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SUPREME COURT OF THE STATE OF WASHINGTON
COURT OF APPEALS, DIVISION III
CASE NO. 31837-1-III

YVONNE A.K. JOHNSON, a single person,

Respondent,

v.

JAMES P. RYAN, a married individual,

Petitioner.

**JOHNSON'S ANSWER TO
PETITION FOR REVIEW**

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I. IDENTITY OF RESPONDENT

Yvonne A.K. Johnson (“Johnson”), the Appellant below, offers this Answer to James P. Ryan’s (“Ryan”) Petition for Review.

II. INTRODUCTION

“[I]n all honesty... your community’s problems are not my problems. I’m looking out for my family.”¹

“I have waged an all-out PR war against a former employer!”²

*“As for my goal/end game, I have only one: I am owed something. ...I need and intend to get what is owed me.”
See fn. 1.*

This is a case about cyberbullying³ and the injuries personally sustained by the targeted victim, Ms. Johnson, by a cyberbully who is seeking to justify his conduct by invoking Washington’s anti-SLAPP statute (RCW 4.24.525). Cyberbully, Ryan, was fired on 10/17/10 after his employer, the Spokane Civic Theatre (“Civic Theatre”), learned he had advertised his employment with the Civic Theatre in online solicitations for extramarital sex; initiated some of his sexual solicitations while backstage on Civic Theatre premises; and utilized graphically nude photos

¹ James Ryan’s May 2012 online correspondence with a Civic Theatre director and community member. Johnson obtained this document via discovery in her unlawful termination suit against the Civic Theatre. A copy is attached hereto as **Appendix A**.

² Civicdoody.com 4/25/12 blogpost “Lose-Lose”.

³ “Cyberbullying” – “[t]he use of the internet and related technologies to harm or harass other people, in a deliberate, repeated, and hostile manner. See Wikipedia – <http://en.wikipedia.org/wiki/Cyberbullying> citing “*What is Cyberbullying*” U.S. Department of Health & Human Services.

and texts in doing so. CP 64-65. Ryan's 'for cause' termination was a result of his actions implicating and associating the Civic Theatre with his solicitations for extramarital sexual relations. CP 83-85.

Within days of his termination, Ryan commenced a vicious campaign aimed specifically at and against Johnson creating a cyber-blog (thetyrannyofyvonne.blogspot.com),⁴ wherein he began broadcasting his termination by Johnson was an "outrageous wrong" and that he intended to tortiously interfere with Johnson's business relations and expectancies. "This site is dedicated to documenting Yvonne's warpath. ...It will stand as a warning to any potential future employer[s] that to hire Yvonne A.K. Johnson is to invite tyranny into their midst." **Appendix B.**

Since 2010, Ryan by means of his cyberbullying, maliciously and falsely has accused Johnson of engaging in criminal conduct involving moral turpitude (submitting false statements to the Unemployment Security Department). His cyber-attacks also consistently belittled, defamed, and discredited Johnson, thereby subjecting her to contempt,

⁴Ryan's blogging campaign is also found at civicoody.com, spokanecivictheatre.org, and spokanecivictheater.org. All four websites were incorporated, in their entirety, into the parties' appellate briefs below. See fn.3 of Ryan's Response Brief. A printed copy of the 10/24/10 blogpost "Unnecessary Escalation" from thetyrannyofyvonne.com is attached hereto as **Appendix B** as it appears Ryan has removed the post from his blog archives.

ridicule, and obloquy.⁵ After vilifying Johnson personally to the extent that the Civic Theatre terminated her employment, Ryan gloated via his blog:

“She was the undisciplined pitbull whose owner failed to properly train and restrain, resulting in carnage.”; “I think they did the absolutely necessary and correct thing by firing Yvonne A.K. Johnson. ...The board knows that they just got rid of a lunatic. They know that that lunatic hurt a lot of people over the last eight years.”⁶

During this time span, Ryan’s stated objective of getting what he perceived he was ‘owed’ – reinstatement to the Civic Theatre and/or severance pay – never wavered.

“A modest severance payout would have gotten rid of us. Better yet, rehiring me would have enabled the theatre to make amends for the damage while taking advantage of the considerable talents for which I was hired in the first place. ...I’m not looking for a pot of gold. I’m looking for what I’m owed. Don’t say ‘we can’t afford it.’ Yes you can. (The endowment fund exists for a reason and has three quarters of a million dollars in it.) ...Here’s the bottom line: Civic should make this easy and come to the table to negotiate a reasonable and amicable settlement that allows us all to move forward.”

See fn.5.

⁵ “A written publication is libelous per se... if it tends to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive [her] of the benefit of public confidence or social intercourse. It is clear that the imputation of a criminal offense involving moral turpitude is libel per se in this sense.” Amsbury v. Cowles Pub. Co., 76 Wn.2d 733, 738, 458 P.2d 882, 885 (1969).

⁶ Civicdoody.com 10/2013 blogpost “The Complete Civic Doody Retrospective,” Part II: What I Want (originally published 9/22/13).

Ryan's public proclamation that his "*active campaign*" was intended to extract vengeance to the tune of a \$100,000 severance package ("*I've really kind of settled in on that \$100,000 number*"), cannot now be translated into protected speech on a matter of public concern – irrespective of the fact that it was purposefully and publicly broadcast via the Internet. Id.

The appellate court did not err – cyberbully Ryan was not engaged in protected speech on a matter of public concern – he was engaged in unprotected, obsessive, self-centered, hateful, vitriolic prose intended only for personal gain. This is particularly evident, given Ryan blogged "*Every time you encounter a board member from Spokane Civic Theatre, simply ask 'Hey... I was just wondering... when are you guys going to make things right with Jim [Ryan]?' ...A little bit of shame goes a long way....*"⁷

III. STATEMENT OF THE CASE

A. Ryan's Statement Of The Case Is Argumentative And Misleading.

Ryan's statement of the case is argumentative and contains numerous misleading and/or false assertions. For example, Ryan's blog was not even remotely created as "*a public forum for discussion related to*

⁷ Civicdoody.com 10/22/13 blogpost "October Miscellany."

Spokane Civic Theatre, particularly regarding Executive Director Yvonne A.K. Johnson's... and the Board of Directors' leadership of the community theater." Petition, p. 2. Indeed, Ryan himself admits his blog was created for personal reasons including a warning to "any potential future employer of Yvonne A.K. Johnson" and as a "PR war against a former employer" in order to obtain money he felt he was owed. See theyronnyofyvonne.com and civicdoody.com.⁸

Moreover, Ryan incorrectly asserts Johnson sought removal of Civic Doody in total and as a restraint on his future speech regarding leadership of the community theater. Petition, p. 2. However, Johnson's request for damages clearly sought only removal of comments defaming and/or discrediting her and for Ryan to be enjoined from further tortious interference with her business relations and expectancies. CP 5-6. Additional disagreements regarding Ryan's factual assertions are set forth below in Johnson's statement of facts and procedure relevant to Johnson's request that this Court deny review.

⁸ [Theyronnyofyvonne.com](http://theyronnyofyvonne.com) 10/24/10 blogpost "Unnecessary Escalation" ("*stand as a warning to any potential future employer that to hire Yvonne A.K. Johnson is to invite tyranny into their midst.*"); civicdoody.com 4/25/12 blogpost "Lose-Lose" ("*an all-out PR war against a former employer!*"); 10/2013 blogpost "The Complete Civic Doody Retrospective" Part II: What I Want (originally posted 9/22/13) (a "*pleading*" of Ryan's case... wherein he was looking for what he believed he was owed, a \$100,000 severance "*which is the approximate value of my original contract*"); 10/14/14 blogpost "Four Years On" ("*Civic can do the right thing ... by making us whole and allowing me to walk away.*").

B. Spokane Civic Theatre.

This case involves a suit against Ryan, a terminated at-will employee of the Spokane Civic Theatre (“Civic Theatre”), a private, not-for-profit, performing arts theatre located in Spokane, Washington. CP 27. The Civic Theatre is a private foundation receiving support from private donors and operating with an endowment – the Spokane Civic Theatre Endowment Fund. CP 27-30.

C. Yvonne A.K. Johnson.

In 2005, Respondent Johnson was hired as the Executive Artistic Director for the Civic Theatre. CP 47. At the time, the Civic Theatre was on the cusp of financial ruin. CP 37, 50. By 2010, despite the economic recession, Johnson had doubled revenue for the Civic Theatre. CP 50, 51.

Ryan misstates Johnson’s resume when he relies upon it to assert Johnson “*is a public figure.*” Petition, p. 4. Johnson’s resume at CP 37 makes clear Johnson’s responsibilities. As the Artistic Director, Ms. Johnson was charged with supervising and evaluating employees, administering personnel policies set by the Civic Theatre’s Board of Directors, and administering grievance and termination procedures. CP 37. In July 2013, Johnson was wrongfully terminated by a coup through a newly-constructed Board despite only days earlier, her employment contract had been extended by the old Board. See Johnson v. Spokane

Civic Theatre, et al., Spokane Superior Court Cause No. 13-2-02907-8.

Johnson brought suit but eventually mediated her differences with the Civic Theatre, thereby resolving that litigation. Id.

D. James P. Ryan.

Ms. Johnson's financial acumen and ingenuity allowed the Civic Theatre to expand its full-time staff by adding several positions. CP 51. One of the new positions was a full-time Music Director. Id.

On or about 8/19/10, Respondent Johnson hired, and was to supervise, Ryan as full-time Music Director for the Civic Theatre. CP 3. A mere two months later, Ryan's employment was terminated by Johnson at the direction of the Civic Theatre's Board. CP 3, 83-85, 94. Ryan's termination was 'for cause' due to his actions in implicating and associating the Civic Theatre with his online solicitations for extramarital sexual relations. Id. Ryan ignores that Johnson's actions were at the specific direction of the Board of Directors. Petition, p. 4, CP 37.

Ryan likewise omits in his recitation of facts that the anonymous email disclosing the non-monogamous nature of his marriage also disclosed Ryan's use of graphically nude photos and texts for the purpose of engaging in online extra-marital sexual solicitations. CP 64-65. Indeed, the Civic Theatre further discovered Ryan utilized his Civic Theatre employee photo when sending graphically explicit text messages for his

sexual solicitations. *Id.*, 83. Further, Ryan blatantly advertised he was employed by the Civic Theatre in his online solicitations for extra-marital sex. *Id.*, 83. Moreover, it was learned Ryan had even initiated some of his sexual solicitations while backstage on Civic Theatre premises. CP 83. Ryan's 'for cause' termination was a result of his actions and not totally because of "*public standards and decorum for theatre representatives*" as Ryan insinuates.⁹ CP 83-85.

E. Civicdoody.com And/Or Theyrannyofyvonne.com.

Within two weeks of his termination, Ryan initiated his vituperative campaign of personal attacks against Ms. Johnson by creating the online blogs "**theyrannyofyvonne**" and "**civicdoody**." CP 3-4. The civicdoody blog is accessed by anyone attempting to access <http://spokanecivictheater.org>; <http://spokanecivictheatre.org>; or <http://www.spokanecivictheatre.org>, assuming that would be the correct domain." CP 4; 64 at fn.1; 81; 97. Accordingly, anyone who mistakenly searches for the Civic Theatre's legitimate website by utilizing one of the

⁹ On 10/22/10 Ryan emailed his termination letter to 50+ individuals highlighting and responding to certain sections therein. In doing so, Ryan admitted (1) he had referenced his workplace in his solicitations for sex; (2) sent sexy email/texts from backstage; (3) used his theatre photo in soliciting sex; and (4) offered to show the solicitation communications, and did indeed share a nude photo with other theatre employees. These admissions seriously belie Ryan's contentions that Johnson "*lied*" in his termination letter. This email was obtained by Johnson via discovery conducted in her wrongful termination suit against the Civic Theatre and is attached hereto as **Appendix C**.

above addresses was immediately routed by his design to Ryan's online addresses. CP 4, 81.

The overall thrust and dominant theme of Ryan's blogging sites are pointedly and vociferously related to his personal claim that he was wrongfully terminated in breach of his employment contract, thereby entitling him to either reinstatement or to a severance package. E.g.:

"I continued the work of seeking justice for my family, as I have done for the last sixteen months."; "I am waging an all-out public relations war against Civic."; "I simply have no intention of allowing Ms. Johnson or Civic's 'board of directors' to put this behind themselves until we are able to do the same."; "I don't care. I just want what's owed to me and my family so that we can walk away from this nightmare and never give it another thought..."; "I want the Board of Directors to have realized that this was not just another termination, but rather an epic error... that would have terrible long-term consequences."; "A modest severance payout would have gotten rid of us."; "I'm not looking for a pot of gold. I'm looking for what I'm owed."¹⁰

Unquestionably, Ryan's incessant incendiary, vicious, and spiteful postings were personal rants. CP 7-14.

In his blogged tirades Ryan blatantly accused Johnson of criminal dishonesty in a governmental hearing; namely submitting false statements

¹⁰ Civicdoody.com 2/22/12 blogpost "The Negotiation That Wasn't;" 5/1/12 blogpost "Extreme Isolation;" 2/1/13 blogpost "Next to Normal;" Id.; 10/2013 blogpost "The Complete Civic Doody Retrospective" Part II: What I Want; and Id.

to the government a claimed act by Johnson that is patently false. This constituted defamation per se by Ryan.

“In the course of fighting my claim, Ms. Johnson submitted false statements to the Unemployment Security Department, in the form of my official separation letter. ...She has now opened the theater to... charges of making demonstrably false statements to a government agency, should Washington State wish to pursue that.” CP 106-107; “...you should know that in addition to the outright lies submitted to the State of Washington by Civic in my official separation letter....”

CP 106-8. Likewise, Ryan accused Johnson of unlawful conduct:

“She and board president... proceeded to spread defamatory insinuations about the reason for our termination.”; “she made Civic an accomplice in the attack that was waged against my family.”; “she reacted to it by actually defaming me... when she told people I was fired to protect the children.”¹¹

Further, Ryan’s blogged entries intentionally exposed Johnson to hatred, contempt, and ridicule with the express purpose of depriving her of the benefit of public confidence as well as to injure her professionally:

“It is terrible for Spokane audiences who will see a show that was directed by a person utterly lacking in empathy and humanity.” CP 12; “‘I think it changes lives,’ Johnson said. One thing is for sure: she’s good at changing them for the worse. She destroyed ours.” Id.; “the failure of the Spokane Civic Theatre community to do anything about a leader they know to be narcissistic, dictatorial, and malevolent”; “dishing out in her megalomaniacal lust for power and personal glorification”; “if you lack the

¹¹ Thetyrannyofyvonne.com 10/24/10 blogpost “Unnecessary Escalation” Appx. B; Civicdood.com 8/22/11 blogpost “Taking a Stand;” 5/2013 blogpost “I’ve Been Served.”

personal fortitude required to spend vast amounts of time worshipping at the altar of a narcissistic maniac”; “The board knows that they just got rid of a lunatic.”¹²

Ryan’s assertion that Johnson failed to submit evidence substantiating he did not know the Employment Security Department documents were sent by someone other than her fails – the document at issue evidences it was clearly executed by another Civic employee. CP 125-26.

After being terminated, Ryan filed a meritless lawsuit against the Civic Theatre for breach of contract seeking damages in the form of back pay, front pay, attorney fees and costs. Ryan v. Spokane Civic Theatre, Spokane Superior Court Cause No. 12-2-02311-0. Ryan’s spurious suit was dismissed on summary judgment on or about 2/10/13. CP 96, 104.

Once Ryan’s suit against the Civic Theatre was dismissed, his campaign of vicious personal attacks upon Ms. Johnson increased in volume and intensity. *“This was their best chance to make this go away without spending money. It was handled by their insurance company and had the potential to end this all with a settlement and a non-disclosure agreement.”* CP 104-105. Ryan’s cyberbullying escalated to the extent it became even more antagonistic and vicious toward Johnson, causing her

¹² Civicdoody.com 7/25/11 blogpost “Professional Apples & Community Oranges;” 10/17/11 blogpost “One Year Later;” 1/16/12 blogpost “Yet Another Victim;” 10/2013 blogpost “The Complete Civic Doody Retrospective” Part II: What I Want.

great harm and distress. CP 102. Thus, on 4/5/13, Ms. Johnson filed suit against fired employee Ryan alleging defamation and tortious interference with business relations as a result of his cyberbullying. CP 3-6.

On 5/31/13, Ryan filed an anti-SLAPP motion seeking dismissal of Johnson's civil suit alleging that his online postings, via civicroody.com, were intended to provide a public forum for "*discussion and dissemination of commentary, complaints, and general information related to Spokane Civic Theatre.*" CP 60, 64¹³. Ryan supported his anti-SLAPP motion by asserting that his online cyber-conduct addressed matters of "*public concern,*" as evidenced by Internet traffic the blog purportedly received. Yet, Ryan's postured pleadings are in direct contravention to the prior and ongoing public assertions he made that his battle against Johnson was "*personal,*" all of which he communicated to a "*small*" audience as opposed to the "*general public*" for his own "*psychological and emotional purposes.*"¹⁴

On 6/21/13, Spokane County Superior Court Judge Gregory D. Sypolt nonetheless entered an Order granting Ryan's anti-SLAPP motion and dismissal. CP 140-42. The Order awarded Ryan statutory damages of

¹³ Ryan's assertions are belied by his 10/24/10 theyrannyofyvonne.com blog post where he openly solicited negative comments and participation against Yvonne in order to strengthen claims he was unlawfully terminated. See **Appx. B**.

¹⁴ [Civicroody.com](http://civicroody.com) 10/2013 blogpost "The Complete Civic Doody Retrospective", **Part I: Why I Did This**, (originally published 8/13/13); 7/19/13 blogpost "One Week Later...."

\$10,000, as well as attorney fees and costs. CP 166. The Trial Court entered the anti-SLAPP Order despite the fact that the true goal of Ryan's blogging was personal vengeance and gain. "*Occasionally, some well-meaning person will suggest that I'm 'never going to get anything out of them,' and that I should move on for my own well-being. ...the truth is this: It has never once – not once – occurred to me that I will not get the justice I seek.*" CP 7. "*Now its going to cost serious money if they ever want to end this.*" CP 10. "*Ironically, this is likely a huge disappointment for Yvonne A.K. Johnson and Civic's 'board of directors.'* *This was their best chance to make this go away without spending money... and had the potential to end this all with a reasonable settlement and a non-disclosure agreement.*" CP 11.

Thus, by his own admission, Ryan's blogging was at all times centered on his personal, private vendetta and conflict with former supervisor Ms. Johnson. *Id.* It was this personal campaign which Ryan orchestrated to make publicly known his grievance in order to seek personal vengeance – and not for any "*public concern.*" *Id.* An appeal to Division III ensued which reversed the Trial Court. *Johnson v. Ryan*, 346 P.3d 789 (Wash. Ct. App. 2015).

IV. ARGUMENT

A. **Ryan Identifies No Significant Question Of Constitutional Law Or Issue Of Substantial Public Interest Warranting Supreme Court Review.**

Ryan blatantly ignores both precedent from this Court and the U.S. Supreme Court when arguing this Court must interpret “*in connection with an issue of public concern.*” See White v. State, 131 Wn.2d 1, 11 (1997); Meyer v. Univ. of Wash., 105 Wn.2d 847, 851 (1986); and Snyder v. Phelps, 131 S. Ct. 1207 (2011). Indeed, for the past 28 years, Washington courts have decided whether speech is ‘of public concern’ by adopting the U.S. Supreme Court’s test from Connick v. Meyers, 461 U.S. 138 (1983). See Edwards v. Dep’t of Transp., 66 Wn. App. 552, 560 (1992).

Moreover, Ryan’s assertion that conflict exists between the divisions as to the scope of “public concern” is likewise misplaced and misstated. The decision at issue here is fully in harmony with Division I and Division II decisions. See Edwards v. Dep’t of Transp., 66 Wn. App. 552, 560 (1992); Wilson v. State, 84 Wn. App. 332, 342-46 (1996); Harrell v. Washington State ex rel. Dep’t of Soc. Health Servs., 170 Wn. App. 386, 406-07 (2012); Alaska Structures, Inc. v. Hedlund, 180 Wn. App. 591, 599 (2014). Ryan has not and cannot demonstrate a “conflict” justifying this Court’s review.

Finally, the Court of Appeals' decision does not contravene the existing legislative directive that courts apply and construe the anti-SLAPP Act "*liberally to effectuate its general purpose of protecting participants in public controversies from an abusive use of the Courts.*" Petition, pp. 8-9 (emphasis added). The facts of this case make clear the parties here were engaged solely in a private employment grievance; that no public controversy existed; and that Washington's anti-SLAPP statute has no applicability to this matter.

B. The Court Of Appeals Did Not Err In Deciding The Question Of Public Concern Based Upon Factors Including Content, Form, And Context In Light Of The Entire Record.

Ryan misconstrues what the Court must do when determining whether an employee's speech is of public concern. The Court is not tasked with isolating every statement uttered and analyzing its individual content, form, and context. Petition, pp. 10-11. Instead, the Court must examine the "*content, form, and context of the statement, as revealed by the whole record.*" White, supra, at 11 citing Connick, supra, at 147-148. The appellate court here did just that when concluding the content, form, and context of Ryan's blogging – in light of the entire record – constituted speech primarily focused on a private employment grievance, namely Ryan's termination. Johnson, supra at 797. Accordingly, the appellate court did not error in concluding "*the content and context of Ryan's*

speech is primarily a matter of his own private concern and, therefore, is not protected speech under RCW 4.24.525.” Id.

Moreover, Ryan misrepresents the relief Johnson sought below. Petition, p. 10, fn. 2; see Statement of the Case, supra; and CP 5-6.

Finally, Division III’s Decision does not encourage trial courts to disregard speech and focus solely on intent. Petition, p. 12. The appellate court’s Decision relies upon precedent supporting that courts must “*examine several factors, including content, form, and context of the speech in light of the entire record*” when determining whether speech is of public concern and thereafter correctly advises the “*speaker’s intent is also a factor.*” Johnson, supra, at 797.

C. The Court Of Appeals Did Not Err When Considering The Speaker’s Intent.

Ryan disregards precedence in accusing the appellate court of error. Since 1992, when considering whether speech has been made in connection with an issue of public concern, Washington Courts have considered the context of the speech – including the speaker’s motivation. In Edwards v. Dep’t of Transp., 66 Wn. App. 552, 560 (Div. II, 1992), the court specifically stated “[i]n order to distinguish between speech involving matters of public versus private interest, this court must determine the intent behind the employee’s speech and then determine

whether the employee meant to raise an issue of public concern, or merely intended to further a personal interest.” Likewise, the U.S. Supreme Court has made clear the focus of the speaker’s conduct should be the public interest rather than a mere effort ‘*to gather ammunition for another round of controversy.*” Connick v. Myers, *supra*, 461 U.S. at 148.

Additionally, in Snyder v. Phelps, 131 S. Ct. 1207 (2011) the U.S. Supreme Court emphasized the public concern inquiry must be highly fact specific, taking into account “*all the circumstances of the case,*” including what was said, where it was said, and how it was said – which indisputably includes intent. Id. at 1216. Indeed, when considering the context aspect, Chief Justice Roberts turned to the history of Westboro Baptist Church’s speech and the sincerity of the beliefs of its members. “*There was no preexisting relationship-or conflict between Westboro and Snyder that might suggest Westboro’s speech on public matters was intended to mask an attack on Snyder over a private matter.*” Id. at 1217. Here, when considering the context of Ryan’s speech, Division III rendered a much different conclusion than the Trial Court given the preexisting conflict between Ryan and Johnson.

The appellate court here did not commit error when considering Ryan’s intent, particularly given that he admitted purposefully bringing his private employment dispute to public light in order to benefit himself. “*I*

have waged an all-out PR war against a former employer!"; "I just want what's owed to me and my family so that we can walk away from this nightmare and never give it another thought for as long as we live." See fn.1 and **civildoody.com** 2/1/13 blogpost "Next to Normal." Contrary to Ryan's assertions, consideration of the speaker's intent has existed in Washington since 1992 and has not resulted in any "catastrophic" restraint on speech.

D. There Is No Conflict With Division I.

Division III did not err when relying upon Washington and federal precedence in concluding Ryan's speech was not about matters of public concern. In that regard, this Court has already determined California law does not control interpretation of RCW 4.24.525 as Ryan suggests. See Henne v. City of Yakima, 341 P.3d 284 (2015).

In Henne, this Court found that while the Washington and California statutes at issue had "*some similarities, the laws also have significant differences*" including the legislative purpose of the statutes. Id. at 289. Moreover, this Court emphasized "[o]ur legislature thus phrased its finding more narrowly than California's." Id.

Here, our legislature's use of "*public concern*" rather than "*public interest*" in RCW 4.24.525(2)(d) renders California case law interpreting matters of "*public concern*" unpersuasive. In choosing the term "*public*

concern” over “*public interest*,” our legislature was clear about intending that the term “*public concern*” convey its ordinary meaning. See Ellingson v. Spokane Mortg. Co., 19 Wn. App. 48, 56-58 (1978), (the words “actual damage” were determined to convey their ordinary common law meaning since the legislature expressed no intent for them to convey a different statutory meaning).

Moreover, Division III’s decision does not conflict with Alaska Structures. Indeed, Division III cites directly to Alaska Structures when emphasizing how federal authorities determine whether speech is of a public concern. Johnson, *supra* at 794-95. At first blush this may appear to create a conflict, as Alaska Structures relies heavily upon a California case, Weinberg v. Geisel, 110 Cal.App. 4th 1122 (2003), when analyzing public concern. The reality, however, is that the test set forth in Weinberg relies upon federal authority in analyzing what constitutes public concern. Alaska Structures, *supra*, at 602-03 citing to Time, Inc. v. Firestone, 424 U.S. 448, 454–55 (1976); Dun & Bradstreet v. Greenmoss Builders, 472 U.S. 749, 762 (1985); Hutchinson v. Proxmire, 443 U.S. 111, 135 (1979); and Connick v. Myers, 461 U.S. 138, 148–149 (1983). This is exactly what Division III did as well. Thus, there was no error and review is not warranted.

E. The Court Did Not Err In Remanding Johnson's Claims.

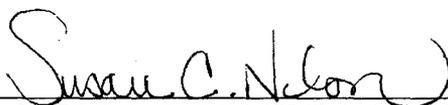
Appellate courts “review the grant or denial of an anti-SLAPP *de novo*.” Johnson, supra, at 793. Once a court concludes a speaker has not met his initial burden of showing the claim targets speech on a matter of public concern, the matter is subject to further proceedings in the trial court. Ryan errs in asserting that Division III was tasked with considering the merits of Johnson’s claims once it concluded Ryan’s speech was not on a matter of public concern.

V. CONCLUSION

Respondent respectfully requests that Petitioner’s Petition for Review be denied.

DATED this 18 day of May, 2015.

DUNN BLACK & ROBERTS, P.S.

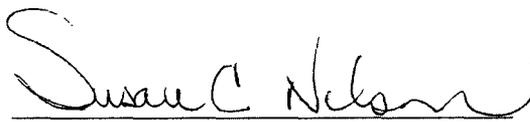


ROBERT A. DUNN, WSBA #12089
SUSAN C. NELSON, WSBA #35637
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18 day of May, 2015, I caused to be served a true and correct copy of the foregoing document to the following:

- | | | |
|-------------------------------------|------------------|------------------------------|
| <input type="checkbox"/> | HAND DELIVERY | Stacia R. Hofmann |
| <input checked="" type="checkbox"/> | U.S. MAIL | Law Office of Andrea Holburn |
| <input type="checkbox"/> | OVERNIGHT MAIL | Bernarding |
| <input type="checkbox"/> | FAX TRANSMISSION | 1730 Minor Ave Ste 1130 |
| <input checked="" type="checkbox"/> | EMAIL | Seattle, WA 98101-1448 |


SUSAN C. NELSON

Write a comment...



Options

Jim Ryan

New Post: The Magic Is Gone

"There is no longer any magic at Civic. How could there be? All of the first-rate talent has fled. Spokane's best directors are no longer at the helm. More importantly, the atmosphere is toxic."

Read the rest at www.CivicDoody.com

Spokane Civic Theatre - Something Stinketh At Spokane Civic Theatre

www.CivicDoody.com

Something Stinketh At Spokane Civic Theatre! Latest news regarding the destructive reign of Yvonne A.K. Johnson and her impotent board of directors.

Like · [Share](#) · [18 hours ago](#) near [Spokane](#)



Wes Deitrick I think you are beginning to alienate people in the performing arts community. I for one, take exception to your comment above, Jim. I'm sure there are others (many I consider my friends) booked to direct next year who would agree. I for one am becoming weary of the rants. Do what you need to do for what you believe is right, but your public judgements are crossing boundaries, and subsequently, appear desperate in nature. There are boards in this community that I have had difficulty with to say the least, and have removed my support from, but I would never work toward the destruction of an arts organization (privately or publicly).

[12 hours ago](#) · [Like](#)



Brad Picard yes wes! some of my dear friends are no longer there. no one organisation is perfect for everyone. Jim Ryan i thought you were putting this behind you and moving on. you are a great talent and a good guy. i love the civic. for 25 years. i ain't divorcing her yet. shes been good to me. those that have left are my dearest friends, ever. i support them in whatever venue they choose. i've seen three bosses there. one thing is sure. the talent, costumers, scene creators, directors, office support, are like my family.

12 hours ago · Like



Jim Ryan Several things: I'm sure that from within the bubble that Civic has become, it looks that way. And if that becomes the general consensus among the broader community, so be it. At that point, I will have faded into obscurity so that you won't still feel compelled to read and comment on my posts. As for those who are booked to direct next year, I can tell you with 100% certainty that many of them do not agree with you at all. Let's just leave that at that. Lastly, on the contrary, I am not working toward the destruction of an arts organization. I hope Civic can thrive one day with a legitimate board that is tending to its best interests and looking out for its long-term interests. I think the current state of affairs is terribly unfortunate and I would like nothing better than to see a change for the better. Perhaps what really bothers you is that so many people do read Civic Doody. Its so much easier when there's not someone out there exposing the truth about the organization you've chosen to continue to associate yourself with.

11 hours ago · Like



Wes Deitrick Always an argument or counterpoint, Jim, right? Let's see if I have this correct-- On this quote from above: "As for those who are booked to direct next year, I can tell you with 100% certainty that many of them do not agree with you at all." So those who are booked next year do not agree with me, but with you and believe this quote from above?: "All of the first-rate talent has fled. Spokane's best directors are no longer at the helm."??? So they believe they are the "second rate" directors and talent? Is that your argument?

11 hours ago · Like



o

Jim Ryan I'm sorry...I was unclear. I was referring to their general opinions of Yvonne A.K. Johnson and the current state of affairs at Civic. Note that YAKJ is directing three mainstage shows. These people would agree that that represents an artistic blow to the theater. Also, several inexperienced directors have been given shows and yes, many of the best in town refuse to work there (or aren't asked for the reasons discussed in my post). Some have lamented the poor showing at auditions these days, particularly noting the absence of some Civic mainstays who are no longer willing to work there.

11 hours ago · Like



o

Wes Deitrick Please do not turn this post into another attack on Yvonne. I would not respond to it if you did. Your post above was that the talent has left civic. This is where I believe you have worked to hurt an arts organization. Regardless of the events that you state happened to you, for any of Spokane's talent to leave their beloved Civic is tragic and hurtful to an arts organization. That is the result of your continued work. And forgive me if I misinterpret what I read between the lines, but you seem pleased that they have left. I want to be very clear on two things: I was treated worse at a particular arts organization, and though I no longer supported the organization with my presence or work, I never wanted others (especially those who did not have the minute details of the misdeeds and IMO atrocious acts and consequences) to give up their support. Many of my friends completely understood my absence from their work without grilling me for the details. In the end it all worked out. Also, you should not presume what motivates my decisions with statements such as this quote from above: "Perhaps what really bothers you is that so many people do read Civic Doody." If you want to question what bothers me now, then you must question what bothered me when I boldly signed a paragraph to the Civic Board regarding your situation.

11 hours ago · Like



o

business leader, I'm sure you would have fully considered the ramifications of making such a drastic move in the first place. Anyone who thought I would go quietly into the night was deluding themselves.

As for my goal/end game, I have only one: I am owed something. Ultimately, I could care less if YAKJ becomes immortal and rules Civic for all of eternity. I need and intend to get what is owed to me. The financial/ professional/ emotional devastation visited upon my family by this incident has been immense and has prevented us from getting the hell out of town, leaving you all to deal with your own problems on your own, without the meddling of this outsider who was lured here and kicked to the curb two months later.

Civic has always had it within its power to put this behind them - and if they were interested in doing the best thing for the theater and the community, they'd get me on a bus out of town as soon as possible. But this isn't about the best thing for the theater and the community. It's about YAKJ. My goal and endgame have never changed. It was wrong then - it's wrong now. I was owed something then - I am owed something now. The delay in giving it to me is the cause of any upheaval and harm that is done to Civic in the meantime.



It is unfortunate in that we do not have both sides of this story (I mean from the civic horses mouth). It would seem to me (perhaps naively) that you would have legal recourse under the circumstances and many lawyers (if they believed they could win) would take on the case for a cut. If the case has any gray areas, they wouldn't. For example, if the email dialog occurred at anytime via cell phone or computer from the Civic's premises, I would suspect that you would not have a case. So, if it is compensation you are looking for which is what I thought, then you should pursue it verses any further attempts to receive a settlement from Civic. I

I think we can assume at this point that a settlement is not going to occur.



I have shared my entire separation letter from Civic, all of which is demonstrably false. It's not probably worth getting into the legal vagaries, except to say that whether or not what Civic did was technically legal, a) we can't afford to sue them and the amounts involved are pretty small for a lawyer to take it on contingency (since I was only making \$30k) and b) not all technically legal actions are right actions and people have to know that some people will hold them accountable for wrong actions. I view the public square as a perfectly legitimate place to let this play out. if it was bullshit, i would be largely ignored. if YAKJ was not notorious for her treatment of people, my case would be an isolated incident and no one would care.

You are welcome to assume that a settlement is not going to happen, but the other side must then assume that I am not going to relent in my quest for a settlement. Fair enough? Hell...even if I was dead wrong and dead guilty of whatever...the attention paid to my blog is indicative of a larger public relations crisis at the theater. again...if everything was

Jim Ryan You make some very valid and important points, Wes - and I have made a major correction to my post. I drew some false conclusions and I appreciate your thoughtful engagement. I am not impervious to good counsel, as some have proven themselves to be. my apologies for my initial defensiveness. a couple thoughts: I sincerely think it is tragic that anyone is leaving or being pushed away from Civic. Ultimately, that has become my cause, even if my motives are largely self-interested. I am not pleased to see anyone walk away from any arts organization, but the fact remains that we all have to choose who and what we associate ourselves with. For example: I don't buy Boy Scout products. There are some wonderful things about Boy Scouts, but I simply can't patronize an organization that harbors such bigotry against my gay brothers and sisters. I can't ultimately harbor any real ill will toward those who do buy their products, but I can encourage them to make their voices heard in one way or another. i don't necessarily view that as an attempt to destroy the Boy Scouts so much as an attempt to force the organization to change. We can't all just say "Oh, well...they're never going to change so there's nothing we can do." I profoundly appreciated the fact that you and many others signed that petition, but I DO wonder what bothered you then and what has changed since. If it was wrong then, at what point was everyone supposed to give up and walk away in defeat? I don't ask this combatively at all. I ask this sincerely - half hoping that someone will give me a rational reason to walk away. I haven't heard one yet. (And truthfully, most people have encouraged me to stay the course.) In any event, thank you again for helping me see the error of my ways and for being willing to have this conversation.

11 hours ago · Like · 1



Wes Deitrick Thank you, Jim for a fair response. There are many reasons not to support The Boy Scouts (National) organization, the one you stated being the strongest. Though in Washington State between Spokane and Seattle there has been the organization's cover up of pedophilia as another strong reason to pull support. I have a difficult time comparing attacks on a huge national organization with their written dogma to a local arts organization without such printed dogma. I'd like to keep this dialog in the bubble of Spokane arts. From my POV there was an issue that was communicated to the arts community, a letter written, signed by local performing artists and delivered. And I am not criticizing when I say that you did not give that effort the time to materialize into a dialog. We never really had a dialog with the board and I think that is because of a frenzied and immense volume of written attacks on the theater, board and Yvonne from you a couple of others in what seemed immediately after the letter

the community signed. I was hoping to have a chance to dialog with the leaders of Civic. Having been a business leader of a \$2M a year organization, I know that the barrage of written attack that came into the organization would have prevented me from being able to respond with a diplomatic head. I would have been forced to seek legal council. So rather than have an environment where I could have had diplomacy and discussion occur, I would have tightened the environment down to silence and a legal posture. I don't know if that was the response of civic, but it would have been mine with all the written attacks received. I only know your side of this story and that is all I will probably ever know as I believe the other side has been silenced. If any of what I say here is true, and you understand it to have a ring of truth, then my biggest concern at this point is (and this too has not been answered): What is your goal or end game in continuing these attacks on civic? What do you hope to achieve? And at this stage, I would like to take this discussion out of this social network. Feel welcome to message me.

2 hours ago · Like

I will respond in full shortly, but I would like you to know that your thoughts have given me pause and I made a correction on my post. thank you for engaging thoughtfully. my apologies for my initial defensiveness and smart-assness.

I am more than willing to concede that my response - when one stands back objectively and looks at it from the monday morning quarterback's position - may or may not have been the best strategic course of action.

I make two excuses: First, once I got a couple of phone calls from people wondering what I had done to children (on the basis of johnson and muzatko's assertion that they needed to "protect the children,") I felt that I could not allow that notion to take hold for a single solitary second - that I had to vociferously defend and counterattack in order to prevent any further damage to my family.

Secondly, remember that I had only just moved my family here and bought a house. my universe was crumbling before my eyes. I flipped the fuck out - and I make no excuses for that. (Hell, I'm still flipping the fuck out.) That said, I flipped out in the most legitimate way possible. I used my voice. I'm a theater person - that's what we do. As a

peaches and cream over there, my blog wouldn't resonate. so at some point - EVEN if I had an orgy backstage during a show - the theater would need to consider taking care of this in the long-term interests of the theater. as a business leader, you must see that.



I see a couple of things here. A lawyer, who strongly believed the case could be won, would be working for a lot more than back wages. They would be pursuing the bigger payoff with punitive damages. Hence, contingency is a possibility providing there is a sound case. The second part is far more gray. I know that Yvonne has pissed off and alienated people and I know that she has also embraced and made friends. I also know that nobody, in her job, would have a 100% support. I think in her job one is lucky to have 75% support. Those who never or rarely get to play, do not support. I just don't know what her percentages are in the polling. Yet I'm fairly certain of the following and this is through my experiences with bad arts organizations: There will always be those who continue to come back and play as players, directors, designers who want to be in a theater game somewhere. An organization with the resources of civic will always survive. The powers that be will leave on their own terms. Many boards have changed their bylaws to make the AD invincible or back to the board as invincible. So... what I'm saying is this. I believe there will never be a settlement. I also hear from you that a lawsuit will not occur. My knowledge of Yvonne: short of those two things occurring, is she will never yield. The only thing that can possibly occur at this point is that attacks on the Civic will only (temporarily) hurt the Civic. The love of that theater in this community goes way beyond Yvonne. The Civic itself is bigger than any person or body of people and it will sustain in the long term. It is why Troy keeps his foot in the door every year. He knows this or he wouldn't. Kathy Doyle-Lipe - every year, Janice Abramson - every year and it will continue. This last post of yours attacked people like them and myself which shouldn't be the objective. The community theater is the community's theater - not Yvonne's or Jack's or whoever comes next. You must see that as well, don't you?



I do see this. In fact, that, I think, is where my blog resonates loudest. Take Troy. He keeps his foot in the door, but that's a shitty, tragic pittance. He has been almost entirely pushed out. As have many, many others who simply hold themselves to too high a standard to donate their time, talent and money to such an organization. You can't seriously be making the argument that because the organization is financially strong that everyone should just accept whatever happens, can you? At what point is it incumbent upon the larger community to fix its own problems? This is not a privately held company. It's a public asset. Only the public can protect it. Look...in all honesty...your community's problems are not my problems. I'm looking out for my family. I would prefer to see all arts orgs thrive, but I am not burdened by any emotional attachment to civic. You have to look within. I am not civics problem. I am not your community's problem. I am a symptom. You have to solve the real problem rather than trying to suppress the symptom. I would have qualms about actively hurting the theater, but as I see it, YAKJ is hurting the theater by her refusal to deal with the consequences of her actions.

Rest assured, I would not be continuing or getting any traction if I did not have the wholehearted supported of quite a few prominent civic insiders - past and present. I'm not tone deaf. I'm just determined. Many of those who remain involved do so while supporting me quietly, complaining to me about how terrible things are there, feeding me inside information, threatening to walk out at any moment, etc. Don't confuse their continued involvement with disagreement with me. Many would very much like to see me succeed in bringing YAKJ down, though that isn't really my goal.

I hope I've made it clear that my attack was misguided and that I have corrected it. You are right - that should not be the objective. You should all be enjoying the benefits of this community asset you built together.



Hi Jim, the poison you speak of existed at other theaters here as well. Those people kept going back into the poison and supporting, working, getting a paycheck and they knew that something was fishy in Denmark. They didn't stop working there and I didn't encourage them to stop. I think at this point you have a blog. That blog makes you feel supported. I know there are several people in Spokane who would love to see Yvonne leave. I think Yvonne will leave when a better opportunity comes her way. She is not going to leave over the pressure of this. And if you believe that pulling talent out of Civic will make her leave, it won't. The audience will still come. Tickets will get sold. In community theater of volunteers the support will continue. They've had over 10,000 hours of volunteer help this year excluding hospitality. A far weaker theater organization survived, though it lost its only asset to the board. Now they own nothing and one day will pay rent to what they once owned. But no one stopped it. They just kept coming back and supporting it. Troy will be fully back at Civic. I don't think he's being pushed out from inside. I only hear good things about him in those walls. If money is the motivation for all your work toward the blog, I doubt seriously you'll see a payday. It is a lot of negative energy to put out if you don't achieve a clear objective. But if you are getting something else out of it, cathartic or otherwise then you should continue. I appreciate that you have withdrawn your appraisal of the people continuing to keep civic a viable performing arts organization. This community is not my community. I'm trying to adopt it -- with difficulty at times, but I have not been fully embraced. I was in Los Angeles for the first 47 years. Nice to have communicated with you a bit and received a bit more of your perspective. My counsel is that if your motivation is that Yvonne will leave due to pressure from your blog or that you will receive compensation from the theater, I don't believe either of those will occur and can spare you a lot of negative energy with the advice to move forward in your life for yourself and your family. If there is other motivation or satisfaction that I am not aware of, then I would suppose you must continue. Even if it is to continue on the previous two motives that I would almost bet the farm against happening. I gotta get out a here and to Seattle for a few days now. Best,
Wes

Chat Conversation End



May 30

Jim Ryan

- o I appreciate the counsel, I really do. As I said, I would love it if someone could talk me out of my mission rationally. But when I think about what your motives are in having this conversation, the best I can come up with is that you basically just want your theater community back - sans all the drama and negativity. Unfortunately, the drama and negativity would continue regardless, as evidenced by the Ben Bentler situation of last Christmas. As evidenced by Yvonne's effort to push Bob Mielbrecht off the board. What you're asking of me is not, strictly speaking, rational from where I sit. You're asking me (and you're not the first) to exhibit undue altruistic concern for this theater community by ending my ranting and raving about the problems that resulted in my being here and being in this position. If nothing else, I hope to prevent someone else from making the same mistake. Ben Bentler told me himself that he wished he'd payed better heed to my blog, which he read before taking the job. It gave him serious pause. Perhaps it has given others reservation enough to avoid walking into the propellor. In any event, my goals, in order of priority are thus: 1) Financial remuneration and expungement of my termination record, regardless of how unlikely either of those things are; 2) I couldn't care less what becomes of Yvonne A.K. Johnson professionally or otherwise. I have zero interest in that woman's past, present, or future. That said, until her ongoing attack on my life ends, I see no reason whatsoever to end mine on hers. I don't have any delusions that my blog will pressure her out. In fact, I am quite sure it will keep her stuck there by preventing her from finding employment elsewhere, given its prominence in search results; 3) Pure, simple, justice. I cannot accept the morally weak argument that "oh well, yvonne is yvonne, so we should all just accept it and move on, regardless of what she has done to anyone or what she will do to others in the future. I consider it my duty to warn others and be a part of the solution, rather than allowing the problem to simply fester and ruin others.

Lastly, (and then I will leave you be, I promise!), I hope you're aware that I have offered repeatedly to submit to binding mediation. What could be more reasonable than that? Both sides could be presented in a confidential setting. If Civic prevailed, I would have no grounds for continuing my efforts. In fact, I would be legally prevented from continuing them. I'm curious why you wouldn't want to use your considerable intellect and influence to work toward a solution like that rather than simply asking me

to unilaterally surrender?

Thanks again. Perhaps a beer someday would be in order? Have a great trip to Seattle.

Best,
Jim



a few seconds ago

Wes Deitrick

o Hi Jim.

Back from Seattle yesterday and settling back in. I have only a couple more comments and then I think I have probably exhausted my end of the discussion.

From your last email I have to say that my motivation seemed fairly obvious in that I found your Facebook post to be insulting to not only me, but to several others that I know, and actually, though changed in your blog with a strike-through, remains fully in place on Facebook which may very well be the the majority of "reads" it receives. Specifically: "There is no longer any magic at Civic. How could there be? All of the first-rate talent has fled. Spokane's best directors are no longer at the helm." -- remains on your Facebook page without a corrected post on Facebook.

That sentence above was my entire motivation in responding to the post - nothing else.

My complaint to you was that you were bleeding into the artists in town who continue to support "their" community theater. Some of those include Kathie Doyle-Lipe, myself, Marianne, Troy will be directing in downstairs this year (many years he only did one show a year for Civic) the entire cast I had on stage in the Chew at the time of your posting and many other very talented people including Peter Hardie who on Sunday very much expressed his support for the Civic (and its leadership).

When I spoke of negativity it was simply a recommendation for YOU-- perhaps misguided in that I know if I were on the relentless quest with the Civic that you are (which I believe under the circumstances and from your statements, will not yield the fruit you seek), that I would look to put out purely positive energy going forward (my experience is that I tend to receive, what I put out). It had nothing to do with any perceived desire that

I need the rumors and negativity to go away for ME to be happy.

In regards to the topic of mediation, that is exactly what I was hoping for when I signed the paragraph to the board. I wanted some of us to have an opportunity to speak with the board and attempt a mutually agreeable reconciliation of sorts. That option was gone with the onslaught of emails, Facebook posts etc.(not just from you) that came immediately after the Civic received the signed statement. I believe that immediate attack probably forced the Civic staff to go to legal council, who would have strongly advised silence from the board, forever erasing a mediation opportunity.

I really do wish you and your family the best now and in the future. At this point, it appears that any council I (and probably anyone else offers) is not going to produce results for you. I do stick with the feeling that regardless of your efforts, your end game of compensation will not be achieved. I may be wrong, but short of having an attorney to work on contingency payment or pro bono, and with my knowledge of the players, there won't be a settlement. Anyway, take care and I hope you find peace in all of this one day. Wes

The Tyranny of Yvonne

Sunday, October 24, 2010

Unnecessary Escalation

On October 15th, five people knew about the email that started our nightmare: **Yvonne A.K. Johnson**, Allyson Shoshana, my wife, and I - and the criminal blackmailer who emailed criminally obtained information to Spokane Civic Theatre.

On October 17th, **Yvonne A.K. Johnson** capitulated to the anonymous blackmailer by firing us. She and board president Michael Muzatko then proceeded to spread defamatory insinuations about the reason for our termination, leading people to believe that children were somehow involved. Those abominable statements demanded that we open up to the community with the whole truth - a truth that was later confirmed by our official termination letters - thus widening the circle into the hundreds.

To date, Yvonne and the Civic have shown absolutely zero inclination to remedy this situation or to respond to the outpouring of protest they've received from the community. They have made no attempt to right this outrageous wrong. For that reason, the circle will soon widen into the thousands. In my termination letter, Yvonne asserted that our private lives could have caused the theater to "go down in financial flames," "be lost to public scandal," and "dwindle into obscurity." Her stubborn insistence upon staying the course could now bring about the very "magnitude of potential harm" she warned of.

Yvonne A.K. Johnson is an extraordinarily competent executive. Let there be no doubt about that. My family and I moved across the country to accept a job at Spokane Civic Theatre largely because it was a thriving, growing institution under her stewardship. But at what cost? She seems to believe that any form of disagreement with her is an attempt to take away the entirety of her success at the Civic. Conversely, when she disagrees with someone, she immediately loses respect for that person as a whole, unable to reconcile the positive characteristics that first brought that person into her world with whatever all-consuming issue has come to the forefront in her mind.

Obviously, we knew none of this three months ago. We could never have anticipated that we would almost immediately become part of the trail of personal and professional carnage left by Yvonne's tyrannical rule and unbending devotion to, above all else, herself. That devotion is disguised as fidelity to the theater itself, but a cursory examination of her behaviors and priorities reveals a woman hellbent on personal power and glory at any cost.

This forum must be dedicated to straightforward, factual accounts of personal and professional experiences with Yvonne. It will be rendered less effective by the angry, personal attacks that bubble up in our souls as a natural human response to being treated like human garbage. I will moderate to this end by accepting submissions at . Anonymous submissions will be considered, but identification is preferred.

We must not give Yvonne ammunition in the form of actionable defamation, slander, or libel. A simple rule to remember: Truth is a defense against any of these claims. Tell the truth and there's no problem. I will

APPENDIX B

begin to compile your stories and link to them below this post, which will remain as an introduction to the cause.

Jim Ryan
November 1, 2010

If you would like to help, please make your voice heard.
Email us at: thetyrannyofyvonne@gmail.com
Write the Civic's board at: 1020 N. Howard St. Spokane, WA 99201
Email Yvonne A.K. Johnson at: yvonne@spokanecivictheatre.com
Call Yvonne at: 509-325-2507

10/24/2010 - The Termination of Jim & Lynette Ryan

Posted by JR at 9:39 AM 0 comments 

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▼ October

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[Blogger](#)

From: Jim Ryan jimryanmd@me.com

Subject: My Termination Notice

Date: October 22, 2010 at 4:59 PM

To: bobbran@hotmail.com, dalengunn@gmail.com, dgriffith@ajscarchitects.com, dramaqueen1985_221@hotmail.com, darth_linux@msn.com, nubianprince253@hotmail.com, lepley@gmail.com, James Elvidge elvidge@qwest.net, Jhon Goodwin goodjhon@gmail.com, jorgezavala81@yahoo.com, josephryanevans@gmail.com, clarinetist@wildblue.net, Mike mike@libertybf.com, pale_wings@yahoo.com, strikersonic@gmail.com, tia@yourbeautifulphoto.com, chris@yourbeautifulphoto.com, Peggy Masella pmasella@alliancellc.net, pvilabrille@comcast.net, JP Abramson lilabejp@aol.com, Miguel Maldonado mmaldy@hotmail.com, casslemhayes@gmail.com, Katrina Yoshinski a24unme@yahoo.com, Kathie Doyle-Lipe Dramapig@aol.com, Jim Humes jimh@spokanecivictheatre.com, peter@spokanecivictheatre.com, david@spokanecivictheatre.com, jan@spokanecivictheatre.com, Wendy & Quinn Klaue klauepie2@comcast.net, dee@spokanecivictheatre.com, lance@spokanecivictheatre.com, stefan@spokanecivictheatre.com, Lynn K lynnndotkom@comcast.net, dmrideout@aol.com, rebecca@spokanecivictheatre.com, Bryan Durbin (work) bryan.durbin@acs-inc.com, EVELYN RENSHAW (HM) erenshaw@comcast.net, Bill Masella bill.masella@gmail.com, Eric Jeffords eajeffords@gmail.com, Jenae Paenitz jenaep@gmail.com, Jillian Wylie jillian.wylie@gmail.com, Julie Watts-Striker julia.striker@gmail.com, Kevin Partridge learnyourlines@gmail.com, Sam Yeaw samuelgyeaw@gmail.com, Siri Hafso shfso@gmail.com, Sampson_Daniels@hotmail.com, Andrea Dawson andreasdawson@hotmail.com, Cameron Lewis camlewis3@hotmail.com, EVELYN RENSHAW (WK) arenshaw@mail.ewu.edu, Mark Pleasant mark.pleasant.jl8i@statefarm.com, Bryan Durbin gokacarot@yahoo.com, Troy troy.nickerson@yahoo.com, patnheather@comcast.net, David Gigler davidg@reliantrxwa.com, Tom Heppler Tom.Heppler@sterlingsavings.com, Dan McKeever ravanew@yahoo.com, TCaprile@aol.com

Here it is - at long last - with nothing new added. I've attached the entire document. I've highlighted sections and responded to them in red. Please let me know if you have questions. Please feel free to forward. Sorry for email address duplications.

Sincerely,

Jim & Lynette



APPENDIX C

Mr. James Ryan
3927 S. Sherman Street
Spokane, WA 99203

October 22, 2010

Dear Jim:

As we discussed Sunday, October 17, 2010, your employment with the Theatre is terminated effective October 17, 2010. This is not a pleasant separation for the Theatre and we are sad and dismayed by the lack of professionalism you accorded us during the process.

YOUR PRE-TERMINATION CONDUCT

The Theatre decided to terminate your employment because you exercised extremely poor judgment by placing into the public domain sexually graphic text and pictures of you and Lynette combined with information that permitted an association to the Theatre. There are three gross offenses here.

The public domain is not an applicable term here. We did not release the rights to our photos or conversations, nor did they expire. Unless you think sending a private photo to your boyfriend or girlfriend constitutes placing it "into the public domain," this was not what we did.

First, there is the public nature of your indiscretions due to using www.Craigslist.org to solicit sex. For most people -- sexual conduct is a personal matter, not something to be shared with the community at large or imported into the workplace.

Unless dating can be construed as soliciting sex, Yvonne's repeated use of this phrase is simply an attempt to appeal to your sense of disgust by relating it to prostitution.

We did not import anything into the workplace. A crime was committed against us, resulting in the *intrusion* of a personal matter into the workplace by an anonymous criminal.

Second, you would have been fine had you exercised even a modicum of judgment and maintained professional anonymity. Instead you chose to publicly associate your sexual activities with the Theatre by referencing your workplace in e-mails, sending sexually explicit e-mails from work while backstage, and using your photo that is on the Theatre's website to solicit sexual activity.

I referenced my workplace in a conversation under false pretenses. Do people generally refrain from sharing where they work with people they intend to sleep with? If so, I missed this cultural shift.

Anyone care to pretend they've NEVER sent a sexy email or text from backstage?

When I sent that photo to the theater before I arrive in Spokane, I said something like "I don't have a headshot, but here's a decent photo. Again...soliciting sex?"

You claim you shared the professional association with the Theatre only "privately" via e-mail correspondence with an individual. However, due to the abilities of www.Craigslist.org users to maintain anonymity, surely you appreciate that sharing photos and information with even one person in that forum has the potential for the information to be posted on the whole internet due to the lack of accountability that accompanies anonymity. Sharing with one there is sharing with all. You've admitted this lapse in judgment to me personally and you obviously share the same concerns, which is why you intimated to me that you normally don't share photos via e-mail until you get to know them better.

We all use our own sense of judgment about people we meet this way. Mine has a solid track record until this incident. Again...a malicious person entrapped and attacked us. Your computer could be hacked. Your identity could be stolen. A person you know and love(d) could do this to you.

Another instance of poor judgment occurred in September during the *Buddy* production wherein we had an altercation regarding the music tempo. Obviously, professionals may differ in their artistic opinions. However, a difference of opinion is not license to accuse your superiors of intentionally or maliciously undermining your authority or abilities. A more mature response would have valued the differing opinions and worked amicably and constructively through the critical process. After, this early lapse in judgment, I coached you on a more appropriate method of communication and in using better judgment when working with superiors in the workplace.

This did, indeed, occur.

Third, as the Music Director, you were in a leadership position and miserably failed to uphold yourself to the high public standards charged to representatives of the Theatre. (See our handbook). On Friday, October 15, 2010, you first disclosed your personal sexual activities to me. As I told you then and as I believe in my heart now, the Theatre neither judges nor cares about what employees do in their personal lives. It is wholly personal.

However, the very moment that the Theatre became implicated is the moment that serious business concerns arose. What was once wholly personal quickly transformed into a matter regarding professional judgment and leadership competence.

While I do not share the same sexual affinities as you and Lynette, I do not personally find them offensive. To each his own, I say. I cannot speak for the rest of the Board, since I do not know their personal inclinations in this regard, nor do I care to so educate myself. However, our personal sensitivities are not the proper measure for the appropriate boundaries of public decorum for representatives of the Theatre. In gauging our public actions, we must think of the diverse community we serve and the potential for its offense. We serve mature audiences and youth audiences. We serve audiences both conservative and liberal, both modest and flagrant.

Given the range of diversity, the Theatre must take a high road and hold itself and its representatives to the highest of ethical standards, lest we offend even a fraction of our supporters none of whom we can afford to alienate. The potential to offend the local community is the appropriate measure to guide our judgment. As a director and leader of the Theatre, you, of all people, should have known better, Jim.

She will later describe our sexual endeavors as "prurient," which is synonymous with lecherous.

If the "potential to offend the local community is the appropriate measure to guide our judgment," perhaps it would have been better to try to handle this quietly, as was our original intent. It wasn't until assertions were made that we were dangerous to children that we felt compelled to come completely clean about the situation, before our names were sullied by Yvonne's insinuations.

You know how dependent we are upon the good will of the local community in the greater Spokane metropolitan area. The Theatre exists and thrives only because of local support. Local ticket sales, local donations, and local volunteers are the lifeblood for our not-for-profit and growing civic theatre. Furthermore, we are not the only game in town. The competition for local charity is fierce and dollars and resources are scarcer due to the degraded state of the economy. Before associating the Theatre with your graphically nude pictures and public domain solicitations for sex, did you even once think beyond your personal gratification and consider the potential negative impact on the Theatre's patron, donor and/or volunteer support? The Theatre could have and still can go down in financial flames because of what you have done. All of our hard work could be lost to public scandal and the Theatre could dwindle into obscurity. That is what you have done, Jim. That is the magnitude of the potential harm.

I think the melodramatic nature of this paragraph speaks for itself. We deeply regret that this had to become as overblown as it has. We wish this had been handled delicately, professionally, and with respect for the fact that an anonymous individual had attacked us maliciously. We would have worked tirelessly to protect both our privacy and the theatre's reputation.

Instead, we were terminated without the opportunity to speak for ourselves on the matter. Instead, salacious insinuations were made. Instead of four people knowing about this, a large contingent of the community has learned about it. Yvonne Johnson is responsible for all of those things by way of her handling of these events.

POST-TERMINATION CONDUCT

To worsen matters, you horribly mismanaged your response to the Theatre's reaction. On Sunday, October 17, 2010, I contacted you to have an in-person meeting with the Board so that we could professionally discuss options. Instead, you refused, became belligerent, and engaged in a smear campaign to discredit me and the Theatre by falsely spreading rumors that your termination was due to disclosing your status as a "swinger". As you may recall, you disclosed that information to me on Friday, October 15, 2010. It was no big deal then and remains

innocuous to this day. The concerns arose later that afternoon while reviewing the photographs and text and realizing the public nature of the association of your sexual solicitations with the Theatre. Even then, the reinstatement of you and Lynette to the Theatre's employ and rehabilitation of the Theatre's image might have been possible. It appears that dissemination of the information may have been limited. Maybe we could have hired a publicist to help us address potential image damage.

Fortunately, Yvonne has a long track record of hyperbole in these kinds of situations. Not only did I not become belligerent, I pleaded for my job. If I had been belligerent, it would have been irresponsible of Yvonne to leave me a phone message moments after that phone call asking me to come to the theater with my keys and music.

That may well have been possible if Yvonne and Michael Muzatko had not begun telling everyone that they did this to "protect the children." Many individuals walked away from their pre-show announcement on Sunday assuming that I had done something horribly wrong – in the ballpark of "raping an underage cast member," as one witness put it. We felt strongly that we needed to protect our reputation swiftly and strongly.

However, your public announcement on Sunday in the lobby before several patrons and staff that the Theatre was terminating you and Lynette for being "swingers" further publicized the unwanted sexual association. At a later time at a party at which Theatre employees and several others were present you circulated the explicit photos and text among attendees in an apparent attempt to generate support for your defense. Again, you further publicized the association and added insult to injury by demonizing the Theatre with attributions of false reasons for alleged wrongful termination. At that time, any possibility for reinstatement and image rehabilitation surely evaporated, thanks to your additional indiscretions and poor judgment, part two.

This was a private event, largely convened to respond to my termination. I have offered on numerous occasions to show the full extent of the emails to anyone who wants to see them. I did so in order to counter the nasty insinuations about children. Only today did the theater end those insinuations and put to rest the question of whether "there's so much more we don't know," or whether "more information is going to be coming out." Nothing new has come out. That said, I showed one photo at that event – a photo that was sent to me by the anonymous criminal.

In light of the above, the Board does not view its termination actions as unfair, unduly harsh or artistically stifling in direct contravention of the Theatre's mission. The decision was made after careful and compassionate deliberation. Of course, as vanguards of the dramatic arts, the Theatre is cognizant of its role in challenging the community's intellect and in pushing the boundaries of creativity and artistic expression. However, your public sexual endeavors are exclusively prurient in nature and deserve no safe harbor.

So much for not judging our sexual endeavors. First, they were not public – not by any definition of the word. Secondly, synonyms for prurient are salacious, lascivious, lewd, lecherous. This is

yet another insinuation that we are somehow a danger to society. I thought we were done with that?

We are truly sorry for the co-victims of your indiscretion and poor judgment, namely Lynette and your son. Because Lynette was an employee and her sexual activities were publicly associated with the Theatre (albeit through your actions), termination was unavoidable. The end result and the potential for the Theatre's financial ruin is just as great. You are fortunate you are on good terms with her for she likely has a legal claim against you if the disclosures were made without her consent.

Yvonne's chauvinism is disappointing. My wife and I are on equal footing in this relationship. I do nothing without her permission. Her actions are my actions, and vice versa. She's sitting here right now.

It is unfortunate we find ourselves in this position. We wish that you would have maintained anonymity and kept your private life out of the workplace. We also wish that you would have responded more amicably and responsibly instead of making matters more public and enlarging the potential harm. Now, in addition to the potentially adverse financial repercussions, the Theatre is losing two contributing and talented employees.

Believe me, we wish that an anonymous criminal had kept our private lives out of the workplace. We also wish we had the sort of loyal and protective employer who would have risen to our aid rather than exacerbated the effects of the attack.

We wish you the best of luck and goodwill in your future endeavors and hope that you now better understand the reasons for our actions. Hopefully, the better human being in you will forego any vengeful and malicious actions to injure the Theatre and the community through costly litigation. Only the art and the community will suffer. We know that is not your wish and that you are not selfish people.

Our family comes first. Our family has been wronged. At this point, any further harm that comes to the theater as a result of litigation or media coverage will be on Yvonne Johnson's hands.

Regretfully,
Yvonne A. K. Johnson
Executive Artistic Director
Spokane Civic Theatre

OFFICE RECEPTIONIST, CLERK

To: Shellie Garrett
Cc: Susan Nelson
Subject: RE: Johnson v. Ryan, No. 91640-3

Received 5-18-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Shellie Garrett [mailto:sgarrett@dunnandblack.com]
Sent: Monday, May 18, 2015 10:56 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Susan Nelson
Subject: Johnson v. Ryan, No. 91640-3

Attached for filing is Respondent Johnson's Answer to Petition for Review.

Johnson v. Ryan, Case No. 91640-3

Shellie Garrett, filing on behalf of Susan C. Nelson, Dunn Black & Roberts, P.S., 111 North Post, Suite 300, Spokane, WA 99201 (snelson@dunnandblack.com)



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