

NO. COA25-914

THIRTY-SEVENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

BEVERLY COBLE,

Plaintiff,

vs.

WILLIAM CLAYTON
BALLENTINE,

Defendant.

From Randolph County

25CV000794-750

DEFENDANT-APPELLANT’S REPLY BRIEF

Ms. Coble’s opposition starkly illustrates why this Court should reverse and vacate the District Court’s no-contact order prohibiting Clayton Ballentine from speaking about Coble, publishing her name, or referencing her by inference in any fashion, in public or private, for one year. The District Court’s order is unprecedented and unconstitutional.

Ballentine’s opening brief explained how the District Court’s order was improper under the First Amendment and this Court’s precedents: First, Ballentine’s online posts about Coble cannot constitute “stalking” or “harassment” within the meaning of N.C. Gen. Stat. §§ 50C and 14-277.3A(b)(2), because his speech was *about* her, not “directed at” her. Second, the order amounts to an unconstitutional content-based gag order and prior restraint of Ballentine’s speech that fails strict scrutiny, as

this Court's precedents make clear. *See State v. Shackelford*, 264 N.C. App. 542 (2019).

In response, Coble's opposition offers strained, unsupported arguments. She argues that Ballentine's public posts about her were somehow "directed at" her because she "regularly monitored" (*i.e.*, read) the Anybody But Coble website. This is a remarkable proposition utterly inconsistent with the First Amendment, as it would transform every journalist and any member of the public who says something negative about somebody else into a stalker and harasser subject to civil and criminal penalties.

Coble goes on to claim the District Court's order satisfies strict scrutiny because it "*only* prohibits Mr. Ballentine from speaking or otherwise publishing Ms. Coble's name or making inferential references to Ms. Coble" for one year. (Opp p 8 [emphasis added]). But that describes an unconstitutional prior restraint. Coble's opposition ignores well-established First Amendment principles including and this Court's precedents. The Court should reject Coble's conclusory theories and vacate the District Court's no-contact order.

I. BALLENTINE'S PUBLIC ONLINE POSTS ABOUT COBLE CANNOT CONSTITUTE STALKING OR HARASSMENT UNDER § 50.

Ballentine explained in the opening brief that the District Court erred in finding he violated § 50C because, as the record evidence shows, he never made any communications "directed at" Coble. (*See Br pp 16–20*). As this Court held in *Weller v. Jackson*, the harassment statute does not reach "social media posts written '*about*' an individual but not sent '*directly to*' the individual." 279 N.C. App. 260 ¶ 15, 2021

WL 4059970 at *3 (2021) (unpublished). Similarly, in *State v. Shackelford*, this Court interpreted N.C. Gen. Stat. § 14-277.3A (the criminal harassment law incorporated into § 50C) in the same way, invalidating a conviction for online posts the defendant “wrote *about* [the plaintiff] but did not send directly *to* her” 264 N.C. App. 542, 556 (2019). Coble’s opposition says nothing about the holdings of these cases.

Instead, she tries to claim Ballentine’s posts *about* her were actually communications somehow directed *to* her, because both parties “actively use the Internet and social media,” Ballentine admitted he wrote the posts, and—so she says—“Ballentine’s posts on Anybody But Coble were directed at [her] via Facebook.” (Opp pp 5–6). Coble’s argument is sophistry. The evidence in the District Court was undisputed that Ballentine had not contacted Coble or directed any communications to her since March 2022. (Tp 34:17-35:20 [Coble’s testimony]). The posts were publicly available on the Internet for all to see. While they were about Coble, they were not communications directed at her within the definitions of stalking and harassment in § 50C. *See Weller*, 279 N.C. App. 260 at ¶ 18, 2021 WL 4059970 at *4.

Coble says little about *Weller* and *Shackelford*, and what she does say in trying to avoid their holdings is wrong. Coble attempts to distinguish *Weller* on the basis that it involved “one news article” instead of “social media posts” (Opp pp 5–6), but this is incorrect. The plaintiff’s complaint in *Weller* “related to social media posts made by defendant on his ‘North Carolina Beat’ Facebook page,” which included videos, interviews, and blog posts. *Weller*, 279 N.C. App. 260 at ¶¶ 4, 6, 7, 2021 WL 4059970 at *1–*2. As for *Shackelford*, Coble apparently urges the Court to disregard

that decision because it was a “criminal case involving ... comments on a Google Plus account.” (Opp p 6). But this Court in *Weller*—which concerned a § 50C civil no-contact order—explicitly cited *Shackelford* for its holding that applying the harassment statute to social media posts about another person violated the defendant’s First Amendment rights. *Weller*, 279 N.C. App. 260 at ¶ 15.¹ Coble cannot avoid the core point of *Shackelford* and *Weller* reflecting the fallacy of Coble’s claims here: Absent more, communications *about* someone are not directed *to* them for purposes of stalking and harassment.

Finally, the Court should disabuse Coble of the notion that speech about someone is, for purposes of the harassment statutes, directed at them if the speaker suspects the subject may (or is likely to) see it. Coble cannot recast Ballentine’s posts about her as veiled communications meant for her merely because both parties “actively use the Internet and social media.” (Opp p 5). There is no evidence in the record to support Coble’s newly concocted theory. But, more than that, countenancing such a theory would allow claims of civil and criminal liability under North Carolina law for every individual who makes criticisms or negative comments about another person on social media or the Internet. Accepting Coble’s contention that public criticisms online are veiled direct communications would subject many thousands of journalists, bloggers, and commentators—as well as the many millions of regular

¹ Google+ was a social media platform Google marketed from 2011-2019. See <https://en.wikipedia.org/wiki/Google%2B>.

people who use social media—to harassment charges on a daily basis. This Court should reject Coble’s blatantly unconstitutional theory.

II. THE NO-CONTACT ORDER VIOLATES THE FIRST AMENDMENT.

Coble’s opposition regarding the First Amendment fares no better as it misunderstands established First Amendment analyses and principles. Again here, Coble simply ignores this Court’s decision in *Shackelford*, which held the interpretation she advances would make the North Carolina harassment statutes unconstitutional under the First Amendment.

Coble first asserts that the First Amendment does not protect “certain well-defined and narrowly limited classes of speech.” (Opp p 7 [quoting *Hest Techs., Inc. v. State ex rel. Perdue*, 366 N.C. 289, 297 (2012)]). But this case has nothing to do with any of these “historic and traditional categories long familiar to the bar,” *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 127 (1991) (Kennedy, J., concurring in judgment), *i.e.*, obscenity, defamation, fraud, incitement, and speech integral to criminal conduct. *See United States v. Stevens*, 559 U.S. 460, 468, 472 (2010) (states do not have “freewheeling authority to declare new categories of speech outside the scope of the First Amendment”). Simply put, speech does not lose protection simply because someone claims it is harassing: There is no categorical ‘harassment exception’ to the First Amendment’s free speech clause.” *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 204 (3d Cir. 2001) (Alito, J.). Coble’s first argument alluding to the narrowly limited categories of other types of speech that may be unprotected is thus wholly irrelevant here.

Coble goes on to contend “[t]he District Court’s no-contact order does not violate the First Amendment because it passes strict scrutiny.” (Opp p 7). Coble misunderstands First Amendment strict scrutiny analysis, however, the correct approach to which *Shackelford* illustrates.

The first step is to determine whether a regulation or court order implicates the First Amendment by restricting protected speech. *Shackelford*, 264 N.C. App. at 553 (citing *State v. Bishop*, 368 N.C. 869, 872 (2016)). This Court found the pertinent language in N.C. Gen. State. 14-277.3A punishing “communicat[i]ons to or about a person” directly implicated First Amendment concerns. *Id.* at 556. Under the statute, “no additional conduct on [the defendant’s] part was needed to support his stalking convictions. Rather, his speech itself was the crime.” *Id.* The same is true for the District Court’s § 50C order in this case; it was targeted entirely at protected speech, as it restricted Ballentine from saying anything about Coble directly, indirectly, or even “inferentially” under the threat of punishment.

The second step is to consider whether a speech restriction is content based because, if so, it must satisfy strict scrutiny, the most exacting test of First Amendment law. *Id.* at 558; see *Bishop*, 368 N.C. at 877–78 (“it is perhaps unsurprising that few content based restrictions have survived this inquiry”). In *Shackelford*, the Court concluded § 14-277.3A was content based because it applied to social media posts of a defendant that would “cause a reasonable person to ... [s]uffer emotional distress’ ... a determination [that] simply could not be made without reference to the content of his posts.” 264 N. C. App. at 558. Coble cast her

claims in the same way (Opp p 3), and thus the District Court's § 50C order must be examined at the third step of the analysis as a content-based speech restriction that is presumptively invalid under the First Amendment. *See id.* at 555.

Coble offers one sentence about strict scrutiny: "To satisfy strict scrutiny, the restriction must serve a compelling government interest and be narrowly tailored to effectuate that interest." (Opp p 7).² Here too, her opposition provides no further discussion or citation of authority.

Coble maintains the State of North Carolina has a compelling interest in protecting its citizens from stalking. She quotes at length legislative findings stating that stalking is a serious problem which can be dangerous and explaining that the General Assembly therefore enacted § 14-277.3A to address situations involving "a pattern of following, observing, or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means." (Opp p 8 [quoting § 14-277.3A(a)].) There is no need to debate this point, however, because the record evidence in this case shows Ballentine never did anything toward Coble even remotely close to stalking. He did not contact her, did not follow her, made no threats of any kind, and directed no communications to her. Coble offers no explanation of how prohibiting Ballentine from engaging in constitutionally protected speech about

² Coble cites *Durham Cnty. Dep't of Soc. Servs. v. Wallace*, 295 N.C. App. 440, 452 (2024), a case that did not involve strict scrutiny at all, as the trial court order at issue only imposed limitations on protestors' conduct, not their speech. 295 N.C. App. at 454.

her addresses the State's interest in protecting potential victims from threats of actual stalking and harassment.

Coble contends the District Court's § 50C order is "the least-restrictive means to ensure Ms. Coble receives the necessary legal protection from" Ballentine. (Opp p 9). This is nonsensical. The order already prohibits Ballentine from approaching Coble, going to her home or workplace, or contacting her directly. (R p 11). Limiting its order to these restrictions was within the District Court's powers and clearly presented a less speech-infringing alternative (although it would have been inappropriate and unwarranted because Ballentine never did any of these things). *See Shackelford*, 264 N.C. App. at 559 (prior no-contact order precluding in-person contact was a less restrictive approach than an order precluding defendant from any online posts). On the other hand, the *most* speech-restrictive and infringing approach is what the District Court did here—imposing a proscription on Ballentine from saying anything of any sort anywhere to anyone about Coble for a full year.

North Carolina precedent forecloses Coble's arguments as a matter of First Amendment law. This Court held in *Shackelford* that reading § 14-277.3A to impose criminal liability on a defendant who merely posted online about another person would "limit speech far beyond the generally understood meaning of stalking" and would instead sweep in a "host of social interactions that ... are clearly understood to fall within the protections of the first amendment." *Shackelford*, 264 N.C. App. at 559 (quoting *People v. Relford*, 104 N.E.3d 341, 353–54 (Ill. 2017)); *see also Bishop*, 368 N.C. at 878–79 (holding that N.C. Gen. Stat. § 14-458.1 governing cyberbullying

contravened the First Amendment because its scope “would essentially criminalize posting *any* information about *any* specific minor if done with the requisite intent”).

In short, Ballentine’s posts cannot constitutionally form the basis for the § 50C order entered against him. The thrust of Coble’s opposition—and her misunderstanding of First Amendment law—is encapsulated by the assertion near the end of her brief that the no-contact order does not offend the First Amendment because it “only prohibits Mr. Ballentine from speaking or otherwise publishing Ms. Coble’s name or making inferential references to Ms. Coble until April 2026.” (Opp p 8). That both concedes the breadth of the order and describes a quintessential prior restraint, “the most serious and least tolerable infringement on First Amendment rights.” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976). It is, of course, no justification for an unconstitutional prior restraint that it was limited to “only” a year.

CONCLUSION

This Court should reverse the District Court’s decision, vacate the no-contact order, and clarify that the First Amendment does not permit the imposition of a gag order under § 50C.

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, LLP

By: Electronically submitted
Greg Gaught
(N.C. Bar No. 57616)
ggaught@brookspierce.com
150 Fayetteville Street, Suite 1700
Raleigh, NC 27601
T: (919) 882-2528
F: (336) 232-9108

N.C. R. App. P. 33(b) Certification:
I certify that all of the attorneys
listed below have authorized me to
list their names on this document as
if they had personally signed it.

FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION

/s/ James C. Grant

James C. Grant*
WA State Bar No. 14358
jim.grant@thefire.org
510 Walnut Street, Suite 900
Philadelphia, PA 19106
T: (215) 717-3473

/s/ David W. Rubin

David W. Rubin*
DC Bar No. 90021100
CA Bar No. 329852
david.rubin@thefire.org
700 Pennsylvania Ave., SE, Suite 340
Washington, DC 20003
T: (215) 717-3473

*Admitted *pro hac vice*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 28(j) of the North Carolina Rules of Appellate Procedure, the undersigned counsel for Defendant-Appellant certifies that the foregoing brief, which is prepared using a proportional font, is fewer than 3,750 words (excluding cover, index, table of authorities, caption, signature blocks, certificate of service, and this certificate of compliance) as reported by the word-processing software used to prepare this brief.

This the 15th day of January, 2026.

By: Electronically submitted
Greg Gaught

CERTIFICATE OF SERVICE

I hereby certify that on this day a copy of the foregoing document was served on the persons indicated below by via email, addressed as follows:

Gary K. Sue
Sue, Anderson & Bordman, L.L.P.
Post Office Box 20083
Greensboro, NC 27420
gks@sa-nclaw.com

Andrew T. Smith
Sue, Anderson & Bordman, L.L.P.
Post Office Box 20083
Greensboro, NC 27420
ats@sa-nclaw.com

This the 15th day of January, 2026.

By: Electronically submitted
Greg Gaught