No. 77982-6-I

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JEREMY DAWLEY,

Appellant.

BRIEF OF *AMICUS CURIAE* AMERICAN CIVIL LIBERTIES UNION OF WASHINGTON

ACLU OF WASHINGTON FOUNDATION

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I. INTEREST OF AMICUS CURIAE

The ACLU of Washington 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, and that has advocated for free speech in Washington in both state and federal courts.

II. INTRODUCTION

Criticism of public officials is a fundamental exercise of political speech rights protected by the First Amendment[1] and by the Washington Constitution[2]. A harsh or provocative critique may offend, upset, alarm, or even provoke anger, but the government cannot criminalize such speech by defining threats in a manner that includes protected speech. Washington's intimidating a public servant statute, RCW 9A.76.180, is overbroad as it prohibits a real and substantial amount of constitutionally protected speech. The statute is also void for vagueness as it fails to provide adequate notice of what is prohibited and adequate standards to prevent arbitrary enforcements.

[1] U.S. Const. amend. I.
[2] Wash. Const. art. I, §§ 4 and 5.

III. ARGUMENT

A. RCW 9A.76.180 Is Facially Overbroad Because It Prohibits A Real and Substantial Amount of Protected Speech Without Constitutional Justification

RCW 9A.76.180 criminalizes speech core to the exercise of an individual's First Amendment rights, including criticism of the government in the form of threats. Legitimate threats to sue a police officer engaged in a wrongful arrest, threats to challenge an incumbent politician in an election, or even threats to reveal corrupt activities are all prohibited by this statute. A person is guilty of intimidating a public servant under RCW 9A.76.180 "if, by use of a threat, he or she attempts to influence a public servant's vote, opinion, decision, or other official action as a public servant." The definition of threats in RCW 9A.76.180,[3] specifically the definition included by reference to RCW 9A.04.110 prohibits protected speech and is therefore unconstitutionally overbroad.

"A law is overbroad if it sweeps within its prohibitions constitutionally protected free speech activities." *State v. Williams*, 144 Wn.2d 197, 206, 26 P.3d 890 (2001) (quoting *City of Bellevue v. Lorang*, 140 Wn.2d 19, 26, 992 P.2d 496 (2000)). "In order to determine whether a statute is overbroad, a reviewing court must first ascertain whether the

[3] RCW 9A.76.180(3) defines threat as "(a) To communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or (b) Threats as defined in RCW 9A.04.110."

law prohibits a real and substantial amount of constitutionally protected conduct." *City of Seattle v. Ivan*, 71 Wn. App. 145, 150, 856 P.2d 1116 (1993) (citing *Seattle v. Huff*, 111 Wn.2d 923, 925, 767 P.2d 572 (1989)). "Criminal statutes receive a more exacting scrutiny and may be facially invalid even if they have a legitimate application." *Id.*

"[T]he First Amendment prohibits the State from silencing speech it disapproves, particularly silencing criticism of government itself." *State ex rel. Pub. Disclosure Comm'n v. 119 Vote No! Comm.*, 135 Wn.2d 618, 626, 957 P.2d 691 (1998) (citing *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 791, 108 S. Ct 2667, 101 L. Ed. 2d 669 (1988)). To avoid chilling legitimate criticism, the State is only empowered to prohibit certain narrow categories of speech that fall outside of constitutionally protected speech. Among those categories are true threats, fraud, or speech integral to criminal conduct. *See Watts v. United States*, 394 U.S. 705, 707-08, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969); *United States v. Stevens*, 559 U.S. 460, 468-69, 130 S. Ct. 1577, 176 L. Ed. 2d 435 (2010). True threats are narrowly understood as "statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." *State v. Johnston*, 156 Wn.2d 355, 361–62, 127 P.3d 707 (2006) (quoting *Virginia v. Black*, 538 U.S. 343, 359, 123 S. Ct. 1536, 155

L. Ed. 2d 535 (2003)). In other words, threats alone are "constitutionally proscribable . . . where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death." *State v. Trey M.*, 186 Wn.2d 884, 901, 383 P.3d 474 (2016) (quoting *Black*, 538 U.S. at 360).

i. RCW 9A.76.180 prohibits a real and substantial amount of constitutionally protected speech including criticism of public officials

Courts that have considered RCW 9A.76.180 and the definition of threats under RCW 9A.04.110 do not dispute that the statute burdens a real and substantial amount of constitutionally protected speech. *See, e.g., State v. Stephenson*, 89 Wn. App. 794, 801-802, 950 P.2d 38 (1998) ("we conclude that RCW 9A.04.110(25)(j)'s prohibitions encompass a 'real and substantial' amount of protected speech.")[4]; *see also State v. Knowles*, 91 Wn. App. 367, 374, 957 P.2d 797 (1998). In fact, even the State recognizes that the statute criminalizes constitutional speech by acknowledging that "[t]he State did not allege a true threat but instead alleged a threat as defined under RCW 9A.04.110(28)(j)." Br. of Resp't, 21.

[4] RCW 9A.04.110 has been amended several times since 1998, which moved the threat definition from Section 25 to its current reference in Section 28. Former RCW 9A.04.110(25)(j) is identical to current RCW 9A.04.110(28)(j).

The threat definition in RCW 9A.04.110 is broader than permitted by the First Amendment. The broad scope of prohibited speech burdens important public interactions with government officials. Government officials are the elected and unelected representatives of the public interest, and must be subject to critique, criticism, and debate as part of the normal functioning of democracy. A statute that chills those legitimate interactions should not stand.

The scope of prohibited speech covered by the statute is plain from the exceedingly broad statutory terms used in the threat definition. For example, "accuse any person of a crime" (RCW 9A.04.110(28)(d)), "expose a secret . . . tending to subject any person to hatred, contempt, or ridicule" (RCW 9A.04.110(28)(e)), "publicize an asserted fact" (*id.*), "reveal any information sought to be concealed" (RCW 9A.04.110(28)(f), and "do any other act which is intended to harm substantially . . . with respect to his or her health, safety, business, financial condition, or personal relationships" (RCW 9A.04.110(28)(j)) are all wide-ranging and highly subjective terms that cover a vast amount of legitimate speech.

From these broad statutory terms, specific examples of unconstitutional applications of RCW 9A.76.180 are easy to conceive, and demonstrate the real and substantial amount of speech prohibited by the statute. *See* Br. Of Appellant, 28. The statute plainly proscribes legitimate

criticism of public officials and other speech core to the interests of democracy. For example, RCW 9A.04.110(28)(d) or (j) is broad enough to cover threatening to sue or bring charges against an officer if they do not cease an arrest where the arrestee believes the officer is violating their civil rights. Moreover, RCW 9A.04.110(28)(e) or (f) is similarly broad enough to cover a reporter offering a city councilor the opportunity to make an official public statement regarding corruption allegations before the reporter publishes an article detailing extensive corruption in city government. These are not true threats, nor are they wrongful interactions. These threats embody fundamental exercises of speech that are plainly impacted by the sheer breadth of the threat definition under RCW 9A.76.180.

Courts should not dismiss these myriad examples of overbreadth as mere hypotheticals or rely on prosecutorial discretion to appropriately address constitutional problems. While it is true that "the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge[,]" *Members of City Council of City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 800, 104 S. Ct. 2118, 80 L. Ed. 2d 772 (1984), the Washington Supreme Court has found facial overbreadth where even "[a] moment's

reflection" elicits examples of protected speech impacted by the statute. *State v. Immelt*, 173 Wn.2d 1, 9, 267 P.3d 305 (2011).

In *Immelt*, the Washington Supreme Court held that a county ordinance prohibiting horn honking was facially overbroad because, in part, the court could easily conceive "numerous occasions in which a person honking a vehicle horn will be engaging in speech intended to communicate a message[.]" *Id*. These hypothesized examples were sufficient to determine that the statute posed a realistic danger to First Amendment protections. *Id*.

Conversely, in *Knowles*, the court asked a narrower question to assess whether the definition of threats in RCW 9A.04.110, in the context of an intimidating a judge statute, posed a realistic danger to First Amendment protections: is there a "realistic danger that a prosecutor would bring charges"? *Knowles*, 91 Wn. App. at 380. This question of actual prosecution does not appropriately measure the threat posed to free speech. The chilling effect of overbreadth exists regardless of the specifics of enforcement. The mere threat that the State *could* enforce a statute may lead some to choose not to speak. Moreover, courts have found statutes overbroad even where the government explicitly promises not to prosecute protected speech. *See Stevens*, 559 U.S. at 480.

ii. Harsh or offensive criticism of public officials is constitutionally protected speech

The right to petition the government is "one of the most precious of the liberties safeguarded by the Bill of Rights." *Lozman v. City of Riviera Beach, Fla.*, 138 S. Ct. 1945, 1954, 201 L. Ed. 2d 342 (2018) (quoting *BE & K Constr. Co. v. NLRB*, 536 U.S. 516, 524, 122 S.Ct. 2390, 153 L.Ed.2d 499 (2002)). Our democratic institutions rely on a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open" and part of that commitment includes protecting criticism that is "vehement, caustic, and sometimes unpleasantly sharp[.]" *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964).

Public servants may at times be unfairly subjected to harsh, offensive, and even alarming language by citizens of the State. But a citizen's right to criticize their government is safeguarded "even though it may advocate action which is highly alarming to the target of the communication[.]" *Williams*, 144 Wn.2d at 209. Moreover, the freedom to challenge police actions without the threat of arrest is a fundamental pillar of a free society. *State v. E.J.J.*, 183 Wn.2d 497, 507, 354 P.3d 815 (2015) (citing *City of Houston v. Hill*, 482 U.S. 451, 462-63, 107 S. Ct. 2502, 96 L. Ed. 2d 398 (1987)). In the context of RCW 9A.76.180, the State can only prohibit criticism that "fits under the narrow category of a

'true threat'", *Williams*, 144 Wn.2d at 209, or falls within the other limited categories of speech that exist outside of constitutionally protected speech. *See Stevens*, 559 U.S. at 468-69. Speech directed at police and other public officials requires robust constitutional protection in order to avoid chilling legitimate – though sometimes difficult to hear – criticism of government officials and activities.

iii. The State cannot demonstrate that the burden on protected speech is constitutionally permissible

RCW 9A.76.180 prohibits a real and substantial amount of constitutionally protected speech. "Content-based restrictions on speech are presumptively unconstitutional and are thus subject to strict scrutiny." *Williams*, 144 Wn.2d at 208 (quoting *Collier v. City of Tacoma*, 121 Wn.2d 737, 748–49, 854 P.2d 1046 (1993)). Nonpublic forum analysis is inapplicable in this context, therefore the State cannot demonstrate that the exceedingly broad definition of threat is narrowly tailored to their interests. However, even if the court adopts a lower standard of review, the State cannot demonstrate that the statute is a reasonable regulation of speech.

1. Public forum analysis is problematic when examining the constitutionality of RCW 9A.76.180

Some courts have erroneously concluded that RCW 9A.76.180 is permissible because the regulated speech occurs in a nonpublic forum,

where the State need only show the restrictions are reasonable and viewpoint neutral. *See Stephenson*, 89 Wn. App. at 794; *see also Knowles*, 91 Wn. App. at 380. This Court should not follow this approach to deciding overbreadth cases.

Public forum analysis is a tool for adjudicating speech restrictions on government property. It is not an appropriate analysis to determine whether RCW 9A.76.180 is facially overbroad. Nothing in the plain text of the statute specifically limits the scope to only speech that occurs or even would reasonably be expected to occur on government property. Moreover, it is easy to conceive of numerous examples of speech covered by the statute that could occur almost anywhere. Citizens interact with police officers, city employees, and other public servants in public and private spaces on a daily basis. Limiting the analysis to speech occurring on government property, or even more restrictively to speech occurring only in a nonpublic forum, does not address the breadth of speech covered by the statute.

The court in *Stephenson* recognized that RCW 9A.76.180 "could apply to communications made in either a public or private forum," but assumed that "[t]he sender of messages designed to frighten public officers into making official decisions based upon fears and concerns for their personal welfare . . . generally will not disseminate the messages

using forums traditionally used by the public for assembly, speech, or debate. Thus, we apply the standards for private speech." *Stephenson*, 89 Wn. App. at 802–03. While this assumption may be accurate for true threats, it is certainly not true for an interaction with a police officer on a public street, or a discussion with an elected official at a public meeting. Threats made in these contexts are unconstitutionally prohibited by the statute and not appropriately addressed by a narrow conception of threats only occurring in a nonpublic forum.

2. The State cannot demonstrate that RCW 9A.76.180 is narrowly tailored to promote the interests of protecting public officials and the integrity of governmental decision-making

"Where a statute regulates protected speech we view it with suspicion." *Williams*, 144 Wn.2d at 208. "If a statute regulates speech based on its content, it must be narrowly tailored to promote a *compelling* Government interest." *Williams*, 144 Wn.2d at 211 (quoting *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 813, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000)). "[T]he burden is on the government to establish that an impairment of a constitutionally protected right is necessary to serve a compelling state interest[.]" *Williams*, 144 Wn.2d at 208–09 (citing *Lorang*, 140 Wn.2d at 29–30 (2000)).

Courts have determined that the intent of RCW 9A.76.180 is: (1) to protect public servants from threats of substantial harm based upon the discharge of their official duties; (2) to protect a fair and independent decision-making process; and (3) to maintain public confidence in democratic institutions by deterring the intimidation and threats that lead to corrupt decision making. *Stephenson*, 89 Wn. App. at 803–04. Amicus agrees that these are important government interests, and does not argue that the crime of intimidating a public servant is itself unconstitutional. Rather, the extraordinary breadth of speech proscribed by the statute demonstrates that the statute is not narrowly tailored, rendering the statute unconstitutional.

For example, the speech proscribed by the statute is not limited to acts which would cause substantial harm - such as bodily injury - to public servants. Instead, the statute prohibits a broad swath of constitutionally permissible speech that might cause legitimate harms such as embarrassment, the loss of an elected office, or the apprehension of a legitimate lawsuit.

Moreover, the breadth of the statute chills, rather than encourages, speech that furthers the public interest in fair and independent decision-making and public confidence in democratic institutions. Amicus agrees that police officers and prosecutors should have appropriate tools to

protect democratic institutions from harm. Statutes that criminalize conspiracy, bribery, corruption, and extortion all serve this purpose by prohibiting a specific wrongful act. While RCW 9A.76.180 may prohibit some of those same harms, it also prohibits speech our democracy values as legitimate, important, and normatively good. The resulting chilling effect is particularly acute in the context of RCW 9A.76.180 where, unlike bribery or extortion, the underlying act of attempting to influence a public official is not inherently wrongful. Citizens' legitimately and appropriately attempt to influence public officials on a daily basis in furtherance of the interests of fair and independent decision-making. Access to public officials and the ability to criticize - sometimes using words that are threatening, provocative, or harsh – promotes transparency and inspires public confidence in democratic institutions. The threat of prosecution under RCW 9A.76.180 is an unacceptable impediment to legitimate speech in furtherance of the same interests that are the basis of RCW 9A.76.180.

A high constitutional bar is necessary and appropriate for restrictions that proscribe constitutionally valuable speech. RCW 9A.76.180 is not narrowly tailored to the government's interests and is therefore overbroad.

3. *The State cannot justify RCW 9A.76.180 even under a lesser standard of review*

Even if this Court adopts nonpublic forum analysis, the State cannot justify RCW 9A.76.180 as a reasonable regulation of speech. This Court can look to its own decision in *Ivan* as a guide. *Ivan*, 71 Wn. App. at 152–53. In *Ivan*, the court found the Seattle Municipal Code section governing coercion unconstitutional based on a broad definition of threat that "prohibits a wide range of communications beyond mere fighting words and other non-protected speech."[5] *Id*. at 151. The sheer breadth of the threat definition – essentially identical to the threat definition under RCW 9A.76.180 – made it impossible for the court to find that the ordinance was reasonable. *Ivan*, 71 Wn. App. at 153.

While *Stephenson* attempts to distinguish the overbreadth analysis in *Ivan*, the court's reasoning is not persuasive. *Stephenson* dismisses

[5] The definition of threat in Seattle, Wash., Mun. Code § 12A.08.050(L) is almost identical to the definition of threat used in the Intimidating a public servant statute: "'Threat' means to communicate, directly or indirectly, the intent: (1) To cause bodily injury in the future to another; or (2) To cause damage to the property of another; or (3) To subject another person to physical confinement or restraint; or (4) To accuse another person of a crime or cause criminal charges to be instituted against another person; or (5) To expose a secret or publicize an asserted fact, whether true or false, tending to subject another person to hatred, contempt or ridicule; or (6) To reveal significant information sought to be concealed by the person threatened; or (7) To testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or (8) To take wrongful action as an official against anyone or anything, or wrongfully withhold official action, or cause such action or withholding; or (9) To bring about or continue a strike, boycott, or other similar collective action with the intent to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or (10) To do any other act which is intended to harm substantially any person with respect to his health, safety, business, financial condition, or personal relationships."

Ivan on the basis that "[t]he public's interest in open and fair government decision making provides a far more compelling justification" for restrictions on speech than the public interest in preventing coercion. *Stephenson*, 89 Wn. App. at 806. However, increasing the significance of the interest fails to solve the fundamental problem identified in *Ivan* – the breadth of the threat definition is inconsistent with a narrowly tailored or even reasonable regulation of speech.

Stephenson also observed that the court in *Ivan* considered "all the definitions of 'threat' contained in the challenged ordinance," rather than the single subsection charged by the State in the case before them.[6] *Stephenson*, 89 Wn. App. at 806. The court noted that *Ivan* had no specific criticism of that specific subsection. *Stephenson*, 89 Wn. App. at 807. But the court in *Ivan* conversely did not say any one subsection of the statute was not problematic. In fact, the court specifically considered whether parts of the statute were severable in order to save its constitutionality, but determined that "the statute in this case sweeps so broadly that no judicial reconstruction can save it." *Ivan*, 71 Wn. App. at 158.

iv. <u>The United States Supreme Court has found speech that is criminalized under RCW 9A.76.180 to be</u>

[6] The court in *Stephenson* limited their inquiry to RCW 9A.04.110(28)(j) which is identical to SMC 12A.08.050(L)(10) addressed in *Ivan*.

constitutionally protected and has found statutes overbroad with a similar scope as RCW 9A.76.180

The United States Supreme Court has found speech that is unambiguously within the scope RCW 9A.76.180 to be constitutionally protected. In *NAACP v. Claiborne Hardware*, African-American citizens advocating for desegregation and other race-related improvements in their community threatened boycotts of local white businesses unless public officials met their demands. *NAACP v. Claiborne Hardware*, 458 U.S. 886, 889-900, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982). When public officials failed to respond, the local NAACP instituted the boycott. *Id.* at 900. A speech given during the boycott also used strong, impassioned, and threatening language referencing potential violence. *Id.* at 902, 927-928. The Court held unanimously that such speech was constitutionally protected.

Similarly, the Court has found statutes overbroad that impact speech within the scope of RCW 9A.76.180. In *Hill*, the Court held that a statute criminalizing "assault[ing], strik[ing], or in any manner oppos[ing], molest[ing], abus[ing] or interrupt[ing] any policeman in the execution of his duty" was unconstitutionally overbroad. *Hill*, 482 U.S. at 455, 467. Although the statute prohibited true threats, it also covered "verbal interruptions of police officers" including "verbal criticism and challenge directed at police officers." *Id.* at 461. In striking the ordinance as

overbroad, the Court rightly observed that "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Id.* at 462-63.

RCW 9A.76.180 is so broad as to permit prosecution of threats of boycotts as leverage to force action on social justice issues, despite the Court's decision in *Claiborne Hardware*. RCW 9A.76.180 is also at least as broad as the statute in *Hill*, as threats intended to oppose or challenge police action place citizens at risk of arrest by Washington police officers for intimidating a public servant. *Cf. Seals v. McBee*, 898 F.3d 587, 590 (5th Cir. 2018) (striking down a substantially similar statute to RCW 9A.76.180 criminalizing "'the use of violence, force, or threats' on any public officer or employee with the intent to influence the officer's conduct in relation to his position" as facially overbroad using a similar rationale).

B. RCW 9A.76.180 is unconstitutionally void for vagueness

RCW 9A.76.180 is unconstitutionally vague. "An ordinance or statute is 'void for vagueness if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application.'" *City of Seattle v. Eze*, 111 Wn.2d 22, 26, 759 P.2d 366 (1988) (quoting *O'Day v. King Cty.*, 109 Wn.2d 796, 810, 749 P.2d 142

(1988)). A statute is unconstitutionally vague if it fails to provide either (i) adequate notice of what is prohibited, or (ii) adequate standards to prevent arbitrary enforcements. *Huff*, 111 Wn.2d at 929 (citing *Kolender v. Lawson*, 461 U.S. 352, 358, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)).

A statute fails to provide adequate notice if "persons of ordinary intelligence are obliged to guess as to what conduct the ordinance proscribes," *City of Spokane v. Douglass*, 115 Wn.2d 171, 179, 795 P.2d 693 (1990), but "[i]mpossible standards of specificity are not required." *State v. Dougall*, 89 Wn.2d 118, 121, 570 P.2d 135 (1977). Likewise, a statute fails to provide adequate standards if it "proscribes conduct by resort to 'inherently subjective terms.'" *Douglass*, 115 Wn.2d at 181 (quoting *State v. Maciolek*, 101 Wn.2d 259, 267, 676 P.2d 996 (1984)).

Put simply, a statute is unconstitutional if it "invites an inordinate amount of police discretion" in its enforcement. *Am. Dog Owners Ass'n v. City of Yakima*, 113 Wn.2d 213, 216, 777 P.2d 1046 (1989) (quoting *State v. Worrell*, 111 Wn.2d 537, 547, 761 P.2d 56 (1988)).

The definition of threats in RCW 9A.76.180 fails both the adequate notice and adequate standards requirements. The broad definition encompasses many legitimate activities that make it difficult for a person of ordinary intelligence to determine whether something they believe is an appropriate exercise of free speech (e.g., threatening to sue a police officer

during a wrongful arrest, or threatening to run against an incumbent if they support a particular piece of legislation) could lead to arrest or prosecution. Moreover, several of the statutory terms (e.g., "expose a secret . . . tending to subject any person to hatred, contempt, or ridicule" (RCW 9A.04.110(28)(e)), "publicize an asserted fact" (*id.*), "reveal any information sought to be concealed" (RCW 9A.04.110(28)(f)), "do any other act which is intended to harm substantially . . . with respect to his or her health, safety, business, financial condition, or personal relationships" (RCW 9A.04.110(28)(j)) are so subjective that they are rendered meaningless. This subjectivity grants police significant discretion to decide whether or not to enforce RCW 9A.76.180 against perfectly legitimate speech. How does an officer decide whether a threat to expose an affair of a politician unless they end the activity reaches a criminal level of "intended to harm substantially. . . personal relationships"? What guidelines constrain a police officer in arresting a citizen intending to speak at a city council meeting and share evidence of private messages with racist content sent between city councilors unless the councilors make an official public statement about the issue, since that information is "sought to be concealed" or may "expose a secret" and will likely subject the city councilor to "hatred, contempt, or ridicule"? The exceedingly broad statutory language fails to provide adequate notice to citizens of

prohibited conduct, and grants police significant discretion to enforce the law against constitutionally protected speech. As a result, the statute is unconstitutionally void for vagueness.

IV. CONCLUSION

For the foregoing reasons the court should find RCW 9A.76.180 unconstitutional as it is overbroad and void for vagueness.

Dated this 22nd day of March, 2019.

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March 22, 2019 - 4:48 PM

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