OR9

No.----------

IN THE

Supreme Court of the United States

MICHAEL T. WILLAN
PETITIONER.

vs,

PETITIONER.,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE WISCONSIN COURT OF APPEALS IV DISTRICT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1979, our (Wisconsin) legislature acknowledged that domestic abuse was a serious statewide social concern which necessitated a comprehensive and informed response. Sec. 1, Ch. 111, Laws of 1979. It recognized the critical need for specialized assistance, not only to the victims of domestic abuse but also to the abusers. More resources had to be marshaled and new methods formulated to meet the challenge of this tragic social phenomenon. Id. As an additional means of alleviating the problem, the legislature enacted sec. 813.12, Stats. See sec. 19, 1983 Wis. Act 204. (App D) The Supreme Court of Wisconsin has never reviewed a case under this act and they declined our timely filed petition in this case. (App C)

1) The question is whether the Wisconsin sec. 813.12 Domestic Abuse statute requires Mens Rea, that the respondent be aware of the threatening nature of the communication used to get the injunction, and—if not—whether the First Amendment requires such a showing.? Elonis v. United States, 575 U.S. ___ (2015)

2) The question is whether Constitutional and United States Supreme Court precedential due process requires 813.12 to provide written prior notice of any new claims prior to the hearing? In re Gault, 387 U.S. 1 (1967)

3) Whether the United States Constitution requires Wisconsin sec. 813.12 Domestic Abuse statute to analyze the clear and present danger doctrine in Dennis v. United States, 341 U. S. 494, 568 before issuing an injunction?

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INTRODUCTION

This is a request for a Petition for a Writ of Certiorari to The State of Wisconsin Court of Appeals CASE NO. 2017AP000473 to review a 6 year Domestic Abuse injunction issued by the Dane County Circuit Court CASE NO. 2017CV000115 in which the petitioner was never notified before the hearing, of the exact alleged charge, that was only brought up in open court, that the petitioner had made "Threats of third degree sexual assault", and the petitioner has been denied by the courts, access to be personally heard in this case. Although here we deal with § 813.12 AM (6) in the civil context, § 813.12 AM (6) is a criminal statute, and it has both criminal and noncriminal applications. Because we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies. Cf. United States v. Thompson/Center Arms Co., 504 U. S. 505, 517–518 (1992) (plurality opinion) (applying the rule of lenity to a tax statute, in a civil setting, because the statute had criminal applications and thus had to be interpreted consistently with its criminal applications).

We believe that the 6 year domestic abuse injunction issued in this case violates the petitioner's constitutional rights under the 1st, 4th, 5th, and 14th amendments to the constitution. The Wisconsin Court's decisions in this case have expressly rejected the United States Constitution and Supreme Courts standards set out in, which precedential due process requires Wis sec. 813.12 to provide written prior notice to the petitioner in this case of any new claims prior to the hearing. In re Gault, 387 U.S. 1 (1967), which did not happen in this case and was ignored by

the courts of Wisconsin as being insignificant. The Wisconsin courts have also concluded that Wisconsin sec. 813.12 Domestic Abuse statute does not require that the petitioner be aware of the intent of the threatening nature of the communication if a reasonable person(the judge) believes it threatening, and that the First Amendment does not require such a showing which disregards this court's ruling in Elonis v. United States, 575 U.S. ___ (2015), And finally, the Courts of Wisconsin have interpreted Wisconsin sec. 813.12 Domestic Abuse statute as a punitive statute for verbal abuse, and not as a statute of protection, that does not require a court to analyze the clear and present danger doctrine in Dennis v. United States, 341 U. S. 494, 568 before issuing an injunction. The Court of Appeals stated in their opinion regarding the constitutional arguments presented were null and void, "because the circuit court, granted an injunction based on testimony about the respondent's yelling. Specifically, Mary alleged that over a two-year period, Willan had engaged in a pattern of verbal abuse that centered on wanting to have more sex with her. Mary further alleged that Willan's abuse had recently escalated into more aggressive conduct. At the hearing, Mary testified about specific examples of instances in which she felt threatened by Willan's abusive approach to sex. Willan further argues that he was denied due process because the circuit court allowed Mary to testify about a "new claim." Because Mary's testimony was consistent with her petition, we reject Willan's argument that he did not have sufficient notice to enable a defense. While the record is sufficient to establish that Willan made true threats, it is unnecessary for us to reach this constitutional question." (App A)

The proper interpretation of Constitutional free speech and Due Process in a domestic abuse injunction case presents a question of surpassing importance to 100 percent of all American families who are in a domestic relationship. This Court's immediate review therefore is warranted to resolve the square conflict in the Wisconsin Courts ruling that it was unnecessary for the Court of Appeals to reach this constitutional question under the 1st amendment and that an alleged domestic abuse respondent is not entitled to due process protections afforded criminal defendants under the 5th amendment to the constitution, or equal protection under the 4th and 14th amendment to the constitution.

OPINIONS BELOW

The opinion in this case is unpublished is attached as appendix A of the attached appendix.

JURISDICTION

The Circuit Court of Wisconsin has issued a 6-year injunction against the petitioner on January 27, 2017. The opinion of the Wisconsin Court of Appeals affirming the Circuit Court was entered on February 1, 2018. (App A) A petition for reconsideration under Wis stat 809.24 was denied by the Court of Appeals on February 27, 2018 The Supreme Court of the State of Wisconsin denied discretionary review July 10, 2018. This petition for a writ of certiorari was post marked September 7, 2018 and received on September 10, 2018 but was sent back for miscellaneous rule violations in the filing. This is a new filing since we have not surpassed the 90 day requirement. The jurisdiction of this Court is invoked under Rule 13 of the rules of the Supreme Court of the United States.

CONSTITUTUTIONAL AND STATUTORY PROVISIONS INVOLVED

Wisconsin sec. 813.12, Stats. See sec. 19, 1983 Wis. Act 204

United States Constitution under the 1st, 4th, 5th, and 14th Amendments

RELEVANT STATUTORY PROVISIONS

Wisconsin sec. 968.075(1) Domestic Abuse Criminal law and sec. 813.12(1)(am) Domestic Abuse injunction law define "Domestic abuse "as follows:

968.075 Domestic abuse incidents; arrest and prosecution.

(1) Definitions. In this section:

(a) "Domestic abuse" means any of the following engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person resides or formerly resided or against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3).

4. A physical act that may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1., 2. or 3.

813.12(1)(am) "Domestic abuse" means any of the following engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver's care, by an adult against his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.

2. Intentional impairment of physical condition.

3. A violation of s. 940.225 (1), (2) or (3).

4. A violation of s. 940.32.

5. A violation of s. 943.01, involving property that belongs to the individual.

6. A threat to engage in the conduct under subd. 1., 2., 3., 4., or 5.

I note that the legislature 1987 act 346 originally defines Domestic abuse under 968.075(1) 4 as, A physical act, or a threat in conjunction with a physical act, which may cause the other person reasonably to fear imminent engagement in the conduct described under subd. 1, 2 or 3. In 1989 Wisconsin Act 293 removed the words "or a threat in conjunction with a physical act" and changed the word "which" to "That" because the legislature determined implied speech was included which without clarification which would make it unconstitutionally broad and vague.

As the statute is used in the Court of Appeals Opinion, "the circuit court is authorized to issue an injunction if it "finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct ... may engage in, domestic abuse of the petitioner." WIS. STAT. § 813.12(4)(a)3. (2015-16).2 Domestic abuse includes third degree sexual assault in violation of WIS. STAT. § 940.225(3)3 or "[a] threat to engage in [such] conduct." WIS. STAT. § 813.12(1)(am)3. and 6. WISCONSIN STAT. § 940.225(3) states in relevant part that "Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony." This statute further provides "Consent", as used in this section, means words or overt actions by a

person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. WIS. STAT. § 940.225(4). (App A 3) Currently under Wisconsin 940.225(3) there is no such criminal law as threat to commit sexual assault. Construing this section to include a requirement of showing imminent danger, if it is constitutional. Blazel v. Bradley, 698 F. Supp. 756 (1988).

STATEMENT OF THE CASE

This is a review of a Domestic abuse injunction case brought pursuant to Wis 813.12. by Ms. Hennig against Mr. Willan. The couple were engaged to be married living together for over 2 years. After 2 ½ years of trying it was determined the relationship was not going to work. So, Ms. Hennig and Mr. Willan in early January 2017 mutually decided that Mr. Willan would find another place to live and be moving out. Over a two-week period, Mr. Willan tried to have numerous conversations with Ms. Hennig about how they were going to split things up, so Mr. Willan could move out, which required the two to discuss breaking the lease, household bills, cell phone, and splitting mutual property they purchased together. On January 17, 2017 after 3 days of trying to have an adult conversation, an argument started between Ms. Hennig and Mr. Willan where Mr. Willan started asking about their mutual property and how they would split it and Ms. Hennig shouted, "Everything is in my name". Hearing these words Mr. Willan became upset, tossed his cell phone on the night stand next to the bed, headed out of the room but punched the door with his fist causing a 3" wide by ½" indentation in the middle of the door. Mr. Willan realized for one split second his anger was taking over, so he immediately calmed himself down. Mr. Willan went to

bed and soon after, Ms. Hennig went to bed in the same bed. The following day on January 18, 2017 after returning from work, Mr. Willan was confronted by a Madison Police officer in his bedroom. The Officer asked about the dented door and what had taken place the night before. Mr. Willan very honestly explained his side of it and apologized for his actions. Because under Wisconsin law when there is an alleged Domestic abuse incident call, the officer is required under Wisconsin stat 968.075 stat. to remove Mr. Willan from the premises. After interviewing Ms. Hennig, the officer determined that Willan did not physically harm Ms. Hennig, did not sexually assault her, or that he did not make any threats of physical harm to her, he decided because under 968.075 stat, Wisconsin law requires the officer to determine who the perceived aggressor is, the officer removed Mr. Willan from the premises on a disorderly citation for striking the door. Mr. Willan was not charged with an actual Domestic abuse incident, he instead was given a misdemeanor citation for disorderly conduct under Wis stat. 947.01 (1) and was released under Wis stat. 968.08 where a law enforcement officer having custody of a person arrested without a warrant may release the person arrested without requiring the person to appear before a judge if the law enforcement officer is satisfied that there are insufficient grounds for the issuance of a criminal complaint against the person arrested. Willan posted a 150.00 bond and was immediately released from custody. Under Wisconsin law even though he was not charged with the domestic abuse statute, Mr. Willan was required to abide by a conditional release contact prohibition pursuant to Wis stat. 968.075 (5) (a) (1). All charges were ultimately dropped by the district attorney because they had determined no crime was committed. On January 19, 2017, Ms. Hennig filled out a petition for a

TRO and an injunction. (App B) In the part of the petition for TRO and/or injunction entitled "State what happened when, where, who did what to whom," Ms. Hennig states, Willan "came home [and] wanted to talk about the same argument that had been happening for 3 days and she didn't want to talk and he got angry and yelled then threw his phone and punched a hole in door. The day before he threw a laundry detergent bottle across the apartment". (App B)

On January 19, 2017 Mr. Willan was served the TRO and notice of an injunction hearing on January 27, 2017. Willan read the papers and hired Attorney Cory Chirafisi to represent him in the matter.

On January 21,2017 Mr. Willan contacted the Madison Police Keep the peace and proceeded to stay in the parking lot with the officers while Mr. Willan's family moved the rest of his personal belongings out, returned his key to the apartment owners. There has been no contact with Ms. Hennig since that time and no chance of any physical harm. An injunction under Wisconsin law is used to protect a potential victim, not punish Mr. Willan, who moved out, and has no chance of doing any harm because he does not live in their apartment.

On January 27, 2017, a hearing was held regarding the permanent injunction. Mr. Willan did not attend the hearing because it was his Attorney, Cory Chirafisi belief the Ms. Hennig's petition was legally insufficient, it does not allege harm or imminent danger as a cause to grant an injunction, that an injunction was not needed because Mr. Willan had already vacated the premises, wanted no contact with Ms. Hennig, that Mr. Willan's presence was not needed since the facts were what they

were and nothing in the facts of the petition rises to the level of granting an injunction under § 813.12.

On January 27, 2017 The Judge heard testimony from Ms. Hennig who testified to the alleged facts in the petition regarding the specific incident in the petition, that Mr. Willan did not damage any of her property, that he had never harmed her, never threatened her. Though Ms. Hennig's petition never mentioned anything regarding threats, Ms. Hennig against Mr. Willan's attorney's objection, was now allowed by the court to add verbal allegation that Mr. Willan coerced her into sex a couple times. After hearing that specific testimony, the Court in a one-line summation found Mr. Willan was a domestic abuser under § 813.12. (App B)and Ms. Hennig's petition for a permanent restraining order was granted. On February 3, 2017 through exculpatory requests in the disorderly conduct case, Mr. Willan's attorney was given copies of new evidence by the district Attorney, that was not available prior to the hearing. Mr. Willan tried to hire an attorney to handle the injunction case with the new evidence, but it was quoted at 20 thousand dollars, just to get back to the circuit court, not counting appeals. Mr. Willan did not have the money to fight the case, so he submitted a motion for a new hearing based upon the new evidence. On February 14, 2017 Mr. Willan Pro se introduced to the Circuit Court, in a motion for a new hearing based on the police report. On March 9, 2017 a Notice of appeal was filed with the clerk of courts. On April 10, 2017 the circuit court denied Mr. Willan's motion for a new hearing. On July 25, 2017 Mr. Willan's briefs and appendix were filed. On August 24, 2017 Ms. Hennig's reply brief was filed. On August 30, 2017 Mr. Willan's reply brief was filed. On November 13, 2017 the case was submitted to the

court of appeals on Briefs. On February 1, 2018 the court of appeals affirmed the Circuit Courts decision. On February 20, 2018 Mr. Willan filed a motion for reconsideration under 809.24. On February 27, 2018 Mr. Willan's motion was denied without comment. On March 28, 2018 Mr. Willan filed this petition for Supreme Court review. On July 10, 2018 the Supreme Court of Wisconsin denied discretionary review.

ARGUMENTS FOR GRANTING THE PETITION

THERE IS NO COURT PRECEDENT ON DOMESTIC ABUSE INJUNCTIONS IN WISCONSIN OR THE UNITED STATES SUPREME COURT

Wisconsin is not alone in having this type of legislation. Every state and the District of Columbia have enacted legislation intended to respond to the problem of domestic violence. See Ex Parte Protection Orders: Is Due Process Locked Out?, 58 Temple Law Quarterly 841, 841 n. 1 (1985). Thirty-seven of these statutes provide ex parte preliminary relief. Id. at 848 n. 37. No federal court has yet addressed the constitutionality of any of these statutes, although the Eastern District of Wisconsin considered the constitutionality of a similar statute in the divorce context. See Geisinger v. Voss, 352 F.Supp. 104 (E.D.Wis. 1972). Four state courts, including the Wisconsin court of appeals, have considered due process challenges to state statutes permitting ex parte orders in domestic abuse cases and have upheld the statutes. See Schramek v. Bohren, 145 Wis.2d 695, 429 N.W.2d 501 (Ct.App.1988); Marquette v. Marquette, 686 P.2d 990 (Okla.App.1984); State v. Marsh, 626 S.W. 2d 223, 231

(Mo.1982) (en banc); Boyle v. Boyle, 12 D. & C.3d 767, 775 (C.P.Alleg. 1979). Blazel v. Bradley, 698 F. Supp. 756 (1988).

This is the kind of significant case that will determine and advance due process for both the alleged victim and the alleged abuser in a domestic abuse injunction case. This matter flows from the fact that the conduct of Mr. Willan does not become a crime unless and until the judge so declares and then only with respect to that one person. This law does not prohibit certain conduct as criminal generally but rather leaves it to a judge to decide whether certain conduct, engaged by the allegations, will be criminal only as to a particular person. Certain acts of an abusive type are criminal by general law—assault and battery—and are a crime regardless of who commits them, but that is not the case under § 813.12. The statute does not make the act of arguing about sex a crime. The only time that act becomes a criminal act is when, and if, a judge declares it to be criminal in a protective order hearing with respect to a particular person. The other is that the statute fails to set out "explicit standards" for those who must apply it, resulting in arbitrary and discriminatory application. Grayned v. City of Rockford, 408 U.S. at 108, Thus, § 813.12 delegates to a judge the power to say what conduct constitutes a crime and whether certain conduct, if engaged in by a particular person, will be a crime and the pronounce a 6 year injunction.

When we permit a violation of s. 940.225 (1), (2) or (3), A violation of s. 940.32. a violation of s. 943.01, involving property that belongs to the individual, usually found in Chapter 940, to be hidden behind the newly created term which we now denominate as "Domestic Abuse injunction law", when we permit the orders

contemplated by the act to be entered without notice or hearing, and, when we permit circuit judges to define the elements of crime on a case by case basis without notice or hearing, then we by judicial interpretation have rendered a nullity: (1) the long established rule of statutory construction that penal statutes must be strictly construed against the state, (2) the constitutional prohibition, Wis .Const. art. I, § , the accused shall enjoy the right to be heard...," and (3) due process of law, U.S.Const.Amend. XIV, The Domestic Abuse injunction law exhibits the fullest potential for creating nine new evils for every evil it would seek by its terms to correct.

The proper interpretation of Constitutional free speech and Due Process in a domestic abuse injunction case presents a question of surpassing importance to 100 percent of all American families who are in a domestic relationship. This Court's immediate review therefore is warranted to resolve the square conflict in the Wisconsin Courts ruling that it was unnecessary for the Court of Appeals to reach this constitutional question under the 1st amendment and that an alleged domestic abuse respondent is not entitled to due process protections afforded criminal defendants under the 5th amendment to the constitution, or equal protection under the 4th and 14th amendment to the constitution.

The Wisconsin Supreme Court has never ruled on any case under section 813.12 or 968.075(1) The Wisconsin Supreme Court declined discretionary review of our timely filed petition. (App C) So now the 5.795 million residents of the Badger state and 320 million other citizens of the united states, are now asking you to clear up the confusion between the constitutional rights of its citizens and the made up

unconstitutional law used by the courts of Wisconsin to take away Mr. Willan's substantial rights for 6 years, as it pertains to Domestic abuse injunction law.

BECAUSE SECTION 813.12AM(6) HAS CRIMINAL LAW CONSEQUENCES, THE RULE OF LENITY MUST BE APPLIED TO RESOLVE STATUTORY AMBIGUITIES

Although here we deal with § 813.12 AM (6) in the civil context, § 813.12 AM (6) is a criminal statute, and it has both criminal and noncriminal applications. Because we must interpret the statute consistently, whether we encounter its application in a criminal or noncriminal context, the rule of lenity applies. Cf. United States v. Thompson/Center Arms Co., 504 U. S. 505, 517–518 (1992) (plurality opinion) (applying the rule of lenity to a tax statute, in a civil setting, because the statute had criminal applications and thus had to be interpreted consistently with its criminal applications).

This Court's Precedent Dictates that the Rule of Lenity Applies, Requiring "A Threat of third degree sexual assault" to Be Construed Narrowly and in Favor of Petitioner

It is a fundamental rule of statutory interpretation, "perhaps not much less old than construction itself," United States v. Wiltberger, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C.J.), that in construing a criminal statute, the rule of lenity requires that ambiguities be resolved in the defendant's favor. Bass, 404 U.S. at 347; see also, e.g., Crandon v. United States, 494 U.S. 152, 158 (1990) (describing lenity as a "time-honored interpretive guideline"); 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *88 (describing lenity as a rule of strict construction); Zachary Price, The Rule of Lenity as a Rule of Structure, 72 Fordham L. Rev. 885, 897 (2004) (discussing the rule of lenity's "origins in the efforts of

common law courts in the seventeenth and eighteenth centuries"). The rule has its roots in several foundational principles of American law: "to promote fair notice to those subject to the criminal laws, to minimize the risk of selective and arbitrary enforcement, and to maintain the proper balance between Congress, prosecutors, and courts." Kozminski, 487 U.S. at 952.

It is also well established that, where a single statute has both civil and criminal applications, courts "must interpret the statute consistently, whether [they] encounter its application in a criminal or non-criminal context." Leocal, 543 U.S. at 11 n.8; see also, e.g., Kasten v. Saint-Gobain Performance Plastics Corp., 563 U.S. 1, 16 (2011); Clark v. Martinez, 543 U.S. 371, 380 (2005); Scheidler v. Nat'l Org. for Wom-en, Inc., 537 U.S. 393, 408-09 (2003); FCC v. ABC, 347 U.S. at 296 ("There cannot be one construction for the 4th district court of appeals and another for the 1 district ."). Disregarding this unitary-meaning principle "would render every statute a chameleon, its meaning subject to change" depending on the circumstances. Clark, 543 U.S. at 382.

Putting these two rules together leads to the conclusion that the rule of lenity must be applied to "hybrid domestic abuse injunction" State statutes with both civil and criminal applications. This Court's opinions say as much. See Leocal, 543 U.S. at 11 n.8; Kasten, 563 U.S. at 16; FCC v. ABC, 347 U.S. at 296; Thompson/Center Arms Co., 504 U.S. at 518 n.10 (plurality opinion) (rule of lenity applied to interpretation of civil tax provision with criminal applications); id. at 519 (Scalia, J., concurring in the judgment)

WISCONSIN COURTS USE A NEGLIGENT STANDARD FOR A CRIMINAL STATUTE TO ISSUE 6 YEAR INJUNTION IN VIOLATION OF THE CONSTITUTION

The Court of Appeals opinion clearly starts out citing that the law used to issue the 6 year injunction against Mr. Willan is a criminal statute. It reads,

The circuit court is authorized to issue an injunction if it "finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct ... may engage in, domestic abuse of the petitioner." WIS. STAT. § 813.12(4)(a)3. (2015-16).2 Domestic abuse includes third degree sexual assault in violation of WIS. STAT. § 940.225(3)3 or "[a] threat to engage in [such] conduct." WIS. STAT. § 813.12(1)(am)3. and 6. WISCONSIN STAT. § 940.225(3) states in relevant part that "Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony." This statute further provides "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. WIS. STAT. § 940.225(4). (App A 3)

In criminal law, an overt act is the one that can be clearly proved by evidence and from which criminal intent can be inferred, as opposed to a mere intention in the mind to commit a crime.

The Wisconsin Domestic abuse injunction Act makes it unlawful for any person that a Court "finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct ... may engage in, domestic abuse of the petitioner." WIS. STAT. § 813.12(4)(a)3. Petitioner contends that, to issue an injunction against him under Domestic abuse that includes third degree sexual assault in violation of WIS. STAT. § 940.225(3)3 or "[a] threat to engage in [such] conduct." , Ms. Hennig should have been required to prove beyond a reasonable doubt that Mr. Willan committed third degree sexual assault in violation of WIS. STAT. § 940.225(3) and that Mr. Willan knew that their previous arguments about sex and yelling had the

characteristics that brought it within the statutory definition of a Domestic abuse. Willan's injunction, however, has been arbitrarily premised by the Court of Appeals solely on a negligence standard that somehow his yelling and alleged verbal abuse would be understood by a reasonable person to be third degree sexual assault in violation of WIS. STAT. § 940.225(3) . Such a "reasonable person" standard is a familiar feature of civil liability in tort law but is inconsistent with "the conventional requirement for criminal conduct—awareness of some wrongdoing." Staples, 511 U. S., at 606–607 (quoting United States v. Dotterweich, 320 U. S. 277, 281 (1943) ; emphasis added). Having liability turn on whether a "reasonable person" regards the communication as a threat—regardless of what the defendant thinks—"reduces culpability on the all-important element of the crime to negligence," Jeffries, 692 F. 3d, at 484 (Sutton, J., dubitante), and we "have long been reluctant to infer that a negligence standard was intended in criminal statutes," Rogers v. United States, 422 U. S. 35, 47 (1975) (Marshall, J., concurring) (citing Morissette, 342 U. S. 246). See 1 C. Torcia, Wharton's Criminal Law §27, pp. 171–172 (15th ed. 1993); Cochran v. United States, 157 U. S. 286, 294 (1895) (defendant could face "liability in a civil action for negligence, but he could only be held criminally for an evil intent actually existing in his mind"). Elonis v. United States, 575 U.S. ___ (2015)

A defendant's state of mind or intent is an element of a criminal offense which must be established by evidence and inferences drawn therefrom, and cannot be taken from the trier of fact through reliance on a legal presumption of wrongful intent from proof of an argument about sex. Since the trial judge's ruling for issuing the 6 year injunction on the arguments about sex had this prohibited effect, it was improper.

There are two key areas that the Court of Appeals never considered in its decision, 1) Ms. Hennig was never in any imminent danger of threats of third degree sexual assault after Mr. Willan moved out prior to the hearing, requiring an injunction for protection, and 2) Did Mr. Willan commit third degree sexual assault like the legislature has proscribed in the manor to prosecute under WISCONSIN STAT. § 940.225(3), not to let a judge determine guilt and sentence without following the criminal laws of Wisconsin. The Court of appeals doesn't attempt to address exactly what part of "abusive approach to sex" makes it a criminal offense under Wisconsin law.

For it is clear that the vagueness of this enactment makes a facial challenge appropriate. This is not a law that "simply regulates behavior and contains a scienter requirement." See Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U. S. 489, 499 (1982). It is a criminal law that contains no mens rea requirement, see Colautti v. Franklin , 439 U. S. 379, 395 (1979), and infringes on constitutionally protected rights, see id. , at 391. When vagueness permeates the text of such a law, it is subject to facial attack. The objectionable quality of vagueness and overbreadth does not depend upon absence of fair notice to a criminally accused or upon unchanneled delegation of legislative powers, but upon the danger of tolerating, in the area of First Amendment freedoms, the existence of a penal statute susceptible of sweeping and improper application. Cf. Marcus v. Search Warrant, 367 U. S. 717, 367 U. S. 733. These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. Cf. Smith v. California, supra, at 361 U. S. 151-154; Speiser v. Randall, 357 U. S. 513, 357 U. S. 526. Because First Amendment

freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. Cantwell v. Connecticut, 310 U. S. 296,3 310 U. S. 11.

THE WISCONSIN DOMESTIC ABUSE STATUTE IS TOO VAGUE AND BROAD TO BE USED IN CONJUNCTION WITH A CRIMINAL STATUTE

The statutory provisions at issue in this case are "catchalls" designed to prohibit forms of Domestic Abuse without specifically describing them. The drafters of the Model Penal Code recognized that if these catch-all provisions were to include speech, they must sketch more than the general outlines of the prohibited speech in order to survive a vagueness challenge.--"It does not specify that the defendant must have any mental state with respect to these elements. In particular, it does not indicate whether the defendant must intend that his communication was a threat to commit third degree sexual assault.

The word "threat" itself in Section 813.12am(6) imposes such a requirement. Every definition of "threat" or "threaten" conveys the notion of an intent to inflict harm. See United States v. Jeffries, 692 F. 3d 473, 483 (CA6 2012) (Sutton, J., dubitante). Elonis v. United States, 575 U.S. ___ (2015)

These definitions, however, speak to what the statement conveys—not to the mental state of the author. Elonis v. United States, 575 U.S. ___ (2015) In this case, neither Wisconsin court have identified one specific statement, or any word spoken or written by Mr. Willan, that would constitutes a threat of harm with intent to commit third degree sexual assault!

The most we can conclude from the language of Section 813.12 am and its neighboring provisions is that Wisconsin Legislature meant to proscribe a broad class

of threats in Section 813.12 am(6), but did not identify what mental state, if any, a respondent must have, to issue an injunction against for a violation.

The fact that the statute does not specify any required mental state under Section 813.12 am(6), however, does not mean that none exists. We have repeatedly held that "mere omission from a criminal enactment of any mention of criminal intent" should not be read "as dispensing with it." Morissette v. United States, 342 U. S. 246, 250 (1952) . This rule of construction reflects the basic principle that "wrongdoing must be conscious to be criminal." Id., at 252. As Justice Jackson explained, this principle is "as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil." Id., at 250. The "central thought" is that a defendant must be "blameworthy in mind" before he can be found guilty, a concept courts have expressed over time through various terms such as mens rea, scienter, malice aforethought, guilty knowledge, and the like. Id., at 252; 1 W. LaFave, Substantive Criminal Law §5.1, pp. 332–333 (2d ed. 2003). Although there are exceptions, the "general rule" is that a guilty mind is "a necessary element in the indictment and proof of every crime." United States v. Balint, 258 U. S. 250, 251 (1922) . We therefore generally "interpret[ ] criminal statutes to include broadly applicable scienter requirements, even where the statute by its terms does not contain them." United States v. X-Citement Video, Inc., 513 U. S. 64, 70 (1994) .

Using that Court logic from the above decision, to this case, Ms. Hennig wrote, "The verbal abuse started 2 years ago, When he came home, would then yell at me about us having sex enough, and if I made time for him more and had sex with him more, he

wouldn't be angry and upset, nor would he be yelling."(APP B) By Ms. Hennig's own admissions in her written statement to get an injunction, it is obvious Mr. Willan truly believed his yelling, discussions and arguments about sex over 2 years, were meant as a way to find a solution to the intimacy problems in their relationship, not as a means to have sex. How can a court find that Mr. Willan committed a threat of third degree sexual assault when Ms. Hennig's own statement shows Mr. Willan believed he was trying to solve a relationship issue in regards to the lack of sex issues going on in their relationship and she told the reporting officer "Michael has never hit her nor forced himself upon her in any sexual way"?

Ms. Hennig consented sparingly for 2 ½ years to sex with Mr. Willan because sex is what couples do and there was not any issue for 2 ½ years that Ms. Hennig brought to anyone's attention that Mr. Willan was committing third degree sexual assault, until Mr. Willan had moved out from her, wasn't present in court to defend himself, but now she felt threatened for 2 1/2 years with danger!

The Courts in the case are substituting their personal opinion regarding sex and what they believe is an abusive approach to sex, for criminal intent! That is not the constitutional standard of the 5th amendment,

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The court used a negligence standard for a criminal statute when it said, " the determination of whether speech is a true threat is an objective one: would a

reasonable person foresee that Willan's statements to Mary would reasonably be interpreted "as a serious expression of a purpose to inflict harm, as distinguished from hyperbole, jest, innocuous talk, expressions of political views, or other similarly protected speech"? Id. (quoted source omitted).

But this Court must reject that interpretation of the statute, because it criminalizes "a broad range of apparently innocent conduct" and swept in individuals who had no knowledge of the facts that made their conduct blameworthy. Elonis v. United States, 575 U.S. ___ (2015). For example, if the statute made verbal abuse illegal, the courts would be full with millions of citizens who didn't like what somebody said in a domestic relationship, who might feel verbally abused, file a petition, and by making verbal abuse illegal without strict guidelines, that would suppress all speech, which the first amendment protects. In this case the Courts of Wisconsin took it upon themselves to usurp the legislative branches power to make law, that made verbal abuse criminal without a mental state requirement. Without a mental state requirement in the statute, an individual who unwittingly said something that a significant other did not like, and they called it verbal abuse, filed for an injunction, then, would be guilty under the Court of Appeals interpretation of the Wisconsin Domestic Abuse law and a 6 year injunction would issue. The United States Supreme Court precedence requires that the Wisconsin statute must require the exact knowledge of the facts that made specific verbal abuse unauthorized before an injunction can issue? It does not exist currently under the statute and the Courts lack the power to amend the current law!

The "presumption in favor of a scienter requirement should apply to each of the statutory elements that criminalize otherwise innocent conduct." X-Citement Video,

513 U. S., at 72 (emphasis added). But communicating something is not what makes the conduct "wrongful." Here "the crucial element separating legal innocence from wrongful conduct" is the threatening nature of the communication. Id., at 73. Mr. Willan did not currently live with Ms. Hennig at the time of the injunction, therefore there was no threating nature present. The mental state requirement must therefore apply to the fact that the communication contains a threat. Elonis v. United States, 575 U.S. ___ (2015)

So, under Section 813.12am(6), "wrongdoing must be conscious to be criminal." The First Amendment, applicable to the States through the Fourteenth Amendment, provides that "Congress shall make no law ... abridging the freedom of speech." 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. Abrams v. United States, 250 U. S. 616, 630 (1919) (Holmes, J., dissenting); see also Texas v. Johnson, 491 U. S. 397, 414 (1989) ("If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable"). The First Amendment affords protection to symbolic or expressive conduct as well as to actual speech. See, e.g., R. A. V. v. City of St. Paul, 391 U. S. 367, 376-377 (1968); Tinker v. Des Moines Independent Community School Dist., 393 U. S. 503, 505 (1969). Is it the Court of appeals position that abusive approach to sex is neither expressive or symbolic? Is sex distasteful or discomforting?

The Court of appeals opinion emphasized that it was irrelevant whether Mr. Willan intended his arguments to be threats—" While the record is sufficient to establish that

Willan made true threats, it is unnecessary for us to reach this constitutional question.." Id., at 286. (App A pg. 6)

The injunction imposed in this case is in place for 6 years and Mr. Willan now, faces a lifetime stigma that he is a domestic abuser, he cannot carry a gun to protect himself or even hunt for 6 years based upon yelling and arguments about sex, and it can be renewed for another 4 years by Wisconsin statute without any rights to object, this is all done without any proof that Mr. Willan ever intended his communication with Ms. Hennig, were meant as threats of harm to her, and, that Mr. Willan was not informed in writing prior to the hearing of the new threat allegations that came up during the hearing.

THE WISCONSIN COURTS NEVER DETERMINED WHETHER THERE WAS A CLEAR AND PRESENT DANGER REQUIRING INJUNCTIVE RELIEF

Mr. Willan has continually renewed his challenge to the constitutional questions presented to this court, to the Circuit Court, Court of Appeals, and The Supreme Court of Wisconsin, contending that the Circuit Court is constitutionally required to find that his arguments about sex, were intended to be threats of physical harm and that he was entitled to due process notice before the hearing. The Court of Appeals disagreed with this argument, "This is because the circuit court also concluded that Willan's conduct of throwing objects and punching a door hard enough to make a four-inch hole were threatening acts that independently supported a domestic abuse injunction. We see no argument from Willan to challenge this determination, so we need not decide whether Willan's threatening words, standing alone, would justify the injunction. See Cholvin v. Wisconsin Dep't of Health and Family Servs., 2008 WI App 127, ¶34, 313 Wis. 2d

749, 758 N.W.2d 118 (if a decision on one point disposes of the appeal, we typically will not decide other issues raised). (App A pg. 6)

However the court in Blazel v. Bradley, 698 F. Supp. 756 (1988). Stated "I conclude that Wis.Stat. § 813.12 provides the essential due process protections that are required before the state may constitutionally deprive plaintiffs of the protected liberty and property interests at stake when a temporary restraining order is issued in a domestic abuse action. Construing 813.12 this section to include a requirement of showing imminent danger, it is constitutional. Blazel v. Bradley, 698 F. Supp. 756 (1988). It is explicit in the statute that judicial participation and a verified petition containing detailed allegations are required before an ex parte order may issue and that a prompt post-deprivation hearing must be provided. And in light of the statute's legislative history, it is implicit that ex parte orders are to be issued **only upon an allegation of risk of imminent and irreparable harm based on personal knowledge.** The ex parte order paperwork is the same paperwork as the permanent injunction paperwork and carries the same charges and meaning.

The Court Opinion makes no determination of risk, or risk assessment to Ms. Hennig's request for court protection in relationship to the federal caselaw in Blazel v. Bradley, 698 F. Supp. 756 (1988). There are no specific findings of fact in the Circuit Court transcripts eluding to the Court of Appeals conclusion (App B)

But there is more to these cases. It is not a number that is on trial; it is a person with a 6 year injunction imposed for yelling. The conduct of the petitioner after he has moved out is the central issue, not the words spoken over 2 ½ years prior. The nature of the words is, of course, relevant as an attribute of the petitioner's conduct, but the words

are thus placed in context from which they draw color and character. A wholly different result might be reached in a different setting. What is under discussion is whether the injunction issued against Mr. Willan for 6 years on a general charge of yelling and verbal abuse prior to him moving out meets the legislative intent of a protective domestic abuse injunction and constitutional requirements of a showing of imminent harm after he has vacated the premises, as defined in Blazel v. Bradley, 698 F. Supp. 756 (1988). It cannot survive when there was no showing of imminent danger and when the statute contains without statutory or judicial definition words of such ambiguous meaning and uncertain connotation as “abusive approach to sex”, “Verbal abuse”, "intent," "threat of sexual assault," or "clear and present danger." The Court of Appeals does not attempt to speak specifically as to that contention.

Debate and argument even in the courtroom are not always calm and dispassionate. Emotions sway speakers and audiences alike. Intemperate speech is a distinctive characteristic of man. Hotheads blow off and release destructive energy in the process. They shout and rave, exaggerating weaknesses, magnifying error, viewing with alarm. So, it has been from the beginning; and so, it will be throughout time. The Framers of the Constitution knew human nature as well as we do. They too had lived in dangerous days; they too knew the suffocating influence of orthodoxy and standardized thought. They weighed the compulsions for restrained speech and thought against the abuses of liberty. They chose liberty.

At all events, it is clear that the defense was ruled out as matter of law and the petitioner was never allowed to present it for decision by either court or jury upon the true facts of this case, a practice which I think is contrary to the overwhelming verdict

of Anglo-Saxon history and practice. The point is that his evidence, proffered for that purpose, was excluded instead of being received and evaluated. Society has an interest in preserving truth as a justification, however obnoxious the effort may be. In this case, neither the court nor jury found or were required to find any injury to any person, or group, or to the public peace, nor to find any probability, let alone any clear and present danger, of injury to any of these. Read the police report, it shows there was no clear and present danger and contradicts what the injunction was issued for. If Mr. Willan was still living in the residence and the police report backed up Ms. Hennig's allegations that she told for the first time ever to the court in this case, it certainly would be no constitutional obstacle to imposing civil or criminal liability for actual results. But in this case no actual violence and no specific injury was charged or proved. Referring to the clear and present danger doctrine in Dennis v. United States, 341 U. S. 494, 568, I said:

"I would save it, unmodified, for application as a `rule of reason' in the kind of case for which it was devised. When the issue is criminality of a hot-headed speech in the privacy of one's house, or on a street corner, or an NFL player kneeling during the national anthem or circulation of a few incendiary pamphlets, or parading by some zealots behind a confederate flag, or refusal of a handful of school children to salute our flag, it is not beyond the capacity of the judicial process to gather, comprehend, and weigh the necessary materials for decision whether it is a clear and present danger of substantive evil or a harmless letting off of steam. It is not a prophecy, for the danger in such cases has matured by the time of trial or it was never present. The test applies and has meaning where an injunction is sought to be based on a speech which

does not directly or explicitly advocate a crime but to which such tendency is sought to be attributed by construction or by implication from external circumstances like the #METOO MOVEMENT. The formula in such cases favors freedoms that are vital to our society, and, even if sometimes applied too generously, the consequences cannot be grave. . . ."

Not the least of the virtues of this formula in such tendency cases is that it compels the prosecution to make up its mind what particular evil it sought or is seeking to prevent. It must relate its interference with speech or press to some identifiable evil to be prevented. Words on their own account are not to be punished in such cases but are reachable only as the root of punishable evils.

The Court of Appeals for the 4th district of Wisconsin handed down an opinion that disregards the law and violates the appellants constitutional rights, while affirming the Circuit court's erroneous conclusions as to the issues raised by appellant regarding the Wisconsin Domestic abuse process. We respectfully urge upon you to look at the facts of this case, look at the law, and grant a writ of certiorari that clarifies the rights granted by the constitution and precedential Supreme Court of the United States law regarding all the points passed upon by the Supreme Court of Wisconsin. We urge that you hold the Domestic abuse Statute of Wisconsin invalid on its face or as applied in this case because, the Due Process Clause of the Fourteenth Amendment is in full play here, and the Constitution or the Wisconsin Legislature has not provided the Courts of Wisconsin with unlimited unchecked discretion in Domestic abuse injunction proceedings, in which the following basic rights are denied a respondent by the Courts:

1.The right of Mens rea in finding a threat; Elonis v. United States, 575 U.S. ___ (2015).

2. The right to proper notice of new charges before the hearing; In re Gault, 387 U.S. 1 (1967)

3. The right to a new hearing to present irrefutable evidence that Ms. Hennig is a liar;

4. The Right for the Court to substitute unprecedented legal opinion for what the legislative created the statute for;

5. The right to Supreme Court appellate review when there is no precedent case law ever in the 35-year history of the Wisconsin Domestic abuse law and where the freedom of one of its citizens is being denied by law without Due Process.

THE COURT OF APPEALS DECISION IGNORES DUE PROCESS

Failure to observe the fundamental requirements of due process has resulted in instances, which might have been avoided, of unfairness to individuals and inadequate or inaccurate findings of fact and unfortunate prescriptions of remedy. Due process of law is the primary and indispensable foundation of individual freedom. It is the basic and essential term in the social compact which defines the rights of the individual and delimits the powers which the state may exercise.

As Mr. Justice Frankfurter has said: "The history of American freedom is, in no small measure, the history of procedure." But, in addition, the procedural rules which have been fashioned from the generality of due process are our best instruments for the distillation and evaluation of essential facts from the conflicting welter of data that life and our adversary methods present. It is these instruments of due process which enhance the possibility that truth will emerge from the confrontation of opposing

versions and conflicting data. "Procedure is to law what scientific method' is to science."

Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement. See Kolender v. Lawson, 461 U. S., at 357 . In this case both reasons invalidate this statute. Accordingly, we first consider whether the ordinance provides fair notice to the citizen and then discuss its potential for arbitrary enforcement. "It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits . . . ." Giaccio v. Pennsylvania, 382 U. S. 399, 402-403 (1966).

Thus, § 813.12 AM (6) plainly does not encompass all offenses which create a "threat of substantial risk" that injury will result from a person's conduct. The "Threat of substantial risk" in § 813.12 AM (6) relates to the type of exact act or communication of a threat to the use of force, not to the possible effect of a person's conduct over a 2 year period prior. The risk in the law is that a personal argument about sex with a significant other, may be used to get a 6 year injunction for Domestic Abuse under Wisconsin law. As has happened in this case, when an individual communicates his personal feelings regarding sex in the privacy of his home and his significant other does not like it, is simply not the same thing as the risk that the individual who may "use threatening actions and language " of physical force against another requiring a Domestic abuse injunction.

That the action of state courts and of judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the Fourteenth Amendment. Thus, in Commonwealth of Virginia v. Rives, 1880, 100 U.S. 313, 318 , this Court stated: 'It is doubtless true that a State may act through different agencies, either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another.' In Ex parte Commonwealth of Virginia, 1880, 100 U.S. 339, 347 , the Court observed: 'A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way.' In the Civil Rights Cases, 1883, 109 U.S. 3, 11 , 17, 21, this Court pointed out that the Amendment makes void 'state action of every kind' which is inconsistent with the guaranties therein contained and extends to manifestations of 'state authority in the shape of laws, customs, or judicial or executive proceedings.' Language to like effect is employed no less than eighteen times during the course of that opinion.

Similar expressions, giving specific recognition to the fact that judicial action is to be regarded as action on the State for the purposes of the Fourteenth Amendment, are to be found in numerous cases which have been more recently decided. In Twining v. New Jersey, 1908, 211 U.S. 78, 90 , 91, 16, the Court said: 'The judicial act of the highest court of the state, in authoritatively construing and enforcing its laws, is the act of the state.' In Brinkerhoff-Faris Trust & Savings Co. v. Hill, 1930, 281 U.S. 673,

680 , 454, the Court, through Mr. Justice Brandeis, stated: 'The federal guaranty of due process extends to state action through its judicial as well as through its legislative, executive, or administrative branch of government.' Further examples of such declarations in the opinions of this Court are not lacking.

One of the earliest applications of the prohibitions contained in the Fourteenth Amendment to action of state [334 U.S. 1 , 16] In the notice and opportunity to defend, has, Ex parte Virginia, supra, held that a similar discrimination imposed by the action of a state judge denied rights protected by the Amendment, despite the fact that the language of the state statute relating to jury service contained no such restrictions.

The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment. Brinkerhoff- Faris Trust & Savings Co. v. Hill, supra. Cf. Pennoyer v. Neff, 1878, 95 U.S. 714 .15

In numerous cases, this Court has reversed criminal convictions in state courts for failure of those courts to provide the essential ingredients of a fair hearing. Thus it has been held that convictions obtained in state courts under the domination of a mob are void. Moore v. Dempsey, 1923, 261 U.S. 86 . And see Frank v. Mangum, 1915, 237 U.S. 309 . Convictions obtained by [334 U.S. 1 , 17] coerced confessions, **by the use of perjured testimony known by the prosecution to be such**, or without the effective assistance of counsel, have also been held to be exertions of state authority in conflict with the fundamental rights protected by the Fourteenth Amendment.

But the examples of state judicial action which have been held by this Court to violate the Amendment's commands are not restricted to situations in which the judicial proceedings were found in some manner to be procedurally unfair. It has been recognized that the action of state courts in enforcing a substantive common-law rule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process. Thus, in American Federation of Labor v. Swing, 1941, 312 U.S. 321 , enforcement by state courts of the common-law policy of the State, which resulted in the restraining of peaceful picketing, was held to be state action of the sort prohibited by the Amendment's guaranties of freedom of discussion. 20 In Cantwell v. Connecticut, 1940, 310 U.S. 296 , 128 A.L.R. 1352, [334 U.S. 1 , 18] a conviction in a state court of the common-law crime of breach of the peace was, under the circumstances of the case, found to be a violation of the Amendment's commands relating to freedom of religion. In Bridges v. California, 1941, 314 U.S. 252 , 159 A.L.R. 1346, enforcement of the state's common-law rule relating to contempts by publication was held to be state action inconsistent with the prohibitions of the Fourteenth Amendment. 21 And cf. Chicago, B. & Q.R. Co. v. Chicago, 1897, 166 U.S. 226 .

The short of the matter is that from the time of the adoption of the Fourteenth Amendment until the present, it has been the consistent ruling of this Court that the action of the States to which the Amendment has reference, includes action of state courts and state judicial officials. Although, in construing the terms of the Fourteenth

Amendment, differences have from time to time been expressed as to whether particular types of state action may be said to offend the Amendment's prohibitory provisions, it has never been suggested that state court action is immunized from the operation of those provisions simply because the act is that of the judicial branch of the state government.

The undisputed facts disclose that petitioner voluntarily moved out from their shared residence with Ms. Hennig prior to the injunction hearing and agreed to never contact her again. It is clear that but for the active intervention of the state courts, supported by the full panoply of state power, petitioner would have been free to exit the property in question without injunctive restraint on his life.

These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to work out their differences as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, the enjoyment of the freedom from injunctive restrictions imposed by State law, on the grounds of made up verbal allegations, "that over a two-year period, Willan had engaged in a pattern of verbal abuse that centered on wanting to have more sex with her. Ms. Hennig further alleged that Willan's abuse had recently escalated into more aggressive conduct. At the hearing, Mary testified about specific examples of instances in which she felt threatened by Willan's abusive approach to sex." The difference between judicial enforcement and nonenforcement of the restrictive injunction is the difference to petitioner being denied rights available to other members of the community and being accorded full enjoyment of those rights on an equal footing.

The enforcement of the restrictive injunction by the state courts in these cases was directed pursuant to the common-law policy of the States as formulated by the legislature. The judicial action in each case bears the clear and unmistakable imprimatur of the State. We have noted that previous decisions of this Court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. Nor is the Amendment ineffective simply because the particular pattern of discrimination, which the State has enforced, was defined initially by the terms of statute. State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands.

We believe in granting judicial enforcement of the restrictive injunctions in this case, the State has denied petitioner the equal protection of the laws and that, therefore, the action of the state courts cannot stand. We have noted that freedom from discrimination by the States in the enjoyment of freedom rights was among the basic objectives sought to be effectuated by the framers of the Fourteenth Amendment. That such discrimination has occurred in this cases is clear. Because of the offending words of the petitioner, the Courts have denied rights and freedoms enjoyed as a matter of course by other citizens. The Fourteenth Amendment declares 'that all persons, whether colored or white, shall stand equal before the laws of the States, and, in regard to speech, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their speech. Nor

may the discriminations imposed by the state courts in these cases be justified as proper exertions of state police power. 27 Cf. Buchanan v. Warley, supra.

The rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights. It is, therefore, no answer to these petitioners to say that the courts may also be induced to deny persons rights of freedom to move on grounds of speech. Equal protection of the laws is not achieved through indiscriminate imposition of inequalities.

Since the Legislature cannot conceivably have meant to criminalize each instance a citizen discusses intimacy in the privacy of one's home, the vagueness that dooms this law is not the product of uncertainty about the normal meaning of " a threat to engage in any of the above conduct," but rather if speech is included, what exact words or actions are covered by the statute and what is not.

Under 813.12 stats. the legislature has not clearly defined whether a threat is verbal or action, and where the legislature's regulation includes expression, "the standards of permissible statutory vagueness are strict." N.A.A.C.P. v. Button, 371 U.S. 415, 432 (1963)., Vagueness may invalidate a criminal law for either of two independent reasons. First, it may fail to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement. See Kolender v. Lawson, 461 U. S., at 357 .

Former Chief justice SHIRLEY S. ABRAHAMSON, J. wrote this about the application of a similar Wisconsin law regarding harassment,

"I conclude that secs. 813.125(1)(b) and 947.013(1)(b), Stats. 1985-86, define harassment to encompass conduct and acts only, not verbal communication. Because this case does not involve speech, the case does not fall within the statutes as I believe the statutes should be interpreted. If the statutes are interpreted to include speech, they are, in my opinion, unconstitutional.

If the statutes are interpreted to include both conduct and speech, they are, in my opinion, unconstitutional. The Wisconsin Court of appeals failure to distinguish between innocent conduct and conduct threatening harm is the result of a vague law. First, the purpose of the fair notice requirement is to enable the ordinary citizen to conform his or her conduct to the law. "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes." Lanzetta v. New Jersey, 306 U. S. 451, 453 (1939). If the speech is in fact harmless and innocent, the injunction order itself is an unjustified impairment of liberty. If the Courts are able to decide arbitrarily which members of the public they will order an injunction against based upon vague descriptions of speech, then the Wisconsin law becomes indistinguishable from the law we held invalid in Shuttlesworth v. Birmingham, 382 U. S. 87, 90 (1965).

This vague phrasing of threats under 813.12 raises a host of questions. If you have an argument about money, is that threatening? How does a court distinguish between interpretations of disagreeing speech? If one partner argues about sex and the other argues that she is keeping mutual property, which one is subject to arrest and injunctive relief or should they be asked by the Court to merely disperse ?

Lack of clarity in the description of the word "threat" might not render the ordinance unconstitutionally vague if the definition of the forbidden conduct were clear, but it does buttress a conclusion that the entire law fails to give the ordinary citizen adequate notice of what is forbidden and what is permitted. The Constitution does not permit a legislature to "set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." United States v. Reese, 92 U. S. 214, 221 (1876). This ordinance is therefore vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all." Coates v. Cincinnati, 402 U. S. 611, 614 (1971).

INADEQUATE NOTICE OF CHARGES.

The Court of Appeals rejected appellants' claim that due process was denied because of inadequate notice. The opinion stated **"that Willan further argues that he was denied due process because the circuit court allowed Mary to testify about a "new claim." Because Mary's testimony was consistent with her petition, we reject Willan's argument that he did not have sufficient notice to enable a defense."**

A "petition" was filed with the court to get a TRO and an injunction on January 19, 2017 by Ms. Hennig, reciting "State what happened when, where, who did what to whom," Ms. Hennig states,

Willan "came home [and] wanted to talk about the same argument that had been happening for 3 days and she didn't want to talk and he got angry and yelled then threw his phone and punched a hole in door. The day before he threw a laundry detergent bottle across the apartment

The applicable Wisconsin Section 813.12(5)(a), Stats., provides that the petitioner shall allege facts sufficient to show: (1) the name of the petitioner and that the petitioner is the alleged victim; (2) the name of the respondent and that the respondent is an adult; and (3) the respondent engaged in or, based upon prior conduct, may engage in domestic abuse of the petitioner. To issue a TRO, 813.12(3)(a)1 and 2 requires the petitioner to assert sufficient facts and circumstances to permit a judge or family court commissioner to find reasonable grounds to believe that the respondent has engaged in or, based on prior conduct, may engage in domestic abuse of the petitioner. From the record, we further note that the form which the petitioner is to complete requires a statement of "what happened, when, where, who did what to whom." Schramek v. Bohren, 145 Wis. 2d 695, 429 N.W.2d 501 (Ct. App. 1988). The statute explicitly states that such petitioner shall allege facts sufficient, not a general allegation, "without alleging any facts." There is a requirement that the petition be served before the hearing, and the new allegations were not served upon, given to, or shown to Mr. Willan. It is a long way from the original allegations of striking a door and throwing a soap bottle across the room to "New claims" of threats of forcible rape.

In re Gault, 387 U.S. 1 (1967) the court stated that, "We cannot agree with the court's conclusion that adequate notice was given in this case. Notice, to comply with due process requirements, must be given sufficiently in advance of scheduled court proceedings so that reasonable opportunity to prepare will be afforded, and it must "set forth the alleged misconduct with particularity."

The "initial hearing" in the present case was a hearing on the merits. Notice at that time is not timely, and even if there were a conceivable purpose served by the deferral proposed by the court below, it would have to yield to the requirements that Mr. Willan be notified, in writing, of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and, in any event, sufficiently in advance of the hearing to permit preparation. Due process of law requires notice of the sort we have described -- that is, notice which would be deemed constitutionally adequate in a civil or criminal proceeding. It does not allow a hearing to be held in which a person's freedom, right to bear arms, and his right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet. Nor, in the circumstances of this case, can it reasonably be said that the requirement of notice was waived. In re Gault, 387 U.S. 1 (1967) In this case no notice regarding "third degree sexual assault" was given and the Court of appeals blew it off like the petition did have the word "sex" in it, which is close enough to allegations of third degree sexual assault, so it does not matter, all in violation of Due process guaranteed by the constitution.

CONCLUSION.

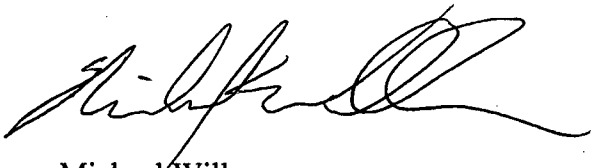
While laws or prosecutions might not alleviate all Domestic abuse, but if it helps one real victim in my opinion it is a success, and, I should be loath to foreclose the States from a considerable latitude of experimentation in this field. Such efforts, if properly applied, do not justify frenetic forebodings of crushed liberty. But these acts present most difficult policy and technical problems, as thoughtful writers who have

canvassed the problem more comprehensively than is appropriate in a judicial opinion have well pointed out.

All American's interest in any particular prosecution should not forget that the shoe may be on the other foot in some prosecution tomorrow. In these, as in other matters, our guiding spirit should be that each freedom is balanced with a responsibility, and every power of the State must be checked with safeguards. Such is the spirit of our American law on Domestic abuse, which concedes the power to the State, but only as a power restrained by recognition of individual rights. This Court cannot escape the conclusion that as the Act has been applied in this case it lost sight of the rights. Mr. Willan has been denied the true justice for rules of law by the Wisconsin Courts in this case. Domestic abuse is a serious social problem that requires state intervention, but it cannot be solved with unconstitutional laws and applications that allow Courts to arbitrarily deny the petitioners right to due process and that suppresses speech that the Courts get to arbitrarily determine what is and is not protected. If Wisconsin wants to combat Domestic abuse, then we ask this Court to force Wisconsin to make the law that passes constitutional mustard that protects both sides of a dispute.

WHEREFORE, consistent with the Constitution of the United States of America, the rules of law, and United States Supreme Court precedence, the Petition for a writ of certiorari should be granted.

Respectfully Submitted,



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