STATE OF MAINE

MAINE SUPREME JUDICIAL COURT

SITTING AS THE LAW COURT

***LAW COURT DOCKET NO. KNO*-25-10**

Pat Doe,

Appellee

v.

Jeffrey James Weymouth,

Appellant.

ON APPEAL FROM THE ROCKLAND DISTRICT COURT

BRIEF OF APPELLANT

May 12, 2025

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STATEMENT OF THE CASE

Appellant Jeffrey James Weymouth and Appellee [redacted] lived together during their marriage in a family camp [redacted]. Tr. 190. The [redacted] home is owned by Mr. Weymouth's mother, Rosemary. Tr. 190. Toward the end of the marriage, [redacted] moved to a house in [redacted]. Tr. 190. The parties share a nine-year-old daughter. Tr. 190.

The parties divorced in September 2024, and both parties agreed to a divorce judgement. Tr. 190. Under the agreed-to divorce judgment, Mr. Weymouth was required to pay [redacted] an equalization payment of $100,000 within thirty days. Tr. 190; App. 37. The judgment also required Mr. Weymouth to submit to daily breath alcohol testing via SoberLink. Tr. 190. Pursuant to the judgment, if Mr. Weymouth missed or failed a test, he would not be allowed to see his daughter for fourteen days. Tr. 11-12. The parties were awarded shared parental rights and responsibilities, and contact was structured on a two week rotating schedule that included substantial contact with Mr. Weymouth. App. 36-37.

On November 12, 2024, [redacted] filed a Complaint for Protection From Abuse. App. 16. In the Complaint, [redacted] described three actions by Mr. Weymouth – a Facebook post, a "loudly slammed" mailbox, and a poster. App.

20. A hearing was held on December 03, 2024. App. 5.

The Facebook Post

App. 66.

On September 29, 2024 – three days after the parties' divorce was finalized – Mr. Weymouth posted a photograph of himself on Facebook. Tr. 155. When Mr. Weymouth posted the picture [redacted] could not directly see the picture because Mr. Weymouth had "defriended" [redacted] after the divorce. Tr. 58-61, 66, 155-56. [redacted] only saw the Facebook post because a screenshot of the post was sent to her by one of her friends. Tr. 60.

The picture in the Facebook post was staged in several ways. First, Mr. Weymouth was wearing a hat that said, "This actually was my first rodeo and last." Tr. 23; App. 66. Mr. Weymouth testified that this was in reference to the fact that he would "never get married again." Tr. 155; App. 66. Next, a book titled *The First Pancake: A Recipe for Delectable Life Transitions* was behind Mr. Weymouth on a shelf.[1] Tr. 23; App. 66. Additionally, Mr. Weymouth is smiling in the picture. App. 66. Finally, Mr. Weymouth had his hand up with his ring finger down and there was a fake plastic finger wearing a wedding band on a table behind him. Tr. 23; App. 66. The fake plastic finger was a Halloween decoration. Tr. 155. According to Mr. Weymouth, the Facebook post was a

[1] *See generally* Tory G. Wilcox, *The First Pancake: A Recipe for Delectable Life Transitions* (2008). The book is a self help book that provides guidance to people undergoing life transitions. *See id.*

message to his friends who knew that he had been in an unhappy marriage and was going through a contentious divorce. Tr. 156. He testified that the Facebook post was an expression that he "was relieved to be out of [his] marriage." Tr. 155.

On the other hand, [redacted] claimed that the hand gesture was depicting "the shocker" – a sex act where one person inserts their index and middle finger into a woman's vagina and inserts their little finger into a woman's anus. Tr. 27. [redacted] did not testify that the image was violent.[2] *See* Tr. 27-28. When asked why she viewed the image as a threat, [redacted] testified that she viewed the image as "crude and rude and lewd" and "a construction of meanness." Tr. 66. When asked on direct examination how she interpreted and reacted to the post, [redacted] stated that "[i]t's pretty gross" and expressed concerns their "daughter is not very far away from seeing social media." Tr. 28. Additionally, [redacted] testified that she believed that the Facebook post was "a veiled threat" to her. Tr. 28.

The District Court (Mattson, J., Rockland) found that Mr. Weymouth's hand gesture was "a double entendre." Tr. 191. On one hand, the District Court found that the "fake plastic finger with a wedding band on it, means in some

[2] On direct, Ms. Weymouth was asked whether "the shocker" was "a lewd, violent sexual act." Tr. 26. Defense counsel objected and the Court ruled that Plaintiff's counsel including the word violent was leading. *See* Tr. 26-27. Additionally, the Court stated that "[i]f the witness believes ["the shocker" gesture] has a violent connotation, I think she's going to explain that." Tr. 27. She did not.

way that Mr. Weymouth is done with marriage. That's clear." Tr. 191. On the other hand, "the finger arrangement also refers to a sex act and Mr. Weymouth was aware of that and he knew that that meaning was being conveyed." Tr. 191. Additionally, the District Court found that the "severed finger" was "inherently violent" because it "implies violence to self or others." Tr. 191. Finally, the District Court found that the Facebook post was directed at [redacted] and Mr. Weymouth "was aware that [redacted] was likely to see [the] post." Tr. 191.

The Mailbox

A few days later, on October 4, 2024, Mr. Weymouth went to [redacted]'s home to drop off child support. Tr. 29. [redacted]'s car was in the driveway. Tr. 29. Mr. Weymouth put a child support check in the copper mailbox and closed it, creating a loud noise. Tr. 154. This noise scared [redacted] Tr. 30. Shortly after, Mr. Weymouth sent a message to [redacted] stating that he "just dropped off [her] weekly subsidy check." Tr. 31; App. 68.

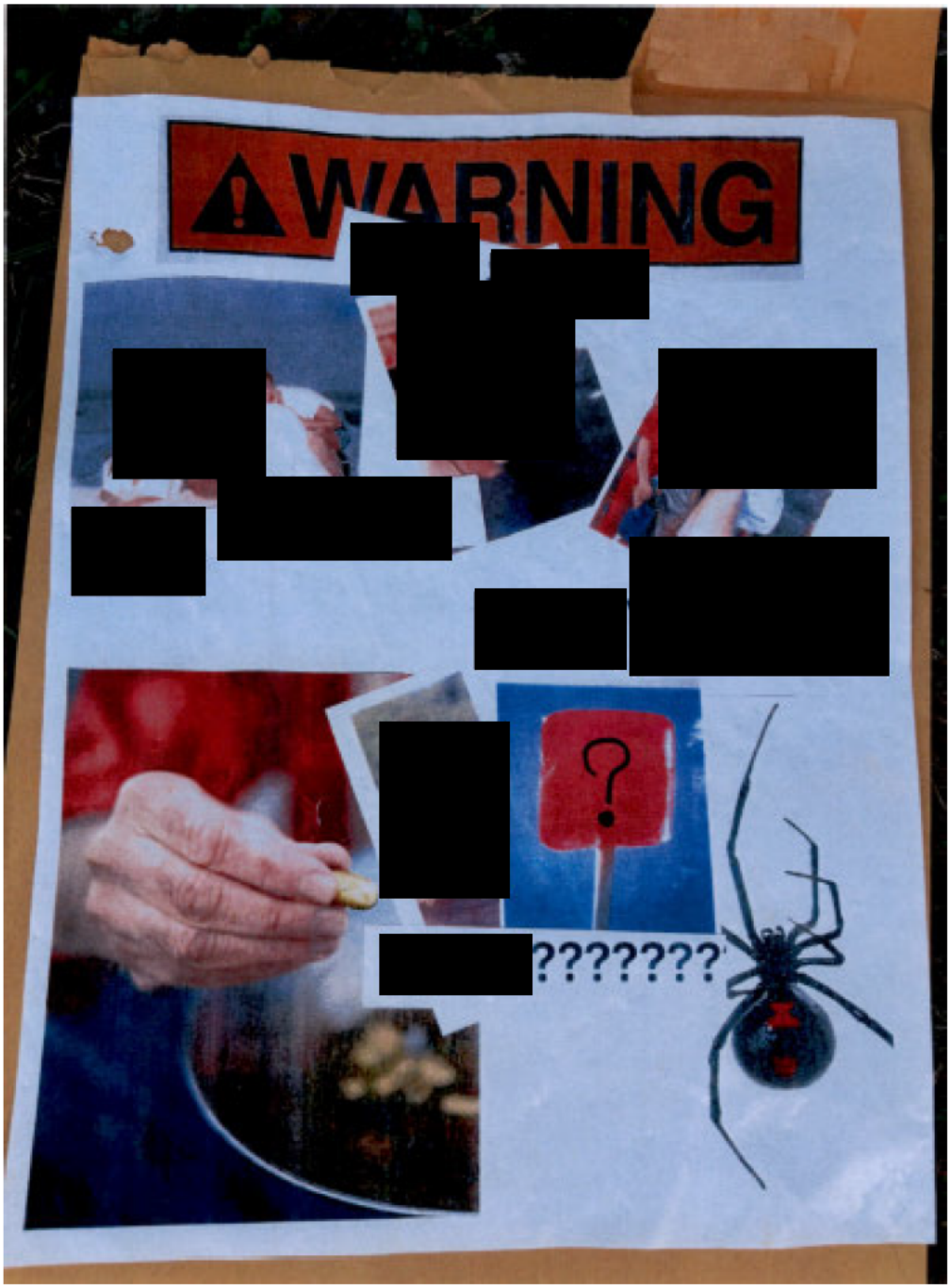
Regarding the mailbox incident, the District Court found that:

> "Mr. Weymouth slammed a metal mailbox at the residence in [redacted], [redacted]'s residence. He knew that would create a lot of noise. I find that [redacted]'s vehicle was there at the time, and he would have known when she was there. And then [redacted] had asked him to put money into her account through direct deposit rather

than delivering it by hand or by mail. And then on October 4th, Mr. Weymouth sent [redacted] an email referring to the child support payment as "a subsidy."

Tr. 191-92.

The Poster



App. 69.

In early November 2024, a poster containing "symbolism" and "double meanings" was created and left in [redacted]'s neighborhood. Tr. 34, 192-93. According to [redacted], her neighbor's son found the poster and then [redacted]'s neighbor gave the poster to her. Tr. 35-36. At the top of the poster was the word "Warning." Beneath that, there were three pictures of [redacted] with her three ex-husbands. Tr. 36-38; App. 69. Next to each picture was her first name as well as her ex-husband's last name. App. 69. Additionally, the poster included a picture of [redacted] next to a lollipop – or "sucker" – with a question mark inside. App. 69. Beneath this picture was [redacted]'s first name and several question marks. App. 69. Finally, the poster had a picture of a black widow spider and a picture of a hand holding a piece of gold. Tr. 39; App. 69. [redacted] testified that she believed the black widow spider represents a "bad woman going through life killing her husbands." Tr. 39. Mr. Weymouth testified that a "black widow usually kills the man that she's married to." Tr. 172.

Rosemary Weymouth – Mr. Weymouth's mother – testified that she alone was responsible for making and distributing the poster. Tr. 109-27. Rosemary testified that she was frustrated and hurt by [redacted] after the divorce. Tr. 111-12. Rosemary heard from multiple people that [redacted] said that she was "toxic." Tr.

106-12. She began making the poster right after [redacted] did not allow Rosemary to take her granddaughter shopping for dance outfits. Tr. 114, 137. Later, she finished the poster to let out her aggression. Tr. 121-22. She used a program called SNAGIT to screenshot a picture of the word "warning" that she found online as well as the picture of a hand holding a piece of gold, the black widow spider, and the lollipop. Tr. 114; App. 69. She used the same program to screenshot three photographs of [redacted] that she found online – one photograph of [redacted] by herself, one of [redacted] and an ex-husband, and one of [redacted], Mr. Weymouth, and their children. Tr. 117-18; App. 69. Regarding a photograph of [redacted] with her two daughters and first husband, Rosemary testified that she found the pictures in [redacted]'s daughter's bedroom after they moved out of Rosemary's home in Lincolnville. Tr. 117-118; App. 69. After creating the poster, Rosemary placed it in her purse. Tr. 122. Rosemary testified that the poster remained in her purse until she threw it out of the window of her car while she was driving. Tr. 123-26. Rosemary was driving home after a meeting in Bangor for the Maine Bead Society. Tr. 123-24. She was particularly frustrated with [redacted] because of recent issues between Mr. Weymouth and [redacted] that resulted in Mr. Weymouth – and Rosemary – being denied access to Mr. Weymouth's daughter. Tr. 124. The District Court did not find Rosemary's

testimony credible. Tr. 192. Instead, the Court surmised that Mr. Weymouth either created the poster or was involved in its creation and distribution. Tr. 193.

Like the Facebook post, the District Court found that the poster contained "symbolism" and "a double meaning." Tr. 192-93. The Court explained that "[i]t could be a warning to other men to look out for [redacted], or it could be a warning to [redacted]" Tr. 193. Furthermore, the Court found that the black widow spider "conveys violence" and "symbolizes domestic violence homicide." Tr. 193 ("There's no other way to put that."). The Court failed to include in its findings the only evidence in the record about the symbolism of a black widow spider – namely, that to the extent it symbolizes violence, it symbolizes violence by women against men. Tr. 39, 172, 193. Both Mr. Weymouth and [redacted] testified that a black widow represents a woman who kills her male partner. Tr. 39, 172.

During closing arguments, defense counsel argued that Mr. Weymouth's First Amendment rights would be violated if the court issued a Protection from Abuse Order based on disparaging comments Mr. Weymouth made about his ex-wife. Tr. 185-86. The Court disagreed. The Court held that the Facebook post, the mailbox incident, and the poster, was a "course of conduct including

harassing, tormenting, or threatening behavior" through which Mr. Weymouth "attempted to place [redacted] in fear of bodily injury and that she was, in fact, placed in fear of bodily injury." Tr. 193. Additionally, the Court also held that Mr. Weymouth "consciously disregarded a substantial risk that his speech would put [redacted] or a reasonable person in her position in fear of bodily injury." Tr. 194.

As a result, the Court ordered, among other things, that Mr. Weymouth "is prohibited from having any contact, direct or indirect, with [redacted]" App. 7-8. Additionally, the Court awarded [redacted]. sole parental rights and responsibilities of their child and limited Mr. Weymouth's contact to [redacted]'s discretion. App. 9-10. Finally, the District Court's Order prohibits Mr. Weymouth from possessing firearms and ordered him to relinquish all firearms. App. 9.

Mr. Weymouth is in recovery from alcohol use disorder. Tr. 190. He abused alcohol towards the end of his marriage and went to a four-week in-patient rehab program. Tr. at 148-49. After five months of sobriety, Mr. Weymouth had a slip in July of 2024. Tr. 149, 153. Additionally, in the fall of 2024, Mr. Weymouth missed a SoberLink test on September 27th, October 8th, 10th, and 11th, and November 4th.[3] App. 47.

[redacted] testified that Mr. Weymouth struggles with depression. Tr. 10. [redacted]

[3] On September 24th and November 7th Mr. Weymouth had a noncompliant test but then submitted a compliant test. App. 49-56.

testified that Mr. Weymouth expressed suicidal thoughts to her and said that if he died by suicide, he would use a gun to end his life. Tr. 10-11, 190. At times he had problems with anger management. Tr. 31. Additionally, Mr. Weymouth owns multiple firearms. Tr. 10-11, 190.

There was no evidence presented at the hearing of any prior violence, threats, or aggressive conduct by Mr. Weymouth toward [redacted]. or anyone else. *See* Tr. 5-98. [redacted] did not testify that Mr. Weymouth physically harmed her, explicitly threatened her with violence, or engaged in any physically intimidating behavior. *See* Tr. 5-98. While [redacted] testified that Mr. Weymouth has "anger issues," Tr. 31, she did not describe any incidents where Mr. Weymouth directed anger at her or engaged in threatening behavior, *see* Tr. 5-98. There was also no testimony or evidence that Mr. Weymouth had a history of violent behavior toward others. *See* Tr. 5-98.

STATEMENT OF THE ISSUES

1. Whether a finding of abuse to issue a Protection from Abuse Order violates the First Amendment when it is based on a Facebook post conveying relief to be finished with marriage and a poster containing non-violent messages about an ex-partner.

2. Whether the District Court committed clear error by finding that Mr. Weymouth expressions of relief and frustration following a protracted divorce attempted to place or placed [redacted] in fear of bodily injury through a course of conduct, including, but not limited to, threatening, harassing or tormenting behavior.

SUMMARY OF THE ARGUMENT

A. Standards of Review

The Law Court reviews constitutional violations – including First Amendment violations – *de novo*. *See Gray v. Dept. of Pub. Safety*, 2021 ME 19, ¶ 13, 248 A.3d 212; *State v. Hassan*, 2018 ME 22, ¶ 11, 179 A.3d 898.

The Law Court "review[s] a trial court's finding of abuse for clear error 'and will affirm a trial court's findings if they are supported by competent evidence in the record, even if the evidence might support alternate findings of fact.'" *Walton v. Ireland*, 2014 ME 130, ¶ 22, 104 A.3d 883 (quoting *Handrahan v. Malenko*, 2011 ME 15, ¶ 13, 12 A.3d 79)

B. Legal Arguments

At the end of a nine-year marriage and a protracted divorce, Mr. Weymouth was frustrated and relieved. For expressing these feelings, the District Court issued Mr. Weymouth a two-year Order that strips him of contact with his daughter, prohibits him from possessing firearms, and severely restricts his constitutional rights. More strikingly, the Court removed his parental rights by awarding sole parental rights to [redacted]. No threats were made. No physical contact occurred. There is no history of violence, no credible evidence of an intent to cause fear, and no allegation of physical harm – ever.

At worst, Mr. Weymouth's speech could be interpreted as immature, symbolic, and nonviolent. The Court's overreach not only punishes protected expression – it sends a dangerous and chilling message: speak out after a breakup, and you risk losing your child, your rights, and your reputation.

The District Court's decision violates Mr. Weymouth's First Amendment rights because the Facebook post and the poster are protected speech. Although certain narrow categories of speech, such as "true threats," may be regulated, a "true threat" requires both an objective and a subjective showing – the statement must objectively convey a serious expression of an intent to commit unlawful violence, and the speaker must subjectively have consciously disregarded a substantial risk that the statement would be perceived that way. *Counterman v. Colorado*, 600 U.S. 66, 74-82 (2023). Neither element is satisfied here. The Facebook post and the poster contain no explicit references to violence or conveyed a serious threat when viewed in any reasonable context. At worst, Mr. Weymouth's speech was immature and reactionary. Mr. Weymouth did not reasonably place [redacted] in fear of bodily harm, especially given the absence of any history of violence or physical aggression. *See* Tr. 5-96. Moreover, there is no evidence that Mr. Weymouth consciously disregarded a substantial risk that his speech would be interpreted as a threat. Because

the objective and subjective elements required under *Counterman* are not met, the District Court's Order punishes constitutionally protected expression and must be vacated.

The District Court clearly erred in finding that Mr. Weymouth committed "abuse" under 19-A M.R.S. § 4102(1)(B). Because the Facebook post and the poster are protected speech, they cannot support a finding of a "course of conduct" as required by the statute, leaving only the mailbox incident. Slamming a mailbox and sending a message about child support is not "threatening, harassing, or tormenting" behavior under the plain meaning of those terms, which require conduct far more serious than what occurred here. Furthermore, even if [redacted] subjectively felt scared, her reaction to the mailbox incident was not objectively reasonable because it was a one-time, nonviolent act, with no direct confrontation, no prior threats, and no evidence that Mr. Weymouth intended harm. Stretching the law this far turns ordinary bitterness and the frustration of divorce into an offense punishable by court order. Accordingly, the District Court's finding of abuse must be reversed.

LEGAL ARGUMENT

I. The District Court's decision violates Mr. Weymouth's First Amendment Right and Me. Const. art. I, § 4.

The First Amendment to the United States Constitution guarantees that

"Congress shall make no law … abridging the freedom of speech." U.S. Const. amend. I; *see also* Me. Const. art. I, § 4 ("Every citizen may freely speak, write and publish sentiments on any subject[.]"). "The hallmark of the protection of free speech is to allow 'free trade in ideas' – even ideas that the overwhelming majority of people might find distasteful or discomforting." *Virginia v. Black*, 538 U.S. 343, 358 (2003) (quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)); *see also Watts v. United States*, 394 U.S. 705, 708 (1969) (explaining that the First Amendment protects "vehement, caustic, and sometimes unpleasantly sharp attacks" as well as language that is "vituperative, abusive, and inexact"); *Boos v. Barry*, 485 U.S. 312, 322 (1988) (quotation omitted) ("[C]itizens must tolerate insulting, and even outrageous, speech in order to provide 'adequate "breathing space" to the freedoms protected by the First Amendment."); *Fed. Election Comm'n v. Wis. Right To Life, Inc.*, 551 U.S. 449, 474 (2007) ("Where the First Amendment is implicated, the tie goes to the speaker, not the censor.").

Although the protections afforded by the First Amendment are not absolute, the government may only regulate "certain well-defined and narrowly limited classes of speech." *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571-72 (1942); *see also Counterman v. Colorado*, 600 U.S. 66, 73-74 (2023). The

Supreme Court has "'often described [those] historically unprotected categories of speech as being of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest' in their proscription." *Counterman*, 600 U.S. at 73-74 (alterations in original) (quoting *United States v. Stevens*, 599 U.S. 460, 470 (2010)).

Relevant here, one category of unprotected speech is true threats of violence. *E.g.*, *Counterman*, 600 U.S. at 74. "True threats are 'serious expression[s]' conveying that a speaker means to 'commit an act of unlawful violence.'" *Counterman*, 600 U.S. at 74 (alterations in original) (quoting *Black*, 538 U.S. at 359); *State v. Labbe*, 2024 ME 15, ¶ 47 n.18, 314 A.3d 162. "[J]ests, 'hyperbole,' or other statements that when taken in context do not convey a real possibility that violence will follow" are not *true* threats. *Counterman*, 600 U.S. at 74.

For speech to qualify as a "true threat," objective and subjective conditions must be met. *See id.* at 74-82. First, the statement must objectively convey a threat. *Id.* at 74. This means that a reasonable person would interpret the statement as conveying a serious expression of an intent to commit an act of unlawful violence. *Id.*; *Labbe*, 2024 ME 15, ¶ 47 n.18, 314 A.3d 162. Second, the First Amendment requires proof that the speaker had a subjective

awareness of the threatening nature of the statement. *Counterman*, 600 U.S. at 77. The minimum level of mens rea permitted is recklessness – that is, a conscious disregard of a substantial risk that the statement would be interpreted as a threat. *Id.* at 79-80.

Here, Mr. Weymouth posted a tongue-in-cheek photograph to Facebook at the close of a nine-year marriage. Around the same time, a poster critical of [redacted]'s romantic history appeared in her neighborhood – a poster that Mr. Weymouth consistently denied creating or distributing. There were no threats, no violent words, and no context suggesting danger. Furthermore, nothing in the record shows that Mr. Weymouth consciously disregarded a substantial risk that his speech would be taken that way. Therefore, neither the objective nor the subjective elements required under *Counterman* are met. Accordingly, the Court's Order violates Mr. Weymouth's First Amendment right to freedom of speech.

A. The Facebook post and the poster are not "true threats."

In this case, although the contents of the Facebook post and the poster may have been childish, immature, or inconsiderate, a reasonable person would not interpret them as conveying a serious expression of an intent to commit an act of unlawful violence because (A) there are no explicit references

to violence in either image and (B) there is no context that would cause the speech to be interpreted as a serious expression of an intent to commit an act of unlawful violence.

1. There is no explicitly threatening language or explicit references to violence.

Although not required under the true threats test, courts find that speech qualifies as a true threat when it includes explicitly threatening language or explicit references to violence.[4] *See State v. Cook*, 947 A. 2d 307, 311, 319 (Conn. 2008) (internal quotation marks omitted) (brandishing table leg with metal stick protruding from one end, defendant told victim, "[t]his is for you if you bother me anymore"). In this case, the Court found that the Facebook post and the poster contained violent references. However, this is not supported by the record.

The Facebook Post. First, the plastic finger in the Facebook post is not a violent reference – it is a Halloween prop and a joke. The Court correctly found that the plastic finger "means in some way that Mr. Weymouth is done with marriage." Tr. 191 ("That's clear."). However, the leap to interpreting it as

[4] Importantly, speech that has an expressive purpose other than to instill fear in another may be explicitly threatening and still fail to rise to the level of a true threat. *Watts*, 394 U.S. at 706 (statement explicitly threatening to shoot the President was, given its context, "political hyperbole" and not a "true threat").

"impl[ying] violence to self or others" and "inherently violent" is unreasonable and not supported by the record. Tr. 191. Most importantly, no witness testified that they interpreted the finger as violent. The only testimony regarding the symbolism of the finger came from Mr. Weymouth who testified that it represented his "relie[f] to be out of [his] marriage." Tr. 155.

The plastic finger is a Halloween decoration. This prop is the kind that one might expect to see at an elementary school Halloween party and is no more menacing than a plastic skeleton decoration. Using the District Court's logic, anyone who posts about Halloween could be accused of violent intent. But jokes – even offensive ones – are not "true threats." *See Counterman*, 600 U.S. at 74. However immature, the plastic finger was clearly symbolic and nonviolent. This is plainly true when viewing the Facebook post. Mr. Weymouth conveyed to his Facebook friends that he was done with his marriage, that he was not going to get married again, and that he cut his finger off to ensure that he would never be married again. He posted this three days after the parties' contentious and protracted divorce was finalized. It is unsurprising that Mr. Weymouth was frustrated and relieved to be done with his marriage. Additionally, even if the image of a severed finger is viewed as violent, it depicts self-mutilation – not violence directed at [redacted] Thus, even under the District

Court's harshest interpretation, there was no link to any threat of unlawful violence against her.

Second, Mr. Weymouth was not making "the shocker" gesture. As explained above, Mr. Weymouth was communicating to his Facebook friends that he was done with his marriage and marriage generally. To that end he posted a photograph with his ring finger bent down and a fake severed finger on a table. This was his tongue-in-cheek way of saying: "never again." By removing his ring finger it would be impossible for him to be married again. The other symbols in the picture make his message even more clear. He wore a hat reading, "This actually was my first rodeo and last," posed in front of a self-help book about life transitions, and smiled directly at the camera. Was it immature? Sure. Was it offensive to his ex-wife? Probably. But was it a threat? Absolutely not. It was a symbolic expression of his exacerbation and frustration with marriage and his relief for it to be over.

Despite all the evidence to the contrary, even if this Court were to believe that Mr. Weymouth intended to make "the shocker" gesture – there is still no basis for calling it violent. The District Court gave [redacted] every opportunity to testify as to why she believes that "the shocker" symbol is a violent gesture rather than just sexual. Tr. 27 ("If the witness believes this has a violent

connotation, I think she's going to explain that."). She did not. Regarding "the shocker," [redacted] testified that she viewed the image as "crude and rude and lewd" and "a construction of meanness." Tr. 66. Both parties testified that "the shocker" is understood as a sexual symbol. Tr. 26; 164-65. However, there is no evidence that suggests that "the shocker" is a violent gesture. Furthermore, there was no evidence that the gesture had anything to do with [redacted] There was no history of Mr. Weymouth using the gesture to intimidate, threaten, or target [redacted], and no testimony that she ever saw him use the gesture before. In fact, there is no evidence that Mr. Weymouth ever intimidated, threatened, or targeted [redacted]

The Poster. Finally, the black widow spider in the poster is not a violent reference. The District Court found that it "conveys violence" and "symbolizes domestic violence homicide." Tr. 193. However, that interpretation is not supported by the record or by common understanding. No witness testified that a black widow spider symbolized a man threatening a woman. In fact, the record reflects the opposite. Both [redacted] and Mr. Weymouth testified that a black widow spider represents a woman who kills her male partners. Tr. 39; 172. This is the established meaning behind the term "black widow" – a femme fatale who destroys the man she marries. *See* Kritika Rao & Amita Kanaujia,

Spiders in Mythology and Folklore: An Arachnophile's Interest, *in* Folklore Connect: Biodiversity and Wildlife 147 (Aruna Kumari Nakella. ed. 2023) (explaining that a "black widow spider" represents "a femme fatale who kills her sugar daddy spouse"). Interpreting this image as a threat of violence from Mr. Weymouth towards [redacted] flips its meaning on its head and disregards the testimony presented at trial and the common understanding of the black widow spider.

In this context, the message behind the black widow spider is crystal clear: [redacted] is someone who uses and discards men. The poster may be mean-spirited and juvenile, but it is not violent. The meaning is even more clear in the full context of the poster, which includes other satirical elements like a "sucker" lollipop, the word "warning," photographs of [redacted]'s ex-husbands, and a picture of a "gold digger." Moreover, the black widow spider is next to the space on the poster for the next husband. Taken together, it is an unflattering commentary on [redacted]'s romantic history – not a threat of violence. This kind of commentary, while potentially upsetting, is a far cry from "true threat."

2. The context between the parties would not cause a reasonable person to believe that Mr. Weymouth meant to convey a serious expression of an intent to commit an act of unlawful violence.

When speech does not contain explicit references to violence, Courts

find that it qualifies as a true threat only when the context makes it reasonable to believe that the speaker meant to convey a serious expression of an intent to commit an act of unlawful violence. *See e.g.*, *State v. Heffron*, 2018 ME 102, ¶ 11, 190 A.3d 232 (citation omitted) ("[C]ourts do not violate a defendant's First Amendment protections by issuing a protection from abuse order … where the defendant has a history of engaging in behavior that 'would cause a reasonable person to fear bodily injury and suffer emotional distress ….'").

First, Courts often consider whether there was a history of physical violence between the parties. *See United States v. Osinger*, 753 F.3d 939, 953 (9th Cir. 2014) (Watford, J., concurring) (reasoning that text messages did not "rise to the level of 'true threats' … given their context and the absence of any history of violence between" the parties). When there is no history of physical violence between the parties, courts may also look to other acts of aggression. *Cf. Smith v. Hawthorne*, 2002 ME 149, ¶ 18, 804 A.2d 1133 (reasoning that "[o]nce [defendant] physically struck [the victim's] car, it was objectively reasonable for her to fear that he might direct his escalating anger and physical aggression toward her").

In this case, there is no history of violence or aggression of any kind – physical or emotional. Mr. Weymouth never hit [redacted] Moreover, there's no

evidence that he's ever assaulted anyone. In fact, even though [redacted] testified that Mr. Weymouth has "anger issues," Tr. 31; 190, she offered no examples of that anger being directed at her or manifesting in threatening conduct. There is not a single allegation – let alone credible evidence – of Mr. Weymouth ever raising a hand, making a threat, or engaging in any act of intimidation towards [redacted] or anyone else. A summary conclusion by an aggrieved party that someone has anger issues without any description is wholly insufficient to transform the Facebook post and the poster into "true threats."

Second, Mr. Weymouth's previous statements about suicide do not transform the Facebook post or the poster into "true threats." [redacted] testified that Mr. Weymouth expressed suicidal ideations to her and that if he died by suicide, he would use a gun. Tr. 10; 190. However, there was no testimony of when these comments were made, how serious they were, or how they had any relation to the Facebook post or the poster. Moreover, even if [redacted] knew that Mr. Weymouth was suicidal at some previous time, that does not make it more likely that he would commit unlawful violence against her at the time of the Facebook post or the poster. In fact, research may even suggest the opposite. *See generally* Me. Coal. to End Domestic Violence, Maine Guidelines & General Scoring Criteria for the Ontario Domestic Violence Assault Risk Assessment 6,

18 (2019), https://dirigosafety.com/wp-content/uploads/2020/09/ODARA-guidelines-booklet-FINAL-x3.pdf (explaining that "threats of suicide" was "not predictive" of future acts of domestic violence and not considered when evaluating a criminal defendant's ODARA score). The Court's reasoning conflates self-harm with threats to others.

Third, legal firearm ownership – without a history of violence or misuse – does not change the context of the Facebook post or the poster. Mr. Weymouth has the right to own firearms. U.S. Const. amend. II; Me. Const. art. I, § 16. Mr. Weymouth exercises that right lawfully and responsibly. There is no evidence that Mr. Weymouth ever misused his firearms. There is no evidence that he has ever brandished a weapon, threatened anyone with a gun, or used firearms in a reckless or intimidating manner. Crucially, neither the Facebook post nor the poster contains any reference – direct or implied – to guns or gun violence. Therefore, Mr. Weymouth's gun ownership does not transform the Facebook post or the poster into "true threats."

In sum, because neither the Facebook post nor the poster contain explicit references to violence and because the surrounding context does not make it reasonable to interpret them as serious expressions of an intent to commit unlawful violence – they do not meet the legal standard for "true

threats." At worst, Mr. Weymouth's speech was immature or inconsiderate – but it was not dangerous or violent. These do not amount to "true threats." Accordingly, his expression is squarely protected by the First Amendment.

B. Mr. Weymouth did not consciously disregard a substantial and unjustifiable risk that the Facebook post or the poster would cause harm to [redacted]

1. The recklessness standard applies to "true threats" in protection from abuse cases.

The First Amendment free-speech guarantee is not confined to criminal prosecutions. *See e.g.*, *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 418 (1971) (applying First Amendment to a civil injunction based on speech); *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (applying First Amendment scrutiny to a civil defamation action). Although the *Counterman* decision involved a criminal stalking statute, the Court's holding rests on First Amendment principles that apply in all "true threat" cases. *See Counterman*, 600 U.S. at 75-78.

In *Counterman*, the Court held that the First Amendment demands "a subjective mental-state requirement shielding some true threats from liability" to avoid "a chilling effect" on speech. *Id.* at 75. As the Court explained:

> Prohibitions on speech have the potential to chill, or deter, speech outside their boundaries. A speaker may be unsure about the side

> of a line on which his speech falls. Or he may worry that the legal system will err, and count speech that is permissible as instead not. Or he may simply be concerned about the expense of becoming entangled in the legal system. The result is "self-censorship" of speech that could not be proscribed – a "cautious and restrictive exercise" of First Amendment freedoms.

Id. (internal citations omitted). The Court concluded that a "culpable mental state" was necessary in "true threat" cases to avoid self-censorship. *Id.* at 76-78. The Court explained that "[t]he speaker's fear of mistaking whether a statement is a threat; his fear of the legal system getting that judgment wrong; his fear, in any event, of incurring legal costs – all those may lead him to swallow words that are in fact not true threats." *Id.* at 77. Moreover, the Court held that "recklessness" satisfies the First Amendment's requirement for culpable mental state in true threat cases. *Id.* at 82 (explaining that the recklessness standard offers "offers 'enough "breathing space" for protected speech,' without sacrificing too many of the benefits of enforcing laws against true threats").

The same principles are true when applying the "true threats" doctrine to a protection from abuse case. The risk of self-censorship is no less acute simply because the proceeding is civil rather than criminal. The chill on speech

arises not from the label attached to the case, but from the threat of legal sanction, error, and entanglement with the judicial system. *See id.* at 75-77. Protection from abuse orders carries significant consequences, including potential arrest, 17-A M.R.S. § 506-B, restrictions on the constitutional right to possess firearms, 19-A M.R.S. § 4110(3)(B), restrictions on the constitutional right to free speech, 19-A M.R.S. § 4110(3)(D), (E)(2), (F), and reputational harm. In this case, for example, Mr. Weymouth lost all his rights as a parent because [redacted] was granted sole parental rights after the finding of abuse. *See* 19-A M.R.S. § 4110(3)(I). Because civil proceedings apply a lower burden of proof than criminal trials, the risk of error – and unconstitutional censorship – is even greater. Accordingly, the subjective recklessness standard articulated in *Counterman* must apply in protection from abuse cases involving "true threats."

2. Mr. Weymouth did not act "recklessly."

As explained above the Supreme Court held that "recklessness" satisfies the First Amendment's requirement for culpable mental state in "true threat" cases. *Counterman*, 600 U.S. at 82. A person acts recklessly when he "consciously disregard[s] a substantial [and unjustifiable] risk that the conduct will cause harm to another." *Id.* at 79 (alterations in original) (quoting *Voisine v.*

United States, 579 U.S. 686, 691 (2016)). Although recklessness "involves insufficient concern with risk, rather than awareness of impending harm," it still "involve[es] a 'deliberate decision to endanger another.'" *Id.* (quoting *Voisine*, 579 U.S. at 694). Specifically, in the context of threats, the Supreme Court explained that recklessness "means that a speaker is aware 'that others could regard his statements as' threatening violence and 'delivers them anyway." *Id.* at 79 (quoting *Elonis v. United States*, 575 U.S. 723, 746 (2015) (Alito, J., concurring in part and dissenting in part)).

The Facebook Post. First, regarding the Facebook post, Mr. Weymouth did not intend [redacted] to see the post, therefore, he was not aware of the risk that the post would cause her harm. Most significantly, Mr. Weymouth and [redacted] were no longer Facebook friends, so he was unaware she would ever see it. [redacted] only saw it become someone else took a screenshot and sent it to her. Without any reason to believe she would view the post, Mr. Weymouth could not "consciously disregard" any risk to her.

Moreover, Mr. Weymouth's hand gesture was not a violent reference. The clear message of the downturned ring finger and plastic finger with a wedding band was that he was done with marriage and never intended to marry again. The Court even credited this interpretation of the Facebook post. Tr. 191

(explaining that the "fake plastic finger with a wedding band on it, means in some way that Mr. Weymouth is done with marriage"). Even accepting the Court's finding that Mr. Weymouth was making "the shocker" gesture as part of a "double entendre," there was no evidence that Mr. Weymouth knew or should have known that [redacted] would interpret "the shocker" gesture as a threat of violence. The Court concluded only that Mr. Weymouth "was aware" that "the finger arrangement also refers to a sex act." Tr. 191. But sexual innuendo, even if crude or inappropriate, is not inherently violent. The Court's leap from vulgarity to violence is completely unsubstantiated.

The Poster. Second, the poster does not meet *Counterman*'s recklessness requirement. Mr. Weymouth unequivocally denied any involvement in its creation or distribution. Mr. Weymouth's mother Rosemary testified under oath that she alone created and distributed the poster. She was upset about the fallout from the divorce and the custody arrangement, which had impacted her ability to see her granddaughter. Even if the Court doubted her credibility, it pointed to no evidence showing that Mr. Weymouth was aware of the poster beforehand – let alone that he consciously disregarded a substantial risk that it would be perceived as threatening.

Even accepting the Court's finding that he created the poster, the record

does not support the finding that Mr. Weymouth recklessly threatened [redacted]. Both Mr. Weymouth and [redacted] testified that the black widow spider symbolized a woman who kills her romantic partners. This is the common meaning of a black widow spider. The black widow spider was clearly included to highlight [redacted]'s repeated failed marriages and the damage she inflicted on her three prior spouses – but there is no evidence in the record that Mr. Weymouth was aware of the risk that she would interpret the black widow spider as a threat of violence against her. The poster's plain meaning is a warning to other men who might get into a relationship with [redacted] – not a serious expression of an intent to commit unlawful violence against her. This is consistent with the common meaning of a black widow spider. There is no evidence that Mr. Weymouth was aware of, let alone consciously disregarded, a substantial risk that [redacted] would interpret the poster as a threat of bodily harm.

In sum, neither the Facebook post nor the poster contain the "deliberate decision to endanger" [redacted] required to satisfy the recklessness standard. Accordingly, there is no evidence that Mr. Weymouth consciously disregarded a substantial and unjustifiable risk that the Facebook post or the poster would cause harm to [redacted]. Thus, because the Facebook post and the poster are not "true threats" they are protected by the First Amendment.

II. Mr. Weymouth did not "abuse" M.W.

Pursuant to 19-A M.R.S. § 4102(1)(B), a person commits "abuse" by, among other things, "[a]ttempting to place or placing another in fear of bodily injury through any course of conduct, including, but not limited to, threatening, harassing or tormenting behavior."[5] When a "course of conduct" is "based on the content of the actor's speech, the actor must have consciously disregarded a substantial risk that the speech would place a reasonable person in fear of bodily injury." 19-A M.R.S. § 4102(1)(B).

Here, the Court committed clear error finding that Mr. Weymouth's conduct met the statutory definition of abuse. First, because the Facebook post and the poster are protected speech, there was not enough instances to form a "course of conduct." Second, the remaining incident – loudly slamming a mailbox and then sending a rude message – falls far short of "threatening, harassing or tormenting behavior." Finally, even if [redacted] subjectively felt afraid from the mailbox incident, it was not objectively reasonable under the circumstances, which involved no threats, no violence, and no confrontation.

A. A "course of conduct" requires more than one act.

[5] This definition applies when such acts occur "between family or household members," a term that includes former spouses. 19-A M.R.S. § 4102(6)(A).

A "course of conduct" requires two or more acts. *Cf.* 17-A M.R.S. § 210-A (defining "course of conduct" in criminal stalking statute). In this case, the District Court identified three acts as the basis for its finding: the Facebook post, the mailbox incident, and the poster. However, as discussed above, both the Facebook post and the poster are protected speech under the First Amendment and cannot form the basis of liability. *See infra* I. When those acts are removed from the analysis, the only remaining conduct is the single mailbox incident – which, standing alone, is insufficient to constitute a "course of conduct" under the statute. Accordingly, the statutory requirement of multiple acts is not met, and the finding of abuse cannot stand.

B. The mailbox incident was not threatening, harassing or tormenting behavior.

Even if the Facebook post or the poster are unprotected speech, there is still not a "course of conduct" because the mailbox incident – one incident of loudly slamming a mailbox and then sending a message referring to a child support payment as a subsidy – is not "threatening, harassing or tormenting behavior." The terms "threatening," "harassing," and "tormenting" are not defined in statute. When statutory language is undefined, the Law Court's "primary obligation is to determine its plain meaning" and the Court "often

rel[ies] on the definition provided in dictionaries in making this determination." *State Tax Assessor v. MCI Commc'n Servs., Inc.*, 2017 ME 119, ¶ 14, 164 A.3d 952.

Threatening. First, the mailbox incident was not "threatening." The ordinary meaning of "threatening" is "expressing or suggesting a threat of harm [or] danger." *Threatening*, Merriam-Webster, https://www.merriam-webster.com/dictionary/threatening (last visited Apr. 28, 2025); *see also Threat*, Black's Law Dictionary (12th ed. 2024) ("A communicated intent to inflict harm or loss on another or on another's property."); 17-A M.R.S. § 209 (defining "criminal threatening" as "intentionally or knowingly plac[ing] another person in fear of imminent bodily injury").

Mr. Weymouth's conduct does not meet any of these definitions. He did not verbally threaten [redacted], did not physically approach her, and made no gestures suggesting harm. [redacted] was inside her home, physically separated from the mailbox, and Mr. Weymouth did not try to confront her. A momentary loud noise, without more, simply does not communicate a threat of bodily harm. To call this "threatening" stretches the term far beyond its plain meaning and distorts the statute's purpose.

Harassing. Second, the mailbox incident was not "harassing." The plain

meaning of "harassing" means "to annoy persistently" or "to create an unpleasant or hostile situation for especially by uninvited and unwelcome verbal or physical conduct." *Harass*, Merriam-Webster, https://www.merriam-webster.com/dictionary/harass (last visited Apr. 28, 2025); *see also Harassment*, Black's Law Dictionary (12th ed. 2024) ("Words, conduct, or action (usu[ally] repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress to that person and serves no legitimate purpose; purposeful vexation."); 5 M.R.S. § 4651(2) (defining harassment as "[t]hree or more acts of intimidation, confrontation, physical force or the threat of physical force directed against any person, family or business that are made with the intention of causing fear, intimidation or damage to personal property and that do in fact cause fear, intimidation or damage to personal property"); 17-A M.R.S. § 506-A (defining "harassment" as "engag[ing] in any course of conduct with the intent to harass, torment or threaten another person" after "having been notified, in writing or otherwise, not to engage in such conduct").

In this case, there was only a single act: Mr. Weymouth closing the mailbox hard enough to make a loud noise and then sending a rude message about child support. Loudly closing a mailbox on a single occasion is not

repeated or persistent behavior.

Tormenting. Finally, the mailbox incident was not "tormenting." The ordinary meaning of "tormenting" is "to cause severe usually persistent or recurrent distress of body or mind." *Torment*, Merriam-Webster, https://www.merriam-webster.com/dictionary/ torment (last visited Apr. 28, 2025).

Nothing about Mr. Weymouth's conduct meets that threshold. The mailbox incident falls far short of the severe level of distress necessary for "tormenting." [redacted] may have found the incident irritating or unwelcome, but irritation is not torment. Under any reasonable reading of the statute, one slammed mailbox does not constitute torment.

Accordingly, the District Court clearly erred in finding that Mr. Weymouth's single, nonviolent act of closing a mailbox – without threats, confrontation, or persistent conduct – constituted "threatening, harassing, or tormenting behavior" under 19-A M.R.S. § 4102(1)(B).

C. Even if M.W. was placed in fear by the mailbox incident, it was not reasonable.

An alleged victim's fear must be "reasonable" to support a finding of abuse. *Smith v. Hawthorne*, 2002 ME 149, ¶ 18, 804 A.2d 1133. In *Smith*, the

Law Court upheld a finding of reasonable fear where the defendant engaged in escalating hostility towards his stepdaughter over multiple days, including yelling at her in public places, kicking her out of the family home after a heated argument, and kicking a car while she was inside it. *Id.* ¶¶ 3-4. After the defendant kicked the car, she locked the doors out of fear and "was shaking and crying, and she was scared of Hawthorne because she 'didn't know what he was gonna do next' and 'didn't know if he was gonna come try to get [her].'" *Id.* ¶ 4. After this incident, the defendant left three offensive notes on his stepdaughter's car. *Id.* ¶ 5. At the hearing, the victim, her biological father, and the victim's school counselor all testified that the victim "believed her step-father's anger towards her was escalating and that she was very scared of him." *Id.* ¶ 5.

By contrast, the facts in this case are materially different. Mr. Weymouth placed a check in [redacted]'s mailbox and closed it with enough force to make a loud noise. Unlike in *Smith*, [redacted] was safely inside her home at the time and not physically proximate to the inanimate object impacted. There was no direct confrontation, no physical aggression toward her person, and no threat to her immediate safety.

Furthermore, in *Smith*, the car-kicking was part of a continuing course of

escalating anger over a period of several days. Here, there was no comparable escalation. The mailbox incident was an isolated act not preceded by hostile interactions, threats of violence, or any aggressive pursuit. Mr. Weymouth did not linger, yell, threaten, or physically confront [redacted] He placed a check in a mailbox and immediately left. His subsequent message referring to the child support as a "subsidy" was rude and immature but did not threaten harm.

Finally, in *Smith*, the victim's immediate act of locking her car door was a concreate, external sign of fear of bodily harm. [redacted], in contrast, did not take any similar action. She did not call the police to report fear of violence, did not seek to secure her home, and did not testify that she believed Mr. Weymouth would enter the house or harm her. She described feeling startled but not endangered.

Accordingly, even accepting [redacted]'s subjective reaction, the circumstances of the mailbox incident do not support a finding of objectively reasonable fear of bodily injury. The District Court's conclusion that Ms. Weymouth's fear was reasonable was clear error.

D. The Facebook post and the poster were not "threatening, harassing or tormenting behavior."

Even if this Court were to find that the Facebook post or the poster fall outside First Amendment protection, the District Court's conclusion that they

constituted "threatening, harassing or tormenting behavior" under 19-A M.R.S. § 4102(1)(B) was still clear error for the reasons outlined in Section I. Neither the Facebook post nor the poster come close to that line. They contain no explicit references to violence and did not convey a serious threat when viewed in any reasonable context. At worst, Mr. Weymouth's speech was immature, reactionary, and unflattering commentary on [redacted]'s romantic past. There were no explicit threats, no violent language, and no suggestion of unlawful violence or bodily harm – particularly in light of the complete absence of any history of violence or physical aggression by Mr. Weymouth. Against this backdrop, no reasonable person could interpret the speech as abuse.

Moreover, because the Court's finding was based entirely on the content of Mr. Weymouth's speech, the statute required a showing that he "consciously disregarded a substantial risk" that his speech would place a reasonable person in fear of bodily injury. 19-A M.R.S. § 4102(1)(B). There is no evidence in the record that supports such a finding and the District Court's conclusion was clear error.

Regarding the Facebook post, Mr. Weymouth did not intend for [redacted] to see it – he had "defriended" her, and she only saw it because a third party forwarded it to her. There is no basis to conclude that Mr. Weymouth

consciously disregarded a risk that she would view it or be harmed by it. Moreover, the post's message, as even the Court acknowledged, was an expression that he was done with marriage. *See* Tr. 191 (concluding that the "fake plastic finger with a wedding band on it, means in some way that Mr. Weymouth is done with marriage. That's clear"). Even if the Court believed the post carried a "double entendre," nothing in the record supports the leap from misplaced humor "consciously disregard[ing] a substantial risk that the speech would place a reasonable person in fear of bodily injury." 19-A M.R.S. § 4102(1)(B). The same is true for the poster. Mr. Weymouth denied any role in its creation or distribution, and his mother took full responsibility. Even accepting the Court's disputed finding that he was involved, the poster's message was plainly a satirical commentary on [redacted]'s romantic history, not a serious threat of violence. Both parties testified that the black widow spider depicted a woman harming men - not the other way around – and there is no evidence that Mr. Weymouth was aware of, let alone consciously disregarded, any risk that [redacted] would interpret it as a threat of bodily injury.

CONCLUSION

For all the reasons advanced herein, Appellant respectfully requests that this Court vacate the District Court's protection from abuse Order and remand the case to the trial court for further proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

We, Michael B. Whipple, and Jeffrey P. Sherman, do hereby certify that we have sent a copy of Appellant's Brief to counsel for the appellee, Pat Doe via electronic mail at:

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Dated this 12th day of May 2025, at Portland, Maine.

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