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No. 89674-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

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MICHAEL HENNE,
Plaintiff/Respondent,

Filed *E*
Washington State Supreme Court

vs.

CITY OF YAKIMA, a municipal corporation,
Defendant/Petitioner.

MAY - 8 2014

Rjh
Ronald R. Carpenter
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BRIEF OF AMICUS CURIAE
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 ORIGINAL

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I. IDENTITY AND INTEREST OF AMICUS CURIAE

The Washington State Association for Justice Foundation (WSAJ Foundation) is a not-for-profit corporation under Washington law, and a supporting organization to Washington State Association for Justice (WSAJ). WSAJ Foundation is the new name of Washington State Trial Lawyers Association Foundation (WSTLA Foundation), a supporting organization to Washington State Trial Lawyers Association (WSTLA), now renamed WSAJ. WSAJ Foundation, which operates the amicus curiae program formerly operated by WSTLA Foundation, has an interest in the rights of persons seeking legal redress under the civil justice system, including an interest in the proper interpretation and application of the “anti-SLAPP” statute, RCW 4.24.525, and related statutes.¹

II. INTRODUCTION AND STATEMENT OF THE CASE

The Court is presented here with an issue of first impression, the proper interpretation and application of RCW 4.24.525, one of Washington's anti-SLAPP statutes. This review involves a tort action filed by Michael Henne (Henne), a sergeant in the Yakima Police Department, against the City of Yakima (City). The underlying facts are drawn from the briefing of the parties and the Court of Appeals opinion. See Henne Br. at 1-3, 5-15; City Br. at 1-6; City Pet. for Rev. at 3-7; Henne Ans./Cross-Pet. at 2-3; Henne, 177 Wn. App. at 584-87.

¹ The acronym "SLAPP" refers to "strategic lawsuit against public participation." See Henne v. City of Yakima, 177 Wn. App. 583, 584 n.1, 313 P.3d 1188 (2013), *review granted*, 179 Wn. 2d 1022 (2014). For a history of the origins of this type of action in Washington, see Tom Wyrwich, A Cure for A “Public Concern”: Washington’s New Anti-SLAPP Law, 86 Wash. L. Rev. 663, 668-82 (2011).

Henne's tort action alleged he suffered harassment and retaliation by the City based upon its handling of statements and submissions by fellow officers resulting in a series of internal investigations. See Henne, 177 Wn. App. at 584-85; City Br. at 1 (describing action as "arising out of" officer reports of misconduct and resulting internal investigations).

Henne only sued the City, not any of the officers who submitted reports relating to the internal investigations. Henne's original complaint made claims against the City for (1) retaliatory reassignment to a less desirable position when he refused to resign while under investigation; (2) harassment and retaliation in the form of unwarranted internal investigations; and (3) failure to investigate and discipline other officers for unprofessional behavior related to the investigations. See Henne at 586. Henne sought damages for lost wages and benefits, lost opportunities for advancement, general damages, and injunctive relief to enjoin the City from perpetuating a hostile work environment. See id.

The City responded to Henne's complaint, in part, by invoking RCW 4.24.525, one of Washington's anti-SLAPP statutes, contending that his claims "related to the internal investigations" and involved protected statements and submissions based upon "public participation and petition." Henne at 586 (quoting CP 15). On this basis, the City sought to recover attorney fees, costs and statutory damages.

In response, Henne moved to amend his complaint to clarify the nature of his claims, asserting that if the amendment was allowed the

City's special motion to strike would become moot. The superior court entered an order allowing amendment of the complaint, and Henne's amended complaint apparently removed the challenged allegations. See id. at 587. Henne also argued that the City could not invoke the anti-SLAPP statute because it was not a "person," as defined in RCW 4.24.525(1)(e). See Henne at 587; Henne Ans./Cross-Pet. at Appendix, pp. A-28 through A-30 (superior court verbatim report of proceedings).

The superior court did not decide the issue on these grounds. Instead, the court denied the City's motion to strike, concluding that these are not the type of circumstances contemplated by the Legislature in enacting RCW 4.24.525. See Henne Br. at 6; City Br. at 13-14; Henne at 587.

The Court of Appeals, Division III, affirmed on other grounds. The court concluded the City qualified as a "person" under RCW 4.24.525(1)(e) and could invoke the statute, but held that Henne's amendment of the complaint removed the challenged claims, thereby rendering the anti-SLAPP special motion to strike moot. See Henne at 588-89.² Consequently, the court dismissed the appeal as moot. See id. at 589-90.

The City sought review in this Court, challenging the Court of Appeals determination that Henne could amend his complaint and avoid liability under RCW 4.24.525. See City Pet. for Rev. at 1-2. Henne cross-

² Judge Fearing dissented on this issue. See Henne at 599-600 (Fearing, J., concurring in part and dissenting in part).

petitioned, challenging the Court of Appeals determination that the City qualifies as a "person" entitled to invoke the statute. See Henne Ans./Cross-Pet. at 2, 14. This Court granted review on both petitions.³

III. ISSUE PRESENTED

May the City invoke the anti-SLAPP statute, RCW 4.24.525, against Henne in response to his tort action for wrongful employment practices, when the City is the governmental body that received the allegedly protected statements and submissions made by its employees, and Henne did not sue those employees?

IV. SUMMARY OF ARGUMENT

The City's anti-SLAPP motion should fail as it is not "based on an action involving public participation and petition" under RCW 4.24.525(2), because the City itself made no statement or submission arguably protected under the statute. Only the City's employees made reports resulting in internal investigations, and Henne did not sue them. Instead, the City is the governmental body to whom the statements and submissions were made. Nothing in the anti-SLAPP statutory scheme suggests that under these circumstances the City may assert any right its employees would have to invoke RCW 4.24.525. To hold otherwise would unjustifiably expand the class of persons protected by the statute, contrary to legislative intent and the language of the statute.

³ The Washington State Association of Municipal Attorneys (WSAMA) filed an amicus curiae brief on the merits at the Court of Appeals level (WSAMA Am. Br.), and filed an amicus curiae memorandum in this Court supporting the City's petition for review (WSAMA ACM).

V. ARGUMENT

Introduction

The issue of interpretation and application of RCW 4.24.525 is one of first impression, and the Court's opinion in this case will have far reaching effects. The standard of review is de novo. See Davis v. Cox, 2014 WL 1357260 at *3 (Wn. App., Div. I, Apr. 7, 2014).

The briefing before the Court in large part casts the question before the Court in terms of whether the City qualifies as a "person" under subsection (1)(e) of RCW 4.24.525 (or §525). See e.g. Henne Br. at 11-15; City Reply Br. at 1-2, 7-11; WSAMA Am. Br. at 4-6; WSAMA ACM at 1-4. However, the overarching question should be whether the City is entitled to invoke the statute under these circumstances, when the employees making the statements and submissions are not sued, and the City is merely the recipient of the information related to its internal investigations. See Henne Ans./Cross-Pet. at 1-2 (questioning City's "standing" to bring motion to strike); City Supp. Br. at 4 (urging "[t]here is no legitimate reason why the anti-SLAPP statute protections of RCW 4.24.525 should be removed from public entities, such as municipalities like the City, acting through their employees.") The issue of whether §525 contemplates that the City may invoke the statute under these circumstances, when its employees are not sued, has not been directly

addressed in the briefing, but is fundamental to proper resolution of this case.⁴

If the City cannot invoke §525 under these circumstances, the Court need not reach the question of whether Henne can avoid application of this statute by amending his complaint.

A. Overview Of Washington’s Anti-SLAPP Statutes, And Their Protection For Those Engaging In Speech And Petition For Redress Of Grievances.

Washington has adopted two separate anti-SLAPP laws designed to protect and foster public participation. In 1989, Washington enacted what has been described as “the first modern anti-SLAPP law” in the nation. Laws of 2002, Ch. 232, §1. This 1989 law confers immunity from suit and provides remedies to the targets of SLAPP suits. See Laws of 1989, Ch. 234 (codified as amended at RCW 4.24.500-.520). Washington’s second anti-SLAPP law was adopted in 2010. See Laws of 2010, Ch. 118 (codified as RCW 4.24.525). The 2010 law expands the scope of anti-SLAPP protection and creates an expedited procedural framework for resolving anti-SLAPP claims. It also contains its own remedies provision. Both anti-SLAPP laws are designed to protect those

⁴ This question is a proper subject of review, notwithstanding the fact it has been overlooked in the briefing here and below. See Maynard Inv. Co. v. McCann, 77 Wn.2d 616, 623, 475 P.2d 657 (1970) (addressing compliance with provision of mandatory statute even though not raised below); Harris v. Dept. of Labor & Indus., 120 Wn.2d 461, 467-68, 843 P.2d 1056 (1993) (addressing issue first raised by amicus curiae when necessary to reach a proper decision).

speaking out on issues of public concern and/or exercising free speech or petitioning the government.⁵

Re: RCW 4.24.500-.520

The codified statement of legislative findings and purpose for the 1989 anti-SLAPP law is phrased in terms of “[i]nformation provided by citizens.” RCW 4.24.500. Encouraging disclosure of such information is deemed necessary to effective law enforcement and the efficient operation of government, and the Legislature finds that the protections of the law are necessary to eliminate “a deterrent to citizens who wish to report information[.]” *Id.* The purpose of the law is “to protect individuals who make good-faith reports to appropriate governmental bodies.” *Id.*

Toward this end, the 1989 anti-SLAPP law confers immunity upon “[a] person who in good faith *communicates* a complaint or information.” Laws of 1989, Ch. 234, §2 (codified as amended at RCW 4.24.510 [or §510]; emphasis added). Such a person is entitled to recover attorney fees and costs incurred in establishing the defense. *See id.* The “agency receiving a complaint or information” has the ability to intervene and defend the person communicating the complaint or information, and is likewise entitled to recover attorney fees and costs. *Id.* §4 (codified at RCW 4.24.520; emphasis added).⁶

⁵ The 1989 and 2010 anti-SLAPP legislation and the current versions of RCW 4.24.500-.525 are reproduced in the Appendix to this brief.

⁶ *See Segaline v. Department of Labor & Indus.*, 169 Wn. 2d 467, 473, 238 P.3d 1107 (2010) (holding a government agency is not a “person” entitled to protection under RCW 4.24.510 because “[a] government agency does not have free speech rights”).

The original 1989 anti-SLAPP law was limited to complaints or information communicated to an agency of federal, state or local government. See id. A 1999 amendment added self-regulatory organizations in the securities and futures industries to this list. See Laws of 1999, Ch. 54, §1.⁷ However, the 1999 amendment retained the language of the original law conferring immunity only on those persons who communicate a complaint or information. See id. The 1999 amendment also left intact the provision of the original law allowing a government agency receiving the complaint or information to intervene and defend a SLAPP suit. See id.

A 2002 amendment to the original anti-SLAPP law eliminated the good faith requirement in §510 and added a \$10,000 statutory damages remedy. See Laws of 2002, Ch. 232, §2.⁸ The uncodified statement of legislative findings and purpose that accompanies the 2002 amendment reiterates that the law is intended to protect “communications made to influence a government action or outcome” and the “exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.” Id. §1. The Legislature finds that elimination of the good faith motive requirement of the original law is necessary to bring the anti-SLAPP law in line with U.S. Supreme Court precedent recognizing that the federal constitution “protects advocacy to government, regardless

⁷ The 1999 legislation amending RCW 4.24.510 is reproduced in the Appendix to this brief.

⁸ The 2002 legislation amending RCW 4.24.510 is reproduced in the Appendix to this brief.

of content or motive[.]” *Id.* This statement of findings and purpose leaves unaltered the codified statement of findings and purpose in the original 1989 anti-SLAPP legislation.

Despite removing the good faith motive requirement, the language of the 2002 amendment is still phrased in terms of immunity for “[a] person who communicates a complaint or information[.]” RCW 4.24.510. The amendment also leaves undisturbed the provision of the original law allowing a government agency receiving the complaint or information to intervene and defend. *See id.*

Re: RCW 4.24.525

Washington’s second anti-SLAPP statute, adopted in 2010, is codified as RCW 4.24.525. The uncoded statement of legislative findings and purpose for the 2010 law is similar to that supporting the original 1989 law and subsequent amendments, although the protections afforded by the 2010 law are broader in some respects. *See* Laws of 2010, Ch. 118, §1(1). The Legislature expresses its concern regarding “lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.” *Id.* §1(1)(a). The Legislature’s intent is to encourage “citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues,” and to eliminate the effect of SLAPP lawsuits in “deter[ring] individuals and entities from fully exercising their

constitutional rights to petition the government and to speak out on public issues[.]” Id. §1(1)(c) & (d).

Specifically, the Legislature declares that the purposes of the enactment are to:

(a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and

(c) Provide for attorneys’ fees, costs, and additional relief where appropriate.

Id. §1(2).⁹ Section 3 of the enactment requires that it “shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.”

One of the distinctive features of the 2010 law is its delineation of a procedural framework for resolving anti-SLAPP claims on an expedited basis. See Laws of 2012, Ch. 118, §1(2)(b). Concern regarding the ability to set forth clear rules for early dismissal and review of anti-SLAPP claims was foreshadowed in the legislative findings supporting the 2002 amendment to §510 of the original anti-SLAPP law. See Laws of 2002,

⁹ The “rights of persons to file lawsuits” would seem to include the right of access to courts under Washington Constitution Art. I §§10 & 12. See Putman v. Wenatchee Valley Med. Ctr., P.S., 166 Wn.2d 974, 979, 216 P.3d 374 (2009) (citing John Doe v. Puget Sound Blood Ctr., 117 Wn.2d 772, 780, 819 P.2d 370 (1991), and involving access to courts under Art. I §10); Schroeder v. Weighall, 179 Wn.2d 566, 573, 316 P.3d 482 (2014) (involving fundamental right of state citizenship to pursue common law causes of action in court under Art. I §12). Regarding the right to trial by jury, see Sofie v. Fibreboard Corp., 112 Wn.2d 636, 771 P.2d 711, 780 P.2d 260 (1989).

Ch. 232, §1 (indicating the 1989 “law has, in practice, failed to set forth clear rules for early dismissal [and] review”).¹⁰

The 2010 law allows a party to an alleged SLAPP lawsuit to bring a special motion to strike “any claim that is based on an action involving public participation and petition[.]” RCW 4.24.525(4)(a). The moving party has the initial burden of showing by a preponderance of the evidence that the claim is “based on an action involving public participation and petition.” §525(4)(b). If the moving party meets this burden, then the burden shifts to the responding party to establish a probability of prevailing on the claim by clear and convincing evidence. See id.¹¹ The motion may be heard on an expedited timeline, and all other pending matters are stayed until the motion is decided, unless otherwise ordered by the court. See §525(5)(a)-(c). A moving party who prevails on the motion is entitled to recover attorney fees and costs, statutory damages of \$10,000, and additional relief. See §525(6)(a)(i)-(iii). A decision on the motion is subject to immediate appeal as a matter of right. See §525(5)(d).

The 2010 law specially defines when a claim is “based on an action involving public participation and petition[.]”§525(2)(a)-(e). Four of the five subparts of the definition are phrased in terms of “[a]ny oral

¹⁰ RCW 4.24.510 has no mechanism for expedited court consideration of a claim of immunity, and persons claiming immunity have tried unsuccessfully to have trial courts rule in some accelerated fashion on motions to dismiss under that statute. See Right-Price Rec. v. Connells Prairie, 146 Wn.2d 370, 374-75, 46 P.3d 789 (2002) (treating citizen group’s motion to dismiss under RCW 4.24.510 as CR 12(b)(6) motion); Bailey v. State, 147 Wn. App. 251, 259-60, 191 P.3d 1285 (2008) (treating motion to dismiss as motion for summary judgment).

¹¹ See e.g. Dillon v. Seattle Deposition Reporters, LLC, — Wn. App. —, 316 P.3d 1119 (2014) (applying a two step analysis under §525, and rejecting constitutional challenges to this section). There is no constitutional challenge to §525 raised in this review.

statement made, or written statement or other document submitted[.]” See §525(2)(a)-(d). Three of those subparts expressly contemplate that a government body is the recipient of the statements or submissions. Compare §525(2)(a)-(c) (regarding statements or submissions in, in connection with, or in an effort to influence legislative, executive, judicial or other governmental proceedings) with §525(2)(d) (regarding statements in a public place or forum). The final catch-all subpart of the definition refers to “[a]ny other lawful conduct in furtherance of the exercise of the constitutional right of free speech ... or in furtherance of the exercise of the constitutional right of petition[.]” §525(2)(e). Whether defined in terms of oral statements, written submissions or other lawful speech and petition, all five subparts of the definition serve to protect those who *communicate* information.

The 2010 law also includes a provision comparable to the 1989 law (codified as RCW 4.24.520), allowing that “[t]he attorney general’s office or any government body to which the moving party’s acts were directed may intervene to defend or otherwise support the moving party.” §525(4)(e).

The question of whether the City can meet its initial burden under §525 to establish that Henne’s complaint is an action based on public participation and petition is addressed in §B, below.

B. The City Should Not Be Able To Invoke RCW 4.24.525 Because It Is The Governmental Body Receiving The Statements Or Submissions Subject To Protection Under The Statute, And It Should Not Be Able To Assert The Rights Of Non-Party Employees Who Made Any Protected Statements Or Submissions Resulting In The Internal Investigations.

Although the parties appear to consider the question of whether the City qualifies as a “person” under §525(1)(e) to be determinative in this case, there is a threshold question of whether the City is entitled to the protection of the statute when its employees made the relevant statements or submissions *to the City*, resulting in internal investigations by the City, and none of the employees were sued by Henne.

Preliminarily, this is not an instance where the City, through its employees, made statements or submissions to *another* governmental body that are the subject of an anti-SLAPP claim. Whether under such circumstances a municipality qualifies as a “person” entitled to the protection of the statute must await another day.¹² Here, the City is the governing body *receiving* the statements and submissions in question, through its police department. See §525(1)(b) (defining “government” to include any department of a governmental body). Section 525 should not protect the City in these circumstances, when it is the recipient of statements or submissions provided by employees who are not sued.¹³

This Court’s fundamental task when interpreting the statute is to discern and implement the Legislature’s intent. See Estate of Bunch v.

¹² Section 525(1)(e) does not list government entities or agencies in defining “person.” Cf. Segaline, 169 Wn.2d at 483 (Madsen, J., concurring).

¹³ It is assumed for purposes of this brief that these statements or submissions otherwise qualify for protection under §525.

McGraw Ctr., 174 Wn.2d 425, 432, 275 P. 3d 1119 (2012). Legislative intent is implemented by giving effect to the plain meaning of a statute, which may be discerned from all that the Legislature has said in the statute in question and related statutes. See id.

Two uncodified sections of the 2010 legislation indicate the City does not qualify as a moving party in these circumstances. Laws of 2010 Ch. 118, §1 reflects that a primary concern of the Legislature is to avoid chilling the rights of those speaking out on public issues. The City is not the speaker here. Further, §3 of this law identifies its general purpose as protecting “participants” in public controversies from misuse of the courts. Under the plain meaning of the word, the City was not a “participant” at the time the employees’ statements or submissions were made. It was the employees who had “the right to participate in matters of public concern.” Laws of 2010, §1(2)(a). Again, this is different than when an employee is making a statement or submission to *another* government body, or the public for that matter, on behalf of the City. The City here was the mere recipient of the protected communications.

The plain language of §525(2) also supports this conclusion. In this case, the requirement that the plaintiff’s claim is “based on an action involving public participation and petition” falls under either §2(a) or (b), because the allegedly protected communications consist of statements or submissions to the City police department relating to its internal investigations. See City Br. at 25-26 (invoking §525(2)(a) & (b), with

regard to the officer reports and related internal investigations); see also City Supp. Br. at 2-3 (referencing same subsections).¹⁴ These subsections contemplate a participant submitting statements or documents to or in connection with proceedings of a governmental body. The governmental body, here the police department, received the officers' statements and submissions. Only the officers "submitted" protected matter, and only they would qualify as a "person" or "moving party" under §525(1)(c) and (e), if sued. The City is simply the governing body receiving the information.

This interpretation is also supported by §525(4)(e), which provides in relevant part that "any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party." This is an enabling provision that provides the governing body the opportunity to help enforce this statute and contemplates that it is the persons who make the statements or submissions that may invoke the statute. Had Henne sued the City's employees, this provision would have allowed the City to intervene. Implicit in this provision is the notion that the governing body does not necessarily qualify in its own right as a "moving party" under the statute. The Court should conclude that the City

¹⁴ In briefing before this Court, the City only references §525(2)(a) & (b) as the basis for establishing that the police officers' reports involve public participation and petition. See City Supp. Br. at 2-3. The City briefing before the Court of Appeals also references §525(2)(e), regarding other lawful speech and petition conduct as a possible predicate for concluding Henne's claims are based on an action involving public participation and petition. See City Br. at 1-2, 4, 16, 22. The City provides no meaningful analysis as to why this subsection should apply. It should not. It is a catch-all provision, which should only be operative when no other subsection applies. Cf. State v. Workman, 90 Wn.2d 443, 454, 584 P.2d 382 (1978) (noting rule of statutory construction that specific statutory terms take precedence over general statutory terms, where both statutes address the same concern). For example, subsection (2)(e) might apply when a person makes an allegedly untrue statement about a public figure at a private dinner party and is sued for defamation. In this hypothetical, no other subsection would seem to apply.

may not invoke §525 under these circumstances, where it is merely the governing body that received the protected statements and submissions.

The City's reliance on several California cases interpreting that state's anti-SLAPP statute is misplaced. See City Br. at 20-25; City Reply Br. at 13; City Supp. Br. at 6-7.¹⁵ The principal cases referenced by the City are Schaffer v. City and County of San Francisco, 85 Cal. Rptr. 3d 880 (Cal. App. 2008); Bradbury v. Superior Court (Spencer), 57 Cal. Rptr. 2d 207 (Cal. App. 1996); Vargas v. City of Salinas, 92 Cal. Rptr. 3d 286 (Cal. 2009). These cases are distinguishable.

In Schaffer, the plaintiffs sued city police officers *and* both the City of San Francisco and County of San Francisco. The anti-SLAPP claim was based on statements made by *city* police officers "in connection with an issue under consideration by the [*county*] district attorney." 85 Cal. Rptr. 3d at 889. All defendants were allowed to invoke the anti-

¹⁵The current version of the California anti-SLAPP statute, Cal. Civ. Proc. Code §425.16 (or §425.16), is reproduced in the Appendix to this brief. The Court of Appeals has suggested case law interpreting the California statute should be persuasive in most cases. See Dillon, 316 P.3d at 1132 n.21. This is an overstatement. While the California statute shares many similarities, it is not identical to §525, and consequently under any given circumstances California case law may be of limited value in resolving claims under §525. See Wyrwich, *supra*, 86 Wash. L. Rev. at 689 (cautioning against relying on California case law in interpreting §525). For example, the California statute applies to a plaintiff's claim "arising from an act," and "in connection with a public issue," §425.16(b)(1) & (e), while §525(2) requires that the claim be "based on an action involving public participation and petition." See Alaska Structures, Inc. v. Hedlund, 2014 WL 1593127 at *3 (Wn. App., Div. 1, Apr. 21, 2014) (focusing on the gravamen of the complaint); Davis, 2014 WL 1357260 at *4 (same); Dillon, 316 P.3d at 1134 (same). But see Dang v. Ehredt, 95 Wn. App. 670, 977 P.2d 29 (interpreting "based upon" in §510 to mean "the starting point or foundation of the claim" rather than the gravamen of the claim), *review denied*, 139 Wn.2d 1012 (1999). Nor does §425.16 include an intervention provision similar to that in §525(4)(e). The California statute's liberal construction provision is also different, providing that the statute "shall be construed broadly." This appears to be more expansive than Washington's provision, which requires that it be "construed liberally to effectuate its general purpose of protecting *participants* in public controversies[.]" Laws of 2010, Ch. 118, §3 (emphasis added).

SLAPP statute, without explanation by the court, other than noting that governmental entities and their employees qualify as a “person” under the California statute. In any event, it appears the protected statements were made by one governmental entity (the city, albeit through its employees) to another (the county), circumstances not present here.

In Bradbury, a deputy sheriff from Los Angeles County sued the Ventura County District Attorney and members of his staff *and* Ventura County itself in tort, and all of these defendants successfully invoked the anti-SLAPP statute. The court concluded that under these circumstances, both the government and its representatives qualified as a “person” under the statute. See 57 Cal. Rptr. at 209-13. Bradbury involves protected communications of a governmental body, through its speaking agents, to the public itself via a public report and media interviews. Just as in Schaffer, the governmental body itself was the protected speaker, acting through its representatives on a matter of public interest under §425.16(e)(3) (public place, public forum provision). It was not the mere recipient of statements or submissions relating to an internal investigation, made by employees who were not sued or speaking for the government.

In Vargas, the California Supreme Court held that defendants—the City of Salinas, its City Manager and various city officials—could invoke the anti-SLAPP statute regarding “published material” released to the public involving a local initiative election. See 92 Cal. Rptr. 3d at 296-99. The underlying lawsuit was based upon misuse of public funds and

resources prepared and distributed by the city regarding the local initiative. See id. at 301. Again, the governmental entity (the city) is the speaker, rather than the recipient of protected statements and submissions. Because of these distinctions, these California cases are unhelpful to the City.

Two other cases cited by the City, Hansen v. California Dep't of Corrections & Rehab., 90 Cal. Rptr. 3d 381, 386 (Cal. App. 2008), and Miller v. City of Los Angeles, 87 Cal. Rptr. 3d 510, 517 (Cal. App. 2008), *review denied*, are closer fits, as each involves claims arising out of internal investigations involving a governmental body. See City Br. at 29-31. In Hansen, apparently only the governmental body was sued, while in Miller the governmental body and two employees were sued. In each instance, the defendants successfully invoked California's anti-SLAPP statute. These cases are unpersuasive in resolving whether the City may invoke § 525 here because, as previously indicated, both the statutory language and the liberal construction provision of the California statute appear to be more expansive than § 525. See supra n.15; Appendix. Equally important, there is no indication in these cases that the courts were asked to consider, or did consider, whether a governmental body itself is entitled to invoke the anti-SLAPP statute when it is the recipient of the protected statements or submissions.¹⁶

¹⁶ The City also relies on the federal court opinion in Castello v. City of Seattle, 2010 WL 4857022 (W.D. Wash., Nov. 22, 2010), to support its right to invoke §525 here. See City Br. at 26, 31, 34, 43. In Castello, a §525 anti-SLAPP claim was made by two firefighters who were personally sued in a lawsuit against the City of Seattle and others for

In its most recent briefing, the City also suggests that the Court must interpret §525 broadly to include governmental bodies such as municipalities because these entities only act through their employees and thus must partake of the statute's protections. See City Supp. Br. at 3-5. This argument conflates the principles of tort liability that may apply in resolving the merits of the underlying action with the plain language of the anti-SLAPP statute. Section 525 does not expressly state that a governmental body may invoke any rights its employees may have under the statute with respect to protected statements or submissions made by them to the governmental body.¹⁷ Any such reading of §525 would unjustifiably expand the class of persons protected by the statute, contrary to legislative intent.¹⁸

In striking a balance between Henne's right of access to court and trial by jury and the right of persons to participate in matters of public concern, see Laws of 2010, Ch. 118, §1(2)(a), the Court should conclude that the City cannot invoke §525 when it is merely the governing body

statements made by the firefighters about Castello in internal investigations and to the media. See 2010 WL 4857022 at *1-2. It appears only the two defendant firefighters were granted relief under §525, not the City of Seattle. See id. at *11. As a result, Castello does not support the City's argument.

¹⁷The gravamen of Henne's tort claims for harassment and retaliation appears to be grounded in the City's own conduct (albeit through its employees) in handling its internal investigations of Henne, rather than the statements by the officers that resulted in the investigations. See Henne, 177 Wn. App. at 486-87. However, the City does point to what it describes as a "passing reference" in the complaint to one officer's "defamation" of Henne. See City Br. at 41. Nonetheless, the City does not suggest that the complaint includes a defamation claim among the causes of action. In any event, under Washington tort law a principal may not assert the immunity of its agent as a defense, even if the principal is vicariously liable for the agent's conduct. See Savage v. State, 127 Wn.2d 434, 439-40, 899 P.2d 1270 (1995) (following rule stated in Restatement (Second) of Agency §217 (1958)).

¹⁸Of course, like any other defendant, the City may seek relief under CR 11 or RCW 4.84.185, the frivolous action statute, when appropriate.

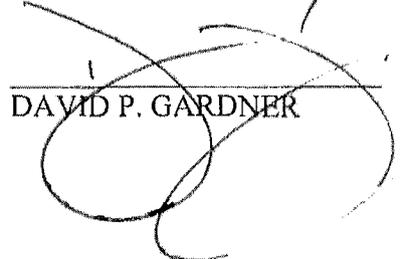
receiving the statements or submissions, and the reporting employees are not sued.

VI. CONCLUSION

The Court should adopt the arguments advanced in this brief and resolve the issues on review accordingly.

DATED this 29th day of April, 2014.


BRYAN P. HARNETIAUX


DAVID P. GARDNER


GEORGE M. AHRENDTS *per authority of Bryan Harnetiaux*

On Behalf of WSAJ Foundation

Appendix

Laws of 1989, Ch. 234

Additions are indicated by <<+ UPPERCASE +>>

Deletions by <<- Lowercase ->>

AN ACT Relating to immunity from civil liability; and adding new sections to chapter 4.24 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

<<+NEW SECTION.+>> Sec. 1. Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of sections 1 through 4 of this act is to protect individuals who make good-faith reports to appropriate governmental bodies.

<<+NEW SECTION.+>> Sec. 2. A person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency shall be immune from civil liability on claims based upon the communication to the agency. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

<<VETOED MATERIAL<<+NEW SECTION.+>> Sec. 3. If an agency fails to reasonably respond to a person who in good faith communicates a complaint or information to any agency of federal, state, or local government regarding any matter reasonably of concern to that agency, the person shall be immune from civil liability on claims arising from the communication of such complaint or information which the person genuinely and reasonably believed to be true. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.VETOED MATERIAL>>

<<+NEW SECTION.+>> Sec. 4. In order to protect the free flow of information from citizens to their government, an agency receiving a

complaint or information under section 2 of this act may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under this act, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in section 2 of this act shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense provided for in section 2 of this act, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

<<+NEW SECTION.+>> Sec. 5. Sections 1 through 4 of this act are each added to chapter 4.24 RCW.

Approved May 5, 1989, with the exception of § 3, which is vetoed.

Effective July 23, 1989, 90 days after date of adjournment.

Section 3 was vetoed by the Governor.

Laws of 1999, Ch. 54

Additions are indicated by <<+ Text +>>;

deletions by <<- Text ->>.

AN ACT Relating to good faith communications to self-regulatory organizations delegated authority by government agencies; and amending RCW 4.24.510.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 4.24.510 and 1989 c 234 s 2 are each amended to read as follows:

<< WA ST 4.24.510 >>

A person who in good faith communicates a complaint or information to any agency of federal, state, or local government<<+, or to any self-

regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, 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 <<-shall be immune from civil liability on claims based upon the communication to the agency->> <<+or organization+>>. A person prevailing upon the defense provided for in this section shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense.

Approved April 20, 1999.

Laws of 2002, Ch. 232

Additions are indicated by <<+ Text +>>;

deletions by <<- Text ->>.

AN ACT Relating to communications with government branches or agencies and self-regulatory organizations; amending RCW 4.24.510; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. Strategic lawsuits against public participation, or SLAPP suits, involve communications made to influence a government action or outcome which results in a civil complaint or counterclaim filed against individuals or organizations on a substantive issue of some public interest or social significance. SLAPP suits are designed to intimidate the exercise of First Amendment rights and rights under Article I, section 5 of the Washington state Constitution.

Although Washington state adopted the first modern anti-SLAPP law in 1989, that law has, in practice, failed to set forth clear rules for early dismissal review. Since that time, the United States supreme court has made it clear that, as long as the petitioning is aimed at procuring favorable government action, result, product, or outcome, it is protected and the case should be dismissed. This bill amends Washington law to

bring it in line with these court decisions which recognizes that the United States Constitution protects advocacy to government, regardless of content or motive, so long as it is designed to have some effect on government decision making.

Sec. 2. RCW 4.24.510 and 1999 c 54 s 1 are each amended to read as follows:

<< WA ST 4.24.510 >>

A person who <<-in good faith->> communicates a complaint or information to any <<+branch or+>> agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, 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 <<-shall be->> <<+is+>> entitled to recover <<-costs->> <<+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+>>.

Approved March 28, 2002.

Effective June 13, 2002.

Laws of 2010, Ch. 118

AN ACT Relating to lawsuits aimed at chilling the valid exercise of the constitutional rights of speech and petition; adding a new section to chapter 4.24 RCW; creating new sections; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. Sec. 1. (1) The legislature finds and declares that:

(a) It is concerned about lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances;

(b) Such lawsuits, called “Strategic Lawsuits Against Public Participation” or “SLAPPs,” are typically dismissed as groundless or unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their productive activities;

(c) The costs associated with defending such suits can deter individuals and entities from fully exercising their constitutional rights to petition the government and to speak out on public issues;

(d) It is in the public interest for citizens to participate in matters of public concern and provide information to public entities and other citizens on public issues that affect them without fear of reprisal through abuse of the judicial process; and

(e) An expedited judicial review would avoid the potential for abuse in these cases.

(2) The purposes of this act are to:

(a) Strike a balance between the rights of persons to file lawsuits and to trial by jury and the rights of persons to participate in matters of public concern;

(b) Establish an efficient, uniform, and comprehensive method for speedy adjudication of strategic lawsuits against public participation; and

(c) Provide for attorneys' fees, costs, and additional relief where appropriate.

NEW SECTION. Sec. 2. A new section is added to chapter 4.24 RCW to read as follows:

<< WA ST 4.24 >>

(1) As used in this section:

(a) “Claim” includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

NEW SECTION. Sec. 3. This act shall be applied and construed liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the courts.

NEW SECTION. Sec. 4. This act may be cited as the Washington Act Limiting Strategic Lawsuits Against Public Participation.

NEW SECTION. Sec. 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Approved March 18, 2010.

Effective June 10, 2010.

**RCW 4.24.500. Good faith communication to government agency--
Legislative findings--Purpose**

Information provided by citizens concerning potential wrongdoing is vital to effective law enforcement and the efficient operation of government. The legislature finds that the threat of a civil action for damages can act as a deterrent to citizens who wish to report information to federal, state, or local agencies. The costs of defending against such suits can be severely burdensome. The purpose of RCW 4.24.500 through 4.24.520 is to protect

individuals who make good-faith reports to appropriate governmental bodies.

[1989 c 234 § 1.]

RCW 4.24.510. Communication to government agency or self-regulatory organization--Immunity from civil liability

A person who communicates a complaint or information to any branch or agency of federal, state, or local government, or to any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency, 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.

[2002 c 232 § 2; 1999 c 54 § 1; 1989 c 234 § 2.]

RCW 4.24.520. Good faith communication to government agency--When agency or attorney general may defend against lawsuit--Costs and fees

In order to protect the free flow of information from citizens to their government, an agency receiving a complaint or information under RCW 4.24.510 may intervene in and defend against any suit precipitated by the communication to the agency. In the event that a local governmental agency does not intervene in and defend against a suit arising from any communication protected under chapter 234, Laws of 1989, the office of the attorney general may intervene in and defend against the suit. An agency prevailing upon the defense provided for in RCW 4.24.510 shall be entitled to recover costs and reasonable attorneys' fees incurred in establishing the defense. If the agency fails to establish the defense

provided for in RCW 4.24.510, the party bringing the action shall be entitled to recover from the agency costs and reasonable attorney's fees incurred in proving the defense inapplicable or invalid.

[1989 c 234 § 1.]

RCW 4.24.525. Public participation lawsuits--Special motion to strike claim--Damages, costs, attorneys' fees, other relief--Definitions

(1) As used in this section:

(a) "Claim" includes any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing requesting relief;

(b) "Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, or subdivision of a state or other public authority;

(c) "Moving party" means a person on whose behalf the motion described in subsection (4) of this section is filed seeking dismissal of a claim;

(d) "Other governmental proceeding authorized by law" means a proceeding conducted by any board, commission, agency, or other entity created by state, county, or local statute or rule, including any self-regulatory organization that regulates persons involved in the securities or futures business and that has been delegated authority by a federal, state, or local government agency and is subject to oversight by the delegating agency.

(e) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity;

(f) "Responding party" means a person against whom the motion described in subsection (4) of this section is filed.

(2) This section applies to any claim, however characterized, that is based on an action involving public participation and petition. As used in this section, an "action involving public participation and petition" includes:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(c) Any oral statement made, or written statement or other document submitted, that is reasonably likely to encourage or to enlist public participation in an effort to effect consideration or review of an issue in a legislative, executive, or judicial proceeding or other governmental proceeding authorized by law;

(d) Any oral statement made, or written statement or other document submitted, in a place open to the public or a public forum in connection with an issue of public concern; or

(e) Any other lawful conduct in furtherance of the exercise of the constitutional right of free speech in connection with an issue of public concern, or in furtherance of the exercise of the constitutional right of petition.

(3) This section does not apply to any action brought by the attorney general, prosecuting attorney, or city attorney, acting as a public prosecutor, to enforce laws aimed at public protection.

(4)(a) A party may bring a special motion to strike any claim that is based on an action involving public participation and petition, as defined in subsection (2) of this section.

(b) A moving party bringing a special motion to strike a claim under this subsection has the initial burden of showing by a preponderance of the evidence that the claim is based on an action involving public participation and petition. If the moving party meets this burden, the burden shifts to the responding party to establish by clear and convincing evidence a probability of prevailing on the claim. If the responding party meets this burden, the court shall deny the motion.

(c) In making a determination under (b) of this subsection, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(d) If the court determines that the responding party has established a probability of prevailing on the claim:

(i) The fact that the determination has been made and the substance of the determination may not be admitted into evidence at any later stage of the case; and

(ii) The determination does not affect the burden of proof or standard of proof that is applied in the underlying proceeding.

(e) The attorney general's office or any government body to which the moving party's acts were directed may intervene to defend or otherwise support the moving party.

(5)(a) The special motion to strike may be filed within sixty days of the service of the most recent complaint or, in the court's discretion, at any later time upon terms it deems proper. A hearing shall be held on the motion not later than thirty days after the service of the motion unless the docket conditions of the court require a later hearing. Notwithstanding this subsection, the court is directed to hold a hearing with all due speed and such hearings should receive priority.

(b) The court shall render its decision as soon as possible but no later than seven days after the hearing is held.

(c) All discovery and any pending hearings or motions in the action shall be stayed upon the filing of a special motion to strike under subsection (4) of this section. The stay of discovery shall remain in effect until the entry of the order ruling on the motion. Notwithstanding the stay imposed by this subsection, the court, on motion and for good cause shown, may order that specified discovery or other hearings or motions be conducted.

(d) Every party has a right of expedited appeal from a trial court order on the special motion or from a trial court's failure to rule on the motion in a timely fashion.

(6)(a) The court shall award to a moving party who prevails, in part or in whole, on a special motion to strike made under subsection (4) of this section, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the moving party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorney fees; and

(iii) Such additional relief, including sanctions upon the responding party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(b) If the court finds that the special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award to a responding party who prevails, in part or in whole, without regard to any limits under state law:

(i) Costs of litigation and any reasonable attorneys' fees incurred in connection with each motion on which the responding party prevailed;

(ii) An amount of ten thousand dollars, not including the costs of litigation and attorneys' fees; and

(iii) Such additional relief, including sanctions upon the moving party and its attorneys or law firms, as the court determines to be necessary to deter repetition of the conduct and comparable conduct by others similarly situated.

(7) Nothing in this section limits or precludes any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

[2010 c 118 § 2, eff. June 10, 2010.]

Cal. Civ. Proc. Code § 425.16, Anti-SLAPP motion

(a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.

(b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.

(2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, or in any subsequent action, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination in any later stage of the case or in any subsequent proceeding.

(c)(1) Except as provided in paragraph (2), in any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.

(2) A defendant who prevails on a special motion to strike in an action subject to paragraph (1) shall not be entitled to attorney's fees and costs if that cause of action is brought pursuant to Section 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code. Nothing in this paragraph shall be construed to prevent a prevailing defendant from recovering

attorney's fees and costs pursuant to subdivision (d) of Section 6259, 11130.5, or 54690.5¹.

(d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law, (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law, (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest, or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(j)(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or facsimile, a copy of the endorsed, filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

(Added by Stats.1992, c. 726 (S.B.1264), § 2. Amended by Stats.1993, c. 1239 (S.B.9), § 1; Stats.1997, c. 271 (S.B.1296), § 1; Stats.1999, c. 960 (A.B.1675), § 1, eff. Oct. 10, 1999; Stats.2005, c. 535 (A.B.1158), § 1, eff. Oct. 5, 2005; Stats.2009, c. 65 (S.B.786), § 1; Stats.2010, c. 328 (S.B.1330), § 34.)

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Subject: RE: Henne v. City of Yakima (S.C. #89674-7)

Rec'd 4-29-14

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Dear Mr. Carpenter

Attached is the WSAJ Foundation amicus curiae brief in this case, as a PDF. This brief is being served on counsel as cc's to this transmission, with electronic service per prior arrangement.

Respectfully submitted,

Bryan Harnetiaux, Co-Coordinator
on behalf of WSAJ Foundation Amicus Program WSBA #5169