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6 **Respondent's Lawful Exercise of Free Speech**

7 The Respondent's creation of a website and use of public records is lawful free speech and
8 not a basis for the court to enter a protection order. The Washington courts have held that the
9 Washington Constitution provides even broader protection than the First Amendment for the
10 publication of public records. *Catlett v. Teel*, 15 Wash. App. 2d 689, 477 P.3d 50 (2020). The
11 Washington Constitution guarantees an absolute right to publish and broadcast accurate, lawfully
12 obtained information that is a matter of public record. U.S. Const. Amend. 1; Wash. Const. art. 1,
13 § 5; *Catlett v. Teel*, 15 Wash. App. 2d 689 (2020).

14 In *Catlett*, the court found that a former boyfriend's conduct of publishing a police report
15 on a website concerning the behavior of his former girlfriend was not a basis for an anti-harassment
16 protection order. The court found that this was a content-based restriction on his free speech which,
17 not being narrowly tailored to promote any compelling governmental interest, violated his rights
18 under both the First Amendment and the free speech provisions of the Washington Constitution.
19 U.S. Const. Amend. 1; Wash. Const. art. 1, § 5 ; *Catlett v. Teel*, 15 Wash. App. 2d 689 (2020).
20 The Court reasoned that a protection order that is based solely on constitutionally protected free
21 speech is invalid. *Catlett v. Teel*.

22 In this case, the Respondent created the website <https://wwaspsurvivorstruth.com/>. It
23 should be noted once again that the Respondent did not create and does not have any involvement
24 with the website <https://www.breakingcodesilencelawsuit.com/>, which was created and
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1 maintained by Jeremy Whiteley. On the cover page of her website, the Respondent states “My
2 intention is not revenge but a place to present the truth with transparency and share the evidence
3 of some of the falsehoods that have been spread about me. It is not my intention to gratuitously
4 embarrass or harm anyone involved. Instead, my sole purpose is to exonerate myself from
5 defamatory statements against me and restore my ability to seek support and engage meaningfully
6 within my community.”
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8 On her website, the Respondent published materials which were obtained through lawful
9 public records requests or were already posted on the internet or social media platforms. Although
10 the Respondent was not required to do so, she took additional measures to protect the privacy of
11 those mentioned in the reports by using initials or other non-identifiable information. In so doing,
12 the Respondent was merely exercising her absolute constitutional right under the Washington
13 Constitution and First Amendment to publish and broadcast accurate, lawfully obtained
14 information that is a matter of public record. U.S. Const. Amend. 1; Wash. Const. art. 1, § 5. This
15 includes the other documents contained on the website which although not public court records
16 are still other types of public records such as social media postings by the Petitioner or direct
17 communications between the relevant parties.
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19 Nearly the entire basis of the petition is the public records that are contained on the
20 Respondent’s website and, thus, the court must analyze the petition under the case law regarding
21 constitutionally protected free speech. The *Catlett* court ruled that any protection order predicated
22 solely on constitutionally protected speech is invalid. *Catlett v. Teel*, 15 Wash. App. 2d 689, 477.
23 Specifically, in the context of anti-harassment measures, any such order must be narrowly tailored
24 to address a state interest of the highest order. *Id.* RCW 7.105.010(6)(a) defines "course of
25 conduct" in the context of anti-harassment as a deliberate pattern of behavior characterized by a

1 series of acts over any period, however brief, that demonstrates a clear continuity of purpose.
2 "Course of conduct" encompasses all forms of communication, contact, or behavior, including
3 electronic communications, but explicitly excludes constitutionally protected free speech. The
4 Court has consistently held and affirmed that constitutionally protected free speech does not fall
5 within the definition of "course of conduct" underscoring the critical protections against retaliatory
6 actions, such as in this matter.
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While there is a compelling state interest in protecting citizens from harassment, a specific

1 protection order must be narrowly tailored to further a compelling state interest. But our state
2 constitution does not allow for consideration of a “lawful purpose” or restriction when it comes to
3 free speech and provides that “[e]very person may freely speak, write, and publish on all subjects,
4 being responsible for the abuse of that right.” Const. art 1, § 5. There is no categorical harassment
5 exception to the First Amendment’s free speech clause. *Catlett v. Teel*, 15 Wash. App. 2d 689,
6 (2020). The case law is clear that the civil antiharassment statute is not designed to penalize people
7 who “re-post” publicly available records, content and statements, as the actions constitute
8 constitutionally protected free speech.
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10 Further, the court cannot restrict expression because of its message, its ideas, its subject
11 matter, or its content. Here, there is no privacy interest in public records and public postings, and
12 the re-posting of these public records falls within constitutionally protected activity. No applicable
13 exceptions apply to allow a prior restraint to speech and the court only needs to look at the decision
14 of *Coe* and *Catlett* to find that posts such as those at issue in this case related to court records are
15 protected speech. *State v. Coe*, 101 Wn.2d 364 (1984) (finding that the constitution guarantees an
16 absolute right to publish and broadcast accurate, lawfully obtained information that is a matter of
17 public record.)
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19 Therefore, the basis of this protection order, which is the posting of public records, relies
20 on constitutionally protected speech and, thus, the petition must be denied.

21 **Alleged Defamation**

22 The Petitioner’s allegation that the Respondent has engaged in defamation is not only false
23 but also not supported by the case law regarding defamation. Under Washington law, the truth of
24 any potentially offensive statement serves as an absolute defense against defamation claims.
25 *Owens v. Scott Pub. Co.*, 46 Wash. 2d 666, 284 P.2d 296 (1955). A defendant cannot be held liable

1 for defamation if they present an accurate account of events, regardless of others' interpretations
2 of that account. *Id.* Furthermore, it is established that truth can only be considered a defense to
3 defamation when it is accompanied by a good motive. *Momah v. Bharti*, 144 Wash. App. 731, 182
4 P.3d 455 (2008). A defamation plaintiff must establish four essential elements to recover: (1)
5 falsity; (2) an unprivileged communication; (3) fault; and (4) damages. *Id.* The court must also
6 look at the status of Petitioner to determine whether they are a public figure. *Id.* This status is
7 important as there is a clear decrease in the protections against invasions of privacy and defamation
8 of character provided by law, if someone is a “public figure” for a “limited range of issues.” *Id.*
9 Washington follows a five-part balancing test for identifying limited purpose public figures.
10 *Clardy v. Cowles Pub. Co.*, 81 Wash. App. 53, 912 P.2d 1078 (1996). The test considers whether:
11 (1) the plaintiff had access to channels of effective communication; (2) the plaintiff voluntarily
12 assumed a role of special prominence in the public; (3) the plaintiff sought to influence the
13 resolution or outcome of the controversy; (4) the controversy existed prior to the publication of
14 the defamatory statement; and (5) the plaintiff retained public-figure status at the time of the
15 alleged defamation. *Id.* There is more than sufficient proof of all five parts of the test above that
16 the Petitioner is and was a limited purpose public figure as it related to the TTI community and, as
17 such, the Petitioner must prove that the Respondent had actual malice in making posts which were
18 not truthful, before it would meet the legal definition of “defamation,” which could then exempt
19 that content from free speech protections.

22 However, there is no evidence of actual malice behind the Respondent’s website. Rather,
23 there is more than sufficient evidence of the Respondent’s intentions to clear her name by
24 responding to an ongoing dispute. The Petitioner cannot show sufficient basis for this to be
25 qualified as “defamatory” content. As such, there is no proof that the website created by the

Respondent could be exempted from free speech protection. And thus, the website cannot provide an alternate means to support a finding of “course of conduct” to justify an anti-harassment protection order.