

SUPREME COURT OF THE STATE OF WASHINGTON

PAUL TRUMMEL, *Petitioner,*

v.

STEPHEN MITCHELL AND COUNCIL HOUSE, INC.,
Respondents.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. INTRODUCTION

This interesting First Amendment case has been extensively briefed. Petitioner Paul Trummel submits those briefs, along with the Petition for Review and briefs of amici curiae, for this Court's consideration. RAP 13.7(a). Because the issues and arguments have evolved over time, this *Supplemental Brief* provides the Court with a roadmap of the key facts and the dispositive legal issues that must be decided.

The facts and citations to the record¹ are set forth in the briefs² filed in the Court of Appeals, and are summarized in the Petition for Review. For the convenience of the Court, Section II of this brief provides an abbreviated chronology of the key events in the lower courts.

The trial court committed numerous errors, all of which have been addressed in the briefs filed in the Court of Appeals. However, some of those errors are no longer relevant because:

- Mitchell declined to defend some of the trial court's rulings;
- Mitchell abandoned some of the arguments he made below;

¹ In the briefs, "CP" refers to the three volumes of Clerk's Papers transmitted under Appeal No. 48662-4-I (570 pages). "CP (2d)" refers to the one volume of Clerk's Papers transmitted under Appeal No. 50135-6-I (48 pages).

² The parties filed two sets of briefs in the Court of Appeals. The briefs are designated as either "(Civil)" or "(Contempt)".

- Mitchell conceded errors by failing to brief some of the issues; and
- The Court of Appeals rejected some of Mitchell’s arguments.

Section III of this brief provides an outline of the remaining dispositive legal issues before this Court.

II. ABBREVIATED CHRONOLOGY

- Apr. 4, 2001 Mitchell, an apartment manager, files petition for antiharassment, falsely claiming to “represent” the tenants of Council House, an apartment building.
- Apr. 12, 2001 Mitchell serves Trummel with petition and over forty declarations from nonparties who are angry about Trummel’s “Disconnected” newsletters, which report on problems at Council House.
- Apr. 19, 2001 Trummel files *pro se* request for continuance. Trial court denies continuance. Based on Trummel’s newsletters and Mitchell’s hearsay declarations, court finds that Trummel has harassed *nonparty* tenants. Court finds Trummel is “contemptuous” and issues order evicting him.
- May 1, 2001 Attorney Robert Siegel appears for Trummel and moves for reconsideration. Motion is denied.

Sept. 19, 2001 Mitchell moves for finding of contempt, arguing that Trummel's website, which reports on problems at Council House, constitutes "surveillance."

Oct. 1, 2001 Trial court finds Trummel in contempt based on "surveillance" provision in April 19th order.

Oct. 26, 2001 Trial court issues new antiharassment order with content-based restrictions on Trummel's website.

Feb. 11, 2002 Mitchell moves for finding of contempt based on content of Trummel's website.

Feb. 14, 2001 Attorney Siegel withdraws.

Feb. 27, 2002 Trummel appears pro se. Without appointing an attorney, trial court finds Trummel in contempt and sends him to jail.

May 1, 2002 Trial court appoints public defender Brad Meryhew.

June 11, 2002 Attorney Meryhew moves to vacate contempt.

June 17, 2002 Trummel released after nearly four months in jail.

June 21, 2002 Trial court denies motion to vacate contempt, issues new order restricting Trummel's speech and contact with hundreds of nonparties.

July 1, 2002 Undersigned counsel moves for reconsideration, explains that trial court has no jurisdiction to issue order on behalf of nonparty tenants.

July 5, 2002 Mitchell falsely states that tenants are “vulnerable adults” and that he is their “fiduciary.”

July 26, 2002 Trial court denies motions; assigns new judge.

July 22, 2002 Trummel appeals.

Aug. 15, 2003 Mitchell’s briefs shows that tenants are not parties, and that Mitchell does not represent them. Mitchell concedes numerous errors by failing to brief issues.

June 14, 2004 Court of Appeals affirms all trial court rulings.

III. DISPOSITIVE ISSUES

The most egregious error in this case is the trial court’s content-based restriction of Trummel’s speech, including his Internet website www.contracabal.org. This censorship — which led to Trummel being sent to jail for nearly four months — violates the First Amendment under settled Washington and federal case law. *See* Pet. Review at 16-17. Neither Mitchell nor the Court of Appeals has offered any authority to support such content-based restrictions on pure speech.. Mitchell and the lower court have addressed only the related issue of whether those

restrictions are “prior restraint” such that the findings of contempt must be vacated. *See* section C.

This Court must vacate the unconstitutional restrictions on Trummel’s speech. **But that is not enough to vindicate all of the violations of Trummel’s constitutional rights that have occurred in this case.** This Court must also (A) vacate the finding that Trummel committed “harassment,” (B) dismiss Mitchell’s petition, (C) vacate the findings of contempt, (D) uphold Trummel’s right to appointed counsel, and (E) award Trummel attorney’s fees for resisting the unconstitutional injunctions obtained by Mitchell.

A. The Court must vacate the trial court’s finding that Trummel committed “harassment” under RCW Chapter 10.14.

This Court must vacate the trial court’s erroneous finding that Trummel had committed “harassment.” This finding, which was the basis for issuing any anti-harassment order, was error for several reasons:

- (i) the finding of harassment was based on protected speech;
- (ii) the harassment “hearing” violated procedural due process; and
- (iii) the trial court failed to make findings under RCW 10.14.

Any one of these errors requires the Court to vacate the trial court’s finding that Trummel committed “harassment” under RCW Chapter 10.14.

1. The finding of harassment was based on Trummel's constitutionally-protected speech and publications.

Legislative efforts to regulate speech and behavior characterized as “harassment” present serious constitutional issues. “While antiharassment ordinances are constitutional, ... they must be carefully drawn not to burden protected speech” – even where the government has an interest in preventing personal harassment in the form of threats, violence, vandalism and stalking. *Bellevue v. Lorang*, 140 Wn.2d 19, 23, 992 P.2d 496 (2000).

As this Court recently stated in *Suggs v. Hamilton*, 152 Wn.2d 74, 93 P.3d 161 (2004), an anti-harassment order cannot be based on constitutionally-protected speech.

Although “[c]ourse of conduct” includes “any other form of communication, contact, or conduct,” “[c]onstitutionally protected activity” is not within its ambit. RCW 10.14.020(2). Moreover, the harassment chapter may not be used “to infringe upon any constitutionally protected rights including, ... freedom of speech.” RCW 10.14.190.

Suggs, 152 Wn.2d at 80. Pursuant to RCW 10.14.020(2), the trial court cannot consider constitutionally protected activity in determining whether a person has engaged in harassment. *See State v. Noah*, 103 Wn. App. 29, 39, 9 P.3d 858 (2000).

Leafleting, publishing, speaking, using the Internet, complaining to government agencies, and using the court system are all constitutionally

protected activities.³ Therefore, Trummel’s exercise of any of these rights cannot be considered a “course of conduct” for purposes of RCW 10.14.020(2). But Mitchell’s antiharassment petition was *entirely* based on Trummel’s constitutionally protected activities: publications, complaints to government agencies and the use of the courts. CP 2-4. Accordingly, Mitchell’s petition should have been dismissed.

Mitchell’s petition and the trial court’s finding of harassment were based on Trummel’s constitutionally-protected publications. CP 2; RP (4/19/01) at 12-13. Mitchell asked the trial court to impose patently unconstitutional restrictions on Trummel’s newsletter. CP 6. Virtually all of the non-party declarants were primarily upset about Trummel’s newsletters. CP 21-125. The trial court explicitly relied on content of Trummel’s newsletter in finding harassment, stating that “The Court believes there would be adequate cause to enter the Antiharassment Order just based on Trummel’s own papers.” RP (4/19/01) at 12-13.

³ See *U.S. v. Grace*, 461 U.S. 171, 176, 103 S.Ct. 1702, 1706, 75 L.Ed.2d 736 (1983) (picketing and leafleting); *New York Times v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964) (publishing); *Watts v. U.S.*, 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969) (speaking); *Reno v. American Civil Liberties Union*, 521 U.S. 844, 117 S.Ct. 2329, 138 L.Ed.2d 874 (1997) (Internet); *Bellevue v. Lorang*, 140 Wn.2d 19, 23, 992 P.2d 496 (2000) (telephone); *Richmond v. Thompson*, 130 Wn.2d 368, 922 P.2d 1343 (1996) (complaints to government agencies); *Seattle v. Megrey*, 93 Wn. App. 391, 968 P.2d 900 (1998) (access to courts).

The trial court's reliance on the content of Trummel's publications is patently unconstitutional. The First Amendment protects insulting, inflammatory, and even hate-filled speech. *National Socialist Party v. Village of Skokie*, 432 U.S. 43, 97 S.Ct. 2205, 53 L.Ed.2d 96 (1977) (neo-Nazis permitted to march through Jewish suburb); *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992) (overturning conviction for cross burning); *Brandenburg v. Ohio*, 395 U.S. 444, 89 S.Ct. 1827, 23 L.Ed.2d 430 (1969) (statements advocating violence against blacks and Jews are protected). Speech is protected unless specific speech falls into a recognized category of unprotected speech such as "true threats. *Suggs*, 152 Wn.2d at 81-82; *State v. Williams*, 144 Wn.2d 197, 213, 26 P.3d 890 (2002); *Planned Parenthood v. American Coalition*, 290 F.3d 1058 (2002). An anti-harassment order cannot be based on protected speech no matter how offensive such speech might be. *Noah*, 103 Wn. App. at 42 (anti-harassment order cannot be based on picket signs). **Mitchell and the lower courts have never explained how Trummel's publications fall into any category of unprotected speech.**⁴

⁴ Like the petition in *Suggs*, Mitchell's petition was based on a vague allegation that Trummel's publications were "defamatory." CP 2. But Mitchell never proved that any of Trummel's statements were actually defamatory. See App. Br. (Civil) at 27-33. Only a specific statement of fact that has been adjudicated to be defamatory may be considered

The trial court's decisions to evict Trummel and to imprison him were both expressly based on the *content* of Trummel's publications. After these unconstitutional rulings were widely criticized, Mitchell and the lower courts attempted to revise history, asserting that the anti-harassment order was based on Trummel's *conduct* inside Council House.⁵ But even a cursory review of the trial court's original oral ruling shows that the trial court expressly relied upon Trummel's protected speech as the primary basis for the finding of harassment. RP (4/19/01) at 8–15. The Court of Appeals also relied on the protected *content* of Trummel's newsletters, characterizing them as “an extension of his vitriolic and threatening personal confrontations with [nonparties].” Opinion at 11. In any event, the record is devoid of evidence of conduct directed at Mitchell that would support an anti-harassment order.

In three recent cases, this Court has drawn a clear distinction between speech and conduct, and squarely held that speech cannot be

unprotected speech. *See Suggs*, 152 Wn.2d at 83-84. On appeal, Mitchell effectively conceded that Trummel's statements were not defamatory. *See Reply. Br. (Civil)* at 15.

⁵ The Court of Appeals also attempted to avoid the required First Amendment analysis by characterizing Trummel's conduct as “keeping watch over tenants inside their own homes.” Opinion at 11. The Opinion makes no attempt to explain how such alleged conduct amounts to harassment of Mitchell or how such alleged conduct justifies censorship of Trummel's publications. And the Opinion provides no factual basis for this theory other than a single alleged incident in which Trummel was attempting to determine the source of bothersome noise at 3:00 a.m. Opinion at 10.

considered “harassment” unless it amounts to a “true threat.” *Williams*, 144 Wn.2d 207 (citing *Watts v. U.S.*, 394 U.S. 705, 89 S.Ct. 1399, 22 L.Ed.2d 664 (1969)); *State v. J.M.*, 144 Wn.2d 472, 477-78, 28 P.3d 720 (2001); *State v. Kilburn*, 151 Wn.2d 36, 41-42, 84 P.3d 1215 (2004). Trummel’s publications, while perhaps upsetting to some readers, are not “true threats” or any other type of unprotected speech. *See* CP 263-74. The lower court’s reliance on Trummel’s speech violated the First Amendment, and must be reversed under *Williams*, *J.M.*, and *Kilburn*.

The Court of Appeals attempted to avoid the issue of protected speech by characterizing Trummel’s *speech* as “harassing *conduct*,”⁶ and by making circular arguments such as “[h]arassment is not protected speech.” Opinion at 11. Mitchell relied on similar arguments in opposing this Court’s discretionary review. Objection at 13; Response to Seattle Weekly at 3-7; Response to Amici Journalists at 3-8. These arguments intentionally blur the distinction between speech and conduct that this Court has carefully drawn.

⁶ The suggestion that Trummel’s alleged harassment consisted of unpleasant interactions with tenants in the hallways of Council House is an after-the-fact rationalization. This theory was concocted by Mitchell in his response brief after Trummel pointed out that the Court could not rely on Trummel’s publications, lawsuits or complaints to HUD in finding harassment. The trickle of unproven allegations, recited on page 9-10 of the Opinion, do not establish a course of harassing conduct directed at Mitchell or anyone else. *See* Section B(2).

Both Mitchell and the Court of Appeals argue that Trummel's distribution of his newsletter inside Council House can be considered harassment of the tenants. But there are no restrictions on the distribution of newsletters inside the apartment building, and Trummel never actually entered anyone's unit without permission. Both the Seattle Municipal Code and applicable federal regulations protect Trummel's right to distribute his newsletter inside Council House, including placing the newsletter under tenants' doors. SMC § 22.206.180; 24 C.F.R. § 245.115. Trummel even has the right to distribute his newsletter to tenants and other persons who do not want to receive it. *See Martin v. Struthers*, 319 U.S. 141, 143, 63 S.Ct. 862, 863, 87 L. Ed 2d 1313 (1943).

Distribution of a newsletter is a "constitutionally protected activity" under RCW 10.14.020(2). Unless the *content* of Trummel's newsletters fell into some recognized category of unprotected speech, the lower courts were not permitted to consider those newsletters at all. *Noah*, 103 Wn. App. at 42. Because Trummel's newsletters (and web site) are protected speech, the lower courts' rulings are nothing more than unconstitutional censorship.

2. The antiharassment “hearing” on April 19, 2001 violated Trummel’s right to procedural due process.

Trummel never had an opportunity to defend himself at the April 19th hearing. The Court of Appeals acknowledged that due process requires an evidentiary hearing where witnesses are subject to cross examination. Opinion at 16; *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 1011, 1021-22, 25 L.Ed.2d 287 (1970). It is also undisputed that all of the evidence offered by Mitchell at the “hearing” was inadmissible hearsay. *See Reply Br. (Civil)* at 3, 17.

But the Court of Appeals brushed these problems aside on the specious theory that Trummel waived his due process rights and evidentiary objections. Opinion at 16-17. The record shows that Trummel did not waive his rights. RP (4/19/01) at 4. Rather, the trial court’s capricious denial of a continuance forced Trummel to proceed unprepared and unrepresented.

Trummel was entitled to a short continuance under the factors set forth in *Balandzich v. Demeroto*, 10 Wn. App. 718, 720, 519 P.2d 994 (1974). Mitchell did not object to a continuance, made no showing of prejudice, and never explained why a temporary order under RCW 10.14.080 could not have been issued until Trummel obtained counsel and prepared a defense. The Court of Appeals noted that RCW 10.14.070

provides for a hearing within 14 days, but offered no authority for its assumption that this requirement cannot be modified where due process requires. Opinion at 15. The Court of Appeals analysis is error under *Hough v. Stockbridge*, 150 Wn.2d 234, 236, 76 P.3d 216 (2003) which establishes that a court has equitable authority to modify the procedural requirements of RCW Chapter 10.14.

The denial of Trummel's request for a short continuance was arbitrary and capricious, and resulted in a deprivation of due process.

3. The trial court failed to make the statutory findings required to ensure that the antiharassment statute does not violate Constitutional rights.

The antiharassment statute "is not designed to penalize people who are overbearing, obnoxious or rude." *Burchell v. Thibault*, 74 Wn. App. 517, 522, 874 P.2d 196 (1994). Clearly-defined statutory elements must be established in order for an anti-harassment order to pass constitutional muster. *Burchell*, 74 Wn. App. at 521. As this Court noted in *Suggs*, 152 Wn.2d at 84, n.5, the trial court should make specific findings on each of the required factors. The trial court failed to make the findings necessary to ensure Trummel's constitutional rights were not violated. *See* App. Br. (Civil) at 11-16; Reply Br. (Civil) at 4-6.

B. The Court must dismiss Mitchell’s entire petition for failure to prove any harassment by Trummel.

As explained in Section A, an antiharassment order cannot be based on constitutionally protected speech. Furthermore, the petitioner must prove the essential elements of harassment under RCW 10.14.020, and cannot seek an anti-harassment order based on alleged harassment of someone other than himself. *Burchell*, 74 Wn. App. at 522.

1. Mitchell failed to prove the essential elements of harassment under RCW Chapter 10.14.

Once Trummel’s constitutionally-protected activities are excluded, as required by *Suggs, Noah* and RCW 10.14.020(2), there is no factual basis for a course of conduct directed at respondent Mitchell. App. Br. (Civil) at 42-43; Reply Br. (Civil) at 3, 20. The Court of Appeals failed to identify any particular person as the target of harassment, and never explained how Trummel had harassed Mitchell himself.

Furthermore, Mitchell was required to show that Trummel caused Mitchell (not some other person) substantial emotional distress, *and* that such emotional distress is objectively reasonable. RCW 10.14.020(1); *Burchell*, 74 Wn. App. 521. Mitchell’s alleged emotional distress (if any) was caused by various government investigations, CP 230, which cannot be considered harassment under RCW 10.14.020(2). *See* Opinion at 10. Nevertheless, the court relied on such investigations as the *only* basis for

Mitchell's alleged emotional distress. Opinion at 3. Mitchell's showing of "substantial emotional distress" is insufficient as a matter of law. His petition must be dismissed. *Burchell*, 74 Wn. App. at 523.

2. The trial court had no jurisdiction to issue an antiharassment order on behalf of nonparties.

Unable to show any actual harassment directed at himself, Mitchell has relied on allegations that Trummel harassed the tenants in the apartment house to justify evicting Trummel, censoring his website, and throwing him in jail. *See* Respondent's Objection at 2-4. But the allegation that Trummel harassed tenants is also erroneously based on Trummel's protected speech. *See* section A; App. Br. (Civil) at 43-44.

The trickle of unproven allegations on pages 9-10 of the Opinion does not establish a "course of conduct" directed at Mitchell or anyone else. *See* Reply Br. at 21. Those allegations, even if true, do not show a "course of conduct" directed at any particular person. Nor can a course of conduct be based on tenants' alleged fears of physical violence when there is absolutely no evidence that Trummel — an elderly man — ever actually engaged in violence. *See* Opinion at 9.

More importantly, **the tenants are not parties**, and neither of the lower courts had jurisdiction to consider the allegation that the Trummel had harassed them. In the trial court, Mitchell falsely claimed to bring this

action in a “representative capacity” for tenants of Council House. CP 2, 508-15, 519, 534-35, 544-48. But only Mitchell and the corporation are parties, CP 519, and Mitchell now concedes that he does *not* actually represent the tenants. *See* Reply Br. (Contempt) at 1. Mitchell’s misrepresentation led the trial court to restrict Trummel’s contact with dozens of nonparties, many of whom are Trummel’s supporters. CP 508-15, 534-35, 544-48. These restrictions are still in effect.

RCW Chap. 10.14 does not allow a court to restrict contact with nonparties. The court may only grant relief “**between the parties.**” *Hough*, 150 Wn.2d 217. The provisions of the trial court’s orders addressing Trummel’s contact with nonparties are **absolutely void**. *Pearce v. Pearce*, 37 Wn.2d 918, 923, 226 P.2d 895 (1951). Nevertheless, the Court of Appeals inexplicably failed to address this issue.

Mitchell’s arguments (on pages 17-18 of his Objection) that the court had jurisdiction over nonparties are frivolous. *Bering v. SHARE*, 106 Wn.2d 212, 721 P.2d 918 (1986) does not authorize Mitchell to obtain a restraining order on behalf of nonparties that he does not legally represent. *See* Reply Br. (Contempt) at 8-9. Mitchell’s convoluted “real party in interest” theory was first introduced in the Court of Appeals, and is not supported by the record or case law. *See* Reply Br. (Contempt) at 2-

4. Finally, Mitchell asserts that *Hough* and *Pearce* are “distinguishable” but never explains why. Objection at 18.

Mitchell’s petition is based on alleged harassment of nonparties. Under *Hough*, *Pearce* and *Burchell*, Mitchell’s petition must be dismissed, and the contempt findings based on those allegations must be vacated.

C. The Court must vacate the findings of contempt based on the censorship of Trummel’s website.

Trummel was held in contempt several times. The first finding of contempt was simply erroneous—Trummel had not actually violated the trial court’s April 19, 2001 order, which contained no restrictions on Trummel’s publications. The trial court’s finding that Trummel’s website amounted to “surveillance” is unsupported by evidence and contrary to law. *See* App. Br. (Contempt) at 8-12; Reply Br. (Contempt) at 9-11. This Court must vacate that finding.

The subsequent findings of contempt, which ultimately sent Trummel to jail, were based on prior restraints of Trummel’s speech. **Those content-based restrictions are unconstitutional and must be vacated.** The real issue is whether the findings of contempt based on Trummel’s violation of those restrictions must be vacated under *State v. Coe*, 101 Wn.2d 364, 679 P.2d 353 (1984).

Under the collateral bar rule, a judgment of contempt will normally stand even if the order violated is later reversed. *Coe*, 101 Wn.2d at 369-70. But there is an important First Amendment exception to this rule: orders that constitute prior restraint of speech are **void**, and the collateral bar rule does not apply. *Coe*, 101 Wn.2d at 374. Because the restrictions on Trummel’s website are prior restraints, the findings of contempt based on those provisions must be reversed. *See App. Br. (Contempt) at 18-20; Reply Br. (Contempt) at 13-16.*

Based on a misinterpretation of *Bering v. SHARE*, 106 Wn.2d 212, the Court of Appeals held that the restrictions on Trummel’s publications were not “prior restraint” because they were imposed after a finding that Trummel had allegedly abused his right to speak. Opinion at 25. This holding is directly contrary to *Suggs, supra*, in which this Court held that the unconstitutional restrictions were prior restraints even though those restrictions were imposed after a finding that the defendant had committed harassment. *Suggs*, 152 Wn.2d at 84. Under *Suggs* and *Coe*, the findings of contempt are void, and must be vacated.

D. Because the trial court violated Trummel’s right to counsel, the contempt orders must be vacated.

The opening and reply briefs show that Trummel was held in contempt and jailed in violation of his right to counsel under the state and

federal constitutions. U.S. Const. amends. 6, 14; Const. art. 1, § 22; *Alabama v. Shelton*, 535 U.S. 654, 122 S. Ct. 1764, 1769-70, 152 L.Ed.2d 888 (2002); *Tetro v. Tetro*, 86 Wn.2d 252, 255, 544 P.2d 17 (1975). See App. Br. (Contempt) at 20-33; Reply Br. (Contempt) at 16-24. As Trummel argued, those claims are not moot, and would result in the invalidation of the trial court's contempt findings and order, as well as the vacation of fee awards. App. Br. (Contempt) at 31-33; Reply Br. (Contempt) at 23-24. This Court should vacate the contempt findings and order (CP 413-14, 418; CP (2d) 42-43, 47-48), because Trummel was denied his right to counsel.

E. Trummel is entitled to attorney's fees and costs.

Trummel is entitled to an award of attorney's fees and costs under the anti-SLAPP statute, RCW 4.24.510. Mitchell brought this action for the purpose of preventing Trummel from complaining about Mitchell to various government agencies. CP 2. Under RCW 4.24.510, Trummel's complaints are absolutely privileged, requiring Mitchell to pay Trummel's attorneys' fees and costs. See *Dang v. Ehredt*, 95 Wn. App. 670, 977 P.2d 29 (1999).

The suggestion in *Port of Longview v. Int. Raw Materials, Ltd.*, 96 Wn. App. 431, 979 P.2d 917 (1999), that RCW 4.24.510 only applies to claims for damages is careless dicta that should not be followed by this

Court. The actual issue in *Longview* was whether RCW 4.24.510 applied where an unlawful detainer action was allegedly brought in retaliation for the defendant's statements, but that action was not "based on" those statements as the statute requires. Unlike the unlawful detainer action in *Longview*, Mitchell's claims were "based on" Trummel's speech, and Mitchell sought various injunctions restraining that speech. The legislature obviously intended RCW 4.24.510 to prevent parties from bringing any claims based on speech to government, not just damages claims.

Trummel is also entitled to attorney's fees for dissolving a wrongfully issued injunction. *Ino Ino v. Bellevue*, 132 Wn.2d 103, 143, 937 P.2d 154 (1997). Mitchell and Council House could afford to hire a large law firm to censor, evict and jail Trummel. Equity demands that the respondents pay Trummel fees for resisting their wrongful actions.

IV. REQUEST FOR ATTORNEY FEES

Pursuant to RAP 18.1(b), Trummel respectfully requests that the Court award him attorneys' fees on appeal. Trummel is entitled to an award of fees for the reasons set forth in section III(E) (above).

V. CONCLUSION

Trummel respectfully requests that the Court reverse and vacate all of the lower courts' and orders, and award him attorney's fees and costs.

RESPECTFULLY SUBMITTED this 28th day of April, 2005.

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