

No. 75977-4

**SUPREME COURT
OF THE STATE OF WASHINGTON**

PAUL TRUMMEL,

Appellant,

v.

STEPHEN MITCHELL, et al.

Respondents

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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IDENTITY AND INTEREST OF AMICUS

The American Civil Liberties Union of Washington ("ACLU") is a statewide, non-partisan, non-profit organization with over 20,000 members, dedicated to the preservation and expansion of constitutional and civil liberties. The ACLU recognizes that unlawful harassment is a serious social evil, and that narrowly tailored antiharassment orders can be effective tools to keep the peace and protect individual privacy.

Unfortunately, the Washington civil antiharassment statute can be misused to punish and even to enjoin constitutionally protected speech. For this reason, the ACLU has participated in many cases involving RCW 10.14, as amicus or as counsel to the parties. E.g., In re Marriage of Suggs, 152 Wn.2d 74, 80, 93 P.3d 161 (2004); State v. Noah, 103 Wn.App. 29, 38-39, 9 P.3d 858 (2000). The ACLU filed an amicus brief in Division I in the present case.

ISSUES TO BE ADDRESSED BY AMICUS

1. What are the elements of unlawful harassment under RCW 10.14?
2. How do constitutional free speech principles affect a court's consideration of the evidence and crafting of an antiharassment order?
3. What process is due in a full hearing under RCW 10.14?

4. What is the proper standard of review on appeal of a civil antiharassment case where a significant portion of the petitioner's evidence consisted of objections to the content of the respondent's speech?

WHY AMICUS BRIEFING WILL ASSIST THE COURT

In recent years, the ACLU has received calls from citizens who have faced antiharassment orders for speaking at public meetings, publishing letters to the editor, or reporting misconduct to government oversight agencies. Properly applied, RCW 10.14 does not allow these abuses. But trial courts must carefully adhere to the statute's safeguards to avoid curtailing constitutional rights. To help this Court provide the best guidance to trial courts, amicus wishes to file a brief that identifies the areas where misapplication could cause the greatest constitutional concerns.

The parties have vigorously litigated the case, raising a plethora of evidentiary and legal issues. The ACLU amicus brief takes a step back from the heat of the battle to offer a framework from which the Court can assess the parties' more precise areas of contention. Because this framework is developed from the ACLU's years of advising and representing litigants in harassment cases, it reflects broader interests that those of the parties themselves.

FAMILIARITY WITH ISSUES

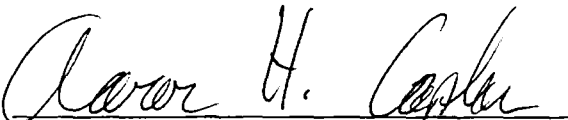
Counsel for the ACLU has read the trial court orders, all briefs submitted to the Court of Appeals, the unpublished opinion of the Court of Appeals, and all of the briefs submitted to this court. Counsel is familiar with the scope of the argument presented by the parties and has not unduly repeated arguments raised by others.

CONCLUSION

For these reasons, the ACLU requests leave to file the attached amicus brief for the Court's consideration.

Respectfully submitted this 23rd day of May, 2005.

AMERICAN CIVIL LIBERTIES UNION
OF WASHINGTON


By: Aaron H. Caplan, WSBA #22525