

COPY  
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JUL 23 2012  
Clark Co. Dist. Court

District Court of Washington  
County of Clark

City of Vancouver,  
Plaintiff,  
v.  
Brandy L. Edwards,  
Defendant.

No. 18998V  
Motion to Dismiss

**I. Motion**

*...shall make no law...abridging the freedom of speech...*

*The Constitution "demands that content-based restrictions on speech be presumed invalid ... and that the Government bear the burden of showing their constitutionality."*<sup>1</sup>

The City of Vancouver is prosecuting Brandy Edwards for two counts of cyberstalking. Count one is based on allegations that she created a fake dating profile through which the complaining witness voluntarily communicated with and sent nude pictures to Ms. Edwards. Count two is based on the allegation and that Ms. Edwards posted comments on a web blog owned by the complaining witness and that needed approval from the complaining witness to actually post.

1 By and through Her Attorney of Record Shon W. Bogar, Defendant Brandy Edwards hereby  
2 moves the Court for an Order dismissing the City of Vancouver's case. This motion is made under  
3 the 1<sup>st</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendments to the Constitution of the United States and their progeny, and  
4 Article I Section 5 of the Constitution of the State of Washington and its progeny.  
5

6 This motion is also made in the interests of justice as the underlying allegations constitute  
7 no more than a civil dispute that would fail in a civil defamation or other tort proceeding. The  
8 complaining witness is a public figure and professional blogger who enjoys income from  
9 controversy and notoriety while she blogs on matters of religion, sexuality and family and who has  
10 specifically defamed the Defendant Brandy Edwards and others on her blogs. In cause #11-2-0436-  
11 5<sup>2</sup>, the Superior Court of Clark County found that the complaining witness:  
12

- 13 • "made a public threat ... against Ms. Edwards" via Twitter on December 24, 2010;
- 14 • publicly "brainstormed ways to vandalize Ms. Edwards' property;"
- 15 • "made false allegations about Ms. Edwards on her blog . . . stating as a fact that Ms.  
16 Edwards was committing unemployment insurance fraud and illegally using taxpayer  
17 funds;"
- 18 • "illegally hacked" her ex-husband's "password protected email account" and "unlawfully  
19 published the contents of Ms. Edwards private email conversations with" the complaining  
20 witness's "ex-husband to the public on her blog;"
- 21 • otherwise defamed Ms. Edwards by name and even "created an entire subset on her website  
22 dedicated to publically harassing Ms. Edwards at [www.mandajuce.com/brandy](http://www.mandajuce.com/brandy)."  
23  
24  
25

1 <sup>1</sup> Ashcroft v. American Civil Liberties Union, 542 U.S. 656, 669.

2 <sup>2</sup> Edwards v. Westmont, Clark County Superior Court Cause #11-2-04936-5, Findings of Facts and Conclusions of Law entered January 11, 2012.

1 To proceed with this dispute as a criminal prosecution a waste of the Court's limited resources for  
2 legitimate criminal cases. The City of Vancouver has picked sides in a civil dispute without  
3 conducting a thorough or legitimate investigation, and this Court should not allow the prosecution.

4  
5  
6 Date

7/23/12

Shon W. Bogar, WSBA #41764  
Attorney for Defendant

8  
9 **II. FACTUAL ALLEGATIONS**

1 Paragraphs 1 and 2 below are from the discovery and police reports provided to the Defense by  
11 the City. Paragraphs 3, 4 and 5 below are from various blogs or twitter accounts maintained by the  
12 complaining witness that are publicly viewable as of the date referenced in each respective citation.  
13 Each of the blogs or twitter accounts includes pictures of the complaining witness and are  
14 searchable via a simple google search. Further, the pictures in each blog or twitter account also  
15 appear to be the same as those provided to the Defense in the discovery.  
16

17 1. In Count 1, the City of Vancouver alleges that Ms. Edwards committed cyberstalking  
18 through the creation of a "fake dating profile" on OKCUPID.com from September 10,  
19 2010 through September 17, 2010.<sup>3</sup> The alleged communications were voluntary in  
20 nature, and consisted of "a series of emails and chats between" the complaining witness  
21 and the alleged fake profile.<sup>4</sup> The complaining witness voluntarily sent nude photos of  
22 herself to the alleged fake profile.  
23

24 2. In Count 2, the City of Vancouver alleges that Ms. Edwards committed cyberstalking by  
25

<sup>3</sup> City's Reply to Defendant's Motion for Bill of Particulars, *City of Vancouver v. Edwards*, Clark County District Court Cause #18998V.  
<sup>4</sup> *Id.*

1 making a post to the complaining witness' blog "mandajuice.com" on or about March 9,  
2 2011.<sup>5</sup> That post needed to be approved by the complaining witness in order to be  
3 published. "Exhibit A" is attached to this motion, was provided to the Defense in  
4 discovery and shows that the complaining witness had total control over what was  
5 actually posted to her blog.  
6

7 3. The complaining witness is a professional blogger maintaining at least two blogs and a  
8 twitter account<sup>6</sup>. She advertises herself as

9 seeking a publisher for her novel *Gravy*. She has also been a professional blogger  
10 since 2003, producing content for Disney Corporation's Family.com, as well as  
11 AlphaMom.com and ClubMom.com. With well over a million page views, her  
12 personal blog, mandajuice.com, has enjoyed wide success. Though she hates the  
13 term "mommy blogger," she digs being recognized in airports.<sup>7</sup>  
14

15 4. The alleged post from count 2 occurred on the blog "mandajuice.com." On  
16 "mandajuice," the complaining witness blogs about cooking, food and her children. She  
17 also encourages people to judge and comment on her posts<sup>8</sup>, publicly identifies people  
18 as having herpes<sup>9</sup>, and blogs about: masturbation while on psychotropic medication<sup>10</sup>,  
19  
20  
21

22 <sup>5</sup> Information, *City of Vancouver v. Edwards*, Clark County District Court Cause #18998V.

23 <sup>6</sup> <http://twitter.com/mandajuice/>, account active as of July 23, 2012 at 11:10 am.

24 <sup>7</sup> BeliefNet.com, A Year of Sundays, Who are We?

25 <sup>8</sup> <http://blog.beliefnet.com/yearofsundays/who-2.html>. Retrieved June 13, 2012.

<sup>9</sup> "... my skin is *incredibly* thick. The angrier you get, the harder I laugh. So, READ IT AND WEEP! Or laugh or snicker or get angry! Throw things! But please, whatever you do, NEVER STOP JUDGING ME. Because the more vindictive the comment, the more it serves to reveal delicious Freudian minefields ..." <http://www.mandajuice.com/mandajuice/2010/12/heres-the-thing-about-the-comments.html?cid=6a00d83451bb0269e20147e0f958ac970b>. Retrieved July 23, 2012.

<sup>10</sup> *Id.*

<sup>10</sup> <http://www.mandajuice.com/mandajuice/2012/02/the-food-drug-and-parental-administration.html>

1 sexual abuse she alleges to have suffered as a teenager with various older men<sup>11</sup>, having  
2 sex while menstruating<sup>12</sup>, how she wouldn't tell her current partner her full name until  
3 after he had "seen [her] tits<sup>13</sup>," how she is "COMPLETELY INSANE" the week before  
4 she menstruates because she suffers from "pre-menstrual dysphoric disorder"<sup>14</sup>  
5 (emphasis in original)," "how no one is going to be shocked" if she were diagnosed as  
6 bipolar<sup>15</sup>, various prescription drugs she takes because of her mental health issues<sup>16</sup> and  
7 a host of other normally private issues. This is all on mandajuce.com, and remains open  
8 for public viewing and public comment as of today.  
9

- 1  
11 5. The complaining witness' second blog is "A year of Sundays," currently carried on  
12 beliefnet.com. In "Sundays," the complaining witness and Joel Gunz visit a new church  
13 every week and then editorialize on the church. For example,

14 After the sermon, the lights went down, the music went up and the Hansons  
15 invited the parishioners up to the stage. This is ME talking, so I know no one will be  
16 surprised when I draw a raunchy analogy between the pattern at the Pentecostal  
17 church and, well, sex. The entire thing is basically an orgy. First they get you all hot  
18 and bothered with the music – forty whole minutes is plenty of foreplay to get  
19 anyone's juices flowing. As soon as you feel like you can't take the "aural" pleasure  
20  
21

22 <sup>11</sup> <http://www.mandajuce.com/mandajuce/2011/08/what-kind-of-sexual-abuse-did-you-suffer-as-a-childyoung-adult.html>. Retrieved July 23, 2012.

23 <sup>12</sup> <http://www.mandajuce.com/mandajuce/2011/05/index.html> . Retrieved July 23, 2012.

24 <sup>13</sup> <http://www.mandajuce.com/mandajuce/2010/12/you-should-message-me-if.html> . Retrieved July 23, 2012.

25 <sup>14</sup> <http://www.mandajuce.com/mandajuce/2012/01/as-i-was-driving-to-my-monday-therapy-appointment-i-did-a-little-math-in-my-head-and-ended-up-with-a-rather-startling-conclu.html> . Retrieved July 23, 2012.

<sup>15</sup> <http://www.mandajuce.com/mandajuce/2012/01/index.html> , retrieved July 23, 2012.

<sup>16</sup> <http://www.mandajuce.com/mandajuce/2012/03/some-things-are-worth-the-overdraft-charge.html> , retrieved July 23, 2012; and <http://www.mandajuce.com/> , retrieved July 23, 2012.

1 for another minute, they penetrate you with the sermon and the pounding begins. If  
2 you can manage to make it through twenty solid minutes of breathless, sweaty  
3 (bible) thumping without smudging your Sears briefs, you're invited to the pulpit for  
4 your community climax, which is pretty much a sweaty, noisy, roiling pit of  
5 writhing human bodies. Apparently Jesus is pretty mind-blowing. Some of the girls  
6 even CRY.<sup>17</sup>

8 Or this

9  
10 When Pastor Rick scuffed onto the stage in his untucked triple-XL  
11 button-down and this brillo-pad helmet of Lego hair, I disliked him immediately.  
12 And not just because he bears an eery resemblance to my ex-husband. But because  
13 I've never seen a preacher so lacking in kindness and generosity of spirit. He  
14 just sounded too angry and self-righteous.

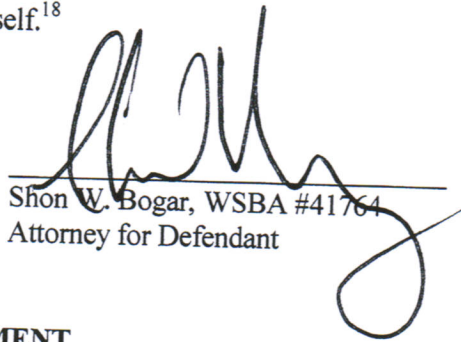
15  
16 I sat there watching him and wondering, what IS this man eating? Is it  
17 shame? anger? depression? sexual dysfunction? (Bob Dole would like you  
18 to know there's a pill for that). I value kindness above all other things (because it's  
19 something I obviously need to work on myself) and while I think the pews at Imago  
20 Dei were OVERFLOWING with it, I couldn't find any in their gregarious leader.

21  
22 I have been morbidly obese myself (HERE: I will even link to the photos  
23 because there's nothing like a good before and after), which still probably doesn't  
24 give me license to call someone else out on their weight issues, but I'm gonna take  
25

<sup>17</sup> <http://blog.beliefnet.com/yearofsundays/2011/05/church-of-the-chemically-imbalanced-the-portland-pentecostals.html#ixzz1uPdRlXPX> . Retrieved July 19, 2012.

1 that liberty anyway because this man? He can't possibly be filled with Christ's love  
2 because he clearly does not love himself.<sup>18</sup>  
3

4 7/23/12  
5 Date

6   
7 Shon W. Bogar, WSBA #41764  
8 Attorney for Defendant

9 **III. ARGUMENT**

10 The prosecution fails constitutional muster across the board. The cyberstalking law  
11 itself is overbroad, vague and implicates a broad range of constitutionally protected speech, thus  
12 violating the 1<sup>st</sup>, 5<sup>th</sup> and 14<sup>th</sup> Amendments to the US Constitution. As applied, both counts fail  
13 constitutional requirements as both are content based restrictions on speech that must survive a  
14 strict scrutiny or most exacting scrutiny analysis. Specifically, Count 1 fails as it is based upon the  
15 premise of an allegedly fake profile – there would be no prosecution if the profile was real as the  
16 communications were entirely voluntary – and Count 2 is a blatant content based prosecution based  
17 upon the terms outlined in the Information. The Government must thus show both a “compelling”  
18 governmental interest in the prosecution AND that the prosecution or restrictions are “actually  
19 necessary” to further the interest. The burden is on the Government, and any failure requires  
20 dismissal.  
21

22 While this case is on the cutting-edge of cyber-speech jurisprudence in Washington as it  
23 apparently never been litigated, the federal courts have analyzed and struck down similar  
24  
25

<sup>18</sup> <http://blog.beliefnet.com/yearofsundays/2011/04/imago-dei.html#ixzz1uPqTjOrF>.  
Retrieved July 19, 2012.

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1 cyberstalking statutes as unconstitutional.<sup>19</sup> Furthermore, the US Supreme Court's recent analysis to  
2 strike down the Stolen Valor Act on 1<sup>st</sup> Amendment grounds provides recent guidance on how to  
3 analyze allegedly "false-speech." Despite the offensive nature of the alleged speech, the 1<sup>st</sup>, 5<sup>th</sup> and  
4 14<sup>th</sup> Amendments of the US Constitution prohibits the instant prosecution.

6 **A. The cyberstalking statute is unconstitutional because it is overbroad, vague and  
7 implicates a broad range of otherwise constitutionally protected speech.**

8 The 1<sup>st</sup> Amendment to the US Constitution provides that "Congress shall make no law .  
9 . . . abridging the freedom of speech." This prohibition was extended to the States through the 14<sup>th</sup>  
1 Amendment. Article I, Section 5 of the Washington State Constitution provides similar protections  
11 for speech.

12 These protections extend to anonymous speech, to offensive speech, and to distasteful  
13 speech. Indeed, there are only six classes of "very well-defined and narrowly limited classes of  
14 speech" that remain unprotected.<sup>20</sup> Unprotected speech is limited to obscenity,<sup>21</sup> defamation,<sup>22</sup>  
15 fraud,<sup>23</sup> incitement to violence,<sup>24</sup> true threats,<sup>25</sup> and speech integral to criminal conduct.<sup>26</sup> Thus,  
16 "speech that does not fall into these exceptions remains protected"<sup>27</sup> and statutes that include  
17 protected speech fail the constitutional analysis.

18  
19 Criminal statutes imposing criminal liability for speech alone violate the 1<sup>st</sup> Amendment  
20 as the "First Amendment literally for bids the abridgment only of 'speech' . . ." <sup>28</sup> The cyberstalking  
21 statute criminalizes a number of communications that do not fall into the narrow class of  
22

23  
24 <sup>19</sup> U.S. v. Cassidy, Criminal Case No. RWT 11-091, In the United States District Court for the District of Maryland.

<sup>20</sup> Chaplinsky v. New Hampshire, 315 U.S. 568, 571-572 (1942).

<sup>21</sup> Roth v. United States, 354 U.S. 476 (1957).

<sup>22</sup> Beauharnais v. Illinois, 343 U.S. 250, 254-255 (1952).

<sup>23</sup> Virginia Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 778 (1976).

<sup>24</sup> Brandenburg v. Ohio, 395 U.S. 444, 447-449 (1969).

<sup>25</sup> Watts v. United States, 394 U.S. 705 (1969).

<sup>26</sup> Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 498 (1949).

<sup>27</sup> United States v. Cassidy, *See also* United States v. Stevens, 130 S.Ct. 1577, 1586 (2010).



1 unprotected speech that can be properly prohibited. The statute criminalizes anonymous and  
2 embarrassing speech, embarrassing and private speech suggesting the commission of any lewd or  
3 lascivious act, as well as embarrassing speech that is part of an on-going communication between  
4 adults. All of these kinds of speech fall into the protected category of speech under the 1<sup>st</sup>  
5 Amendment yet are criminalized under Washington's cyberstalking statute.  
6

7 **B. The cyberstalking statute is unconstitutionally vague and thus violates the 5<sup>th</sup>**  
8 **Amendment's Due Process Clause.**

9 The 5<sup>th</sup> Amendment's Due Process Clause requires that "no man shall be held  
10 criminally responsible for conduct which he could not reasonably understand to be proscribed."<sup>29</sup> A  
11 criminal statute is unconstitutionally vague if it either fails "to provide the kind of notice that will  
12 enable ordinary people to understand what conduct it prohibits" or encourages "arbitrary and  
13 discriminatory enforcement."<sup>30</sup> This general test of statutory vagueness demands a stricter  
14 application when a law may have an inhibiting effect on speech.<sup>31</sup>  
15

16 In Count 1, the City is prosecuting Ms. Edwards based on the "anonymous or repeatedly  
17 whether or not conversation occurs" prong of the statute. This statute fails constitutional muster  
18 because it does not allow an ordinary person the ability to understand exactly what is prohibited  
19 because of the final prong and because it strongly encourages arbitrary enforcement. Under this  
20 statute, any embarrassing e-mail or text sent from a new e-mail account or phone number  
21 constitutes criminal behavior whether or not the sender has any indication that the recipient does  
22 not want the e-mail. The lack of requirement that the recipient inform the sender that the  
23  
24  
25

<sup>28</sup> Texas v. Johnson, 491 U.S. 397, 404 (1989).

<sup>29</sup> Palmer v. City of Euclid, 402 U.S. 544 (1971).

<sup>30</sup> City of Chicago v. Morales, 527 U.S. 41 (1999).

<sup>31</sup> Hynes v. Mayor & Council of Borough of Oradell, 425 U.S. 610, 620 (1976).

1 communication is unwanted is in itself a fatal flaw to the ability of an average person to understand  
2 what is and what is not permissible.

3  
4 In Count 2, the City is prosecuting Ms. Edwards under the “lewd and lascivious” prong  
5 of the statute. This prong also fails constitutional muster because it overtly criminalizes indecent  
6 language with an embarrassing intent. The problems with this prohibition are patently clear given  
7 the City’s prosecution for the following language that Ms. Edwards is alleged to have attempted to  
8 post on the complaining witness’ blog:

9  
10 Amanda DESPARATELY tried to date me a few months ago. I chose not to pursue  
11 even meeting her in person because she is so full of herself and tells so many lies. Don’t  
12 believe me? Amanda sent me several naked pictures of herself after one internet chat. I  
13 have a lot of information that you, her blog readers might find interesting, to say the  
14 least. E-mail me at carson.westman@yahoo.com and I will send you what you would  
15 like to see. Amanda is a fucking whack-job.

16  
17 **C. The Cyberstalking Statute is a Content-Based Restriction on Free Speech That  
18 Fails Most Exacting Scrutiny as Applied to the Alleged Speech Herein**

19 The cyberstalking statute is a content-based restriction because it regulates speech based  
20 on the effect that the speech has on the audience. As a general rule, “laws that by their terms  
21 distinguish favored speech from disfavored speech on the basis of the ideas or views expressed are  
22 content-based.”<sup>32</sup> In determining whether a statute is content-neutral or content-based, the Court  
23 must determine whether “the government has adopted a regulation of speech because of  
24 disagreement with the message it conveys.”<sup>33</sup>

25  
<sup>32</sup> Turner Broad. Sys. Inc. v. Fed. Comm’ns Comm., 512 U.S. 622, 642 (1994).

<sup>33</sup> Ward. V. Rock Against Racism, 491 U.S. 781, 791 (1989).

1 To survive most exacting or strict-scrutiny, the City has the burden of showing that a  
2 content-based restriction is “‘actually necessary’ to achieve its interest.”<sup>34</sup> Thus, in order to show  
3 that the cyberstalking statute does not fail constitutional muster, the City must show that the City  
4 has a “compelling” interest in protecting its citizens from the harm of electronic communications as  
5 outlined in the statute before further showing that the restriction is actually “necessary” to further  
6 the interest.  
7

8 Even if the City can make the argument that there is a compelling state interest in  
9 providing some level of protection under the statute, there is no compelling state interest under the  
10 facts alleged herein because if the allegations were true, the actions would amount to no more than  
11 a private citizen communicating what is verifiably true about a public figure. The City’s allegations  
12 are that Ms. Edwards engaged in a voluntary communication with the complaining witness and then  
13 attempted to make a subsequent post to the complaining witness’ blog detailing the nature of their  
14 voluntary communications. Moreover, the City’s own statement of probable cause indicates that the  
15 complaining witness voluntarily engaged in the communications, voluntarily sent nude photos of  
16 herself over the internet, and had complete control over everything that could be posted to her blog.  
17 There is absolutely no governmental interest in criminally prosecuting people after an embarrassing  
18 yet *voluntary* internet communication. The opposite is true.  
19  
20

21 The City must also show that the proposed restriction is actually necessary to any  
22 compelling interest claimed. Numerous examples of less restrictive methods to reach any claimed  
23 interest can be easily imagined. Regarding Count 1, private dating sites could require users to  
24  
25

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<sup>34</sup> U.S. v. Alvarez, 567 U.S. \_\_\_\_ (2012), citing Brown v. Entertainment Merchants Assn.,  
564 U.S. \_\_\_\_ (2011).

1 submit their credit card information, thus ensuring that the name on the site matches the name of  
2 the user. In Count 2 (public posts to a public blog requiring owner approval), the owner could either  
3 moderate what is posted, require a Facebook profile to post (as does The Columbian), or simply not  
4 open the blog to the public. Any of these alternatives would satisfy any interest the Government  
5 could make while still allowing speech to freely flow.  
6

7 **D. If Protecting the Congressional Medal of Honor Does Not Survive Exacting**  
8 **Scrutiny Then Neither Should the Instant Prosecution**

9 In US v. Alvarez, the US Supreme Court declared unconstitutional the law prohibiting  
10 people from falsely claiming the authority to wear the Congressional Medal of Honor and other  
11 military decorations and awards as a violation of the 1<sup>st</sup> Amendment.<sup>35</sup> The Court conducted a full  
12 exacting scrutiny analysis before striking down the law after concluding that there are a host of  
13 other means to reach the desired goal of protecting the integrity of military medals.  
14

15 To put this in perspective, the Congressional Medal of Honor has been awarded only  
16 3,476 times since 1861.<sup>36</sup> Since the bombing of Pearl Harbor, it has been awarded only 857 times  
17 including 526 posthumous awards. Without exception, the award is the Nation's highest military  
18 honor and is only awarded for the most courageous and conspicuous gallantry usually resulting in  
19 the death of the recipient. Which is why Congress passed the Stolen Valor Act in response to a near  
20 epidemic of people from all walks of life falsely claiming the authority to wear the Congressional  
21 Medal of Honor and other military decorations.  
22

23 Simply put, the Constitution requires more than good intentions when speech is  
24 involved. In Alvarez, the politician-Defendant had been prosecuted and convicted under Stolen  
25

<sup>35</sup> U.S. v. Alvarez, 567 U.S. \_\_\_\_ (2012).

<sup>36</sup> Id.

1 Valor after falsely claiming the right to wear the Congressional Medal of Honor during  
2 introductions at “his first public meeting as a board member of the Three Valley Water District  
3 Board.”<sup>37</sup> In conducting its analysis, the Court not only concluded that the Stolen Valor Act  
4 required “most exacting scrutiny,” but also concluded that the Act was not “actually necessary” to  
5 achieve its interest.<sup>38</sup> The Court struck down the law because there exists a host of other remedies  
6 short of prohibiting speech that achieved the same goal.  
7

8 The listed alternatives are directly analogous to the instant prosecution. Just as the  
9 military or private citizens may ridicule one who makes a false claim online, so too did the instant  
10 complaining witness publicly ridicule the Defendant in her blog. Just as ordinary citizens may use  
11 “counterspeech” to “remedy ... speech that is false” as is “the ordinary course in a free society,<sup>39</sup>”  
12 so too may ordinary citizens publicize false dating profiles online. Just as Congress or an interested  
13 group may create a database for legitimate Medal holders, so too may internet dating sites require  
14 that users submit their credit card information in order to use their system.  
15

16 The burden is on the government to prove that the proposed restriction on speech or  
17 prosecution because of speech is both for a compelling state interest and that the prohibition or  
18 prosecution is actually necessary to further that interest. As a nation, we believe that freedom is  
19 worth the pain of watching the flag burned in protest, that free speech means we can lambast our  
20 public figures, and that it cannot be a crime to falsely claim the nation’s highest honor because the  
21 acts done to earn the honor were done for something greater than a medal. Against this backdrop of  
22 all the kinds of speech that the Supreme Court has ruled are constitutionally protected, the City of  
23  
24  
25

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<sup>37</sup> Id.

<sup>38</sup> Id.

<sup>39</sup> Id.

1 Vancouver seeks criminally prosecute Brandy Edwards for allegedly creating a fake dating profile  
2 and allegedly attempting to post an offensive comment that required moderator approval on a  
3 public blog.  
4

5 **E. Allowing the City of Vancouver’s prosecution of internet speech will severely chill**  
6 **speech and socially desirable uses of anonymous internet communication.**

7 This case will distinctly chill legitimate journalistic and other actions that society clearly  
8 desirable and appropriate. The most glaring example of actions that would be criminalized under  
9 the City’s interpretation of the cyberstalking statute is anonymous internet actions undertaken by  
10 private citizens and journalists to bring to light the truth about other people. A partial list of socially  
11 desirable actions private citizens and journalists have taken that would be criminalized includes:

- 12 • “To Catch a Predator” – the NBC news show that uses undercover civilians to  
13 embarrass and torment “sexual predators” by having civilian adults pretend to be  
14 minors on the internet and then capture intended face-to-face meetings between  
15 the predators and the pretend minors.  
16
- 17 • “Perverted-justice.com” – A private website with goals similar to “To Catch a  
18 Predator” and that advertises helping law enforcement prosecute and convict  
19 549 convictions stemming for civilians posing as minors on the internet and  
20 anonymously communicating with adults. Every communication between the  
21 pretend minors and the adults is with the intent to embarrass the adults for  
22 engaging in sexually explicit communications with the minors.  
23
- 24 • Anonymous political and social bloggers who comment on public figures with  
25 the intent to embarrass.

- 1                   • Private e-mails between two people about a third person with the intent to share  
2 true information that may embarrass the third party.  
3

4                   Of course, this list does not include the average, every-day embellishments in which  
5 people engage every day on the internet. Dating profiles and Facebook are prime examples. Where  
6 would the City draw the line between mere puffery and outright fraud? Would posting an outdated  
7 picture on a dating site cause the City to get involved if the poster had gained some weight or lost  
8 some hair? Would a man fudging his income upward a tax bracket or two bring about a prosecution  
9 when his new love-interest discovered that she was with someone of less means than she believed?  
10 Would false Facebook profiles, such as profiles for pets (a violation of Facebooks' Terms of  
11 Service no doubt) constitute some form of criminal behavior? The City's prosecution offers no  
12 answers to what anonymous speech on the internet would instantly become criminal and what  
13 speech would rather be subject to the marketplace of ideas and to public shaming as a means of  
14 correcting offensive speech that the Supreme Court found a viable alternative to restrictions on  
15 content based speech in Alvarez.  
16

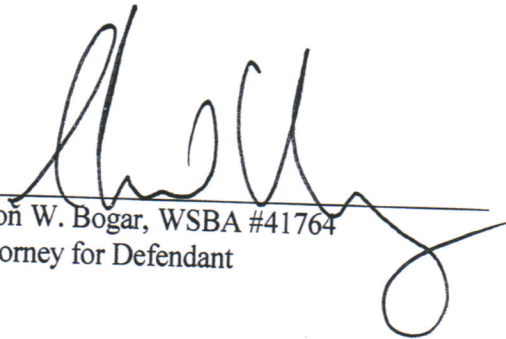
17  
18                   **IV. CONCLUSION**

19                   The City of Vancouver is criminally prosecuting Brandy Edwards based on a  
20 constitutionally deficient statute and based on allegations that not only constitute protected speech  
21 but that, if true, would also be completely privileged in a civil defamation suit. The City is seeking  
22 to criminalize fake dating profiles, is picking sides in voluntary internet debates, is engaging in an  
23 arbitrary and constitutionally deficient prosecution, and is wasting the Court's resources with a  
24 prosecution that would fail in a civil action. The Court should dismiss the case with prejudice.  
25

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7/23/12  
Date



Shon W. Bogar, WSBA #41764  
Attorney for Defendant

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EXHIBIT "A"

WordPress.com <donotreply@wordpress.com>  
To: amanda@mandajuce.com

Wed, Mar 9, 2011 at 6:20 PM

A new comment on the post "The Bridge: A Perfectly (Im)Perfect Christian Experience" is waiting for your approval:

<http://yearofsundays.com/2011/03/09/the-bridge-a-perfectly-imperfect-christian-experience/>

Author: c (IP: 64.134.136.155, 64.134.136.155)

E-mail: [coli@ust.com](mailto:coli@ust.com)

URL :

Whois : <http://whois.arin.net/rest/ip/64.134.136.155>

Comment:

As someone who Amanda DESPERATELY tried to date a few months ago, I can tell you this, this woman is not who she makes herself out to be. She's a liar and a complete fucking nutcase. There were just too many inconsistencies in what she had written vs what she told me. In fact, she also sent me numerous naked pictures of herself after one internet chat.

If anyone would like proof of the things she told me, feel free to e-mail me at [carson.westman@live.com](mailto:carson.westman@live.com) or [carson.westman@yahoo.com](mailto:carson.westman@yahoo.com). I'd be happy to chat.

I chose not to pursue a relationship with this woman because of all the lies she told either to me or on her blog. I didn't even want to meet her in person. After I dumped her ass, she accused me of being her ex-husband. Talk about drama. That shit only confirmed to me that I did the right thing to dump her.

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ATTACHMENT 4