

NO. 48662-4-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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PAUL TRUMMEL,

Appellant,

v.

STEPHEN MITCHELL and COUNCIL HOUSE, INC.,

Respondents.

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BRIEF OF *AMICUS CURIAE* SEATTLE WEEKLY IN SUPPORT OF  
APPELLANT

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## I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

*Amicus curiae Seattle Weekly* has been a significant and respected journalistic force in the Seattle community over its 28-year history. The paper's award-winning coverage and independent voice have made it the guide to Seattle's civic and cultural life, providing readers with intelligent, provocative, and challenging insights on local politics, entertainment, media and culture. *Seattle Weekly* is Seattle's largest alternative newspaper with a circulation of 101,000 readers each week through its news racks and an average of 197,000 readers each month on the Internet at [www.seattleweekly.com](http://www.seattleweekly.com). It is a member of Village Voice Media, whose properties include *The Village Voice*, *LA Weekly*, *Seattle Weekly*, *City Pages* (in Minneapolis-St. Paul), *OC Weekly* (in Orange County, CA), and the *Nashville Scene*.

*Seattle Weekly* is known for aggressive investigations and reporting and for tackling unpopular and difficult issues. *Seattle Weekly's* interest in this case stems from its concern that content-based censorship, prior restraint and punishment of unpopular messages and unpopular people erodes the freedom of speech for all.<sup>1</sup>

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<sup>1</sup> Indeed, the trial court acknowledged that its decision would apply to journalists working for newspapers such as *Seattle Weekly*: "Even if Mr. Trummel was a salaried employee of a world class newspaper and the recipient of a Pulitzer Prize, he would not be able to behave the way he behaved at Council House." RP (6/17/02) at 4.

## II. STATEMENT OF THE CASE

Paul Trummel published a web site. CP 332-78. On that site he posted names, addresses and other publicly available information regarding people connected with his federally funded senior housing complex. CP (2d) 16-17. In April 2001, a trial court issued a permanent anti-harassment order against Trummel that barred him from contacting by telephone or writing or through third parties any resident of the complex or any board members, staff or employee of Council House, the organization that ran the complex. RP (4/19/01) at 18. Much of the conduct at issue involved Trummel's publication of a newsletter critical of the complex and its management and his newsgathering techniques. RP (4/19/01) at 8-18. He was ordered not to perform "surveillance" on Stephen Mitchell, the director of Council House. RP (4/19/01) at 17. In issuing the order, the trial court held:

[I]t is my findings specifically that his claim to be a journalist is a bogus claim insofar as he has no useful journalistic purpose with respect to his activities at Council House. He is not employed by anybody but himself, there is no publisher involved, there is no press involved, there is merely the misguided use of an obviously well-developed talent to write and Mr. Trummel has regrettably seen fit to use that talent in a way that is clearly within the purview of [the anti-harassment statute].

RP (4/19/01) at 6-7.

In October 2001, Mitchell moved to have Trummel held in contempt based on articles and information published on Trummel's web site. RP (10/1/01) at 2-3. The trial judge held that Trummel's posting of information on his web site—which Trummel stated was sent to him voluntarily by third parties rather than as a result of Trummel's personal observation, RP (10/1/01) at 5,—constituted “surveillance” and was a violation of the anti-harassment order. CP 325. Trummel was held in contempt. RP (10/1/01) at 21-23. The court again noted that “I do not recognize he has any claim to freedom of any press here . . . .” RP (10/1/01) at 23.

Trummel was ordered to delete from his web site the names and addresses “and any other personal information” regarding past or present Council House staff, residents, employees, board members or agents, including its lawyers. RP (10/1/01) at 25. He was ordered not to “post personal information” regarding these people on the Internet in the future. If anyone wanted to be listed on his web site, they had to sign a “waiver” which Trummel was required to file with the Court showing that person agreed to be mentioned. RP (10/1/01) at 26. Trummel removed several people's names and other information. He did not initially remove Mitchell or his photograph from the web site. RP (10/5/01) at 12. The judge indicated that he was “inclined to put [Trummel] in jail until he edits

that web site . . . I don't want to see Steve Mitchell's name on that web site, I don't want to see the name of anybody outside of the legal documents." RP (10/5/01) at 15-16. The trial court expanded the ruling to prohibit the posting of photographs of the same people whose names could not be used unless they gave Trummel a signed waiver. RP (10/26/01) at 10-11. Trummel complied and removed all names and photographs from his web site for several months. He then created a web site in Europe on which he posted articles critical of Council House that used people's names. The European web site advised Washington readers to go to a separate web site where redacted versions of the articles were posted. Council House brought another motion for contempt against Trummel in February 2002 based on the European web site. The trial court held that this second web site constituted a violation of the anti-harassment order and immediately had Trummel imprisoned. RP (2/27/02) at 17. Trummel remained in jail for more than 100 days until he agreed to remove the names, photos, and other personal information from his web site. RP (6/17/02) at 15-16; RP (6/21/02) at 3-4.

### **III. ARGUMENT**

#### **A. Unpopular Speech and Unpopular Speakers Merit Free Speech Protections.**

The right to speak freely extends to every person both under the federal and state constitutions. U.S. CONST. amend. I; WASH. CONST. art.

I, § 5. Unpopular messages and unpopular speakers are in greatest need of protection of this right. Preserving their rights to speak—and to offend—is essential to preserving this right for all.

[I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken . . . that deviates from the views of another person may start an argument or cause a disturbance. **But our Constitution says we must take this risk . . . and our history says that it is this sort of hazardous freedom -- this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.**

*Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 309 U.S. 503, 508-09, 89 S. Ct. 733, 21 L. Ed. 2d 731 (1969) (emphasis added).

It is a dangerous proposition to allow the government, including courts, to decide whose speech merits protection.<sup>2</sup>

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are,

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<sup>2</sup> See *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943) ("If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion[.]").

or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects . . . . [T]he alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.

*Terminiello v. Chicago*, 337 U.S. 1, 4-5, 69 S. Ct. 894, 93 L. Ed. 1131 (1949).<sup>3</sup>

Distinctions drawn based on the qualifications or perceived worth of a speaker are even more problematic. First, our history has taught us that important ideas can derive from unknown and previously unheralded voices. If they can be silenced, vital ideas might never be expressed.

For example, Thomas Paine, an elementary school drop out, unsuccessful apprentice corset maker, failed shop keeper and twice-terminated tax collector wrote *Common Sense* in 1776 with no journalistic training or experience.<sup>4</sup> The pamphlet today is hailed by historians as “the

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<sup>3</sup> See also *Abrams v. United States*, 250 U.S. 616, 630, 40 S. Ct. 17, 63 L. Ed. 1173 (1919) (Holmes, J., dissenting) (“The hallmark of the protection of free speech is to allow ‘free trade in ideas’ -- even ideas that the overwhelming majority of people might find distasteful or discomforting.”); Eugene Volokh, *Freedom of Speech and Information Privacy: The Troubling Implications of a Right to Stop People From Speaking About You*, 52 Stan. L. Rev. 1049, 1116 (2000) (“The protection of free speech generally rests on an assumption that it’s not for the government to decide which speech is ‘fair’ and which isn’t . . . . Once people grow to accept and even like government restrictions on one kind of supposedly ‘unfair’ communication of facts, it may become much easier for people to accept ‘codes of fair reporting,’ ‘codes of fair debate,’ ‘codes of fair filmmaking,’ ‘codes of fair political criticism,’ and the like.”).

<sup>4</sup> Scott Liell, *THOMAS PAINE, COMMON SENSE, AND THE TURNING POINT TO INDEPENDENCE*, (Running Press 2003) at 16, 23.

most brilliant pamphlet ever written.”<sup>5</sup> It is believed to have inspired the American Revolution.<sup>6</sup> But at the time he wrote it, Paine was not employed or viewed as a journalist and had no journalistic training. With his less-than-impressive credentials, Paine could easily have been seen as a “bogus” journalist and deemed unworthy of protection.

Similarly, some of the most important whistleblowers in recent history could have been silenced under the principle espoused by the trial court. These speakers publish “inside” and sometimes “private” information, but society relies on them to shed light where the government and “traditional” media cannot. Speakers such as Rachel Carson (environmental whistleblower),<sup>7</sup> Cynthia Cooper (WorldCom whistleblower), and Sharon Watkins (Enron whistleblower),<sup>8</sup> could have been silenced if journalistic credentials were the key to speech protection. To keep channels of communication free from censor and chill, *all* speakers must be allowed to bring forth claims of malfeasance regardless of a court’s evaluation of a speaker’s worth.

Second, the unpopular speaker and message will always be at risk for ridicule and suppression. If they can be silenced, all are at risk of

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<sup>5</sup> REVOLUTIONARY AMERICA! 1763 –1783, [www.hoover.archives.gov/Exhibits/RevAmerica/3-When/Common Sense.htm](http://www.hoover.archives.gov/Exhibits/RevAmerica/3-When/Common%20Sense.htm) (2003).

<sup>6</sup> BIOGRAPHY, [www.ushistoryorg/paine](http://www.ushistoryorg/paine) (2003).

<sup>7</sup> BIOGRAPHY, [www.rachelcarson.org/index.cfm?fuseaction=bio](http://www.rachelcarson.org/index.cfm?fuseaction=bio) (2003).

<sup>8</sup> TIME, 2002 PERSONS OF THE YEAR, [www.time.com/time/personoftheyear](http://www.time.com/time/personoftheyear) (2003).

ensorship when they find themselves in the minority. The trial court here labeled Trummel a “bogus” journalist, RP (4/19/01) at 6, discounted his assertions to be a “bona fide” member of the press, RP (6/17/02) at 3, and called Trummel’s claim that he was a member of the press “a self-serving fantasy,” RP (6/17/02) at 11. The judge labeled him a “mean old man” whose speech constituted a collection of “anti-Semitic, homophobic, [and] misogynist lies.” RP (6/17/02) at 2, 10. Trummel’s speech was offensive to and unpopular with many of his neighbors and the judge. Trummel was working on his own, independently, and not under the umbrella of a major news organization. But these are all reasons why it is imperative that Trummel’s right to speak be protected. The offensiveness of his speech and his deemed lack of qualifications and worth as a speaker are irrelevant. All speakers have a constitutional right to free speech. *Every* person—from respected journalist to supposed charlatan, from populist speaker to “homophobic,” “misogynist,” “anti-Semitic” “mean old man”—has the right to speak freely. *See* WASH. CONST. art. I, § 5; *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 896-97 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997).<sup>9</sup>

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<sup>9</sup> *See also* Volokh, *supra* note 3, at 1095 (“Though the Court has often said in dictum that political speech or public-issue speech is on the ‘highest rung’ of constitutional protection, it has never held that there’s any general exception for speech on matters of ‘private concern.’ Political speech, scientific speech, art, entertainment, consumer product reviews, and speech on matters of private concern are thus all doctrinally entitled

**B. Posting Publicly Available Information on the Internet is Protected Speech.**

The same free speech rights exist for speech on the Internet as oral speech or speech in paper form. *See Reno*, 521 U.S. at 897 (“We agree. . . that our cases provide no basis for qualifying the level of First Amendment scrutiny that should be applied to [the Internet].”). The U.S. Supreme Court has described the Internet as a “vast democratic fora” that is not as “invasive as radio or television.” *Id.* at 868-69 (internal quotation marks omitted). Indeed, the Internet provides the means for “*any person* with a phone line [to] become a town crier with a voice that resonates farther than it could from any soapbox.” *Id.* at 896-97 (emphasis added).

Thus, publication on the Internet retains the same First Amendment protection afforded more traditional publications. Specifically, the publication of “personal” information—such as names and addresses—protected when published in paper form when it is lawfully obtained and publicly available, see *Florida Star v. B.J.F.*, 491 U.S. 524, 540, 109 S. Ct. 2603, 105 L. Ed. 2d 443 (1989), is equally protected when it is published on the Internet.<sup>10</sup>

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to the same level of high constitutional protection, restrictable only through laws that pass strict scrutiny.”).

<sup>10</sup> *See Sheehan v. Gregoire*, 272 F. Supp. 2d 1135, 1142 (W.D. Wash. 2003) (“Defendants cite no authority for the proposition that truthful, lawfully-obtained, publicly-available personal identifying information constitutes . . . constitutionally proscribable speech. Rather, disclosing and publishing information obtained elsewhere is precisely the kind of speech that the First Amendment protects.”).

**C. The Trial Court’s Contempt Order is an Unconstitutional Content-Based Restriction on Speech.**

Orders related to Trummel’s speech were content-based. The trial court in this case held that “the specific posting on the Internet of victim names, home addresses, coupled with repeated inflammatory rhetoric connecting them with concepts like Islamic terrorism and racism are a violation” of the anti-harassment order. CP 325. Trummel was subsequently ordered not to post “to the Internet or his web site . . . any personal identifying information . . . of any current, former or future staff member, resident, Board member, or agent . . . of Council House.” CP (2d) 7. The court’s order was directed at the content of Trummel’s publication.

Content-based restrictions on speech must be narrowly tailored to serve a compelling state interest. *Collier v. City of Tacoma*, 121 Wn.2d 737, 749, 854 P.2d 1046 (1993). There is no compelling interest at stake in this case—or in any case—which would allow the state-ordered removal from the Internet of otherwise-available information.

**1. There is No Compelling Privacy Interest in Otherwise Available Personal Information.**

Privacy interests cannot act as a sword to strike First Amendment rights to speak about or publish publicly available information such as names and addresses. *See Org. for a Better Austin v. Keefe*, 402 U.S. 415,

419-20, 91 S. Ct. 1575, 29 L. Ed. 2d 1 (1971) (rejecting a claim that a privacy interest against public criticism can warrant injunctions against otherwise free speech). The United States District Court for the Western District of Washington ruled on this very issue in *Sheehan v. Gregoire*. In that case, William Sheehan had posted on the Internet the personal information—such as addresses and telephone numbers—of certain police officers. 272 F. Supp. 2d at 1139. In response to a state law that prohibited the publication of such information, Sheehan removed the information and brought suit. *Id.* The district court struck down the law as an unconstitutional content-based regulation. *Id.* The court reasoned that “the speech at issue here is merely names, addresses, and numbers,” and, regardless of the intent of the person posting the information, publishing such information cannot constitute a threat that would render the speech unprotected by the First Amendment. *Id.* at 1143. Moreover, because the statute targeted the publication of private information regarding only certain individuals—police officers—it was content-based. *Id.* at 1146.

The district court rejected the defendants’ argument that the protection of police officers’ privacy served a compelling state interest. *Id.* at 1147. The court noted that personal identification information such as names and addresses is available from a “myriad [of] public and private

sources, including for-profit commercial entities.” *Id.* The district court reasoned that the intent of the person publishing the information could not serve as justification for prohibiting speech because “[t]hought-policing is *not* a compelling state interest recognized by the First Amendment.” *Id.*

In the present case, there is similarly no compelling privacy interest that would justify the trial court’s orders. The information ordered removed from Trummel’s web site was the names and addresses of the residents and management of Council House. This information is publicly available. It is irrelevant whether Trummel may have had an intent to harass by publishing the information: “[t]he government can assert no compelling interest in suppressing speech based on the content of that speech ‘when the speaker intends to communicate, but permitting the same speech if incidental to another activity.’” *Id.* at 1146 (citation omitted); *see also State v. Noah*, 103 Wn. App. 29, 42, 9 P.3d 858 (2000) (“The issues of picketing *and the content* of the signs were prominent in the trial court discussions. This type of protected speech *could not properly form a basis for the trial court [anti-harassment] order.*”) (emphasis added).

Trummel’s status as an independent publisher—a “bogus” journalist in the words of the trial judge—cannot create a compelling interest to censor speech. “When a State attempts the *extraordinary*

measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing its prohibition evenhandedly, to the smalltime disseminator as well as the media giant.” *Florida Star*, 491 U.S. at 540 (emphasis added). There are no constitutional grounds here for punishment, whether the speaker is a "smalltime disseminator" or a "media giant."

**2. The Posting of Publicly Available Information on the Internet is Not “Surveillance.”**

The lower court’s contempt order rested on the holding that Trummel’s recitation of names and addresses on the Internet constituted “surveillance,” which was expressly prohibited by the original anti-harassment order. CP (2d) 1. The court conceded that Trummel’s speech was “not surveillance in the sense that it’s been established necessarily that he goes out actively or pro-actively and recruits the information in order to publish it, but it certainly is surveillance in the sense of the intent and spirit of the statute.” RP (10/1/01) at 22. Such an amorphous and undefined interpretation of “surveillance” cannot not serve as the basis for a compelling interest justifying the suppression of otherwise vibrant First Amendment rights.

Unlike *Noah*, where this Court accepted that the photographing and videotaping of people in public could be surveillance for purposes of

an anti-harassment order, see 103 Wn. App. at 42, the conduct at issue here cannot be deemed “surveillance.” In *Noah* the anti-harassment statute was found to be “narrowly tailored by [virtue of it’s] focus on the victim and a no-contact zone around the victim. It leaves open ample alternative channels of communications . . . so long as no contact is made with the victim and the proscribed zone is not violated.” *Id.* at 41-42.

The conduct at issue in this case, posting information on the Internet, was not communication to or contact with the alleged victims. The alleged victims would not even be aware of the posting, and they would actually have to go looking for the speech to come into contact with it. No resident or manager of Council House was forced to access and read Trummel’s web site. The reasons for restricting “surveillance”—to place barriers between the alleged victim and harasser—are simply not present when dealing with the posting of information on the Internet.

Further, the act of creating a web site and posting information available only to those who voluntary visit the site cannot involve “surveillance” of individuals. A speaker may perform acts of surveillance to gather information, and subject to constitutional protections for newsgathering and other relevant laws, such acts could conceivably be punished. But even if information is gathered through acts constituting “surveillance,” subsequent speech regarding the information gathered is a

distinct and protected act. *Speaking* about a crime you just committed is not the same as *committing* the crime. The crime may be punishable, the speech is not.

If the logic of the trial court were adopted, news reporting and other Internet publishing could fall within the definition of surveillance and could become subject to state-sanctioned censorship. News organizations, their reporters and independent web site operators alike could be subject to anti-harassment orders based entirely on their speech on the Internet. An Internet report by a media organization that “Councilwoman Jones can be reached at the following phone number” could be considered “surveillance.” Reporting on the movements of an elected official in the context of a news story could be deemed to be “surveilling” him. A telephone directory posted online with names and addresses of public employees—the precise issue in the federal *Sheehan* case—could be deemed illegal. This cannot be.

Indeed, if Trummel had told his information to a reporter instead of publishing it himself, the trial court’s reasoning would extend to force the reporter to hide the information or aide-and-abet Trummel in violating the anti-harassment order.<sup>11</sup> Reporters could themselves be seen as surveilling

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<sup>11</sup> See RCW 10.14.120 (imposing civil penalties for violations of anti-harassment orders); 10.14.170 (imposing criminal penalties for violations of anti-harassment orders); 9A.08.020 (imposing accomplice liability for criminal acts).

people simply by reporting facts given to them voluntarily by a source. News organizations leery of civil or criminal penalties could censor themselves and avoid reporting on controversial topics. This cannot be tolerated under the First Amendment. *See Florida Star*, 491 U.S. at 535 (noting the “timidity and self-censorship which may result from allowing the media to be punished for publishing certain truthful information” (internal quotation marks omitted)).

**D. The Trial Court’s Contempt Order is an Unconstitutional Prior Restraint on Speech.**

At the federal level, prior restraints on speech bear a “heavy presumption against . . . constitutional validity,” and their proponents must carry a “heavy burden of showing justification for the imposition of such a restraint.” *Keefe*, 402 U.S. at 419. If prior-restraint orders are content-based, they must survive the strictest scrutiny known to First Amendment jurisprudence. *See Recording Indus. of Am. v. Verizon Internet Servs.*, 257 F. Supp. 2d 244, 261 (D.C.D.C. 2003) (citing *New York Times Co. v. United States*, 403 U.S. 713, 714, 91 S. Ct. 2140, 20 L. Ed. 2d 822 (1971)). It is only in the “exceptional case” that a prior restraint will be tolerated. *Near v. Minnesota*, 283 U.S. 697, 716, 51 S. Ct. 625, 75 L. Ed. 1357 (1931); *see also CBS v. Davis*, 510 U.S. 1315, 1317, 114 S. Ct. 912, 127 L. Ed. 2d 358 (1994).

The Washington Supreme Court has confirmed that Article 1, Section 5 of the Washington Constitution is broader than the First Amendment and *absolutely prohibits* prior restraints of constitutionally protected speech. *See State v. Coe*, 101 Wn.2d 364, 374, 679 P.2d 353 (1984). Thus, the Washington Constitution absolutely prohibits any prior restraint on the publication of information that is truthful and lawfully obtained. *See id.* at 378 (concluding that Article 1, Section 5 of the state constitution guarantees an absolute right to publish and broadcast accurate, lawfully obtained information that is a matter of public record). No balancing of the right to free speech against the potential harm of publication is appropriate since the right to publish lawfully obtained publicly available information is absolute. *Id.* at 365.

The contempt order in this case was a prior restraint. While it mandated the removal of previously published content, it also prohibited future speech: Trummel was prohibited from “[p]osting to the Internet” any personal information. CP (2d) 7. Future speech is directly prohibited by this mandate.

Additionally, the nature of the Internet supports a finding that orders such as this are prior restraints. Unlike books and newspapers, which are tangible and fixed once published, publication on the Internet is dynamic. Web-page authors are able to change the content of their site at

any time and create a new publication. Each time a person chooses to visit a web site, the contents are published anew over the Internet to the reader. Thus, prohibitions on content over the Internet operate as restraints that prohibit future speech:

With the Internet, significant leverage is gained by the gadfly, who has no editor looking over his shoulder and no professional ethics to constrain him. Technology blurs the traditional identities of David and Goliath. Notwithstanding such technological changes, however, the Courts have steadfastly held that the First Amendment does not permit the prior restraint of speech by way of injunction . . . .

*Ford Motor Co. v. Lane*, 67 F. Supp. 2d 745, 753-54 (E.D. Mich. 1999).

The prior-restraint order in this case cannot pass constitutional muster. It serves no compelling interest. Nor is it narrowly tailored. The court's order does not limit the restraint to posting personal information that could be considered "surveillance" or "harassment," but instead applies to "*any* personal information" about "*any* current, former or future" resident, employee, or manager of Council House. CP (2d) 7 (emphasis added). Trummel was prohibited from mentioning even the *name* of officers of Council House who are required by law to be identified on corporate disclosure documents. Only people who consented

to be named or shown on his web site were allowed to be included. Such a broad restriction on speech cannot survive the scrutiny required.

The resulting chill on speech by media outlets will be immediate if such a broad, unsupported and unsupportable prior restraint is allowed to stand. *See Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976) (“A prior restraint . . . has an immediate and irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication ‘chills’ speech, prior restraint ‘freezes’ it at least for the time.”); *see also Nebraska Press Assn. v. Stuart*, 423 U.S. 1327, 1329, 96 S. Ct. 251, 46 L. Ed. 2d 237 (1975) (Blackmun, J.) (“Where . . . a direct prior restraint is imposed upon the reporting of news by the media, each passing day may constitute a separate and cognizable infringement of the First Amendment.”).

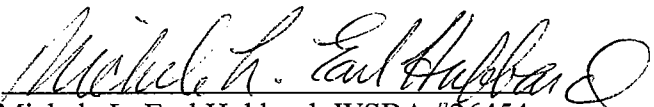
#### IV. CONCLUSION

Paul Trummel and his speech may have been unpopular, but the state’s content-based restriction and punishment of his speech was performed without a compelling interest. The information Trummel posted was publicly available and could not lawfully be censored. His posting of information was not “surveillance” subject to restriction. Posting information on the Internet—the “vast democratic fora”—forced his speech on no one. Unpopular as Trummel and his message may have

been, his speech should not have been censored, his right to speak should not have been restrained, and he should not have been imprisoned for refusing to abide by unconstitutional orders. All holdings to the contrary must be corrected.

RESPECTFULLY SUBMITTED this 15th day of October, 2003.

Davis Wright Tremaine LLP  
Attorneys for *Seattle Weekly*

By   
Michele L. Earl Hubbard, WSBA #26454  
Todd W. Wyatt, WSBA # 31608

CERTIFICATE OF SERVICE

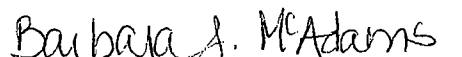
I, Barbara J. McAdams, hereby certify and declare:

1. I am over the age of 18 years and am not a party to the within cause;
2. I am employed by the law firm of Davis Wright Tremaine. My business and mailing address are 2600 Century Square, 1501 Fourth Avenue, Seattle, Washington 98101;
3. On the 15th day of October, 2003, I caused to be served, Brief of Amicus Curiae Seattle Weekly in Support of Appellant, upon:

Eric Broman Nielsen, Broman & Koch 810 Third Avenue, Suite 320 Seattle, WA 98104	Richard Dubey Short Cressman Burgess 999 Third Avenue, Suite 3000 Seattle, WA 98104
Elena Luisa Garella 927 N. Northlake Way Suite 301 Seattle, WA 98103	

I declare under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED this 15<sup>th</sup> day of October, 2003, at Seattle, Washington.

  
\_\_\_\_\_  
Barbara J. McAdams