

SUPREME COURT OF THE STATE OF WASHINGTON

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PAUL TRUMMEL, *Petitioner,*

v.

STEPHEN MITCHELL AND COUNCIL HOUSE, INC.,  
*Respondents,*

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PETITION FOR REVIEW

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## **I. IDENTITY OF PETITIONER**

Petitioner Paul Trummel asks this Court to accept review of the Court of Appeals decision terminating review designated in Part II.

## **II. COURT OF APPEALS DECISION**

Trummel seeks review of the Opinion filed on June 14, 2004, and the order denying his motion for reconsideration entered July 26, 2004. Copies of the Opinion and order are attached as Appendices A & B.

## **III. ISSUES PRESENTED FOR REVIEW**

A. Does the Court of Appeals decision conflict with this Court's decisions and violate Trummel's First Amendment rights where it affirmed anti-harassment orders that were impermissibly based on Trummel's constitutionally-protected publications?

B. Does the Court of Appeals decision conflict with several appellate decisions where the antiharassment petition failed to establish essential elements of harassment, including (i) a course of conduct directed at a specific person, and (ii) substantial emotional distress?

C. Does the Court of Appeals' decision violate due process where it holds that RCW 10.14.070 requires a hearing in 14 days, despite an uncontested request for a continuance to obtain counsel?

D. This Court has held that courts lack jurisdiction to issue orders restricting contact with nonparties. Does the Court of Appeals

decision conflict with this Court's decisions where it affirmed such orders and failed to address this Court's precedent?

E. Should this Court review a Court of Appeals decision that affirmed restrictions on Trummel's publications that constitute unconstitutional prior restraints?

F. Whether a finding of contempt based on unconstitutional prior restraint is void and not subject to the collateral bar rule.

G. Should this Court grant review where the trial court's substantive and procedural findings of contempt violated Trummel's due process rights and his right to counsel?

#### **IV. STATEMENT OF THE CASE**

This case involves a dispute between appellant Paul Trummel, a retired journalist, and respondent Stephen Mitchell, the administrator of a "Council House," a HUD-subsidized apartment where Trummel resided. Trummel contends that Mitchell is a tyrant who abused his authority and violated various laws and regulations. Trummel investigated Mitchell and Council House, reporting his findings in newsletters and on the Internet. Trummel was subjected to retaliation by Mitchell, for which Trummel initially sought an anti-harassment order against Mitchell.

On April 4, 2001, Mitchell filed a petition for antiharassment against Trummel along with more than 40 declarations by tenants whom

were upset by Trummel's newsletter. Few, if any, of the declarations described conduct which, if true, would amount to harassment under RCW 10.14.020. CP<sup>1</sup> 1, 21-125. Trummel filed a *pro se* response and a motion for a continuance to obtain counsel. CP 128-138; 139-41.

At a hearing on April 19, 2001, Trummel advised the court that he had been able to retain an attorney, Robert Siegel, but Siegel was not available that day. Even though Mitchell did not oppose the requested continuance, the King County Superior Court denied the request, forcing Trummel to defend himself *pro se*. RP (4/19/01) at 2.

The trial court then held a brief "hearing" in which the First Amendment, the statutory elements of harassment, and the Rules of Evidence were ignored, and Trummel's rights to counsel and due process were violated. The trial court summarily determined that Trummel was not really a journalist and that his publications constituted "harassment" under RCW Chap. 10.14. Even though Mitchell had not requested such draconian relief, the trial court issued an antiharassment order that effectively evicted Trummel from his home.

Trummel continued to exercise his First Amendment rights by publishing articles on the Internet. In October 2001, the court found

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<sup>1</sup> "CP" refers to the three volumes of Clerk's Papers transmitted under Appeal No. 48662-4-I (570 pages).

Trummel in contempt on the novel theory that his website, [www.contracabal.org](http://www.contracabal.org), was “surveillance” of Council House. RP (10/1/01) at 22-23; CP 325-26. The court issued a new order that contained explicit content-based restrictions on Trummel’s speech. CP (2d) 5-8.<sup>2</sup>

In an effort to force Trummel to comply with the court’s unconstitutional censorship, the court imprisoned Trummel, then age 68, in the King County Jail for almost four months. CP 582-83; CP (2d) 42-43. In June 2002, Trummel was released, but the court entered a new antiharassment order requiring Trummel to stay away from hundreds of people who never petitioned the court for any relief, and prohibiting Trummel’s publication of any “identifying information,” including names, of Mitchell, tenants and Council House staff. CP 465-69.

The trial court’s unconstitutional rulings and attempts to censor the Internet were widely reported and criticized. The Seattle Weekly, the ACLU, and three professional organizations representing more than 500,000 journalists appeared as *amici curiae* to urge the Court of Appeals to reverse the trial court and restore free speech. Despite the obvious errors and importance of the case, the Court of Appeals *affirmed* the trial court’s rulings in an *unpublished* opinion.

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<sup>2</sup> “CP (2d)” refers to the one volume of Clerk’s Papers transmitted under Appeal No. 50135-6-I (48 pages).

After the Opinion was issued, this Court issued its unanimous decision in Suggs v. Hamilton, \_\_\_ Wn.2d \_\_\_, 93 P.3d 161 (July 8, 2004), which clearly establishes that the antiharassment orders and contempt findings are invalid. The Court of Appeals ignored Suggs and denied Trummel’s motion for reconsideration without comment.

Trummel now asks this Court to restore his First Amendment rights by reversing virtually every aspect of the lower courts’ rulings.

## **V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

### **A. The Court of Appeals decision conflicts with Suggs and raises significant constitutional questions because it affirmed anti-harassment orders based on Trummel’s constitutionally-protected 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).

To avoid infringing on constitutional rights, the anti-harassment statute, RCW Chapter 10.14, was drafted to prohibit only “serious, personal harassment.” RCW 10.14.010. “The 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, at 521; see Suggs, *supra*.

An anti-harassment order cannot be based on any constitutionally-protected activities, including speech. “Constitutionally protected activity is not included within the meaning of ‘course of conduct.’” RCW 10.14.020(2); Suggs, 93 P.3d at 163-64. 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.<sup>3</sup> 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,

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<sup>3</sup> 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); Lorang, 140 Wn.2d 119 (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).

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: "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.

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, 93 P.3d at 165; 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 fell into any category of unprotected speech.

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.<sup>4</sup> Only a specific statement of fact that has been adjudicated to be defamatory may be considered harassment. Suggs, 93 P.3d at 165-66. On appeal, Mitchell conceded that Trummel’s statements were not defamatory. See Reply. Br. (Civil) at 15.

The Court of Appeals attempted to avoid the issue of protected speech by characterizing Trummel’s *speech* as “harassing *conduct*.”<sup>5</sup>

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<sup>4</sup> The parties filed two sets of briefs in the Court of Appeals. The briefs are designated as either (Civil) or (Contempt).

<sup>5</sup> 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 at 11. “Trummel used his newsletters as an extension of his vitriolic and threatening personal confrontations with [nonparties].” Id. This holding is not supported by any recognizable First Amendment analysis. The court’s citation to State v. Alexander, 76 Wn. App. 830, 888 P.2d 175 (1995), for the proposition that “[h]arassment is not protected speech,” Opinion at 11, is a circular argument. By characterizing Trummel’s newsletters as “vitriolic” the Court of Appeals improperly relied on the *content* of the newsletters. Because the Court of Appeals has not shown that the content of the newsletters was unprotected, the Opinion violates Suggs and Noah, and affirms unconstitutional censorship.

The trial court’s decisions to evict Trummel and jail him were both based on the content of Trummel’s publications. After these unconstitutional rulings were widely criticized (see Appendix D), Mitchell and the lower courts attempted to re-write history, asserting that the anti-harassment order was based on Trummel’s *conduct* inside Council House.<sup>6</sup> But even a cursory review of the trial court’s original oral ruling shows

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Opinion, do not establish a course of harassing conduct directed at Mitchell or anyone else.

<sup>6</sup> 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

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.

There is no authority to support the Court of Appeals' erroneous assumption that Trummel's distribution of a newsletter inside Council House constituted harassment. There are no restrictions on the distribution of newsletters inside Council House, and Trummel never actually entered anyone's home without permission. Both the Seattle code and applicable federal regulations allow Trummel 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 give his newsletter to tenants 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). Unless the content of that newsletter fell into some recognized category of unprotected speech, the lower courts were not permitted to consider the newsletter at all. RCW 10.14.020(2); Noah, 103 Wn. App. at 42. The lower courts' rulings are unconstitutional censorship.

The improper consideration of protected speech in issuing and enforcing an anti-harassment order warrants review under RAP 13.4(b)(1) and (3) because the Court of Appeals decision directly conflicts with this

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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.

Court's opinion in Suggs, supra, and presents significant questions of constitutional law. In addition, this Court should grant review under RAP 13.4(b)(4) due to substantial public interest in this case, as shown by the numerous amicus organizations in the Court of Appeals. The Court of Appeals did not address their concerns in any meaningful way.

**B. The Court of Appeals decision conflicts with Burchell and Noah because Mitchell's petition failed to establish essential elements of harassment and should have been dismissed.<sup>7</sup>**

RCW 10.14.020 requires a petitioner to establish a "course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." A person who is not himself the specific target of the harassment cannot seek an anti-harassment order. Burchell v. Thibault, 74 Wn. App. 517, 522, 874 P.2d 196 (1994).

Mitchell's allegations of harassment were entirely based on Trummel's constitutionally-protected activities: publications, legal action, and complaints to government agencies. CP 2-4. The Court of Appeals correctly recognized that these constitutionally-protected activities cannot

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<sup>7</sup> Trummel also argues that the trial court failed to make the statutory findings that are necessary to ensure that the antiharassment statute does not violate constitutional rights. See App. Br. (Civil) at 11-16. As this Court noted in Suggs, 93 P.3d at 166 n.5, the trial court should make specific findings on each of the factors set forth in RCW 10.14.030. (The Court of Appeals addressed only an irrelevant issue *not* raised by Trummel: whether such findings must be in writing. Opinion at 8.) Trummel will revisit the findings issue if review is granted.

be the basis for a finding of harassment. Opinion at 10. But once Trummel's constitutionally-protected activities are excluded, as required by Noah and RCW 10.14.020(2), there is no factual basis for a course of conduct *directed at Mitchell*. Mitchell concedes this. Reply Br. (Civil) at 3, 20. The Court of Appeals failed to identify any particular person as the target of harassment, and gave no factual basis for a finding that Trummel harassed Mitchell himself. Mitchell's petition for anti-harassment should have been dismissed for failure to prove any harassment directed at Mitchell. Burchell, 74 Wn. App. at 523.

In addition, the statute unambiguously requires that the petitioner prove that: (1) the harassing conduct has actually caused the petitioner (not some other person) substantial emotional distress, *and* (2) such emotional distress is reasonable. RCW 10.14.020(1). The statute requires the petitioner's emotional distress to be evaluated both subjectively and objectively. Burchell, 74 Wn. App. 521. This process is necessary to avoid constitutional infringements. Burchell, 74 Wn. App. 521.

Mitchell's petition failed to show that he suffered "substantial emotional distress" caused by a "course of conduct," which *excludes* Trummel's protected activities. RCW 10.14.020(1). On appeal, Mitchell admitted that his alleged emotional distress (if any) was caused by various government investigations. CP 230. App. Br. (Civil) at 43. The Court of

Appeals recognized that such investigations cannot be part of a course of conduct under RCW 10.14.020(2). Opinion at 10. Nevertheless, the court relied on such investigations as the *only* basis for Mitchell’s alleged emotional distress. Opinion at 3. Under Burchell, Noah, 103 Wn. App. at 39, and the plain language of the statute, Mitchell’s showing of “substantial emotional distress” was insufficient as a matter of law. His petition should have been dismissed.

This issue warrants review under RAP 13.4(b)(2) and (3) because the Court of Appeals decision conflicts with the decisions in Burchell and Noah, and presents significant questions of constitutional law.

**C. The Court of Appeals’ interpretation of RCW 10.14.070 violates due process.**

Trummel was served with the more than 40 declarations filed by Mitchell on April 12, 2001, only one week before the hearing. CP 139. Furthermore, Mitchell’s petition did not request the summary eviction imposed by the trial court. CP 6. Consequently, Trummel had no notice whatsoever that such an order might be entered.

Due process requires adequate notice and a meaningful opportunity to prepare a defense. Matter of McLaughlin, 100 Wn.2d 832, 849, 676 P.2d 444 (1984). Where important rights are at stake – including the right to public housing – due process guarantees the right to private counsel and

requires a hearing with cross examination of adverse witnesses. Goldberg v. Kelly, 397 U.S. 254, 90 S.Ct. 1011, 1021-22, 25 L.Ed.2d 287 (1970); Housing Authority v. Saylor, 19 Wn. App. 871, 578 P.2d 76 (1978). Although such rights are required by due process and the statute, Opinion at 16, the court affirmed the trial court's deprivation of due process. Trummel was forced to represent himself and had no meaningful opportunity to respond to the declarations filed by Mitchell. Mitchell's declarations were never tested by cross examination, and it is undisputed that those declarations were inadmissible. See Reply Br. (Civil) at 3, 17.

The Court of Appeals brushed these problems aside on the specious theory that Trummel somehow *waived* his due process rights and his evidentiary objections. Opinion at 16-17. Waivers of important rights must be knowing, intelligent and voluntary. See In re Welfare of G.E., 116 Wn. App. 326, 335, 65 P.3d 1219 (2003). Trummel did not waive his rights. Rather, the court's capricious denial of a continuance forced Trummel to proceed unprepared and unrepresented.

Trummel was entitled to a continuance under the factors set forth in Balandzich v. Demeroto, 10 Wn. App. 718, 720, 519 P.2d 994 (1974), which the appellate court cited – but failed to apply. Opinion at 14. Mitchell never objected to a continuance or made any showing of prejudice. Neither Mitchell nor the appellate court has explained why a

temporary order under RCW 10.14.080 would not have sufficed for the few days it would take Trummel's lawyer to appear.

The Court of Appeals' decision is entirely based on the fact that RCW 10.14.070 provides for a hearing within 14 days. Opinion at 15. Like Mitchell, the Court of Appeals cited no authority for the novel proposition that a trial court cannot modify this requirement where justice requires. Hough v. Stockbridge, 150 Wn.2d 234, 236, 76 P.3d 216 (2003), establishes that a court has equitable authority to dispense with the requirement of a written petition. If a trial court has the authority to dispense with the statutory requirement of a written petition, then it certainly has the authority to grant a continuance.

The 14-day time limit in RCW 10.14.070 was undoubtedly intended to provide for prompt disposition of most anti-harassment petitions. RCW 10.14.070 requires service on the defendant only 5 days before the hearing. But there are many situations, such as this one, where it is not possible to provide meaningful due process protections in such a short time period. The Court of Appeals' strict interpretation of this statute violates due process, Hough, *supra*, and common sense.

This issue warrants review under RAP 13.4(b)(1) and (3) because the Court of Appeals decision conflicts with this Court's opinion in Hough, *supra*, and presents significant questions of constitutional law.

**D. The Court of Appeals Opinion conflicts with Hough and Pearce because the trial court had no jurisdiction to issue an antiharassment order for the benefit of nonparties.**

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 respondents, CP 519, and Mitchell concedes that he does *not* represent the tenants. See Reply Br. (Contempt) at 1. Mitchell’s misrepresentation caused the trial court to restrict Trummel’s contact with dozens of people who are not parties, many of whom are Trummel’s supporters. CP 508-15, 534-35, 544-48.

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 restricting Trummel’s contact with nonparties are *absolutely void*. Pearce v. Pearce, 37 Wn.2d 918, 923, 226 P.2d 895 (1951).

The Court of Appeals inexplicably failed to address this issue. This Court should grant review under RAP 13.4(b)(1) and (3) because the Court of Appeals’ Opinion conflicts with Hough and Pearce, and presents significant questions of law relating to trial court jurisdiction.

**E. Review is Appropriate because the restrictions on Trummel’s publications are unconstitutional prior restraint.**

Like the print media, the Internet is a public forum that is protected by the First Amendment. Reno v. ACLU, 521 U.S. 844, 117 S.Ct. 2329,

138 L.Ed.2d 874 (1997). The publication of identifying information, including names, is protected by the First Amendment. Florida Star v. B.J.F., 491 U.S. 524, 541, 109 S.Ct. 2603, 2613, 105 L.Ed.2d 443 (1989) (upholding a newspaper’s right to publish rape victim’s name). Such speech cannot be enjoined unless it amounts to a “true threat.” Planned Parenthood, 290 F.3d 1058 (2002); Sheehan v. Gregoire, 272 F.Supp.2d 1135 (W.D.Wash., 2003); RCW 10.14.190. Judicial restrictions on protected speech constitute unlawful prior restraint. Suggs, supra. Nevertheless, Trummel went to jail for publishing articles and information about Mitchell and Council House on the Internet, and the unconstitutional restrictions on his speech remain in effect.

On appeal, Mitchell failed to brief the issue, effectively conceding that the trial court was not permitted to censor Trummel’s publications. See Reply Br. (Civil) at 2, 6-15. It is undisputed that the restrictions on Trummel’s publications are unconstitutional and should have been vacated. But the Court of Appeals affirmed the trial court “in all respects.” Opinion at 2. How the court reached this unconstitutional result is not clear – the court did not address this issue in its opinion.

This issue warrants review under RAP 13.4(b)(1) and (3) because the Court of Appeals decision conflicts with Florida Star, Reno, and Suggs (and many other cases), and presents significant questions of constitutional

law. In addition, this Court should grant review under RAP 13.4(b)(4) due to substantial public interest in this case.<sup>8</sup>

**F. The collateral bar rule does not apply to findings of contempt based unconstitutional prior restraint.**

Under the collateral bar rule, a judgment of contempt will normally stand even if the order violated is erroneous and later reversed. State v. Coe, 101 Wn.2d 364, 369-70, 679 P.2d 353 (1984). 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 publication restrictions allegedly violated by Trummel are unconstitutional prior restraints (see section E), the findings of contempt based on those provisions must be reversed.

Based on a misinterpretation of Bering v. SHARE, 106 Wn.2d 212, 234, 721 P.2d 918 (1986), 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 abused his right to speak. Opinion at 25. This holding is directly contrary to Suggs. This Court held that the unconstitutional restrictions on speech in Suggs were prior

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<sup>8</sup> Trummel also argues that the geographic restrictions in the anti-harassment order(s) were excessive and unnecessary. See App. Br. (Civil) at 46-48. Trummel will revisit this issue if review is granted.

restraints even though those restrictions were imposed after a finding that the defendant had committed harassment. Suggs, 93 P.2d at 166.

This issue warrants review under RAP 13.4(b)(1) and (3) because the Court of Appeals decision conflicts with Suggs and Coe, and presents significant questions of constitutional law. In addition, this Court should grant review under RAP 13.4(b)(4) due to substantial public interest.

**G. The contempt finding is unconstitutional and conflicts with Stella Sales, infra.**

Trummel's contempt briefs showed why his website publications could not constitutionally be found to support a finding that he violated the prohibition against "surveillance" in the antiharassment order. App. Br. (Contempt) at 8-12; Reply Br. (contempt) at 9-11. Under the both the state and federal constitutions, court orders must be narrowly construed when contempt is alleged. U. S. Const. Amend. 14; Const. Art. 1, § 3; Stella Sales, v. Johnson, 97 Wn. App. 11, 20, 985 P.2d 391 (1999); Taylor v. Hayes, 418 U.S. 488, 497-500, 94 S. Ct. 2697, 41 L. Ed. 2d 897 (1974).

The Court of Appeals nonetheless affirmed the contempt findings, based on the content of Trummel's website publications. No authority was cited to support this novel analysis. Opinion, at 16-17. Because the contempt finding is unconstitutional and conflicts with Stella Sales, this Court should grant review. RAP 13.4(b)(2), (3).

**H. The egregious violation of Trummel’s rights to due process and to counsel, where the trial court failed to appoint an attorney before jailing him, warrants review.**

Trummel was denied his right to counsel and due process at the hearing when the court sent him to jail. App. Br. (Contempt) at 20-31; Reply Br. (contempt) at 16-22; Mot. Reconsider at 17-18. As an indigent, Trummel had the right to counsel at public expense at a proceeding where he might be jailed. Const. Amends. 6, 14; Const. Art. 1, §§ 3, 22; United Workers v. Bagwell, 512 U.S. 821, 833, 114 S. Ct. 2552, 129 L. Ed. 2d 6342 (1994); Argersinger v. Hamlin, 407 U.S. 25, 32 L. Ed. 2d 530, 92 S. Ct. 2006 (1972); Bellevue v. Acrey, 103 Wn.2d 203, 691 P.2d 957 (1984); Tetro v. Tetro, 86 Wn.2d 252, 544 P.2d 17 (1975). Because the Court of Appeals opinion conflicts with Acrey, Tetro, and violates the constitution, this Court should grant review. RAP 13.4(b)(1), (3).

**VI. CONCLUSION**

Trummel respectfully requests that this Court grant review, and reverse and vacate the lower courts’ rulings and orders.<sup>9</sup>

In the alternative, this Court could issue an order directing the Court of Appeals to reconsider its Opinion in light of Suggs, supra.

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<sup>9</sup> Trummel is also entitled to an award of attorneys fees and costs. See Brief of Appellant (Civil) at 48-49. This issue will be addressed separately if review is granted.

RESPECTFULLY SUBMITTED this \_\_\_\_ day of August, 2004.

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CERTIFICATE OF SERVICE

The undersigned certifies that on the date written below, a true and correct copy of this *Petition for Review* was served on each of the parties below as follows:

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## **VII. APPENDICES**

Appendix A	Court of Appeals Opinion
Appendix B	Order Denying Reconsideration
Appendix C	Relevant Sections of RCW Chapter 10.14
Appendix D	Copies of various news articles about this case