V I R G I N I A:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,	)	
Plaintiff,	)	
	)	
v.	)	**Chancery No. 53360**
	)	
WESLEY C. SMITH,	)	
Defendant	)	

#47 – MOTION TO RECONGNIZE RIGHT OF FREEDOM OF SPEECH AND TO VACATE, OR RECOGNIZE AS VOID, ALL ORDERS THAT DEPRIVE DEFENDNAT OF THAT RIGHT

A pdf copy of this motion is available at: http://www.liamsdad.org/court_case/

COMES NOW the Defendant, Wesley C. Smith, and moves this Court pursuant to Amendment I of the United States Constitution and Article I, Section 12 of the Constitution of Virginia for entry of an Order recognizing as void and/or vacating **all orders** claiming to prohibit the Defendants from exercising his right to freedom of speech. In support of his MOTION the Defendant states as follows:

1. On August 6th 2004, the Plaintiff filed a motion asking the court to issue a broad prior restraint of free speech against the Defendant.

2. The Plaintiff knowingly scheduled a hearing on the matter on August 17, 2004, during the Defendants two-week vacation visitation period, which action can be considered a violation of the custody order, which prohibits interference with the Defendant's vacation visitation.

3. The Defendant had made plans to take our son to visit family in Michigan during that visitation period and requested a continuance from the Plaintiff but the Plaintiff refused.

4. It is unreasonable for Ms. Vardy, Mr. Fahy or this Court to pretend they are acting in "the best interests of the child" then schedule hearings that if the Defendant attended would require the child to wait one year before he got another week vacation period with the Defendant. The child should not have to miss out on vacation with family and be put in day care instead of Ms. Vardy selecting a more appropriate time for the hearing.

5. It's indicative of his representing Ms. Smith not Liam Smith that the Guardian ad Litem did not object to the scheduling and request a continuance for his "client". In fact he did the opposite and claimed

it was ok to proceed without the Defendant, yet when Ms. Vardy did not show for a hearing he argued for continuing.

6. The Defendant requested the Court to continue the hearing and the Court refused.

7. The Defendant had notified the court there were significant issues with the Plaintiff's motion, including constitutional issues and the fact the Plaintiff has done very similar actions to those she is accusing the Defendant of.

8. On August 17th 2004 the Court went ahead with the hearing and issued an injunction against the Defendant on grounds that he wasn't there. This appears to be biased action considering that the court didn't do that when the Plaintiff failed to appear on June 23 2004.

9. Unquestionably, "[a]n injunction is an extraordinary remedy." Unit Owners Ass'n of BuildAmerica-1 v. Gillman, 223 Va. 752, 770, 292 S.E.2d 378, 387 (1982). Thus, "[t]o secure an injunction, a party must show irreparable harm and the lack of an adequate remedy at law." Black & White Cars v. Groome Transp., Inc., 247 Va. 426, 431, 442 S.E.2d 391, 395 (1994). Also, an injunction "must be specific in its terms, and it must define the exact extent of its operation so that there may be compliance." Gillman, 223 Va. at 770, 292 S.E.2d at 387. In other words, the injunction "should set forth what is enjoined in a clear and certain manner and its meaning should not be left for speculation or conjecture." Id.

10. Here, the injunction meets none of these requirements. First, the Plaintiff offered no evidence that, absent the injunction, she would be irreparably harmed, nor did the trial court make any factual findings that could be construed as a finding of irreparable harm. Because "proof of irreparable damage is absolutely essential to the award of injunctive relief," Bradlees Tidewater, Inc. v. Walnut Hill Inv., Inc., 239 Va. 468, 471-72, 391 S.E.2d 304, 306 (1990), The Plaintiff failed to establish that she was entitled to the "extraordinary remedy" of injunctive relief.

11. If the Plaintiff feels the Defendant has made defamatory comments she could bring a common law action for defamation and thus has an adequate remedy at law. "'a court of equity will not enjoin the commission of a threatened libel or slander' [because] an action for damages will ordinarily provide a

complete remedy" (quoting Moore v. City Dry Cleaners & Laundry, Inc., 41 So. 2d 865, 873 (Fla. 1949))); see also Alberti v. Cruise, 383 F.2d 268, 272 (4th Cir. 1967) (noting that, "[g]enerally[,] an injunction will not issue to restrain torts, such as defamation or harassment, against the person," because "[t]here is usually an adequate remedy at law which may be pursued").

12. Amendment I of the United States Constitution states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press,…

13. Article I, Section 12 of the Constitution of Virginia provides greater protection against prior restraints than the first amendment to the United States Constitution:

> That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained **except by despotic governments**; that any citizen may freely speak, write, and publish his sentiments **on all subjects**, being responsible for the abuse of that right; that the General Assembly **shall not pass any law** abridging the freedom of speech or of the press, ...

14. The ruling by the Court is an obvious unconstitutional prior restraint of free speech and should never have been made, with or without the Defendant being there. The ruling constitutes "clear, substantial, and material" error and is virtually unlimited in both breadth and duration. See D'AMBROSIO V. D'AMBROSIO, VA Record No. 1182-04-4.

15. The court also did not court did not make the findings necessary for the issuance of injunctive relief. See D'AMBROSIO V. D'AMBROSIO, VA Record No. 1182-04-4.

16. Issuing such an illegal order while the Court knew the Defendant would be out of state appears to be improper to the point of questioning the professional ethics of the court, not just its legal interpretation.

17. Prior restraint orders are clearly and consistently ruled illegal even in much more extreme cases such as SHAWN S. SUGGS v. ANDREW O. HAMILTON from the Washington state Supreme Court July 8, 2004.

18. Prior restraints carry a heavy presumption of unconstitutionality. Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S. Ct. 631, 9 L. Ed. 2d 584 (1963). In Near v. Minnesota ex rel. Olson, 283 U.S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931) the United States Supreme Court declared that prior restraints are permissible only in exceptional cases such as war, obscenity, and "incitements to acts of violence and the

overthrow by force of orderly government." 283 U.S. at 716.

19. The Plaintiff has filed petitions for a rule to show cause based on the Defendant not complying with the prior restraint provisions of the void orders. Its pretty clear that the Court is aware that its rulings are void in that it has refused to issue the rule.

20. The United States Supreme Court has stated that "No State legislator or executive or judicial officer can war against the Constitution without violating his Undertaking to support it". Cooper Vs. Aaron. 358 U.S. 1 78 S.Ct. 1401 (1958). If a judge does not fully Comply with the Constitution, then his orders are void, in re Sawyer, 124 U.S. 200 (1888), he/she is Without jurisdiction, and he/she has engaged in an act or acts TREASON!

21. Neither the Court nor Ms. Vardy or Mr. Fahy should need any legal advice from the Defendant to know the court simply does not have the legal justification to issue the relief requested, but that Ms. Vardy should have know better and that requesting such requesting relief was a violation of the rules of the supreme court of Virginia and can in no way be considered a reasonable request and per § 8.01-271 the Court has an obligation to issue sanctions for making the request.

22. It should be noted that the Defendants website not only constitutes freedom of speech of an individual but also freedom of the press. In a given month the Defendant's website receives over 1,500 visits from unique sites located in over 30 countries.

23. It should also be noted that the main reason the Defendant has a website that discusses the misconduct of the Plaintiff is due to the Plaintiff refusing to work out a reasonable settlement outside of court followed by the Court refusing to discuss in court issues such as her adultery. The Plaintiff blocking all private and semi-private discussion of the issues forced the Defendant to take discussion of the issues public. And while the issues discussed on the Defendant's website are appropriate political discussion the Defendant had offered to remove the Plaintiff's name from the website if she would stop avoiding discussion of the relevant issues and agree to a reasonable settlement.

WHEREFORE the motion having been made in bad faith and the Court ruling in bad faith, the Defendant requests the Court to remind the Plaintiff that while the court has trampled the Constitutional

rights of both the Child and the Defendant that this Court is at least going to uphold the First Amendment Rights of the Defendant by the following:

1. That the Court issue an order vacating all orders that contain a prior restraint of the Defendants exercise of free speed and/or declare all such orders to be already null and void. Such orders to include, but not limited to:
   a. Order Entered Sep, 23rd 2004 by Judge Farris
   b. Any order based on Nov 3, 2004 ruling by Judge Farris (Plaintiff claims an order has been entered but the Defendant is not aware of the order actually being entered).
2. The court issue a written apology by the court for having paid no respect whatsovever for the Defendants rights per U.S. and Virginia Constituions and and order the Plaintiff to do likewise.
3. Sanction the Plaintiff and/or Loretta Vardy Per § 8.01-271 for harassing the Defendant by holding a hearing during his vacation visitation and by filing a motion that she knew the court had no authority to grant. Order the Plaintiff to pay the Defendant for time spent on getting the motion vacated, and since the Defendants current wage would be neither a sanction or deterrent, the rate of a typical attorney ($175-$200/hour) is appropriate.
4. Order such further relief as the nature of the case or the goals of equity require.

Respectfully Submitted,
Wesley C. Smith

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no phone

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was served to Loretta Vardy and Ronald Fahy (GAL) via e-mail and/or fax and/or website, this 13th day of February 2006.

_____
Wesley C. Smith