

No. 78665-2-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

---

JASON E. SLOTEMAKER,  
Petitioner-Appellant,

v.

STATE OF WASHINGTON,  
Respondent-Appellee.

---

**MOTION OF AMERICAN CIVIL LIBERTIES UNION OF  
WASHINGTON, ELECTRONIC FRONTIER FOUNDATION, AND  
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

---

Nancy Talner, WSBA #11196  
AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON  
901 5th Ave., Ste. 630  
Seattle, WA 98164

Rita Griffith, WSBA #14360  
WASHINGTON ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS  
1511 3rd Ave., Ste. 503  
Seattle, WA 98101

Hyland Hunt, WSBA #53697  
DEUTSCH HUNT PLLC  
300 New Jersey Ave. NW, Ste. 900  
Washington, DC 20001  
(202) 868-6915  
hhunt@deutschhunt.com

Eugene Volokh, *pro hac vice pending*  
SCOTT & CYAN BANISTER FIRST  
AMENDMENT CLINIC  
UCLA School of Law  
405 Hilgard Ave.  
Los Angeles, CA 90095  
*Pro hac vice pending*

*Attorneys for Amici Curiae*

## **RELIEF REQUESTED**

The American Civil Liberties Union of Washington, Electronic Frontier Foundation, and Washington Association of Criminal Defense Lawyers respectfully request that this Court grant leave to file an *amicus curiae* brief pursuant to RAP 10.6.

## **IDENTITY AND INTEREST OF *AMICI CURIAE***

The American Civil Liberties Union of Washington (“ACLU-WA”) is a statewide, nonpartisan, nonprofit organization, with over 135,000 members and supporters, that is dedicated to the preservation of civil liberties including the right to free speech. The ACLU-WA strongly opposes laws and government action that infringe on the free exchange of ideas or that unconstitutionally restrict protected expression. It has advocated for free speech and the First Amendment directly, and as *amicus curiae*, at all levels of the state and federal court systems. *See, e.g., City of Lakewood v. Willis*, 186 Wn.2d 210, 375 P.3d 1056 (2016); *Rynearson v. Ferguson*, 355 F. Supp. 3d 964 (W.D. Wash. 2019).

The Electronic Frontier Foundation (“EFF”) is a San Francisco-based, non-profit, member-supported digital rights organization. Focusing on the intersection of civil liberties and technology, EFF actively encourages industry, government, and the courts to support free expression, privacy, and openness in the information society. Founded in

1990, EFF has over 38,000 dues-paying members nationwide. EFF publishes a comprehensive archive of digital civil liberties information at [www.eff.org](http://www.eff.org). EFF has served as counsel or *amicus curiae* in many cases addressing free speech online. *See e.g., City of Vancouver v. Edwards*, No. 18998V (Clark County Superior Court 2012); *Rynearson, supra*; *Backpage.com v. McKenna*, 2:12-cv-00954-RSM (W.D. Wash. 2012).

The Washington Association of Criminal Defense Lawyers (“WACDL”) was formed to improve the quality and administration of justice. A professional bar association founded in 1987, WACDL has around 800 members, made up of private criminal defense lawyers, public defenders, and related professionals. It was formed to promote the fair and just administration of criminal justice and to ensure due process and defend the rights secured by law for all persons accused of crime. It regularly files amicus briefs in cases addressing important questions for criminal defendants and the criminal justice system in Washington.

*Amici* agree with the parties that Mr. Slotemaker’s conviction must be vacated. *Amici* write separately to emphasize the importance of this case for all Washingtonians. The provision of the cyberstalking statute under which Mr. Slotemaker was convicted reaches a wide variety of protected speech, including a large amount of social and political commentary on the internet. And, because most people will steer far clear

of any criminal prohibition, it chills even more speech beyond what its already overbroad prohibition covers. *Amici* write separately to urge the Court to issue a precedential opinion holding the statute unconstitutional, to provide needed guidance to the public and participants in the legal system.

### **FAMILIARITY WITH ISSUES**

Counsel for *amici* has reviewed the appellate briefing in this matter. Counsel is familiar with the scope of the arguments presented in the parties' briefing and will not unduly repeat them.

### **ISSUE TO BE ADDRESSED BY *AMICI CURIAE***

Is RCW 9.61.260(1)(b), which criminalizes speech—including speech to the public on matters of public concern—based solely on purportedly bad intent and repetition or anonymity, facially overbroad in violation of Article 1, Section 5 of the Washington Constitution and the First Amendment to the United States Constitution?

### **NEED FOR ADDITIONAL ARGUMENT**

The issue presented in this case is of substantial significance to all Washingtonians. The experience of *amici*'s members and *amici*'s familiarity with the cyberstalking statute and the manner in which it unconstitutionally chills speech enable them to provide additional authorities and perspective to the Court, reflecting the impact of the issue

beyond this particular case. The amicus brief also provides additional legal analysis that supplements, without undue duplication, the arguments made by the parties.

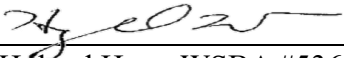
### CONCLUSION

For the foregoing reasons, and under RAP 10.6, ACLU-WA, EFF, and WACDL respectfully request leave to file the accompanying amicus brief.

July 1, 2019

Respectfully submitted,

Nancy Talner, WSBA #11196  
AMERICAN CIVIL LIBERTIES  
UNION OF WASHINGTON  
901 5th Ave., Ste. 630  
Seattle, WA 98164

  
Hyland Hunt, WSBA #53697  
DEUTSCH HUNT PLLC  
300 New Jersey Ave. NW, Ste. 900  
Washington, DC 20001  
(202) 868-6915

Rita Griffith, WSBA #14360  
WASHINGTON ASSOCIATION OF  
CRIMINAL DEFENSE LAWYERS  
1511 3rd Ave., Ste. 503  
Seattle, WA 98101

Eugene Volokh, *pro hac vice pending*  
SCOTT & CYAN BANISTER FIRST  
AMENDMENT CLINIC  
UCLA School of Law  
405 Hilgard Ave.  
Los Angeles, CA 90095

*Attorneys for Amici Curiae*

### **CERTIFICATE OF SERVICE**

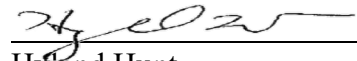
I hereby certify that on July 1, 2019, I served the foregoing motion  
upon the following counsel of record electronically via the court portal:

Douglas R. Hyldahl  
Douglas Hyldahl, PS Inc.  
103 E. Holly St., Ste. 505  
Bellingham, WA 98225

*Attorney for Petitioner*

Haley W. Sebens  
Office of Skagit County Prosecuting Attorney  
Courthouse Annex  
605 South Third  
Mt Vernon, WA 98273

*Attorneys for Respondent*

  
Hyland Hunt

# DEUTSCH HUNT PLLC

July 01, 2019 - 1:20 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 78665-2  
**Appellate Court Case Title:** State of Washington Respondent v. Jason E. Slotemaker, Petitioner  
**Superior Court Case Number:** 16-1-00886-0

### The following documents have been uploaded:

- 786652\_Briefs\_20190701131230D1843869\_3805.pdf  
This File Contains:  
Briefs - Amicus Curiae  
*The Original File Name was Slotemaker Amicus Brief.pdf*
- 786652\_Motion\_20190701131230D1843869\_3224.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was Volokh pro hac motion.pdf*
- 786652\_Motion\_20190701131230D1843869\_5327.pdf  
This File Contains:  
Motion 2 - Other  
*The Original File Name was Slotemaker Amicus Motion.pdf*

### A copy of the uploaded files will be sent to:

- doug@hyldahl-law.com
- hsebens@co.skagit.wa.us
- skagitappeals@co.skagit.wa.us
- talner@aclu-wa.org
- volokh@law.ucla.edu

### Comments:

Motions are the Motion for Leave to File Amicus Brief and Motion for Admission Pro Hac Vice

---

Sender Name: Hyland Hunt - Email: hhunt@deutschhunt.com  
Address:  
300 NEW JERSEY AVE NW STE 900  
WASHINGTON, DC, 20001-2271  
Phone: 202-868-6915

**Note: The Filing Id is 20190701131230D1843869**