No. C102979

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

WOMEN'S HEALTH SPECIALISTS

Plaintiff-Respondent,

v.

C.H.,

Defendant-Appellant.

Appeal from the Shasta County Superior Court Hon. Benjamin L. Hanna, Judge Presiding Superior Court Case No. 206304

Application of the American Center for Law and Justice and Animal Activist Legal Defense Project for Permission to File Brief of Amici Curiae in Support of Appellant; Amici Brief in Support of Appellant

*CECE HEIL, SBN [redacted]
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American Center for Law & Justice
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AMICI APPLICATION FOR PERMISSION[1]

Pursuant to California Rules of Court, Rule 8.487(e), proposed amici curiae the American Center for Law and Justice and Animal Activist Legal Defense Project respectfully seek this Court's permission to file the attached brief in support of Appellant C.H. This case presents, *inter alia*, the question of what First Amendment standard governs the Workplace Violence Restraining Order issued in this case. The amici brief will assist the Court by identifying the relevant standard and explaining why that standard must govern.

INTEREST OF AMICI

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. The ACLJ has submitted amicus briefs, *inter alia*, in a variety of free speech cases. The ACLJ offers the present brief to refute the idea that First Amendment protections against overly broad injunctions can be circumvented by using the device of a workplace restraining order.

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[1] No party to this case authored or proposed the contents of this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici or their members made a monetary contribution intended to fund the preparation or submission of this brief.

The Animal Activist Legal Defense Project (AALDP) at the University of Denver, Sturm College of Law, directed by Professor Justin Marceau, is the only offering at any U.S. law school that provides legal advice and representation to animal activists. As such, the AALDP is the only course that trains future lawyers to represent activists seeking to advance the wellbeing of non-human animals. Through training, advocacy, and direct client representation, the AALDP seeks to advance a number of vital but contested rights: the right to speak freely about the well-being of non-human animals; the right to document instances of animal cruelty; the right to rescue dying animals; and the right to determine the proper guardianship of helpless creatures. We have expertise in engaging with juries, prosecutors, and the media; in challenging laws that curtail free speech and due process; and in protecting individuals who bear witness to the exploitation of animals across the range of settings in which they suffer, from factory farms to puppy mills to roadside animal zoos. The Project serves groups and individuals who are generally associated with progressive causes, working with a variety of unpopular activists accused of civil disobedience and direct action.

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Pursuant to California Rules of Court, rule 8.208, Amici disclose that they know of no other entity or person that has a financial or other interest in the outcome of the proceedings.

Respectfully submitted,

Dated: Sept. 22, 2025

AMICI AMERICAN CENTER FOR LAW AND JUSTICE and ANIMAL ACTIVIST LEGAL DEFENSE PROJECT

By: */s/ CeCe Heil*
CeCe Heil

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional and Statutory Provisions

INTRODUCTION

The scope of the First Amendment's guarantee of the right to free speech against judicial overreach does *not* vary with the cause of action. The superior court therefore erred in failing to apply the U.S. Supreme Court's *Madsen* constitutional standard to the relief issued in this case. This Court should vacate the decision and order below and remand for reconsideration under the correct constitutional standard: "We must ask instead whether the challenged provisions of the injunction burden no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Center*, 512 U.S. 753, 765 (1994). In the alternative, this Court should simply reverse the injunction as unconstitutional.

ARGUMENT

THE *MADSEN* STANDARD GOVERNS COURT ORDERS RESTICTING FREE SPEECH REGARDLESS OF THE LABEL ON THE CAUSE OF ACTION.

A. The Superior Court Applied the Wrong Legal Standard.

1. Madsen sets the constitutional standard for permissible injunctive relief.

This is a case in which an abortion facility has sued an abortion opponent seeking court-imposed injunctive relief. Had Women's Health Specialists (WHS) simply sued C.H. civilly in court seeking an injunction against him (and/or his fellow pro-lifers)[2] for alleged misconduct, as other abortion facilities have

[2] *Madsen* governs such injunctions whether sought against an individual defendant, *e.g., United States v. Dinwiddie*, 76 F.3d

done over the years, *Madsen* clearly would apply. *See, e.g., Planned Parenthood Shasta-Diablo v. Williams*, 10 Cal. 4th 1009, 1019 (1995) (asking whether the injunction is valid under *Madsen*). Plaintiff-Respondent WHS does not dispute this obvious point.

In the present case, of course, WHS used a different cause of action, namely, a plea for a workplace violence restraining order (WVRO) under California Code of Civil Procedure § 527.8. But that is irrelevant to the First Amendment question. *Madsen* governs the permissible *relief* a court may grant; it does not depend on which legal *tools* are invoked. And in fact, courts have recognized that *Madsen* governs the scope of injunctions not just in state-court actions for injunctive relief, *e.g., Planned Parenthood Shasta-Diablo*, but also in federal actions under the Freedom of Access to Clinic Entrances (FACE) Act, *e.g., United States v. Mahoney*, 247 F.3d 279, 286 (DC Cir. 2001). Indeed, the constitutional right to free speech would be quite flimsy if its protections could be sidestepped simply by invoking a different or new cause of action.

Madsen therefore governs the constitutional permissibility of the injunction issued in this case, and the superior court erred in not applying *Madsen*.

2. WHS's contrary arguments are not persuasive.

WHS resists this conclusion. But none of its arguments withstand analysis.

913, 927 (8th Cir. 1996), or against multiple defendants, as in *Madsen*.

First, WHS points out that the WVRO tracks the possible relief expressly authorized by the statute. Resp. Br. at 11, 34-35. But whether such relief is authorized *in general*, and whether it is unconstitutional *as applied* to this particular case, are two very different questions. *Madsen* sets a *standard*; it does not prescribe specific *results* in advance.

Moreover, to say that certain relief is constitutional because a law or ordinance authorizes the challenged restriction is circular. Every statutorily based legal restriction has a statutory basis. That does not mean it is automatically constitutional. The question here is not whether the statutory menu of possible relief encompasses the WVRO order, but rather whether that order complies with the First Amendment.

Second, WHS emphasizes that the superior court granted the WVRO in response to C.H.'s alleged misconduct.[3] Resp. Br. at 11, 40. But *every* injunction issued in abortion protest litigation (or other demonstration cases) will invoke incidents of alleged misconduct or illegality as justification for its issuance. *See Madsen*, 512 U.S. at758 (impeding access); *United States v. Dinwiddie*, 76 F.3d 913, 927 (8th Cir. 1996) (threats, assault, obstruction); *U.S. v. Mahoney*, 247 F.3d at 281 (violating FACE); *Planned Parenthood Shasta-Diablo*, 7 Cal. 4th at 866-67

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[3] Whether the three belly bumps of which C.H. is accused were intentional, incidental, or accidental is irrelevant to the overarching question of the applicability of *Madsen*. Again, *Madsen* does not dictate particular results, but instead sets the *standard* for adjudging whether the relief granted is sufficiently narrow.

(intimidating patients; obstructing access). Just as *Madsen* governs the relief in all these cases, it governs here. *Madsen*, like the First Amendment right to free speech in general, does not apply only to the angelic. Rather, *Madsen* sets limits on how far a court can go *in response* to bad behavior.

WHS argues that the terms of the WVRO do not "mention" or "single out" speech-related activity. Resp. Br. at 43. But again, this does not distinguish other cases in which *Madsen* governs. *Madsen* itself applied its eponymous test to injunctive provisions which, among other things, restricted "entering" a buffer zone, "approaching" other persons, or making "noise" audible inside the abortion facility. 512 U.S. at 759-60. None of these actions necessarily involves speech. Likewise, *Mahoney* forbade "coming within" a buffer zone, 247 F.3d at 281, which is not inherently an expressive activity.

Again, the First Amendment's protections would be paper tigers if they came into play only against restrictions that *mentioned* expressive activities but not against broader and more *blunt* restrictions like the imposition of a "no entry" or buffer zone. To be sure, an individual protester's misconduct may warrant incidental limitations on his expressive activities – *so long as the restrictions pass Madsen scrutiny*. But the superior court here did not even apply *Madsen* in the first place.

Finally, WHS contends that *Madsen* does not necessarily doom an overly extensive injunction *in its entirety*; it simply requires trimming back the restrictions. Resp. Br. at 11, 50. That is true to a point: provisions that flunk the *Madsen* standard

cannot themselves stand, but that does not mean more modest limits might not be permissible. In this case, however, the superior court did not even apply the right constitutional test (and the limits it imposed fail egregiously under *Madsen*). The remedy, *see infra* §I(B), is at least a do-over.

B. This Court Should Either Remand to Allow the Superior Court to Apply the *Madsen* Standard, or Else Itself Hold that the Current WVRO Violates *Madsen*.

In light of the foregoing, the proper course is to vacate the ruling below and remand for reconsideration under the correct constitutional standard. "Usually, when a trial court applies the incorrect legal standard in exercising its discretion, the appropriate disposition is to remand for the court to apply the proper standard." *Doe v. Atkinson*, 96 Cal. App. 5th 667, 679 (1st Dist. 2023).

If this Court instead were itself to apply the *Madsen* standard to the WVRO, the current restrictions should be overturned. The alleged offense here is three belly bumps in one interaction on one day. The WVRO, however, imposes a laundry list of restrictions having no focused connection to the alleged offense. For example, the WVRO orders the defendant to stay "at least 100 yards away from" the plaintiff abortion facility. App. 042. The interposition of a football field-long buffer zone is obviously far more than is "necessary" (*Madsen*) for the

prevention of belly bumps.[4] Instead of being a tailored remedy, the WVRO order is simply a check-the-box, one-size-fits-all form. *See* App. 041-043. Virtually *none* of the restrictions contained in that form order respond to what actually is alleged. This is presumably because the aim of the WVRO law is to protect employees from creepy or menacing colleagues or supervisors, not to police public demonstrations.

If the constitutional test – as it is under *Madsen* – is that an injunction must "burden no more speech than necessary to serve a significant government interest," 512 U.S. at 765, and if the interest here is in preventing future belly bumps, then the current WVRO is the antithesis of the required narrowness. Signing off on a standard form here is not an order "tailored by a trial judge to afford more precise relief," *Madsen*, *id.* at 765. If it reaches the merits, then, this Court should reverse the WVRO.

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[4] Also grossly out of proportion with the alleged offense are many other restrictions in the WVRO, including but not limited to (1) the ban on "contact[ing] . . . in any way" the complaining employee, App. 041, where is no allegation of stalking here; (2) the WVRO's total ban on "enter[ing] the . . . workplace," App. 041, where the superior court construed the workplace to extend onto the *public sidewalk,* Tr. 244-45; and, (3) the total ban on ownership or possession of firearms, App. 042, which disables the defendant even from having a gun in his own home for self-defense, where the alleged offense had nothing to do with any weapons of any sort.

CONCLUSION

For the foregoing reasons, the Court should vacate the decision below and remand for application of the proper First Amendment standard, or in the alternative simply reverse the order outright.

Respectfully submitted,

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Counsel for Amici the American Center for Law & Justice and Animal Activist Legal Defense Project

September 22, 2025

CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.204(C)(1)

Pursuant to California Rules of Court Rule 8.204(c)(1) I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 1474 words, not counting the portions excluded by Rule 8.204(c)(3).

Dated: September 22, 2025

Respectfully submitted,

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