespassed taylor and becca, because he was asking her personal questions and actually bragging about filming of breasts" and that I "lie so much." (See Exhibit C pg. 13)

20. On Facebook Mr. Bocoook posts pictures of me and under those pictures writes "got the front pic of jack the supervisor who makes taunting remarks at young men" or that I am "jack the corrupt supervisor" and that I am a "predator hiding brhind [sic] a security title." (See Exhibit C pg. 14, 15, 17)

21. I have endured Mr. Bocoook's harassment for over a year. For example, or about August 24, 2011 Mr. Bocoook informed Benjamin Miller that I "better watch [my] back [I] have something coming to" me. Attached hereto as Exhibit D is a true and correct copy of that incident report.

22. On August 22, 2011, Mr. Bocoook informed Mark Horytzik that "karma is gonna catch up to that prick [me]. One of these days he will be walking down the street where he is not safe since he has pissed off all the street kids and ... get pulled into an alley and have the shit beat out of him with a 2x4 or even a knife and that will be the only way he changes his

bullshit ways." Attached hereto as Exhibit E is a true and correct copy of the August 22, 2011 incident report.

23. Mr. Bocook has made disparaging, false, and harassing statements to me at City Council meetings. On October 1, 2012, at the televised weekly city council meeting Mr. Bocook said:

One of the concerns is that the River Park Square security abuse of people, um, if somebody was to do what Jack Lindell does to people in the workplace, they would fire you and probably put you in jail [inaudible], they are making sexual comments, now he's doing it to women. There was five women out there on September 14th, he was filming their breasts, the women asked him to stop, he wouldn't stop and then he went and took the pictures and showed them to other people who had been trespassing and had been calling him a creep, or whatever they called him. Why do people not pay attention to this, I don't know. They called the police, the police drove right by, they did not come there. They didn't make any questions, I can't prove this. Downtown Partnership pays the police department \$50,000 a year, they say for the bicycle police, I say it's going into their funds. What difference does it make if it's for the bicycle police. If it's enough money to buy us some, so they won't interact with the citizens? I don't know, but I do know they seem to take the side of security and businesses over people. This ain't right, and I don't know why it's not addressed. I don't know why the police don't address a citizen. They'll drive right by them, I'm having issues with that and I'm going to keep talking about it, and other people are going to keep talking about it until maybe somebody does something about it. This sexual harassment, it happens to citizens, it's wrong. It's wrong in the workplace, it's wrong out here. And I would appreciate it if somebody started paying attention to what I'm talking about because I've witnessed it directly and that, then I, like last year, I witnessed uh, three teenage boys being sexually harassed by the security people and maintenance people, the police came, because they didn't hear it, they did nothing about it, and yet there was four witnesses, and I had an issue with that because it's saying that we don't have a right to be witnesses to a crime we witnessed, and I really have issues with that.

24. The comments are available on the Internet at <http://www.spokanecity.org/services/citycable5/streamingmedia/>. The comments begin at about the 27:47 minute mark.

25. On October 8, 2012, Mr. Bocook made yet more harassing and untrue comments about me at the City Council meeting. He falsely accused me of slashing his tires or causing

someone to slash his tires. Those comments are also available on the Internet at <http://www.spokanecity.org/services/citycable5/streamingmedia/>. His false comments begin at about the 33:00 minute mark. Those comments are:

Richard Bocook: Well it looks like I struck a chord with my testimony last week about Mr. Jack Lindell and his sexual abuses towards people.

Mike Allen: Can I get a point of clarification...are people allowed to come up here and make legal accusations against somebody in this environment?

Unidentified male: The Council rules prohibit or discourage personal attacks, I would definitely caution anybody speaking before the City Council to avoid personal attacks and, and frankly making pretty serious criminal allegations against individuals which could have legal ramifications against the speaker.

Bocook: Well what I witnessed is what I witnessed, you know, and if they want to take me to court over it, that's fine.

Unidentified male: I would agree, I think telling somebody is guilty of sexual abuse on public comment is a personal attack.

Bocook: I'm not afraid to say this [inaudible] say his name, I won't say his name, but apparently what's happened is um, my tires were slashed, they came out there targeting me, um, I won't say their names, I'll call them security people then. If that'll make you feel better. This is what I'm going to say, I'm going to read this part because when I'm exercising my constitutional rights at a public sidewalk and I'm encouraging other people to exercise their constitutional rights on a public side walk of freedom of speech, and I don't care if it's a security person or whoever. This is Title 18, U.S.C. § 241. If two or more persons conspire to injure or press, threaten or intimidate any person in any state, territory, local session or district in the free exercise or enjoyment of any right or privilege secured by him by the constitutional laws of the United States or because of his, [inaudible] that is conspiracy against rights, it's continually happening to me, and to others. What do you want? Do you want me to bring some video, do you want me to bring other people to testify. I'm talking about a problem in our city. I'm talking about that everyone of you taking oaths to uphold the constitution, our constitutional rights are being infringed upon by security people. What else do you want me to say? I would like to know. Has anybody got an answer about that? What do I have to do to get this across to the people up here that we have a problem in downtown Spokane when it comes down to our civil rights. My tires were slashed Friday. That's targeting. I was in, I was in, a public street, by Rosauers, two tires were slashed. This happened, can I, can I say who did that? No I can't say who did that, but I guaranty you if I'm out here exercising my civil rights, if I'm getting underneath somebody's skin because of it, then to me it's a targeting. What's next, is it going to be my windows? Is it going to be a fire bomb? I'd like to know, I'm telling you there's a serious problem out here. I've told you people before, you get filtered information, that's what you get. If I can't talk to you openly, I'll talk to you privately about it if that's what you choose, but we have a problem out here, and

I won't mention any names anymore if that's so offensive, but I'm not afraid to mention them, and I'm not afraid, I'm not afraid of legal recourse either, because I guaranty you there's a lot of witnesses to this stuff, I'm not the only one. What I'm telling you is what I witness. I'm not the victim of the problems, other people are. I witnessed it directly. The police were called, the police never came. What about that? You know, that's, that's a really serious issue downtown. That's all I got to say, thank you.

26. I do not want to dignify Mr. Bocook's comments with a response. But what Mr. Bocook says about me is just plain false and offensive. The above instances show a sustained course of conduct involving Mr. Bocook targeting me. He has, among other things, falsely labeled me a child molester, accused me of sexual harassment, and accused me of slashing his tires. Being called a child molester, in public in downtown Spokane in broad daylight before other witnesses, has caused me emotional distress. Spokane is a small town. Many people shop at River Park Square and visit the Federal Court House, both locations where I work. It is stressful to be working my job at both locations and be constantly told (in a loud bullying accusatory voice) that I am a corrupt, thief, who harasses people and molests children. It is stressful to know that Mr. Bocook has encouraged others to complain to my supervisors at both locations (River Park Square and DHS) because of my alleged corruptness. It is stressful to read Mr. Bocook's Facebook posts where Mr. Bocook ominously warns that I'm going to "get what's coming." On October 8, 2012, Mr. Bocook made more false comments, on TV no less, about me before the Spokane City Council. Mr. Bocook was warned, by members of the Spokane City Council, that what he was saying could get him in trouble. Mr. Bocook responded that he was "no afraid" of such legal consequences. The "Jack Lindell is going to get what's coming" comments are particularly worrisome given Mr. Bocook's statement to the City Council that he is "not afraid of legal recourse" regarding the hurtful and false things he says about me. What makes Mr. Bocook's comments even more disconcerting is his statement

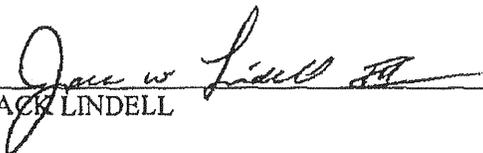
to me (See paragraph 6 of Chad Kelly's declaration) that "I know where you live. I have your address."

27. I need a temporary restraining order issued immediately for the following reasons: (1) Mr. Bocook has stated that he is not afraid of legal repercussions of his acts; (2) Mr. Bocook has stated that I'm "going to get what's coming," and knows "where I live"; and, in addition, (3) I am in fear that I could lose my job or get disciplined because of Mr. Bocook's complaints to both of my bosses.

28. In addition, I would like this order to remain in effect for more than one year for the reasons stated above. His harassment of me is sustained, persistent, and emotionally scarring. I have dealt with it for more than a year now. Accordingly, it follows that Mr. Bocook should be ordered to stay away from me and refrain from harassing me for a year, or longer. Given Mr. Bocook's anger toward me I anticipate that this anti-harassment action will make him mad and that his anger (as evidenced by his persistent harassment of me for over the past week) will not magically go-away after a couple weeks. Thus it makes sense that Mr. Bocook be ordered to stay away from me for quite some time.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 24 day of October, 2012.



JACK LINDELL

APPENDIX B

FILED
OCT 30 2012
SPOKANE COUNTY DISTRICT COURT

**SPOKANE COUNTY DISTRICT COURT
STATE OF WASHINGTON**

JACK WOODROW LINDELL **12/12/1977**
Petitioner (Protected Party) Date of Birth

v.
RICHARD EUGENE BOCOOK **07/29/1957**
Respondent (Restrained Party) Date of Birth

Case Number: 12720693

Temporary Anti-Harassment Protection Order

Hearing Date, Time & Location:

November 9, 2012 at 9 a.m.

Judge Walker's Courtroom 3
Public Safety Building 2nd Floor
E-mail: DCProtectionOrders@PAVO.spokanecounty.org
Message Only: (509) 477-2953 Court Clerk Jo Ann Gerke

Respondent Identifiers: Caution - Weapon Access: Unknown

Sex: Male Race: Caucasian Hgt: 6 Wgt: 200 Eyes: BLU Hair: BRO

HEARING PREPARATION INFORMATION:

Respondent may submit Declarations or Exhibits in response to this Petition. Any party submitting documents for consideration at hearing must submit two identical copies to the Court (one of which will be provided by the Clerk to the opposing party) and must keep a copy for themselves. These documents should be submitted prior to the hearing date to the Court Clerk or Judicial Assistant in Courtroom 3 (as listed above) any afternoon between 1:30 p.m. and 3:30 p.m..

The Court *finds* the Petition sets forth facts to support the following findings:

- A. An emergency exists to support issuing a Temporary Protection Order without prior notice to the Respondent.

- B. Petitioner(s) allege Respondent has committed unlawful harassment (defined in RCW 10.14.020 and RCW 10.14.080) by:
 - Engaging in a knowing and willful course of conduct,
 - That was directed to a specific person,
 - Which seriously alarms, annoy, harasses or is detrimental to such person, *and*
 - Which serves no legitimate or lawful purpose.

IT IS THEREFORE ORDERED:

Respondent is directed to appear for a Protection Order Hearing and show cause why this Temporary Protection Order should not be made effective as a Protection Order for a year (or more) and why the court should not order the relief requested by the Petitioner(s).

Failure of Respondent to Appear at the Hearing May Result in the Court Granting All of the Relief Requested in the Petition. The Hearing Date is listed on Page 1 of this Order.

RESPONDENT IS SOLELY RESPONSIBLE FOR ABIDING BY ALL RESTRICTIONS IN PARAGRAPHS 1-7 PROTECTING PETITIONER(S) LISTED ON PAGE 1 OF THIS ORDER. ONLY THE COURT CAN MODIFY THE RESTRICTIONS.

1. Respondent is RESTRAINED from committing any acts of harassment against Petitioner(s), from harassing, following, keeping under physical or electronic surveillance, from using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of Petitioner(s).
2. Respondent is RESTRAINED from coming near and from having any contact or conversation, in person or through others, by phone, mail, electronically, or by any means, directly or indirectly, except for contact by Respondent's lawyer or, *if authorized by the Court*, mailing or service of process of court documents.
3. Respondent is RESTRAINED from cyberstalking (as defined in RCW 9.61.260) Petitioner(s) by making an electronic communication to Petitioner(s) or a third party (or allowing previously posted communications to continue) that harasses, intimidates, torments or embarrasses the Petitioner(s) by using:
 - (a) lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd/lascivious act,
 - (b) making an electronic communication anonymously or repeatedly (whether or not a conversation occurs), or
 - (c) threatening to inflict injury on Petitioner(s), Petitioner(s) property or a family or household member.
4. Respondent is RESTRAINED from entering or being within 1 CITY BLOCK of any known location of Petitioner(s). If parties are in the same location and Respondent cannot maintain the restrained distance, Respondent shall leave immediately with no conversation or contact with Petitioner(s); even if Respondent was there first. It is solely Respondent's responsibility to ensure that the restriction distance is maintained.
5. Respondent is RESTRAINED from entering or being within 2 CITY BLOCKS of Petitioner(s) Residence: CONFIDENTIAL.

6. Respondent is RESTRAINED from entering or being within 2 CITY BLOCKS of Petitioner(s)
Workplace: Riverpark Square and Thomas Foley Federal Courthouse, Spokane WA

7. Not Applicable

EXPIRATION DATE OF TEMPORARY ORDER: This Temporary Protection Order is Effective
Until Midnight of the Next Hearing (Hearing Date Listed on Page 1 of this Order.)

Warnings to Respondent: A violation of provisions 1 through 7 of this order with actual notice of its terms is a criminal offense under RCW 10.14 and will subject you to arrest. Willful disobedience of provisions 1 through 7 of this order is a gross misdemeanor. RCW 10.14.170. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under RCW 7.21.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

RECORDS

It is further ordered that the Clerk of the Court shall forward a copy of this *Order and the Petition* on or before the next judicial day to: Spokane Police & Sheriff, where Petitioner(s) live, where the order shall be entered it in the state's computer-based criminal justice system used by law enforcement to list outstanding warrants.

SERVICE

It is further ordered that the Clerk of the Court shall also forward a copy of this *Order and the Petition* on or before the next judicial day to: Spokane Police & Sheriff, where Respondent lives, which shall personally serve Respondent with a copy of this order and promptly complete and return to this Court the Return of Service.

10/30/2012

Signed in Spokane, WA this .

X *P. Connolly Walker*

Judge Patti Connolly Walker

Signed by: Walker, Patti

Matthew Mensik
Petitioner's Signature

Attorney, Matthew Mensik, for Petitioner
WSBA # 44260

APPENDIX C

FILED

FEB 01 2013

SPOKANE COUNTY DISTRICT COURT

SPOKANE COUNTY DISTRICT COURT STATE OF WASHINGTON	
JACK WOODROW LINDELL, Petitioner (Protected Party)	12/12/1977 Date of Birth
v.	
RICHARD EUGENE BOCOOK, Respondent (Restrained Party)	07/29/1957 Date of Birth

Case Number: 12720693

AMENDED
Anti-Harassment Protection Order

Judge Walker's Courtroom 3
Public Safety Building 2nd Floor
1100 W. Mallon, Spokane WA 99210-2351

E-mail: DCProtectionOrders@PAVO.spokanecounty.org
Message Only: (509) 477-2953 Court Clerk Jo Ann Gerke

Respondent Identifiers: Caution - Weapon Access: Unknown

Sex: Male Race: Caucasian Hgt: 6 Wgt: 200 Eyes: BLU Hair: BRO

The Court *finds* based on the Court Record that:

- A. The Court has jurisdiction over the parties, the minors, and the subject matter and Respondent was provided with reasonable notice and an opportunity to be heard.
- B. Notice of this hearing was served on the Respondent by: Personal Service.
- C. This Order is issued in accordance with the Full faith and Credit provisions of the Violence Against Woman Act: 18 United States Code § 2265.
- D. Respondent was not acting pursuant to any statutory authority and has committed unlawful harassment (as defined in RCW 10.14.020) by:

Engaging in a knowing and willful course of conduct;
That was directed to a specific person;
Which seriously alarms, annoy, harasses or is detrimental to such person; and
Which serves no legitimate or lawful purpose.

The Court concludes as a matter of law the relief below shall be granted.
IT IS THEREFORE ORDERED:

1. Respondent is RESTRAINED from committing any acts of harassment against Petitioner, from harassing, following, keeping under physical or electronic surveillance, from using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of Petitioner.
2. Respondent is RESTRAINED from coming near and from having any contact or conversation, in person or through others, by phone, mail, electronically, or by any means,

directly or indirectly, except for contact by Respondent's lawyers or, *if authorized by the Court*, mailing or services of process of court documents.

3. Respondent is RESTRAINED from cyberstalking (as defined in RCW 9.61.260) Petitioner by making an electronic communication to Petitioner or a third party (or allowing previously posted communications to continue) that harasses, intimidates, torments or embarrasses the Petitioner by using:
 - (a) lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd/lascivious act,
 - (b) making an electronic communication anonymously or repeatedly (whether or not a conversation occurs), or
 - (c) threatening to inflict injury on Petitioner, Petitioner's property or a family or household member.
4. Respondent is RESTRAINED from entering or being within 2 CITY BLOCKS of Petitioner's Residence: CONFIDENTIAL.
5. Respondent is RESTRAINED from entering or being within 100 FEET of (1) RIVER PARK SQUARE, which is located between West Spokane Falls Blvd (North), North Lincoln Street (West), West Main Avenue (South), and North Wall Street (East), and (2) the 809 BUILDING, which is located between West Main Avenue (North), North Lincoln Street (West), North Post Street (East) and the alley halfway between West Main Avenue and West Riverside Avenue (South), both of which are cross-hatched on Exhibit "A" attached herewith. EXCEPTION: Respondent has unrestricted access to Spokane Library using street-level entrance.
6. Respondent is RESTRAINED from any contact with Petitioner at the Thomas S. Foley Federal Courthouse, which is located between West Main Avenue (North), North Monroe Street (West), North Lincoln Street (East) and West Riverside Avenue (South) (as cross-hatched in Exhibit "A" attached herewith). If the parties are both at the Federal Building the Respondent shall leave immediately with no conversation or contact with the Petitioner
7. Respondent is RESTRAINED from entering or being within 100 FEET of any known location of the Petitioner. If the Parties are in the same location and the Respondent cannot maintain the restrained distance, Respondent shall leave immediately with no conversation or contact with the Petitioner, even if the Respondent was there first. It is solely the Respondent's responsibility to ensure that the restriction distance is maintained.
8. Respondent is allowed to go to Spokane City Hall, provided that the Respondent utilizes street-level entrances.
9. Respondent is allowed to ride City buses and to participate in any City parade or other similarly permitted event, including those whose route of travel is on West Main Avenue, West Spokane Falls Blvd, North Wall Street, North Lincoln Street, North Post Street or West Riverside Avenue.

EXPIRATION DATE OF ORDER: JANUARY 18, 2015.

Warnings to Respondent: A violation of provisions 1 through 9 of this order with actual notice of its terms is a criminal offense under RCW 10.14 and will subject you to arrest. Willful disobedience of provisions 1 through 9 of this order is a gross misdemeanor. RCW 10.14.170. Willful disobedience of the terms of this order may also be contempt of court and subject you to penalties under RCW 7.21.

You Can Be Arrested Even if the Person or Persons Who Obtained the Order Invite or Allow You to Violate the Order's Prohibitions. You have the sole responsibility to avoid or refrain from violating the order's provisions. Only the court can change the order upon written application.

Pursuant to 18 U.S.C. § 2265, a court in any of the 50 states, the District of Columbia, Puerto Rico, any United States territory, and any tribal land within the United States shall accord full faith and credit to the order.

Appeal: You have **30 days** to file an appeal of the Court's decision and can obtain appeal information at the District Court Clerk's Office at the Public Safety Building, 1100 W. Mallon, Spokane, WA.

RECORDS

It is further ordered that the Clerk of the Court shall forward a copy of this *Order and the Petition* on or before the next judicial day to: Spokane Police & Sheriff, where Petitioner lives, where the order shall be entered in the state's computer-based criminal justice system used by law enforcement to list outstanding warrants.

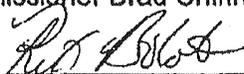
SERVICE

It is further ordered that the Clerk of the Court shall also forward a copy of the *Order and the Petition* on or before the next judicial day to: Respondent was served with this Order in Court and no further service is necessary.

DATED this 1st day of FEB, 2013.


Petitioner's Signature

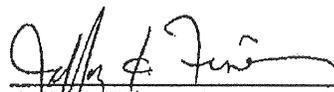


Commissioner Brad Chinn


Respondent's Signature

WITHERSPOON · KELLEY


Richard L. Mount, WSBA #16096
Matthew A. Mensik, WSBA #44260
Attorneys for the Petitioner



Jeffrey Finer, WSBA #14610
Attorney for the Respondent

EXHIBIT A



spokane washington map arena

Get Google Maps on your phone
Text the word "GMAPS" to 466453




APPENDIX D

COPY
ORIGINAL FILED
NOV 26 2013
THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

JACK WOODROW LINDELL,

Petitioner/Respondent

vs.

RICHARD EUGENE BOCOOK,

Respondent/Appellant

Cause No. 13-02-00902-6
Dist. Court No. 12720693

FINDINGS OF FACT
CONCLUSIONS OF LAW AND ORDER
ON APPEAL OF ANTI-HARASSMENT
PROTECTION ORDER

This matter having come before the Court this day, the Court having reviewed the District Court and Superior Court files and records in this matter, having considered oral argument from the parties in a hearing held before this Court on August 30, 2013, and the Court being fully advised in the premises, does hereby find as follows:

FINDINGS OF FACT

1. The Respondent/Appellant engaged in a knowing and willful course of conduct over a period of seventeen months. This conduct included verbal assaults, threats, stalking and cyber stalking at the Petitioner/Respondent's two places of employment.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER ON APPEAL OF
ANTI-HARASSMENT PROTECTION ORDER - 1
S0815873.DOCX

 WITHERSPOON • KELLEY
Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Phone: 509.624.5265
Spokane, Washington 99201-0300 Fax: 509.458.2728

ORDER

It is ORDERED, ADJUDGED and DECREED that;

1. The February 1, 2013 Anti-Harassment Protection Order (CP 146-150), and all of the provisions and restrictions placed upon the Respondent/Appellant contained therein, shall remain in full force and effect as set forth in the District Court's Order.

Done in open Court this 26 day of November, 2013.

GREGORY D. SYPOLT
HONORABLE GREGORY D. SYPOLT
SUPERIOR COURT JUDGE

Agreed to and Presented by:

WITHERSPOON • KELLEY

By: Richard L. Mount
Richard L. Mount, WSBA #16096
Matthew A. Mensik, WSBA #44260
Attorneys for the Petitioner/Respondent

Agreed to and Notice of Presentment by:

JEFFRY K. FINER, P.S.

By: Jeffrey K. Finer
Jeffrey K. Finer, WSBA #14610
Attorney for Respondent/Appellant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW AND ORDER ON APPEAL OF
ANTI-HARASSMENT PROTECTION ORDER - 3
S0815875.DOCX

 WITHERSPOON • KELLEY
Attorneys & Counselors

422 W. Riverside Avenue, Suite 1100 Phone: 509.624.5265
Spokane, Washington 99201-0300 Fax: 509.458.2728

APPENDIX E

The Court of Appeals

of the
State of Washington
Division III

APR -4 2014

JACK WOODROW LINDELL,)	No. 32106-1-III
)	
Respondent,)	
)	
v.)	COMMISSIONER'S RULING
)	
RICHARD EUGENE BOCOOK,)	
)	
Petitioner.)	
_____)	

Richard Eugene Bocook seeks discretionary review of the Spokane County Superior Court's November 26, 2013 Order. The Order upheld the decision of the district court that (1) found Mr. Bocook had unlawfully harassed Jack Woodrow Lindell and (2) imposed an anti-harassment order that restrained him from being in certain specified areas – i.e., areas in which Mr. Lindell resided or worked. The superior court also awarded Mr. Lindell \$51,327.26 in attorney fees and costs

Mr. Bocook contends, as follows:

- (1) The superior court should have made an independent review of the record

because the restraining order implicated Mr. Bocook's free speech rights.

- (2) The superior court erred when it did not consider least-restrictive alternatives.
- (3) The superior court erred when it held that an important state interest under the anti-harassment statute, RCW 10.14, was equivalent to "compelling state interest," the required standard for the constitutional right at issue here.
- (4) The court erred when it held that Mr. Bocook's conduct was not protected speech.
- (5) The court's award of attorney fees was improper because Mr. Bocook prevailed in part when he successfully challenged the scope of the area the original district court order prevented him from entering. And,
- (6) The court erred when it held that the State's anti-SLAPP statute does not apply.

This Court first notes that Mr. Bocook does not specifically cite RAP 2.3(d), which governs our acceptance of discretionary review of district court decisions. However, he does argue that the decision of the superior court is in direct conflict with state and federal law, that it presents a significant constitutional question, and that it involves an issue of public interest. Those arguments fall within the criteria set out in RAP 2.3(d).

The protection Order arose in the following context: Mr. Bocook was involved in public protests directed against Spokane's River Park Square's perceived policy to keep street kids off the public sidewalk in front of its mall doors. Mr. Lindell is the head of

security for the mall. On October 20, 2012, Mr. Lindell obtained a temporary anti-harassment order against Mr. Bocoock, based upon allegations that Mr. Bocoock had targeted him personally.

At the district court hearing conducted on January 18, 2013 on Mr. Lindell's request for a permanent restraining order, Mr. Lindell testified Mr. Bocoock was at River Park Square several times a week. He would set up just outside the Main Street entrance, and "barrage" insults to Mr. Lindell over a microphone. Motion, App. D9. The insults included "thief, woman beater, corrupt, a predator. . . . that [Mr. Lindell] follow[ed] young men to the bathroom." *Id.* at 10. Mr. Lindell also testified that Mr. Bocoock walked by him outside the federal courthouse, where Mr. Lindell worked part-time, and asked, "who have you sexually harassed today, Jack Lindell?" *Id.* at 14. In addition, Mr. Lindell testified that Mr. Bocoock would use chalk to write similar comments on the sidewalks outside both places. And, Mr. Bocoock threatened him on Facebook, stating that he would get "what's coming to him." *Id.* at 15.

Mr. Bocoock testified at the hearing, as well. He did not deny calling Mr. Lindell the names quoted in the preceding paragraph.

In its oral ruling, the district court stated, "[Mr. Bocoock] is not saying, . . . I've got some political issues here. . . . [Instead, Mr. Bocoock's]. . . . focus is on Mr. Lindell . .

[Mr. Bocook] is seeking [Mr. Lindell] out.” Motion, App D at 92. The district court cited caselaw for the proposition that “harassment is not protected speech.” *Id.* The court held that the speech here served no legitimate purpose.

On February 1, 2013, the district court entered an amended protection order. The court found that Mr. Bocook had committed unlawful harassment, as defined in RCW 10.14.020. It therefore restrained Mr. Bocook from committing any acts of harassment against Mr. Lindell and “from entering or being within 2 city blocks of Mr. Lindell’s residence,” “from being within 100 feet of River Park Square,” and from being in the vicinity of the federal courthouse while Mr. Lindell is there. Response, App. B at 147. These restrictions were more limited than those imposed in the temporary protection order.

Mr. Bocook appealed. The superior court affirmed the district court. It entered the following findings and conclusions:

1. The Respondent/Appellant engaged in a knowing and willful course of conduct over a period of seventeen months. This conduct included verbal assaults, threats, stalking and cyber stalking at the Petitioner/Respondent’s places of employment.
2. The Respondent/Appellant directed the aforementioned conduct to the Petitioner/Respondent.
3. The Respondent/Appellant’s conduct seriously alarmed, annoyed, harassed and was detrimental to the Petitioner/Respondent. The Respondent/Appellant’s verbal assaults, threats, stalking and cyber stalking served no legitimate or lawful purpose.

4. At all stages of this litigation, the Petitioner/Respondent was the prevailing party.

CONCLUSIONS OF LAW

1. Protecting citizens from harassment is a compelling state interest.
2. The Respondent/Appellant's conduct was not constitutionally protected activity.
3. The Respondent/Appellant was not acting pursuant to any statutory authority and has committed unlawful harassment (as defined in RCW 10.14.020).
4. RCW 4 24.500 et seq., (the Anti-SLAPP statute) only applies to civil actions for damages, and is therefore inapplicable to legal actions brought for equitable relief, such as anti-harassment protection orders (RCW 10.14 et seq.).
5. At all stages of this litigation, the Petitioner/Respondent was the prevailing party, and is therefore entitled to reasonable attorneys' fees and costs.

ORDER

It is ORDERED, ADJUDGED and DECREED that:

1. The February 1, 2013 Anti-Harassment Protection Order (CP 146-150), and all of the provisions and restrictions placed upon the Respondent/Appellant contained therein, shall remain in full force and effect as set forth in the District Court's Order.

Motion, Appendix at A-7 to A-9.

1. Protected Speech – Independent Review – Compelling State Interest – Least Restrictive Alternatives.

Mr. Bocoock argues that his speech is protected speech under the First Amendment, and that the superior court regulated his speech (a) without conducting an independent review of the record; (b) without the support of a compelling state interest; and (c) without looking to whether a less restrictive alternative existed than banning him from certain locations. In his view, the superior court's decision is in direct conflict with *Bering v. SHARE*, 106 Wn.2d 212, 721 P.2d 918 (1986).

This Court observes that Mr. Bocook bases his argument on a premise that his speech is speech the First Amendment protects. But both the district and the superior courts here held that using a microphone to broadcast, in close proximity to Mr. Lindell's places of employment and his residence, his personal opinion that Mr. Lindell is a child molester or wife-beater, is not protected speech. Stated simply, this Court agrees. Consequently, no significant constitutional issue sufficient to establish discretionary review is raised in these arguments. And, independent review, least restrictive alternative, and compelling state interest analyses do not come into play.

This Court also notes that Mr. Bocook relies on *Bose Corp. v. Consumers Union of U.S., Inc.*, which held that "in cases raising First Amendment issues we have repeatedly held that an appellate court has an obligation to 'make an independent examination of the whole record' in order that 'the judgment does not constitute a forbidden intrusion on the field of free expression.'" 466 U.S. 485, 499, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-86, 84 S.Ct. 710, 725-726, 11 L.Ed.2d 686 (1964)). Mr. Bocook argues the superior court did not make an independent examination of the record. He cites the superior court's statement at the review hearing, as follows: "I believe the trial court actually made specific findings *as to credibility or lack*, as the case may be in certain instances. And as

we know, the court is, *this court, in an appellate capacity must view the lower court's findings and conclusions with great deference, since that is the court which is able to observe the demeanors and manners of the various witnesses* and was able to hear their testimonies.” (Emphasis added.) Motion, App. A at 660-61.

This Court holds that even if Mr. Bocook’s speech was protected under the First Amendment, the foregoing comment by the superior court regarding issues of credibility does not mean that it failed to conduct an independent review of the district court record.

2. Reasonable Attorney Fees and Anti-SLAPP Statute.

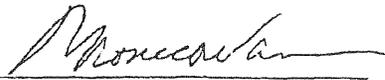
Mr. Lindell asked that the superior court award him reasonable attorney fees. Mr. Bocook argued, among other things, that the immunity provision of the Anti-SLAPP statute, RCW 4.24.510, protected him from any liability for attorney fees. The superior court disagreed and ordered Mr. Bocook to pay Mr. Lindell reasonable attorney fees and costs.

Because Mr. Bocook’s request for review of that portion of the superior court’s decision set forth above is a request for review of a matter originally raised and decided in the superior court, not the district court, it is appealable as a matter of right and not subject to discretionary review. Therefore, that part of the superior court’s decision will be decided by a panel of judges of this Court. Accordingly,

No. 32106-1-III

IT IS ORDERED, Mr. Bocoock's motion for discretionary review is denied. The superior court's decision on Mr. Lindell's request for attorney fees is referred to a panel of judges for decision as an appeal of right. The Clerk of Court is directed to set a perfection schedule for Mr. Bocoock's appeal of the award of attorney fees.

April 4, 2014



Monica Wasson
Commissioner

APPENDIX F

FILED
AUGUST 20, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, STATE OF WASHINGTON, DIVISION III

JACK WOODROW LINDELL,)	No. 32106-1-III
)	
Respondent,)	ORDER DENYING
v.)	MOTION TO MODIFY
)	COMMISSIONER'S RULING
RICHARD EUGENE BOCOOK,)	AND GRANT MOTION TO
)	FILE AMICI CURIAE
Appellant.)	

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of April 4, 2014, and the records and file herein, and is of the opinion the motion should be denied regarding discretionary review of the anti-harassment ruling and the motion to file an amici curiae brief should be granted. Therefore,

IT IS ORDERED, the motion to modify the Commissioner's Ruling regarding discretionary review is denied and the motion to file an amici curiae brief is granted.

DATED: August 20, 2014

PANEL: Jj. Korsmo, Fearing, Lawrence-Berrey



STEPHEN M. BROWN
ACTING CHIEF JUDGE

APPENDIX G

Filed *E*
Washington State Supreme Court

JUL 30 2015 *bjh*

Ronald R. Carpenter
Clerk

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JACK WOODROW LINDELL,

Respondent,

v.

RICHARD EUGENE BOCOOK,

Petitioner.

NO. 90856-7

RULING DENYING REVIEW

Jack Lindell petitioned for a civil antiharassment protection order against Richard Bocook pursuant to chapter 10.14 RCW. The Spokane County District Court granted a temporary antiharassment protection order effective for 10 days. Following a hearing on Mr. Lindell's request for a permanent order, the court entered a two-year antiharassment order that restrained Mr. Bocook from committing any acts of harassment against Mr. Lindell and from being in certain locations, including restraining him from being within 100 feet of River Park Square, one of Mr. Lindell's work locations. In its oral ruling the court indicated that this no contact zone should not prohibit Mr. Bocook from visiting certain locations within it, including the city hall, post office, and federal courthouse. But the written order dated January 18, 2013, did not reflect this ruling. An amended order with the correct delimitations was entered on February 1, 2013. Mr. Bocook appealed to Spokane County Superior

717/68

Court, which affirmed and awarded Mr. Lindell \$51,327.26 in attorney fees and costs. Mr. Bocook then moved for discretionary review in Division Three of the Court of Appeals. Commissioner Wasson denied review of the superior court decision and determined the superior court award of attorney fees and costs would be separately decided by a panel of judges because the award was appealable as a matter of right and not subject to discretionary review. A panel of the court denied Mr. Bocook's motion to modify the ruling.¹ He then moved for discretionary review by this court, a few months before the civil antiharassment order expired on January 18, 2015.

Ordinarily, the motion for discretionary review would be considered moot upon the expiration of the antiharassment order. But here the petitioner's appeal of the attorney fees and costs award, still pending in the Court of Appeals, is related to the merits of Mr. Bocook's claims that the antiharassment orders infringed his right of free speech protected by the First Amendment and article I, section 5 of the Washington Constitution.² Mr. Bocook claims the orders constituted a prior restraint on speech, and that there was no compelling government interest that would justify such restraint. Further, he contends the restrictions were overly broad and not narrowly tailored to protect the identified interests. He also asks this court to review the superior court's denial of the anti-SLAPP (strategic lawsuits against public participation) claim he raised after Mr. Lindell sought attorney fees and costs.³

¹ Mr. Bocook entitled his motion as a petition for discretionary review of the commissioner's ruling, but the Court of Appeals considered the motion as a motion to modify the commissioner's ruling. See RAP 13.3(e) (ruling by commissioner or clerk of the Court of Appeals is not subject to review by the Supreme Court, but a decision of the Court of Appeals on a motion to modify such a ruling may be subject to review).

² Neither party moved the Court of Appeals to modify the commissioner's ruling that the award of attorney fees and costs is appealable as a matter of right and not subject to discretionary review. However, Mr. Bocook contends that he raised the anti-SLAPP provisions in the district court in his briefing and therefore this court should review application of its provisions in the context of a petition for an antiharassment order.

³ In light of the imminent expiration of the order and the nature of the arguments, I awaited this court's decisions in *Davis v. Cox*, ___ P.3d ___, 2015 WL 3413375 (Wash.) and *State v. E.J.J.*, ___ P.3d ___, 2015 WL 3915760 (Wash.) before ruling on the pending motion.

When he petitioned for the protection order, Mr. Lindell served as the chief of security for River Park Square, a shopping center in downtown Spokane. Mr. Lindell also worked as a Department of Homeland Security contract security guard at the Thomas Foley Federal Courthouse, which is near River Park Square. Mr. Lindell submitted a declaration describing incidents in the year prior to the filing of the petition. Apparently, Mr. Bocook perceived that River Park Square had a policy to keep street kids off the public sidewalk in front of its mall entrance, a policy to which Mr. Bocook objected. Mr. Lindell's petition described multiple incidents in which Mr. Bocook would position himself in front of the main entrance of River Park Square and in a very loud voice or with the assistance of a microphone, direct comments to Mr. Lindell in which he would call him names such as child molester, wife beater, pervert, thief, corrupt person, and so on. Mr. Lindell averred that the name calling occurred in front of visitors to River Park Square and in front of his family. According to Mr. Lindell's declaration, Mr. Bocook had recently said, "you're gonna get what's coming." Mr. Lindell also relayed an incident when he was working at the federal courthouse and was standing with a co-worker when Mr. Bocook walked past them over and over, addressing him with comments such as "how many boys have you sexually harassed lately Jack." Mr. Lindell also alleged Mr. Bocook would write disparaging comments about him in chalk on the sidewalks in proximity to his worksites. Mr. Lindell's declaration listed comments posted on Mr. Bocook's Facebook page. These comments alleged corruption, encouraged others to talk to the Department of Homeland Security about Mr. Lindell's corrupt methods, suggested that Mr. Lindell followed young people into the bathrooms and peeked through the doors, said Mr. Lindell asked one young woman personal questions and bragged about filming her breasts, and posted photographs of Mr. Lindell with comments such as "predator hiding brhind [sic] a security title" and "his time is coming." Mr. Bocook

also made comments to third parties suggesting harm might come to Mr. Lindell, including that “One of these days he will be walking down the street where he is not safe since he has pissed off all the street kids” and that he could “get pulled into an alley and have the shit beat out of his [sic] with a 2x4 or even a knife and that will be the only way he changes his bullshit ways.” Mr. Lindell’s declaration also relayed statements Mr. Bocook made at televised city council meetings. These included statements that Mr. Lindell was filming women’s breasts, that he witnessed security personnel sexually harassing three teenage boys, and that the police would not do anything about it. At another city council meeting he said that security people had slashed his tires.⁴

At a January 18, 2013, hearing on the request for a permanent order, Mr. Lindell testified to these events. Mr. Bocook also testified at the hearing. In his testimony Mr. Bocook confirmed that a number of the face-to-face name-calling incidents occurred and that he had approached within a few feet of Mr. Lindell to take his photograph. In its written order entered that day the district court found Mr. Bocook had committed unlawful harassment as defined in RCW 10.14.020. It restrained Mr. Bocook from committing any acts of harassment against Mr. Lindell or cyberstalking Mr. Lindell as defined in RCW 9.61.260. It also restrained Mr. Bocook from being within 100 feet of any known location of Mr. Lindell, or within two city blocks of Mr. Lindell’s residence or his workplaces, River Park Square and the Thomas Foley Federal Courthouse. Two weeks later, on February 1, 2013, an amended order was entered that narrowed and tailored the geographic restrictions. Mr. Bocook was restrained from being within 100 feet of River Park Square, with an exception that allowed unrestricted access to the Spokane Library using the street-

⁴ After he filed his petition, Mr. Lindell indicated to the court that he was not relying on the comments at the city council meeting or the incident regarding the chalk writing on the sidewalk as support for his petition.

level entrance. Further, he was restrained from being within 100 feet of any known location of Mr. Lindell, and specifically restrained from any contact with Mr. Lindell at the federal courthouse. The order provided that Mr. Bocook was allowed to go to the Spokane City Hall using street-level entrances and to ride city buses or participate in parades or other similarly permitted events on the city streets around these workplace locations. The order also restrained Mr. Bocook from being within two city blocks of Mr. Lindell's residence. The order provided it would expire on January 18, 2015.

On appeal the superior court affirmed the order, concluding that Mr. Bocook had committed unlawful harassment as defined in RCW 10.14.020; that his conduct was not constitutionally protected activity; that the anti-SLAPP statute under which Mr. Bocook sought fees and penalties only applied to civil actions for damages and was inapplicable to legal actions brought for equitable relief such as antiharassment protection orders, and that Mr. Lindell was the prevailing party at all stages of the litigation and therefore was entitled to reasonable attorney fees and costs. The superior court affirmed the antiharassment order, rejected Mr. Bocook's claim that the anti-SLAPP statute precluded liability for attorney fees, and awarded attorney fees and costs totaling \$51,327.26. As discussed, the Court of Appeals denied review of the affirmance of the antiharassment order, and determined that matters originally raised and decided in the superior court, including the award of attorney fees and costs and the ruling on the application of the anti-SLAPP statute, were appealable as a matter of right.

Mr. Bocook now seeks this court's review of the denial of discretionary review of the superior court's affirmance of the antiharassment order. To obtain this court's discretionary review of the Court of Appeals decision, Mr. Bocook must show that the Court of Appeals committed obvious error that renders further proceedings

useless or probable error that substantially alters the status quo or limits the freedom of a party to act, or that it so far departed from the usual course of proceedings, or so far sanctioned such a departure by the trial court, as to call for this court's review. RAP 13.5(b). And to make this showing, he would need to demonstrate that the Court of Appeals was wrong to deny discretionary review under the similar criteria of RAP 2.3(d).

Mr. Bocook first urges that this court's review is warranted because the superior court did not employ the "independent review" standard applicable in cases raising First Amendment issues. This standard, as explained in *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984), provides that in defamation actions that turn on a determination of actual malice, an appellate court has an obligation to independently examine the entire record in order to make sure that the judgment does not impermissibly intrude on rights of free expression. *Id.* at 499. Relying on *Bose*, Mr. Bocook argues that the superior court erred when it observed that the district court made specific findings as to credibility, and that in its appellate capacity it would view the lower court's findings and conclusions with deference where the district court was able to observe the demeanor and manner of the various witnesses and was able to hear the testimony. The commissioner's ruling concluded that the superior court's comment regarding issues of credibility did not mean that it failed to conduct an independent review of the district court record. Mr. Bocook contends the superior court and the Court of Appeals erred by allowing the district court decision to stand without an independent review on appeal. He argues that what little reference was made to the record "supports the conclusion that the reviewing courts deferred to the facts below, even as to facts explicitly challenged by Bocook." Further, he contends that this court has warned the lower courts not to rely upon uncorroborated affidavits in cases involving

speech rights, citing *Federal Way Family Physicians, Inc. v. Tacoma Stands Up for Life*, 106 Wn.2d 261, 267, 721 P.2d 946 (1986).

But the purpose of the independent review is not to eliminate the traditional deference accorded the trial court on issues of credibility and shift such determinations to the appellate courts. The Supreme Court indicated in *Bose* that findings on credibility would continue to be given deference. *Bose*, 466 U.S. at 501 n.17, 104 S. Ct. 1949. And in *State v. Kilburn*, 151 Wn.2d 36, 49-52, 84 P.3d 1215 (2004), this court examined the parameters of the independent review as explained in *Bose* and concluded it was not the equivalent of de novo review in which the reviewing court makes an original appraisal of all the evidence to determine the facts. More specifically, this court has held that the rule of independent appellate review does not extend to factual findings on credibility. *State v. Johnston*, 156 Wn.2d 355, 365-66, 127 P.3d 707 (2006).

This conclusion makes sense, as nothing about the First Amendment context changes the inherent limitations on an appellate court's ability to make credibility determinations. Rather, where a finding of fact goes beyond a determination of what was said or occurred based on observation of witnesses and evaluation of testimony, and crosses into the realm of reasoning that applies a legal rule to determine if the communications were of an unprotected character, the reviewing court must exercise its own independent judgment by freshly examining facts that are intermingled with the legal question to analyze the parameters of speech protection. See *Kilburn*, 151 Wn.2d at 51 (reviewing *Bose* and subsequent application of the independent review principle). And Mr. Bocoock's citation to *Physicians* is inapposite. That case involved a record composed entirely of affidavits with no live testimony and where only one supplemental affidavit showed hindrance to clinic ingress and egress. *Physicians*, 106 Wn.2d at 266. This court concluded that the paper

record there shed little light on whether ingress and egress had been impeded to an extent that the clinic employees and visitors had a well-grounded fear of invasion of their legal rights that would support a preliminary injunction. *Id.* at 266-67. Here, in contrast, the trial court record contains live testimony as well as detailed declarations. And the superior court's discussion of the factual record demonstrates that it did make an independent examination of the whole record in order to freshly examine how the evidentiary facts were analyzed under applicable law. After doing so, the court concluded that Mr. Bocook's actions were harassment that could be addressed by an order protecting Mr. Lindell from unwanted contacts consistent with the First Amendment. The court examined "statements in issue and the circumstances under which they were made to see ... whether they are of a character which the principles of the First Amendment ... protect." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688-89, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 285, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964)).

In Mr. Lindell's view this case involves only a limitation on Mr. Bocook's conduct, and not on his speech, and therefore substantial evidence is the appropriate standard of review. For support he cites *Trummel v. Mitchell*, 156 Wn.2d 653, 668, 131 P.3d 305 (2006), where this court stated, "We find substantial evidence in the record documenting Trummel's conduct, which includes yelling and screaming at staff and residents, threatening residents, spying on residents, and disrupting meetings." But in *Trummel* this court examined whether the antiharassment order was properly based on conduct and not on constitutionally protected activity, observing that RCW 10.14.020(1) provides that "[c]onstitutionally protected activity is not included within the meaning of 'course of conduct'" and that RCW 10.14.190 provides that "[n]othing in this chapter shall be construed to infringe upon any constitutionally protected rights including, but not limited to, freedom of speech and

freedom of assembly.” *See id.* at 665, 668. The review conducted thus contained the elements of an independent review under *Kilburn* and *Bose*. And in the recent decision in *E.J.J.*, this court observed that words that are disrespectful, discourteous, and annoying are nonetheless constitutionally protected; thus, the court was required to engage in a careful review of the record to ensure the defendant’s obstruction conviction could not have been based on speech alone. *E.J.J.*, slip op. at *1, 3.

The fact that disrespectful, discourteous, and annoying speech enjoys constitutional protection does not mean that a statute cannot provide for narrowly drawn areas where persons can be excluded to serve sufficiently important interests. *See E.J.J.*, slip op. at *5, n.9 (distinguishing prohibitions on picketing behavior in precise and limited area from criminal penalties for speech under the obstruction of justice laws). But Mr. Bocook contends that the superior court and the Court of Appeals erred in determining that “speech and expressive conduct upon a public sidewalk may be limited under RCW 10.14.190 without regard to a least-restrictive analysis.” Pet. for Discr. Review at 4. Relatedly, he contends that the superior court and the Court of Appeals erred in equating the “important state interests” in protecting individuals from harassment recognized in RCW 10.14.100 as “compelling state interests” sufficient to restrain him from such locations. Public streets and sidewalks have been recognized as “the archetype of a traditional public forum.” *Snyder v. Phelps*, 562 U.S. 443, 456, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011) (quoting *Frisby v. Schultz*, 487 U.S. 474, 480, 108 S. Ct. 2495, 101 L. Ed. 2d 420 (1988)). But the fact that an order restrains access to portions of public streets and sidewalks does not automatically require that the order be the least restrictive means of achieving a compelling state interest. *See McCullen v. Coakley*, 134 S. Ct. 2518, 2530-31, 189 L. Ed. 2d 502 (2014) (state statute limiting access to public sidewalks by creating buffer zones to abortion clinic entrances not a content-based restriction of speech, and

therefore need not be the least restrictive means of serving the government's interests). Where restrictions on access are not content-based, such restrictions are allowable under the First Amendment if they are narrowly tailored to serve a significant governmental interest, and leave open ample alternative channels for communication of the information. *Id.* at 2529. Injunctive relief that focuses on the precise individuals and the precise conduct causing a particular problem has been contrasted with buffer zones that unnecessarily sweep in individuals, and their speech, when they have not been responsible for the conduct that affects the significant governmental interest. *See id.* at 2538.

Under article I, section 5 of the Washington Constitution, such "time, place, and manner" restrictions must serve a "compelling" rather than a "significant" government interest. *Bering v. SHARE*, 106 Wn.2d 212, 234, 721 P.2d 918 (1986). Protecting citizens from harassment has been recognized as a compelling state interest. *State v. Noah*, 103 Wn. App. 29, 41, 9 P.3d 858 (2000). Mr. Bocook contends that the conclusion in *Noah* is contrary to the level of importance of this interest assigned by the legislature in RCW 10.14.010. There, the legislature found "that serious, personal harassment through repeated invasions of a person's privacy by acts and words showing a pattern of harassment designed to coerce, intimidate, or humiliate the victim is increasing." The legislature further found that "the prevention of such harassment is an important governmental objective." But an interest can be both important and compelling, and Mr. Bocook has pointed to nothing beyond the statutory language to suggest the legislature intended a finding that the governmental interest served is not compelling.

The question thus becomes whether the antiharassment order was content-based such as to be subject to strict scrutiny. *See McCullen*, 134 S. Ct. at 2530. Mr. Bocook contends it was content-based because the district court focused on

whether the words he used caused Mr. Lindell distress. But chapter 10.14 RCW focuses not on approval or disapproval of the ideas expressed, but on whether there has been a course of conduct that appears designed to alarm, annoy, or harass a particular individual and has the purpose or effect of unreasonably interfering with the individual's privacy or creating an intimidating, hostile, or offensive living environment for the individual. RCW 10.14.030(3), (5). The definition of "unlawful harassment" includes a knowing and willful course of conduct directed at a specific person where the course of conduct is such as would "cause a reasonable person to suffer substantial emotional distress, and shall actually cause substantial emotional distress to the petitioner." RCW 10.14.020(2). Of course some reference to the words spoken informs this inquiry. But recognition that Mr. Bocook used spoken words to cause such distress does not make the antiharassment order a content-based order. When the evidence shows such comments were repeatedly directed to an unwilling listener with no apparent purpose other than to harass the individual, an order precluding contact with the individual is based on conduct and not on any expressive idea that is conveyed. *See Eugene Volokh, One-to-One Speech vs. One-to-Many Speech, Criminal Harassment Laws, and "Cyberstalking,"* 107 Nw. U.L.Rev. 731, 742-43 (2013). And this distinction is emphasized by the fact the order does not restrain communication of the same content in other locations and to other individuals. *Cf. In re Marriage of Suggs*, 152 Wn.2d 74, 76-77, 93 P.3d 161 (2004) (order for protection from unlawful civil harassment restraining petitioner from knowingly and willfully making invalid and unsubstantiated allegations or complaints to third parties an unconstitutional prior restraint on speech).

The district court considered the words only to determine if the actions and words showed a course of conduct causing the required substantial emotional distress. And the superior court clearly had these principles in mind in its oral ruling affirming

the order when it stated: "So here we have statements and conduct, which although on the public street, if they'd been limited to perhaps one or two even, wouldn't be a close case at all. Nonetheless, the evidence, the persuasive evidence presented at the trial court, is that these statements and conduct were in the form of a consistent pattern and ongoing, and they were directed specifically at Petitioner Lindell." The superior court did not commit obvious or probable error warranting review under RAP 2.3(b) when it concluded that an antiharassment order based on prior conduct that prevents contact to protect an individual's peace and privacy in his workplace is permissible regulation of conduct. *See Trummel*, 156 Wn.2d at 666-67 (entry of an order that focuses on the speaker's conduct and not the message does not violate First Amendment rights). In turn, the Court of Appeals decision denying review does not warrant this court's review under RAP 13.5(b).

If the court finds by a preponderance of the evidence that unlawful harassment exists, a respondent may be ordered to stay a stated distance from the petitioner's residence and workplace. RCW 10.14.080(6). Amici curiae Pennsylvania Center for the First Amendment and Professor Aaron Caplan, in supporting the motion for discretionary review, acknowledge that "if Bocook has engaged in unlawful harassment as defined by RCW 10.14.020, his future conduct (including future protests) can be subject to certain content-neutral time, place, and manner restrictions." But they urge that the antiharassment order here, encompassing the sidewalks and park space 100 feet around River Park Square and the public sidewalks within two blocks of Mr. Lindell's residence impose "a much broader restriction than the United States Supreme Court's precedents allow."⁵ They point in particular to Supreme Court cases addressing the permissible buffer zones that preclude picketing

⁵ The record reflects that Mr. Bocook did not know the location of Mr. Lindell's residence at the time of the district court hearing, and there is no information in the record that suggests Mr. Bocook was actually impeded in any activities as a result of this restriction.

and approaches to entrants around abortion clinic entrances, *Schenck v. Pro-Choice Network of Western New York*, 519 U.S. 357, 371-72, 117 S. Ct. 855, 137 L. Ed. 2d 1 (1997) (15-foot buffer); *Madsen v. Women's Health Center*, 512 U.S. 753, 758-59, 114 S. Ct. 2516, 129 L. Ed. 2d 593 (1994) (36-foot buffer), and suggest that the principles in these cases demonstrate that 100 feet is excessive. Mr. Bocook, in contrast, presents little argument related to the area from which he was restricted, stating only that the lower courts "removed him from the site altogether without regard for the rules required in *Bering v. SHARE*." Rather, in relation to his challenge to the award of attorney fees, he argues that the geographical restrictions of the first two protection orders were too large, and that his actions in the district court were "successful in overturning the overbroad geographic restrictions and limiting the order to a 100 feet perimeter around River Park Square and the federal courthouse." Before the district court Mr. Bocook requested that the court consider limiting the required distance from River Park Square to 25 feet rather than 100 feet, but the district court noted the space of 25 feet within the courtroom and stated that distance was not sufficient under the circumstances.

In *State v. Noah*, 103 Wn. App. 29, 43-44, 9 P.3d 858 (2000), the court distinguished the orders at issue in *Schneck* and *Madsen* from an order protecting a specific victim against contact by a harasser. But as recognized in *Noah*, the distances established in a protection order may be excessive. *Id.* at 43. However, also relevant here is the recognition in *Noah* that where the order has expired, and where the distance does not make the antiharassment order void, no purpose would be served by appellate review. *Id.* In *Noah* the fact that the order would not be void meant that even if the distance provision were excessive, the contempt proceedings could not be collaterally attacked. Here, the distance established in the order of protection does not void the decision to issue the order. Aside from Mr. Bocook's contention that he was

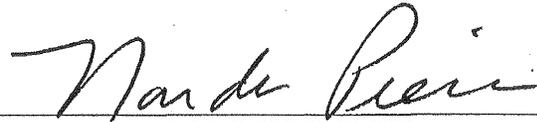
successful in limiting the geographical reach of the order, the distance has no bearing on the attorney fee award.

Nor would appellate review of the expired order serve the purpose of clarifying the law. Review of moot cases where the issue turns on a limited fact situation provides little prospective guidance. *Hart v. Dep't of Soc. & Health Servs.*, 111 Wn.2d 445, 451, 759 P.2d 1206 (1988). Here, Mr. Lindell testified to the broad areas of River Park Square he patrolled as part of his duties, including the exterior areas. And the protection order took into account the unique location of River Park Square with its proximity to government buildings in fashioning exceptions to the required distance. Whether or not the stated distance was excessive in light of Mr. Bocook's prior conduct and in light of these circumstances would be a fact-bound analysis that would be unlikely to provide general guidance. *Cf. Snyder v. Phelps*, 562 U.S. 443, 457, 131 S. Ct. 1207, 179 L. Ed. 2d 172 (2011) (noting Maryland had enacted a law that prohibits picketing within 100 feet of a funeral service after the events giving rise to the tort action before it, and stating "we have no occasion to consider how it might apply to facts such as those before us, or whether it or other similar regulations are constitutional."). Mr. Bocook may make his arguments relating to his success in narrowing the initial broad geographic restrictions as it relates to the attorney fees and costs award in the Court of Appeals. This issue does not warrant this court's interlocutory review.

Mr. Bocook contends this court should consider his anti-SLAPP claim in the context of his motion for discretionary review because he included reference to the claim in his pleadings filed in the district court. But at a hearing before the superior court Mr. Bocook's counsel indicated that while he included reference to the anti-SLAPP law in his district court pleadings, "I indicated it was not ripe, because there had been no demand for damages, or money." Thus, there is no showing the

commissioner erred in determining the superior court was the court that originally ruled on the applicability of this law in its award of attorney fees and costs, making the decision subject to appeal.

The motion for discretionary review is denied.



COMMISSIONER

July 30, 2015

RONALD R. CARPENTER
SUPREME COURT CLERK

SUSAN L. CARLSON
DEPUTY CLERK / CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

July 30, 2015

LETTER SENT BY E-MAIL ONLY

Jeffrey K. Finer
Center for Justice
35 W. Main Avenue, Suite 300
Spokane, WA 99201-0119

Hon. Renee Townsley, Clerk
Court of Appeals, Division III
500 N. Cedar Street
Spokane, WA 99201

Richard Lynn Mount
Matthew A. Mensik
Duane Michael Swinton
Witherspoon Kelley Davenport & Toole
422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201-0300

Re: Supreme Court No. 90856-7 - Jack Woodrow Lindell v. Richard Eugene Bocook
Court of Appeals No. 32106-1-III

Clerk and Counsel:

Enclosed is a copy of the RULING DENYING REVIEW, signed by the Supreme Court Commissioner on this date in the above entitled cause.

Sincerely,

Ronald R. Carpenter
Supreme Court Clerk

RRC:wg

Enclosure as stated

cc: Paul J. Lawrence
Eugene Volokh

