

No. 71360-4-I

THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

DIVISION I

Kent L. and Linda Davis et al.,

Appellants,

v.

Grace Cox et al.,

Respondents,

MOTION OF THE LAWFARE PROJECT FOR PERMISSION TO FILE
AMICUS CURIAE BRIEF

Robert Spitzer
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I. INTRODUCTION

The Lawfare Project respectfully moves the Court for permission to file an amicus curiae brief, to assist the Court of Appeals in its analysis of Washington's Anti-SLAPP Act (RCW 4.24.525), and to argue that the Superior Court's decision constituted reversible error and runs counter to the constitution's cautious and restrictive approach to barring the door to citizens seeking to access justice through the courts.

II. STATEMENT OF AMICUS' INTEREST

The Lawfare Project is a not-for-profit corporation organized under the laws of Washington, D.C. and based in New York, whose mission is to expose and counter "lawfare" – the abuse of legal procedures to advance undemocratic goals. The Lawfare Project's primary activity is advocacy, research and writing, within and outside of the courts, in furtherance of its mission. This appeal directly involves the use of Washington State's Anti-SLAPP Act, which is squarely within the primary area of The Lawfare Project's mission and interest. This appeal involves an egregious example of the misuse of that statute to bar the access to justice, which also constitutes an unconstitutional legislative infringement on the separation of powers.

III. AMICUS CURIAE'S FAMILIARITY WITH ISSUE PRESENTED

A major focus on the research and advocacy of The Lawfare Project is the study of the use of law to stifle debate and restrict public speech. Anti-SLAPP statutes are justified by the desire to prevent the stifling of voices, but in this case ironically have been used to advance the opposite outcome.

The Lawfare Project Director Brooke Goldstein has been invited to brief the United Kingdom Parliament several times on the topic of free speech and application of anti-SLAPP statutes. The Lawfare Project has addressed anti-SLAPP law at CLE-accredited events and at legal conferences around the United States. The Lawfare Project authored a published book entitled *Lawfare: The War Against Free Speech—A First Amendment Guide to Reporting in an Age of Islamist Lawfare*, which addresses anti-SLAPP legislation. In addition, The Lawfare Project monitors the use of political boycotts in the United States and around the world, so the connection to the subject matter of the Olympia Food Cooperative's action is one which is very familiar to the moving party.

IV. STATEMENT OF ISSUE TO BE ADDRESSED

The Amicus Brief of The Lawfare Project addresses the question of whether the Washington Anti-SLAPP Act was properly applied in the context of this case, because the lower court failed to conclusively evaluate whether the conduct from which the claim arose was lawful, and failed to determine if the lawsuit was based on an action involving "public participation and petition."

V. BENEFITS OF ADDITIONAL ARGUMENT

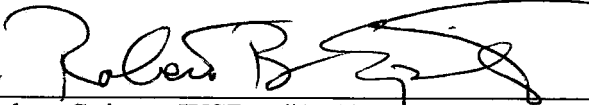
The Lawfare Project will assist this Court by explaining the larger legal and policy contexts at issue in this case. Because of its national and international perspective, it will bring its broader expertise in the analysis of Anti-SLAPP legislation, as well as more updated Washington state precedents filed since Appellant's brief was filed almost a year ago with the Supreme Court.

VI. CONCLUSION

For the foregoing reasons, the Lawfare Project asks the Court for an order granting permission to file the amicus curiae brief that accompanies this motion.

Respectfully submitted this 27th day of January 2014.

GARVEY SCHUBERT BARER

By 

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CERTIFICATE OF SERVICE

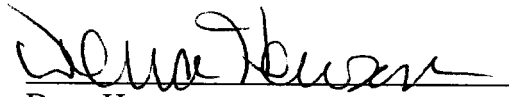
I certify that I served a copy of the foregoing Motion For
Permission To File Amicus Curiae Brief and a copy of the Brief Of
Amicus Curiae Lawfare Project of Washington State by U.S. mail on the
27th day of January, 2014, to the following counsel of record at the
following addresses:

Robert M. Sulkin, WSBA No. 15425	<input type="checkbox"/>	Via Messenger
Barbara H. Schuknecht, WSBA No. 14106	<input checked="" type="checkbox"/>	Via U.S. Mail, First Class
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I declare under penalty of perjury under the laws of the United
States of America and the State of Washington that the foregoing is true
and correct.

Dated this 27th day of January, 2014, at Seattle, Washington.

GARVEY SCHUBERT BARER

A handwritten signature in black ink, appearing to read "Dena Hewson", written over a horizontal line.

Dena Hewson
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