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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By.....

JACK WOODROW LINDELL,

Respondent,

v.

RICHARD EUGENE BOCOOK,

Petitioner.

BRIEF OF RESPONDENT JACK WOODROW LINDELL

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I. INTRODUCTION

This appeal arises from an action initiated by Petitioner Jack Woodrow Lindell ("Mr. Lindell") to stop 17 months of persistent, predatory, personal harassment of him by Respondent Richard Eugene Bocook ("Mr. Bocook"). Mr. Lindell prevailed, and the Spokane County District Court entered an anti-harassment protective order against Mr. Bocook on February 1, 2013 ("Protective Order"), pursuant to RCW 10.14 *et. seq.* Having failed to prevail on any of his defenses or arguments before the District Court, the Superior Court, the Court of Appeals Commissioner, the Supreme Court and this Court, Mr. Bocook now belatedly seeks his sixth, and hopefully final, bite at the apple on three meritless claims.¹

Mr. Bocook's first claim seeks to reduce the award of attorney fees allowable by statute to his victim, Mr. Lindell, because Mr. Bocook allegedly prevailed, in part, by eliminating an *ex parte* temporary protective order's bar to his attendance at Spokane City Council Meetings, and by virtue of the District Court, on its own initiative, reducing the no-contact zone to 100 feet. Mr. Bocook's argument ignores the fact that (1) the Protective Order was entered against him, (2) Mr. Lindell never sought

¹ These three claims were raised for the first time on appeal before the Superior Court. The Court's Commissioner rejected Mr. Bocook's other three claims in his Motion for Discretionary Review. The issuance of the Protective Order was already upheld by the Court's Commissioner.

to bar Mr. Bocook's attendance at City Council Meetings, and (3) Mr. Bocook failed in his bid to stop the implementation of any no-contact zone, and then later, a 25-foot no-contact zone. Mr. Lindell was the prevailing party in the lower courts, thereby entitling him to the fees awarded.

Second, Mr. Bocook raised the immunity provision of Washington's anti-Strategic Lawsuit Against Public Participation ("SLAPP") statute, RCW 4.24.500-.510 ("SLAPP Defense"), for the first time on appeal before the Superior Court in response to Mr. Lindell's request for attorneys' fees as the prevailing party. Setting aside the waiver of the SLAPP Defense before the District Court, and that the SLAPP Defense is inapplicable to Protective Order proceedings, the basis of Mr. Bocook's SLAPP argument (that his actions were protected conduct) has already been uniformly rejected by every Court. As a result of the Supreme Court's affirmation of the Court of Appeal's Commissioner's decision that Mr. Bocook's conduct was not protected speech, Mr. Bocook's SLAPP argument can no longer be on appeal. Therefore, Mr. Bocook's argument as to the application of the SLAPP Defense is meritless, as protected speech is not at issue.

Finally, Mr. Bocook's challenge of the Superior Court's striking of a Declaration is meritless and must be rejected. The Declaration in

question has no application or relevance to the narrow issue relating to the award of attorney's fees, or even to the application of the SLAPP Defense. Even assuming that it was relevant, striking the affidavit was harmless error as the SLAPP Defense is inapplicable and was waived before the District Court.

For these reasons, Mr. Lindell respectfully requests that the Superior Court's decision be affirmed in all respects.

II. STATEMENT OF THE ISSUES

1. Was the Superior Court correct in awarding Mr. Lindell attorneys' fees as the prevailing party on appeal, after the Superior Court upheld the Protective Order, and where Mr. Bocook at no point during the litigation was awarded affirmative relief?
2. Was the Superior Court correct in ruling that Mr. Bocook's SLAPP Defense, raised for the first time on appeal before the Superior Court, was inapplicable to Protective Order proceedings, brought under RCW 10.14 *et. seq.*?
3. Was the Superior Court correct in striking the Declaration of Danette Lanet (attaching three hearsay news articles) as irrelevant to the only issue before the Superior Court— the issue of awarding attorneys' fees to the prevailing party on appeal?

III. STATEMENT OF THE CASE

A. Factual History.¹

1. *Mr. Bocook Carried out Constant and Vicious Predatory Attacks Against Mr. Lindell at Both of Mr. Lindell's Places of Employment for over 17 Months.*

Mr. Lindell was the Chief of Security for River Park Square ("RPS"), a shopping center located in downtown Spokane, Washington. AR 006.² Mr. Lindell's job at RPS required that he patrol the interior and exterior of RPS. AR 007; CP 137-38. Mr. Lindell is also employed as a contract security officer for the U.S. Department of Homeland Security ("DHS") and patrols the interior and exterior of the Thomas Foley Federal Courthouse ("Federal Building") located in downtown Spokane. AR 052; CP 137-38.

For approximately 17 months, Mr. Bocook verbally assaulted, stalked, cyber-stalked, photographed and threatened Mr. Lindell while Mr. Lindell was patrolling the exterior of RPS and the Federal Building. AR

¹ Mr. Lindell has included facts related to Mr. Bocook's attacks solely for the purpose of dispelling Mr. Bocook's argument that the "principal thrust or gravamen" of Mr. Lindell's request for the Protective Order was directed at Mr. Bocook's attendance at Spokane City Hall meetings.

² The District Court record was provided, in its entirety, as an Administrative Record to the Superior Court. The Administrative Record (marked as "CP 001-150") is denoted in this brief as "AR" to avoid confusion with the Clerk's Papers designated by the Parties from the Superior Court (without the "CP" designation, and marked as "Page 1-251"). The Clerk's Papers from the Superior Court are denoted in this brief as "CP." The Clerk's Papers include an incomplete transcript of the two hearings before the District Court (CP-133-248). The final eight pages of the January 18, 2013 hearing before the District Court have been provided as Appendix H (Mr. Bocook's appendices end at "G") to Mr. Lindell's brief. *See* footnote 2 for further clarification. Finally, the Verbatim Report of Proceedings from the two Superior Court hearings have been denoted as "VRP."

006-055. Mr. Bocook carried out these predatory attacks on Mr. Lindell several times a month during this period. AR 006, 035, 049, 054. One of Mr. Lindell's co-workers personally witnessed Mr. Bocook verbally assault and threaten Mr. Lindell approximately 50 times. AR 043. Five witnesses declared that Mr. Bocook focused his verbal assaults solely against Mr. Lindell. AR 037, 040, 046-47, 049. One witness explained that Mr. Bocook has what can only be described as an "absolute hatred for Mr. Lindell." AR 040.

2. *Mr. Bocook Utilized a Microphone to Scream Vulgar Insults at Mr. Lindell from Only a Few Feet Away.*

Seven individuals witnessed Mr. Bocook screaming all manner of vulgar and threatening insults at (or about) Mr. Lindell, both while Mr. Lindell was *on and off duty*. AR 035-55³; CP 142. Mr. Bocook screamed these and similarly despicable statements at Mr. Lindell from *only a few feet away*, often times *utilizing a microphone*. AR 006, 035, 040, 047, 049; CP 142-43; *see also*, CP 183, 193-95 (Mr. Bocook admits to these acts under oath). On at least one occasion, Mr. Bocook called Mr. Lindell a "pedophile" and other names when Mr. Lindell and his young children

³ These statements include falsely accusing Mr. Lindell of being and/or doing the following: "Pervert", "Racist", "Thief", "Wife beater," AR 006; "Pedophile", AR 035, 054; "Child molester", AR 006, 043; "Follows young men to the bathrooms and peaks thru [sic] the doors...or filming young womens [sic] breasts and thighs...", AR 009; 016-31; "Predator hiding behind a security title", AR 030; "I know you like little girls", AR 054; "You film girl's breasts when they go to the bathroom", AR 043; "You are a pervert", *Id.*; "Jack has sex with children", AR 040; "Jack likes little boys", AR 037; "Jack films women's breasts", *Id.*

were walking to dinner at the Red Robin restaurant across from RPS. Mr. Bocook stood only ten feet away utilizing a microphone. CP 143-44; AR 041. According to several witnesses, Mr. Bocook's vulgar attacks served no other purpose than to incite Mr. Lindell. AR 035, 047, 049.

3. *Mr. Bocook Placed Mr. Lindell under Surveillance.*

During the 17-month period, Mr. Bocook regularly photographed Mr. Lindell at his places of work and uploaded those photographs to Mr. Bocook's Facebook page. AR 014-31. Mr. Bocook captioned the photographs with many vulgar statements (*See* footnote 6), and in some cases, threats. *See e.g.*, AR 020. In at least one instance, Mr. Bocook shoved a camera inches from Mr. Lindell's face and snapped a picture. AR 046; *see also*, CP 194-95 (Mr. Bocook admits to the act).

4. *Mr. Bocook Threatened Mr. Lindell on Several Occasions.*

During the 17-month period, Mr. Bocook made several threats against Mr. Lindell. In the summer of 2012, Mr. Bocook screamed the following threat to Mr. Lindell at his place of work: "I know where you live. I have your address." AR 054-55. On August 11, 2012, Mr. Bocook screamed to Mr. Lindell that he was "going to get [his]." AR 007. Also, on August 11, 2012, Mr. Bocook wrote on his Facebook page that Mr. Lindell's "time was coming." AR 008, 020. On August 21, 2012, Mr.

Bocook told an RPS employee that Mr. Lindell "better watch his back" because Mr. Lindell has "something coming to him." AR 009, 032. On August 22, 2012, Mr. Bocook told an RPS employee that Mr. Lindell's "gay gestures to young males" could lead to the shooting of Mr. Lindell and other RPS employees. AR 043-44, 009-10, 033. Additionally, Mr. Bocook stated:

Karma is going to catch up to that prick [Mr. Lindell]. One of these days he will be walking down the street where he is not safe since he has pissed off all of the street kids and will get pushed into an alley and have the shit beat out of him with a 2X4 or even a knife....

AR 033.⁴

5. *Mr. Bocook's Actions Caused Mr. Lindell Substantial Emotional Distress.*

Mr. Lindell testified that Mr. Bocook's constant bombardment of threats, allegations and intense verbal assaults from only a few feet away caused him substantial emotional distress. CP 153-54; AR 012-13. Mr. Lindell expressed to co-workers a very real fear that Mr. Bocook would act out his threats and resort to physical violence. AR 041. Co-workers observed that Mr. Lindell constantly acted nervous and looked tired, as if he was not getting adequate sleep. AR 041, 037.

⁴ The last threat was especially disturbing due to the fact that Mr. Bocook was often accompanied by large groups of undisciplined youth. AR 047, 049, 054.

B. Procedural History.

1. *The District Court Entered an Ex Parte, Temporary, Anti-Harassment Protective Order with a Two-Block No-Contact Zone.*

On October 30, 2012, Mr. Lindell presented an *ex parte* application to the Spokane County District Court seeking an anti-harassment protective order against Mr. Bocook. AR 001-56. The application was granted the same day. AR 057-59.

The temporary order was the Court's stock form that included the following standard restriction language: "Respondent is RESTRAINED from entering or being within 2 CITY BLOCKS of Petitioner(s) Workplace...." AR 059. The Court filled in RPS and the Federal Building as Mr. Lindell's place of employment. *Id.*

2. *Mr. Bocook Willingly Delayed a Hearing on the Merits for Nearly Two Months.*

The District Court set a hearing on Mr. Lindell's application for a permanent anti-harassment protective order for November 9, 2012. AR 057. Mr. Bocook requested a continuance of the hearing over Mr. Lindell's objection. AR 061. The District Court granted the extension and set the hearing for November 30, 2012. *Id.* On November 28, 2012, the parties agreed to a two-week continuance of the hearing to December 14, 2012. AR 063. The parties agreed to a final continuance on

December 12, 2012, and set the final hearing on the merits for January 18, 2013. AR 065.

3. *The District Court Found Mr. Bocoock Committed Unlawful Harassment, and Granted a Permanent Anti-Harassment Protective Order Against Him.*

On January 18, 2013, the parties presented live and written testimony. CP 133-224, Appendix H, 92-98.⁵ The District Court orally ruled and issued a written permanent Order the same day after making factual findings that Mr. Lindell had proven all of the elements of unlawful harassment outlined in RCW 10.14 *et. seq.* Appendix H, pgs. 92-93.

The District Court found that Mr. Bocoock's "focus" is solely on Mr. Lindell," Appendix H, pg. 92, and that Mr. Bocoock was seeking Lindell out for harassment. *Id.* The District Court found that Mr. Bocoock's actions towards Mr. Lindell were not for any lawful or legitimate purpose, *id.*, confirming the fact that this action was based on Mr. Bocoock's unlawful harassment, and not statements before City Council. The District Court held: "Your focus is on Mr. Lindell. It has

⁵ An incomplete copy of the January 18, 2013 hearing before the District Court was provided to the Superior Court. *See* CP 224 ("[Recording ended abruptly]"). Nearly eight full pages were missing (pages 92-98). The complete transcript of the hearing has already been provided to the Court of Appeals Commissioner, and was attached as Appendix F to Mr. Lindell's Answer to Mr. Bocoock's Motion for Discretionary Review. The missing transcript pages are attached hereto as Appendix H (following in order of Appendices provided by Mr. Bocoock, ending at Appendix G. The brief cites the Court to the missing page, for example, as "Appendix H, pg. 93."

nothing to do with chalk. It has nothing to do with free speech. It has nothing to do with a protest or demonstration." *Id.* Given the "hostility and the spite and the vitriol" displayed by Mr. Bocoock, along with "the course of conduct, the series of acts," and the "personal threats," Appendix H, pgs. 93-94, the District Court informed Mr. Bocoock: "You are completely over the line with your entire demeanor, your attitude and your intent." Appendix H, pg. 92.

4. *Mr. Lindell Never Sought to Bar Mr. Bocoock from Attending City Council Meetings.*

At closing arguments during the January 18, 2013 trial (*the first time that either party could clarify their respective positions before the Court*), Mr. Lindell's counsel offered the following exceptions within the requested one-block no-contact zone:

As far as the City Hall attacks, he's more than welcome to go to City Hall and whatever they allow to occur, they allow to occur. The reason we submitted that evidence, your Honor, was to specifically show that he's telling people he doesn't really care what the legal consequences are....

CP 215.⁶ Further: "And so we'd ask the Court to enter [the] order. *Again, carving out* exceptions for him to attend the Martin Luther King march, to

⁶ The two references to Mr. Bocoock's tirades before City Council were included in Mr. Lindell's declaration in support of his petition for a protective order. AR 010-12. As stated in Mr. Lindell's declaration, the references were included to explain Mr. Lindell's fear of Mr. Bocoock's statements and that he did not afraid of the legal consequences of his actions. AR 012; CP 215.

do those things. We're not trying to prevent him from participating in any community activities or advocacy activities." CP 218 (emphasis added).

The District Court noted Mr. Lindell's position on the City Hall exceptions (among others) in its January 18, 2013 oral ruling. Appendix H, pg. 95. The District Court further stated that "There's no intent to prevent [Mr. Bocoock] from walking in the Martin Luther King parade or any other demonstration, from going to the Post Office or going to City Hall, which you have the right to do, or the Courthouse downtown." *Id.*

5. *The District Court Imposed a 100-Foot No-Contact Zone Around Mr. Lindell's Places of Employment.*

Mr. Bocoock argued for a 25-foot no-contact zone, Appendix H, pg. 97, whereas Mr. Lindell requested a one-block no-contact zone, AR 137, with the aforementioned exceptions for Mr. Bocoock to attend City Council Meetings. CP 215, 218. The District Court reduced the standard two city block restriction to 100 feet with the aforementioned exceptions, due solely to the exigencies of the situation, and the location and nature of Mr. Lindell's two places of employment: RPS and the Courthouse. Appendix H, pgs. 95-96. The District Court admitted that it had "an extreme difficulty with the geographical restriction" of the two city block no-contact zone, Appendix H, pg. 95, even though the District Court reminded Mr. Bocoock that "you brought this on yourself." *Id.*

The Protective Order restrained Mr. Bocook from having any *contact* with Mr. Lindell, specifically from committing any acts of harassment, from keeping Mr. Lindell under surveillance, and from stalking and cyberstalking. AR 146-47. The Protective Order in no way restricted the content of Mr. Bocook's speech. *Id.*

6. *The January 18, 2013 Order Contained Language That Was Inconsistent with the District Court's Oral Ruling That Required an Additional Hearing to Remedy.*

Unfortunately, the District Court's oral rulings were not accurately reflected in the Court-drafted written Order. Compare AR 140-42 with Appendix H, pgs. 95-98 and AR 146-48. The Order failed to reflect that the District Court authorized Mr. Bocook to visit the Courthouse, City Hall and the Post Office, and to participate in parades. AR 140-42. Adding to the confusion, the January 18, 2013 Order still contained the Temporary Order's standard restriction language which restrained Mr. Bocook "from entering or being within 2 CITY BLOCKS of Petitioner(s) Workplace[s]", RPS and the Courthouse. AR 141.

The contradictions contained within the January 18, 2013 Order were caused by hurried scrivener's error, due to the fact that the January 18, 2013 hearing "ran overtime" and was "running into the Court's additional docket...." CP 226. Upon receipt of the Order, the parties agreed that the Order needed to be revised and a hearing was held before

the District Court on February 1, 2013, CP 225-248, for what the District Court called a "clarification" of the January 18, 2013 Order. CP 226. After an hour long hearing, the District Court entered the Protective Order which properly reflects the District Court's oral rulings. CP 225-248.

7. *Mr. Bocook Did Not Properly Raise the SLAPP Defense Before the District Court.*

Mr. Bocook did make a brief reference to the SLAPP Defense in his briefing submitted to the District Court. AR 114-15. However, Mr. Bocook's counsel never mentioned the SLAPP Defense during closing arguments, CP 219-224, Appendix H, pgs. 92-99, CP 225-247, and never took issue with the District Court failing to address the defense at the time of hearing.⁷ *Id.*

8. *The Superior Court Upheld the Protective Order on Appeal.*

Mr. Bocook appealed the District Court's Protective Order. CP 001. Mr. Bocook did not identify the District Court's failure to address his SLAPP Defense in the Statement of the Issues portion of his opening brief to the Superior Court. CP 010-11. Mr. Bocook did include a section in

⁷ RCW 4.24.525, providing a "motion to strike" procedure for SLAPP defendants, was struck down as unconstitutional in *Davis v. Cox*, 183 Wn.2d 269, 351 P.3d 862 (2015). Regardless, RCW 4.25.525 is inapplicable because Mr. Bocook did not move to strike Mr. Lindell's petition before the District Court, nor did Mr. Bocook appeal the District Court's failure to strike the petition. CP 010-11.

his brief regarding the SLAPP Defense. CP 027-28. After having received full briefing, on August 30, 2013, the Spokane County Superior Court heard oral argument from both parties. VRP 1-28. The Superior Court focused on Mr. Bocook's pattern and practice of harassment and orally ruled to uphold the Protective Order. VRP 23-26. During oral argument, Mr. Bocook's counsel, Jeffrey Finer, only made a single reference to the SLAPP Defense, VRP 20-23, which was in response to Mr. Lindell's counsel serving a declaration for attorneys' fees and costs should Mr. Lindell prevail on appeal: "They've served me with some SLAPP documents. I can't address these. I was given these just now." *Id.*

9. *Mr. Bocook Claimed His SLAPP Defense "Ripened" for the First Time on Appeal Before the Superior Court When Mr. Lindell Requested Attorneys' Fees as the Prevailing Party.*

On November 15, 2013, the Superior Court heard oral argument on Mr. Lindell's request for attorneys' fees as the prevailing party on appeal. VRP 29-49. During oral argument, Mr. Bocook's counsel argued that Mr. Bocook's SLAPP Defense had "ripened" as a result of Mr. Lindell's request. Mr. Bocook's counsel stated the following:

But I said, and I'm sure if I -- if I misquote, these lawyers will tell you, I said, [SLAPP is] not ripe yet. I can't file a SLAPP [before Mr. Lindell's request for attorney's fees], because there has been no claim for money. There's no claim for liability.

VRP 35.

...

Now lastly, there's an argument the SLAPP provision doesn't apply. And Your Honor, you asked whether we had alleged it. I did bring up that the SLAPP provision was in play, but I indicated it was not ripe, because there had been no demand for damages, or money. Notwithstanding that warning and explicit conversations I had with counsel about my concerns that the SLAPP issue would be ripe if they'd made money demands, at the last hearing they presented at the -- at the time of hearing I was handed without notice a -- the cost bill for 49,000. And I said to them, don't file this. This is setting up the SLAPP issue. If you want money from him, you are seeking to have damages or an order creating a liability. And they -- they went forward.

VRP 39-40.

...

Your Honor, SLAPP applies not because there's damages but because you're signing an order for civil liability [attorney's fees].

VRP 40; *see also*, CP 093-96.

10. The Superior Court Awarded Mr. Lindell Attorneys' Fees as the Prevailing Party, and Ruled That Mr. Bocoock's SLAPP Defense Was Inapplicable to the Actions Brought under RCW 10.14 et. seq.

The Superior Court orally ruled that "it's evident, it's clear and manifest to the court that the Plaintiff [Mr. Lindell] is the prevailing

party", VRP 46, and granted Mr. Lindell's attorneys' fees request. VRP 46-47. The Superior Court entered final orders and judgment on November 26, 2013. CP 127-132. The Superior Court left the Protective Order in place, unaltered, CP 130-32, and awarded Mr. Lindell attorneys' fees and costs. CP 0127-29. The Superior Court ruled that Mr. Bocook's SLAPP immunity defense was inapplicable to the Protective Order pursuant to *Emmerson v. Weilep*, 126 Wn. App. 930, 110 P.3d 214 (2005). CP 131. Further, the Superior Court struck the Declaration of Danette Lanet, CP 097-118, which attached three new articles, because it was not relevant to the issue of attorneys' fees, and Ms. Lanet had "no personal knowledge of the items contained in" the articles. CP 127-29; VRP 44-45.

11. Mr. Bocook Appealed the Superior Court's Rulings.

Mr. Bocook appealed. The Court of Appeals Commissioner issued its ruling on April 4, 2014. The Commissioner ruled that Mr. Bocook's three issues raised for the first time at the Superior Court were appealable to the Court of Appeals as a matter of right. Bocook Opening Br., Appendix E. The Court of Appeals denied review of the three other issues (including the issue of whether Mr. Bocook's conduct constituted unlawful harassment), *id.* at Appendix F, pgs. 5-8, as did the Supreme Court Commissioner. *Id.* at Appendix G.

IV. ARGUMENT

A. The Superior Court's Award of Attorneys' Fees Was Proper Because Mr. Lindell Was the "Prevailing Party."

The Court reviews the reasonableness of attorney fee awards under an abuse of discretion standard. *Progressive Animal Welfare Soc'y v. University of Wash.*, 114 Wn. 2d 677, 688-89, 790 P.2d 604 (1990). The Superior Court did not abuse its discretion in awarding Mr. Lindell attorneys' fees as the prevailing party on appeal, and the Court should affirm the Superior Court and not reduce the award.

The Rules for Appeal of Decisions of Courts of Limited Jurisdiction ("RALJ") govern the review by the superior court of a final decision of the district court. RALJ 1.1. Pursuant to RALJ 11.2(a)-(b), RCW 10.14.090, and RALJ 9.3, and the prevailing party in actions brought under RCW 10.14 *et seq.*, is entitled to attorneys' fees.

"Prevailing party" is defined as the party in whose favor the court rendered affirmative judgment. *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669 (1997). At no point during the proceedings could Mr. Bocook be considered the "prevailing party." On October 30, 2012, the District Court entered a Temporary Order *against* Mr. Bocook. AR 057-59. Then, on January 18, 2013, the District Court entered a Permanent Order *against* Mr. Bocook. AR 146-148. Finally, on November 26, 2013, the Superior Court ruled against Mr. Bocook, affirmed the District Court and left the

Protective Order in place, unaltered. CP 130-32. Thus, Mr. Lindell, not Mr. Bocook, is the prevailing party.

1. *Mr. Lindell Never Sought to Bar Mr. Bocook from City Hall.*

Mr. Bocook claims that he is the "partially" prevailing party (which is not the standard for awarding fees), Bocook Opening Br., pg. 4, because he allegedly defeated an attempt to restrain Mr. Bocook from visiting City Hall. Bocook Opening Br., pg. 14. Mr. Bocook claims that the Superior Court's attorneys' fees award should be reduced accordingly. *Id.* at pgs. 4-5. However, the facts show that Mr. Lindell agreed that Mr. Bocook *should not* be restrained from visiting City Hall. CP 215, 218. The District Court noted Mr. Lindell's agreement to the City Hall exceptions (among others) in its January 18, 2013 oral ruling. Appendix H, pg. 95.

2. *Mr. Lindell Substantially Prevailed on All Claims.*

The District Court's January 18, 2013 oral decision to replace the standard, boiler-plate, *ex parte* Temporary Order's standard language implementing a "2 CITY BLOCKS" no-contact zone with a 100-foot no-contact zone does not turn Mr. Bocook into the "prevailing party." A simple reduction in the distance of the Temporary Order's boiler-plate, no-contact zone does not make Mr. Bocook the "prevailing party" when he

was resisting the entry of any form of a protective order. Such a suggestion would be absurd, especially considering that during the *same* oral ruling the District Court entered a permanent order *against* Mr. Bocook.

Even if Mr. Lindell were to concede that Mr. Bocook "partially" prevailed in limiting the scope of the Protective Order (which Mr. Lindell does not), Mr. Lindell would still be the prevailing party by virtue of substantially prevailing on his claims. "If neither party wholly prevails, then the party that substantially prevails on its claims is the prevailing party." *Hawkins v. Diel*, 166 Wn. App. 1, 10, 269 P.3d 1049 (2011) (citing *Transpac Dev., Inc. v. Oh*, 132 Wn. App. 212, 217-19, 130 P.3d 892 (2006)). Courts consider which party was awarded affirmative relief by the court. *Id.* at 12 (finding that "In the whole of the litigation, the court awarded affirmative relief only to the [plaintiffs,]" making the plaintiffs in that case the "prevailing party").

Mr. Lindell sought the Protective Order to protect himself from Mr. Bocook's relentless harassment, while Mr. Bocook sought nothing other than to defend against the Protective Order and any no-contact zone. Mr. Lindell obtained the Protective Order, and both the District Court and Superior Court found that Mr. Bocook's conduct constituted unlawful harassment under RCW 10.14 *et. seq.* AR 146-148; CP 130-32.

Accordingly, Mr. Lindell was the only party who was awarded affirmative relief by the Court. AR 146-48. Even if the scope of the Protective Order was reduced by a small fraction of the order originally requested, such reduction would not be a form of affirmative relief awarded to Mr. Bocook, but only a slight reduction of the affirmative relief awarded to Mr. Lindell.

3. *Mr. Bocook Failed to Reduce the No-Contact Zone to 25 Feet, and Therefore, Failed under His Own Standard.*

According to Bocook's own proffered standards for success, Mr. Bocook himself was unsuccessful before the District Court. Mr. Bocook requested a 25-foot no-contact zone. Appendix H, pg. 97. The District Court denied that request and implemented the 100-foot no-contact zone, a no-contact zone four times greater than Mr. Bocook requested. Appendix H, pgs. 97-98. Therefore, Mr. Bocook failed in reducing the no-contact zone to 25 feet. *Id.*

4. *Mr. Bocook's Injury, If Any, Was Caused by His Own Two-Month Delay of a Hearing on the Merits.*

Any bar to his attendance at City Council meetings was the result of a temporary order — a temporary order that stayed in placed for nearly two months because Mr. Bocook and his counsel wished to push back the date of a final hearing on the merits. AR 057, 061, 063, 065. Mr. Bocook's injury, if any, was self-inflicted.

5. *The District Court's "Clarification" of the January 18th Order Does Not Alter Mr. Lindell's Status as the "Prevailing Party."*

Due to a scrivener's error, CP 226-27, the District Court's oral rulings regarding Mr. Bocook's right to visit the Courthouse, the Post Office, City Hall, and to participate in parades, Appendix H, pgs. 95-96, were not reflected in the January 18, 2013 Order. AR 140-142. Further, the portion of the District Court's oral ruling, which implemented a 100-foot no-contact zone around RPS, was also omitted. Appendix H, pgs. 96-98. This particular omission, especially when combined with the fact that the protective order's stock language (which includes a no-contact zone of 2 City Blocks") remained in the order, created considerable confusion for all parties. *Compare* Appendix H, pgs. 96-98 with AR 141.

The District Court's clarification in no way alters Mr. Lindell's status as the "prevailing party." The District Court did not rescind any of the permanent protective order's restrictions against Mr. Bocook as expressed in its oral opinion on January 18, 2013. *Compare* Appendix H, pgs. 95-98 with CP 225-247 and AR 146-48.

B. The SLAPP Defense Should No Longer Be Considered On Appeal Because Every Court Has Determined That Mr. Bocook's Conduct Towards Mr. Lindell Constituted Unprotected Conduct.

The basis of Mr. Bocook's SLAPP Defense argument has already been uniformly rejected by every Court. The District Court, the Superior Court, the Court of Appeals, and the Supreme Court found that Mr. Bocook's course of conduct towards Mr. Lindell was unlawful harassment, as defined by RCW 10.14.020. By definition, such finding excluded any constitutionally protected speech. *See* RCW 10.14.020(1) ("Constitutionally protected activity is not included within the meaning of 'course of conduct.'").

As a result of the Supreme Court's affirmation that Mr. Bocook's conduct was not protected speech, Mr. Bocook's SLAPP Defense argument has no foundational basis to proceed. Therefore, Mr. Bocook's argument as to the application of the SLAPP Defense should be rejected.

C. The Superior Court Was Correct In Determining That the SLAPP Defense Was Inapplicable.

1. The SLAPP Defense Is Inapplicable to Legal Actions Brought for Equitable Relief, Such as Anti-Harassment Protective Orders.

The interpretation of a statute is an issue of law, requiring *de novo* review. *Holt v. Gambill*, 123 Wn. App. 685, 689, 98 P.3d 1254 (2004). The Court should affirm the Superior Court's interpretation of RCW

4.24.500-.510, when it replied upon *Emmerson*, 126 Wn. App. at 937, to determine that the SLAPP Defense was inapplicable to actions brought under RCW 10.14 *et. seq.*

RCW 4.24.510 protects "individuals who make good-faith reports to appropriate governmental bodies" from the threat of a "civil action for damages." *Emmerson*, 126 Wn. App. 930 at 936 (citing RCW 4.24.500 and .510) (emphasis added). A "civil action for damages" triggers the protections of RCW 4.24.510.

"A claim under chapter 10.14 RCW is a claim in *equity*," *Trummel v. Mitchell*, 156 Wn.2d 653, 663, n. 7, 131 P.3d 305 (2006) (emphasis added), not a civil action for damages. "A petition for a temporary order of protection is not a civil action for damages, as contemplated by RCW 4.24.500 and .510." *Emmerson*, 126 Wn. App. at 937 (holding that a petitioner for an anti-harassment protective order is immune from civil liability under RCW 4.24.510). Therefore, RCW 4.24.510 is inapplicable to legal actions brought for *equitable* relief, such as the Protective Order.

2. *Mr. Bocook Agrees That the SLAPP Defense Is Inapplicable to the Protective Order.*

Aside from a small reference in his briefing, Mr. Bocook did not reference the SLAPP Defense during either oral argument before the District Court, CP 219-224, Appendix H, pgs. 92-99, CP 225-247, and

took no issue with the District Court's decision not to address the SLAPP Defense raised in Mr. Bocook's briefing. *Id.*

Mr. Bocook agrees in his own briefing that the holding of *Emmerson* is still the law in Washington, but argues that *Emmerson's* binding authority ends when a successful petitioner for a protective order seeks attorneys' fees as the prevailing party on appeal: "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." Bocook Opening Br. at 14.

Mr. Bocook's argument that the Superior Court's award of statutory attorneys' fees has made Mr. Bocook's SLAPP *argument* "ripe" is without legal support or merit. Mr. Bocook fails to site one case bolstering his claim that the Protective Order is a "civil action for damages," or that an attorney fee award is a "civil liability." This may be because RCW 10.14.090(2) allows the court to award attorney fees and costs incurred in bringing an action under the statute as discussed below.

3. *Mr. Bocook Cannot Raise the SLAPP Defense for the First Time on Appeal.*

Mr. Bocook's belief about when a SLAPP Defense "ripens" does not change the fact that Mr. Bocook did not properly raise the SLAPP Defense before the District Court. Mr. Bocook cannot raise the SLAPP

Defense for the First time on appeal before the Superior Court. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995) ("As a general rule, appellate courts will not consider issues raised the first time on appeal."). Mr. Bocook cites no authority authorizing him to attempt such a novel maneuver.

4. *Application of the SLAPP Defense in this Case Would Undermine the Purpose of Awarding Attorneys' Fees Pursuant to RCW 10.14.090.*

Setting aside the lack of legal support, Mr. Bocook's proposed reading and application of RCW 4.24.510 would lead to absurd results. Mr. Lindell should not be held liable for Mr. Bocook's attorneys' fees and be assessed a \$10,000 special penalty for successfully defending the Protective Order on appeal, *see* RCW 4.24.510, solely because Mr. Lindell made references to Mr. Bocook's tirades before City Council, AR 010-12, especially where such references were contained among a plethora of facts which the court found to constitute unlawful harassment.

Mr. Bocook believes his SLAPP Defense would have remained dormant, *warranting no attention*, if Mr. Lindell did not request attorney's fees as the prevailing party—a concession that the merits were properly decided).⁸ Somehow, requesting attorneys' fees on appeal grants Mr.

⁸ By such a concession, Mr. Bocook concedes that his conduct was unlawful, concedes that his speech forming the basis of the Protective Order was unprotected, and therefore concedes that his pursuit of the SLAPP Defense is unfounded and without legal support.

Bocook a second bite at the apple, and the ability to re-litigate the merits of his case a second time before the Superior Court, or even the Washington Supreme Court if attorneys' fees were first requested before that Court.

If that were the law, a prevailing party awarded a protective order would never file for attorney fees on appeal—even up the Washington Supreme Court—without fear of awakening a dormant SLAPP Defense that was raised below. Meanwhile, the harasser would have little incentive to stop filing appeals—regardless of the merits. Washington's legislature never intended for such an absurd result. In our case, it is crucial to understand the purpose of RCW 10.14.090 before applying the protections of the SLAPP Defense.

The purpose of RCW 10.14.090 can be none other than to incentivize and facilitate the private enforcement of RCW 10.14 *et. seq.*, thereby maximizing the effectiveness of the statute in combating unlawful harassment. Scholars agree that one-way fee provisions (like the one found in RCW 10.14.090) are intended to incentivize the private enforcement of the law. *See* Steven N. Subrin et al., CIVIL PROCEDURE: DOCTRINE, PRACTICE, AND CONTEXT 156 (4th ed. 2012) (analyzing fee-shifting statutes, and concluding that a "pro-plaintiff, one-way shift

structure encourages enforcement efforts without penalizing the unsuccessful plaintiff").

RCW 10.14.090 grants courts the authority to award fees to *petitioners* in anti-harassment cases, but not respondents, making the statute a pro-plaintiff, one-way shift structure. Another statute that authorizes a similar shifting of fees is RCW 51.52.130, which grants fees to injured workmen in industrial accident cases. The purpose of RCW 51.52.130 was analyzed in *Brand v. Dept. of Labor and Indus. of Wash.*, 139 Wn.2d 659, 989 P.2d 1111 (1999). *Brand* found that the purpose of the statute was to ensure adequate legal representation for injured workmen who were denied justice by the Department of Labor. *Brand*, 139 Wn.2d at 667 ("Given that attorney fees statutes may serve different purposes, it is important to evaluate the purpose of the specific attorney fees provision and to apply the statute in accordance with that purpose.").

Scholarship, the observations of *Brand* concerning a similar statute, and the purpose of RCW 10.14 *et. seq.* in combating harassment, make it clear that the purpose of RCW 10.14.090(2) is to incentivize victims of harassment to pursue justice against a harasser without fear of incurring unaffordable legal fees. Mr. Bocook's interpretation of the law would frustrate this purpose.

D. Mr. Bocook's Desperate Attempt to Undercut *Emmerson v. Weilep* Fails for Lack of Legal Support.

1. *Emmerson and Lowe v. Rowe* Are Distinguishable and Contradict Mr. Bocook's Interpretation of the SLAPP Defense.

After admitting *Emmerson* is the law, Bocook Opening Br., pg. 14, Mr. Bocook then attempts to undercut *Emmerson* by claiming it is in conflict with *Lowe v. Rowe*, 173 Wn. App. 253, 294 P.3d 6 (2008) in a desperate and strained effort to create support for his argument that a prevailing party's attorneys' fees are covered by the phrase "civil liabilities." Bocook's Opening Br., pg. 15. In doing so, Mr. Bocook ignores the statutory history of the SLAPP statutes, including the facts and issues that distinguish *Emmerson* from *Lowe*.

The facts of *Emmerson* are closely aligned with the facts of this case. *Emmerson* was also a case involving an anti-harassment protective order. *Emmerson*, 126 Wn. App. at 933. The issue in *Emmerson* was whether the SLAPP statute's immunity from "civil liability" included immunity from anti-harassment protective orders. *Id.* at 935.

In making its decision, the Court had to determine whether the term "civil liability" found in RCW 4.24.510 included anti-harassment protective orders, even though the purpose statement of the statute, given in RCW 4.24.500, stated that the purpose of the statute was to protect

communications to the government from "the threat of a civil action for damages." *Id.* at 936. The Court held that: "The term 'civil liability' should not be read in isolation, but construed within the context of the statute's intent and purpose to mean a civil action for damages." *Id.* at 937. Because an action for an anti-harassment protective order is not an action for damages, the Court found that a respondent in such a case cannot claim immunity under the SLAPP Defense. *Id.* The Court's decision was based upon two Washington Supreme Court cases that stand for the principle that "[a statute's] meaning must be construed in the context of the statutory scheme." *Id.* (citing *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002) and *ITT Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 863 P.2d 64 (1993)).

Lowe's facts differ from the facts of this case, and *Lowe's* holding does not conflict with the holding of *Emmerson*. *Lowe* did not involve an anti-harassment protective order, but a suit for defamation. *Lowe*, 173 Wn. App. at 255. The issue in *Lowe* was whether RCW 4.24.500 requires a defendant act in "good faith" to establish the SLAPP defense, despite the fact that the good faith requirement was removed from RCW 4.24.510 by the legislature in 2002. *Id.* at 257. The Court, relying on its decision in *Bailey v. State*, 147 Wn. App. 251, 260-63, 191 P.3d 1285 (2008), held that "[t]he legislative decision to remove a good faith reporting

requirement cannot be undone by its failure to similarly amend the intent section." *Id.* at 261. In other words, the legislature clearly intended to remove the good faith requirement in the statute, and that clear intent trumps the original purpose statement (which was outdated due to the legislature's amendment).

As further grounds for its holding, the *Lowe* Court, citing *Bailey*, found that "intent statements do not control over the express language of an otherwise unambiguous statute." *Id.* While correct, this citation to *Bailey* lacks context. *Bailey* stated the following rules of construction:

When two statutes appear to conflict, the rules of construction direct the court to, if possible, reconcile them so as to give effect to both provisions. The provision later in the chapter prevails if it is more specific than the provision occurring earlier in the chapter. The more recent provision prevails if it is more specific than its predecessor. Significantly, statutory policy statements do not give rise to enforceable rights and duties.

Bailey, 147 Wn. App. at 262-63 (citations omitted) (emphasis added). Our case (and *Emmerson*) are distinguishable from *Lowe* and *Bailey* for the following reasons: (1) the rules of statutory construction listed in *Bailey* do not apply because the term "civil action for damages" found in RCW 4.24.500 does not conflict with the term "civil liability" found in RCW 4.24.510, as a civil action for damages is a form of civil liability; (2) even if these terms did conflict, making the rules of statutory construction listed

in *Bailey* applicable, a "civil action for damages" is a specific subset of "civil liability" and therefore must be the limiting factor to reconcile the terms and to give effect to both provisions; and (3) the legislature has not amended these two terms since they were enacted in 1989, making the reasoning of *Lowe* and *Bailey* wholly inapplicable to this case.

2. *Washington's Rules of Statutory Interpretation Confirm the Reasoning and Holding of Emmerson.*

The proper analysis of this statute is found in *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 43 P.3d 4 (2002), which was cited by *Emerson*. The Washington Supreme Court adopted the following method of statutory interpretation for determining the plain meaning of a statute: "[T]he plain meaning [of a statute] is still derived from what the Legislature has said in its enactments, but that meaning is discerned from *all* that the Legislature has said in the statute and related statutes which disclose legislative intent about the provisions in question." *Id.* at 11-12 (emphasis added). The Supreme Court adopted this rule "because it is more likely to carry out legislative intent." *Id.* at 12.

Here, there is an unambiguous provision outlining the statutory intent or purpose of the legislature in adopting RCW 4.24.510, and it is found in RCW 4.24.500 (a provision included in the statutory scheme,

having been adopted by the legislature in the *same* act on the *same* day).⁹ To achieve the Supreme Court's aim of carrying out legislative intent, the Court must give meaning to the purpose statement found in RCW 4.24.500 and uphold its conclusion in *Emmerson* that the SLAPP Defense granted in RCW 4.24.510 is limited to civil actions for damages, not for actions for injunctive relief (including anti-harassment protective orders).

E. Mr. Bocook's SLAPP Defense Is Inapplicable Because Mr. Lindell's Protective Order Was Not "Based On" Mr. Bocook's Communications with City Council.

Mr. Bocook engaged in a 17-month campaign to harass and defame Mr. Lindell. During this period of harassment, Mr. Bocook engaged in two tirades before City Council, in which Mr. Bocook stated he did not care about the legal consequences of his actions. AR 010-12. As stated in Mr. Lindell's declaration, the references were included to explain Mr. Lindell's fear of Mr. Bocook's statements that he was not afraid of the legal consequences of his actions. *Id.*; CP 215, 218. Mr. Bocook argues that the reference to the tirades in Mr. Lindell's declaration, combined with Mr. Lindell's request for statutory attorney's fees pursuant to RCW 10.14 *et. seq.* "ripens" the SLAPP Defense. Bocook Opening Br., pgs. 14-15.

⁹ Language of the relevant act can be found at 1989 Wash. Legis. Serv. 234 (West).

Mr. Bocook ignores key language in the relevant statute that reveals another fatal flaw in his argument:

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.

RCW 4.24.510 (emphasis added). As shown above, the Protective Order was based on Mr. Bocook's incessant in-person attacks on Mr. Lindell. To claim that this action was "based on" Mr. Bocook's statements before the City Council in August 2012 requires a great stretch of the imagination while ignoring the bulk of the evidence.

Upon the finding of unlawful harassment, RCW 10.14.090(2) grants the court discretion to award attorney's fees to the successful petitioner. The request for attorney's fees was *based on* RCW 10.14.090(2) and the finding of both the District Court and the Superior Court that Mr. Bocook's conduct was unlawful harassment, and not constitutionally protected speech. Therefore, the award of attorney's fees to Mr. Lindell was "based on" Mr. Bocook's harassment, not his statements before the City Council, and the anti-SLAPP statute does not apply.

F. The "Principal Thrust" of Mr. Lindell's Claims Centered on Mr. Bocook's Unprotected Conduct Outside of City Council Meetings, Rendering the SLAPP Defense Inapplicable in this Case.

The Court of Appeals, Division I, has greatly limited the applicability of the SLAPP Defense in cases where some protected conduct occurred in the midst of a maelstrom of harassment: "A defendant in an ordinary private dispute cannot take advantage of the anti-SLAPP statute simply because the complaint contains some references to speech or petitioning activity by the defendant." *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wn. App. 41, 71, 316 P.3d 1119 (2014) (quoting *Martinez v. Metabolife Intern., Inc.*, 113 Cal.App.4th 181, 188 (Cal.App. 2003)).¹⁰ *Dillon* goes on to state:

Rather, it is the *principal thrust* or *gravamen* of the plaintiff's cause of action that determines whether the anti-SLAPP statute applies and when the allegations referring to arguably protected activity are only incidental to a cause of action based essentially on nonprotected activity, collateral allusions to protected activity should not subject the cause of action to the anti-SLAPP statute.

Id. at 71-72 (emphasis in original). *Dillon's* "principal thrust" or "gravamen" test prevents Mr. Bocook from shielding himself from the consequences of 17 months of harassment by making two tirades to the

¹⁰ Due to the vast similarity between the Washington and California anti-SLAPP statutes, Washington courts have held that California cases may be cited as persuasive authority in interpreting the Washington statute. *See, i.e., Alaska Structures, Inc. v. Hedlund*, 180 Wn. App. 591, 599 (2014) (noting the similarities between the Washington and California anti-SLAPP statutes for purposes of interpreting RCW 4.24.525).

City Council. AR 010-12. The principal thrust of Mr. Lindell's claim concerned Mr. Bocook's in-person attacks that occurred over a 17-month period. AR 001-55. Mr. Bocook's statements before the City Council were never the principal thrust or gravamen of Mr. Lindell's claims.

G. The Declaration of Danette Lanet Is Irrelevant and Inadmissible as a Supplement of the Record on Appeal.

The Declaration of Danette Lanet, CP 097-118, enclosing several hearsay news articles discussing Mr. Bocook's activism, was irrelevant to the issue before the Superior Court—the issue of attorneys' fees. CP 095, 128. Further, the Declaration was an inappropriate supplementation of the record on appeal and the Superior Court was correct when it struck the Declaration. *See* RALJ 6.1. Even if the Declaration should have been admitted, the failure to accept it constitutes harmless error, as the SLAPP Defense was (1) inapplicable and (2) waived before the District Court. Therefore, the Court should affirm the Superior Court's decision to strike the Declaration.

V. CONCLUSION

Mr. Bocook's arguments run contrary to established Washington statutory and case law, lack factual support, and should therefore be disregarded. Mr. Lindell respectfully requests that the Court affirm the decisions of the Superior Court in all respects.

DATED this 31st day of March, 2016.

WITHERSPOON · KELLEY

A handwritten signature in black ink, appearing to read "Richard L. Mount", written over a horizontal line.

RICHARD L. MOUNT, WSBA # 16096

MATTHEW A. MENSİK, WSBA # 44260

WILLIAM C. LENZ, WSBA # 49891

Counsel for Respondent

PROOF OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on the 31st day of March, 2016, the foregoing original (plus 2 copies) were filed with the Court of Appeals, Division III, and a copy of the same was delivered to the following persons in manner indicated:

Jeffry K. Finer
Center for Justice
35 W. Main Ave., Ste. 300
Spokane, WA 99201-0119

- By Hand Delivery
- By U.S. Mail
- By Overnight Mail
- By Email Transmission



Shannay Dishneau

Appendix H

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

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|------------------------|---|--------------------|
| JACK WOODROW LINDELL, |) | |
| |) | |
| Petitioner, |) | CAUSE NO. 12720693 |
| |) | |
| vs. |) | |
| |) | |
| RICHARD EUGENE BOCOOK, |) | |
| |) | |
| Respondent. |) | |

AMENDED TRANSCRIPT OF PROCEEDINGS
January 18, 2013

Proceedings had before the HONORABLE JUDGE WALKER, Spokane County District Court, Washington, on January 18, 2013.

| | |
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| <u>APPEARANCES:</u> | <u>FOR</u> |
| Richard Mount | Petitioner |
| Matthew Mensik | |

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| Jeffry Finer | Respondent |
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1 I've got some political issues here. I've got some complaints about
2 the City Government or the President or the Congress or I don't like
3 the new marriage law or I don't like the tax [inaudible] thing.
4 You're not saying well, I want to put these ideas out there for people
5 to discuss. Your focus is on Mr. Lindell. It has nothing to do with
6 the chalk. It has nothing to do with the free speech. It has nothing
7 to do with a protest or demonstration. I don't have a problem if you
8 want to walk down the street, as Mr. Mount said, and complain about
9 something, but the big difference that I found through this hearing is
10 the *Bearing* case, which is cited by your --- your argument here, it's
11 the --- two quotes here. The first is the manner of expression is
12 incompatible with normal activity of the particular place and the
13 particular time. The second quote I think is even more relevant
14 because it pretty much defines and explains RCW 10.14 and it says it's
15 not the speech, but the manner in which perpetrators conducted
16 themselves. So, if you're walking up and down the street and you're
17 telling me that you're trying to avoid Mr. Lindell, I disagree with
18 you totally. You are seeking him out. You are not trying to tell
19 people who he is. They already know who he is and you don't even stop
20 when everybody knows who he is, you focus on him.

21 The other problem you have that harassment is not protected
22 speech and there's several cases that cite that. So, when we get to
23 all of these facts, the question is, has the Petitioner met the burden
24 of proof here? Is this knowing and willful course of conduct? Yes.
25 Is it directed at Mr. Lindell? Yes. It does it seriously alarm,

1 annoy or harass him? The answer is yes. Does it serve a legitimate
2 purpose? Not what you've been doing here.

3 Also, my conclusion is that I agree with Mr. Finer, I'm
4 kind of surprised that this went on this long that he didn't do
5 something. I totally disagree with your comment here about going to
6 the City or doing what you're doing is a way to get it dealt with and
7 when you say get, the only conclusion I can make is that you mean get
8 Mr. Lindell out of town or out of his job or off the street or fired
9 or something else.

10 Another aspect of this is that the comments you make to
11 other employees are intended to get back to him. Maybe you didn't
12 want to tell him face to face of the statement and he's testified to
13 this and I'm not relying on the affidavits. He's testified both in
14 his statement and in testimony today about the "get what's coming,
15 going to get mine and your time is coming." If you are making those
16 statements in a legal atmosphere, I would agree with you. But, given
17 the hostility and the spite and the vitriol here, there's only one way
18 he's going to take that. I'm not even considering this to be what the
19 case law says is a true threat. In other words, the State can charge
20 a crime if you make a threat against somebody. It could be
21 harassment, it could be a statement to do bodily injury or property
22 damage, but that takes --- that has a whole different definition and
23 analysis. I'm not even looking at the type of speech we've gotten in,
24 and I think off the track here on the wife beater and the child
25 molester. You don't like being called that so you're going to get

1 back at him to stop him from calling you that, but he calls you that
2 once or twice and you continue, you just unload on him and it's not
3 for the public. It's for him. What you're doing is making him the
4 target here. You're focusing on him and I'm not sure why. I have an
5 idea here, a guess at it, and I don't know if it's probable, but for
6 some reason it's --- I call it retaliation. Well, the way to solve
7 that is to go to Court. If he's doing this to you, you should have
8 been in here a long time ago. If you've got a problem, if you want to
9 rectify something that he's doing, we have legal means, as you've
10 found out, but to do this. Some people don't go to Court. Some
11 people handle it themselves and they don't really care whether it's
12 free speech or not, but you are completely over the line here with
13 your entire demeanor and your attitude and your intent.

14 The other elements here are not constitutionally protected
15 activity, so I disagree with Mr. Mount. I think that he has to prove
16 that, but my conclusion here is that they have done that. Reading the
17 cases, I'm not sure that they all support Mr. Finer's legal argument
18 here. The course of conduct, the series of acts, numerous acts of
19 even if I just consider three acts of the statements given to other
20 employees, definitely intended to be passed onto him. In conjunction
21 with everything else, he's reasonably not going to conclude those to
22 be legal threats. They're personal threats.

23 And then, the final one here is probably the, what I call
24 the dispositive and that's the continuity of purpose. This whole
25 thing has nothing to do with what you refer to numerously as

1 constitutionally protected expression. Yes, you do have that, but I
2 guarantee you, if he were doing that to you, you would be in here
3 asking for a protection order also.

4 So, my conclusion here is I am going to grant the order.
5 The Petitioner is met by the probability burden, all of the elements,
6 the course of conduct, knowing and willful aspect, series of acts,
7 emotional distress, substantial in the Petitioner and in the
8 reasonable person, not constitutionally protected course of conduct
9 and the continuity purpose.

10 I do have an extreme difficulty with the geographical
11 restriction here. There's no intent to prevent you from walking in
12 the Martin Luther King parade or any other demonstration, from going
13 to the Post Office or going to City Hall, which you have a right to
14 do, or the Courthouse, downtown. Part of the problem here is
15 unfortunately, you brought this on yourself, but I do not believe that
16 the Court is going to go along with this two block restriction. In
17 fact, what this tells me is that he is prohibited from going to about
18 the western half of downtown and that's not our intent here at all.

19 So, the result is, no contact with Mr. Lindell. That means
20 any knowing and lawful or excuse me, knowing or willful contact. If
21 there is a violation and he calls the police, potentially you could be
22 arrested and if you are convicted, the State has the burden of proof
23 here, or the City, to show beyond a reasonable doubt that the elements
24 have been violated. You can bet that if there is a violation, he's
25 going to call the police and we're going to go through all of this

1 again.

2 I'm not going to impose the two block restriction because I
3 don't think that's fair to you. So, what I'm going to do is make it a
4 distance and that's going to be problematic because I don't know how
5 either side is going to enforce that, but the intent here is to say
6 it's now a court order and I'm now going along with the temporary
7 order in terms of continuing it as a twenty-four month order.
8 However, I'm not going to prohibit you from going to those locations
9 that we meant.

10 So, I'm going to make this a one hundred foot distance and
11 you're going to have to just go around that. If you have something
12 that you need to do downtown, that's fine, you can do it. That should
13 not prohibit you from going to the Post Office, Federal Court or City
14 Hall, but if you see him there or you see him on the street, you have
15 to leave, potentially move on, go someplace else. If you want to do
16 your demonstration farther east in downtown on Main or Riverside,
17 that's great, have at it, you have a right to do that.

18 Also, you have a right to appeal this decision within
19 thirty days of today's hearing. I think we made a sufficient record on
20 this and I will sign the order.

21 CLERK: [Inaudible].

22 JUDGE: This has two blocks, so we need to redo ---

23 CLERK: 100 feet for residence also or keep that ---

24 JUDGE: Residence looks like that is confidential, so we
25 don't really care about that. We are going to change number four on

1 page two to one hundred feet.

2 FINER: Judge, I'm only asking on the Post Office,
3 Federal Court, are we just talking Riverpark Square? What does this
4 hundred foot ---

5 JUDGE: It's wherever he is. It's a hundred feet from
6 Mr. Lindell's location. I'm not going to put on a ---

7 FINER: His known location?

8 JUDGE: Well, I've explained that. I don't want to make
9 this anymore complicated, but obviously, since you brought it up, Mr.
10 Bocook, you know where Mr. Lindell works. So, if you're in the valley
11 someplace, it's not likely you're going to see him. You might, but
12 not likely. I don't know where he lives and neither do you. If
13 you're downtown, that's where he works. You know where he works
14 because that exhibit has been admitted into evidence. So, if you want
15 to wonder around the City Hall or Riverpark Square and you bump into
16 him intentionally, you're going to be in violation. Otherwise, I put
17 the two block restriction on, which I don't want to do if that
18 prevents you from ---

19 FINER: Would the Court consider that the contact is
20 twenty-five feet and discussion with him because, Judge, I think the
21 hundred foot is too hard to know.

22 JUDGE: Well, two blocks doesn't work and a hundred feet
23 doesn't work and I'm not sure twenty-five feet is from here to that
24 door and I'm real uncomfortable with that given the facts that I've
25 heard here. So, at this point, I'm going to leave it with the one

1 hundred foot distance. The problem, Mr. Lindell, that you're going to
2 have on this is nobody's going to walk out there with a tape measure
3 or GPS and measure this, so you have to do the best you can and Mr.
4 Boccook, likewise. That's the best I can do under the circumstances.
5 So, I will sign that order and we'll give a copy ---

6 FINER: Can we submit findings?

7 JUDGE: To the parties and ---

8 FINER: Can I ask a question?

9 JUDGE: I'll have you sign those and ---

10 CLERK: [Inaudible].

11 JUDGE: Did you get the replacement? Did I give you the
12 --- yeah, this is the one you want.

13 FINER: Findings of fact, Judge, because this will go up?

14 JUDGE: I expected that.

15 FINER: Well, I think it would have gone up either way.

16 JUDGE: I expected that also.

17 FINER: Yeah.

18 JUDGE: In fact, I might be interested in the result.

19 FINER: Well, I am too. I never know. I bet on a horse
20 race when it's over, but could we do it with findings? I think it
21 eases the appellate review.

22 JUDGE: This is actually in the record.

23 -----ADJOURNED-----

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

| | | |
|------------------------|---|--------------------|
| JACK WOODROW LINDELL, |) | |
| |) | |
| Petitioner, |) | CAUSE NO. 12720693 |
| |) | |
| vs. |) | |
| |) | |
| RICHARD EUGENE BOCOOK, |) | |
| |) | |
| Respondent. |) | |

TRANSCRIPT OF PROCEEDINGS
February 1, 2013

Proceedings had before the HONORABLE JUDGE WALKER, Spokane County District Court, Washington, on February 1, 2013.

| | |
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| <u>APPEARANCES:</u> | <u>FOR</u> |
| Richard Mount | Petitioner |
| Matthew Mensik | |
| Jeffry Finer | Respondent |

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