IN THE SUPREME COURT OF THE STATE OF MONTANA

FRITZ GROENKE,
Plaintiff and Appellee,

vs.

RYAN DEAN GABRIEL,
Defendant and Appellant.



Cause No. DA-24-0665

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# APPELLANT'S REPLY BRIEF

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Appeal from the Eleventh Judicial District of the State of Montana,
in and for the County of Flathead, Taylor "Kai" Groenke, Plaintiff/Respondent,
and Ryan Dean Gabriel, Defendant/Appellant, Cause No. DR-24-527
Honorable Danni Coffman


| **Plaintiff/Appellee** | **Defendant/Appellant** |
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*FILED MARCH 2025*

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instant protective order to gain leverage in an underlying civil trial.[1]

*See* MCA § 3-10-115(1); *'Order on Appeal'*, Cause No. DR-24-510, dated Sept. 30, 2024 (enclosed). (*See also* Cause No. DR-2024-394).[2]



Mr. Gabriel has furnished to the trial courts extensive hard written exculpatory evidence, hard video evidence and in-court testimonial evidence (including sworn affidavits), complete with exhibits, all of which were entered into the underlying trial court record and preserved for this instant court on appeal. The trial and district Courts erred by ignoring Mr. Gabriel's testimony, evidence and interpretation of his own words and motivations, thereby violating Defendant-Appellant's First Amendment rights under the US Constitution.[3]

[1] *See 'State v. Berger'*, 2017 MT 229 ¶6; *and 'Bridger Del Sol, Inc. v. Vincent View, LLC'*, 2017 MT 293, ¶8.
[2] *See 'Motion to Enforce Foreign Judgment and Petition for Contempt, Statement of Charge, and Request for Attorneys' Fees'*, Mont. 11th Jud. Dist. Ct., Flathead Co., No. DR-24-394 (E).
[3] *'Counterman v. Colorado'*, 600 U.S. ___, No. 22-138 (2023) (Kagan, J.).

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## STATEMENT OF THE CASE

### A. Nature of the Action

COMES NOW Defendant and Appellant RYAN DEAN GABRIEL ("Mr. Gabriel") and hereby submits to this Court his reply brief in support of his instant appeal, which seeks to remand or reverse on appeal an Order of Protection obtained by Plaintiff and Appellee FRITZ GROENKE ("Mr. Groenke").

### B. Nature of the Judgment/Order

Plaintiff-Appellee, FRITZ GROENKE ("Mr. Groenke") filed a Sworn Petition for Temporary Order of Protection and Request for Hearing Complaint (the "Petition") with the Justice Court on July 24, 2024. The Petition included a witness statement to the police by Fritz, attaching copies of texts that had been sent by Mr. Gabriel to Mr. Groenke, and his alleged biological daughter, attorney Taylor "Kai" Groenke. Following a hearing and an opportunity to be heard, the Justice Court issued an Order of Protection on August 22, 2024. The Protective Order prohibits Mr. Gabriel from threatening Fritz and prohibits Gabriel from owning, possessing, or purchasing a firearm. It was issued for a two-year period, through August 22, 2026. Mr. Gabriel appealed the Order of Protection issued by the Justice Court to the District Court. Following its review of the evidence and briefing by the parties, the District Court affirmed the order on October 16, 2024.

See Order on 1 Appeal of Flathead County Justice Court Cause No. CV-24-1021, Dec. 24, 2024 ("Order on Appeal"). This appeal by Gabriel followed.

**C. Standard of Review**

Mr. Gabriel respectfully asks this Court to review the lower court decision (Cause No. DR-24-510, Flathead County District Court, Montana) for any factual findings under the "clearly erroneous standard" and for both legal conclusions and mixed questions of law and fact under the "*de novo* standard". (*See 'Stanley v. Lemire'*, 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643. *See also 'State v. Berger'*, 2017 MT 229, ¶ 6, 388 Mont. 498, 402 P.3d 1200).

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## PARTIES

1. Defendant/Appellant, Ryan Dean Gabriel ("Mr. Gabriel"), at all times relevant hereto, is an individual residing at 2000 Blacktail Road, Lakeside, Montana 59922.

2. Plaintiff/Appellee, FREDERICK "FRITZ" GROENKE (hereinafter "Mr. Groenke"), at all times relevant hereto, is:

a) an adult citizen of the State of Montana who resides at 246 Flathead Lake Place, Bigfork, MT 59911, does business from 553 Electric Ave., Bigfork, MT 59911.

b) a self-described real estate broker doing business under the laws of the State of Montana, the assumed name certificate for which is currently active, and who asserts authorization to do business under the alleged license #RRE-BRO-LIC-1435 in this State of Montana. (*See* **Exhibit 24**, attached here.)

3. A third party, TAYLOR "KAI" GROENKE (hereinafter "M/r/s. Groenke") at all times relevant hereto, is:

a) an adult citizen of the State of Montana who resides at 12 Whitetail Meadows Road, Kalispell, MT, and does business from 239 2nd Street West in Kalispell, MT 59901.

b) a licensed, active Montana State Bar Association member and self-described family law attorney doing business under the laws of the

State of Montana under the name "Law Office of Kai Groenke", in this State of Montana.

4. A third party, MONTANA REGIONAL MLS, LLC, is the listing service provider and authority through which Defendant/Appellant Mr. Gabriel's permanent residence was unlawfully and fraudulently listed, does business from 1517 S. Reserve St., Missoula, MT 59801, its CEO is Justin Ponton (hereinafter "Mr. Ponton").

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## STATEMENT OF THE ISSUES

### Questions Presented on Appeal

(1) Did the trial and district courts err in viewing Defendant-Appellant Mr. Gabriel to be the unlawful aggressor and not the victim in the instant matter of Plaintiff-Appellee Mr. Groenke's protective order?

(2) Did the trial and district courts err in finding and affirming that any credible threat of the use of physical force against Plaintiff-Appellee Mr. Groenke exists?

(3) Did the trial and district courts err in accepting Plaintiff-Respondent Mr. Groenke's incorrect interpretation of the evidence as correct and factual?

(4) Did the trial and district courts err by overlooking and therefore violating Defendant-Appellant's First Amendment rights under the US Constitution?

(5) Did the trial and district courts err by ignoring or overlooking exculpatory evidence, and by admitting inadmissible evidence?

## SUMMARY OF THE ARGUMENTS

(1) The trial and district Courts were in error in granting Mr. Groenke the instant protective order and affirming the same, as the Oregon Court of Appeals has retroactively ruled him to be the unlawful actor and not the victim, as it pertains to the events yielding the instant matter of her protective order. (*See* § 40-15-102, MCA; § 45-5-201(1)(d), MCA.)

(2) The trial and district courts erred[4] in finding and affirming that any credible threat of the use of physical force against Mr. Groenke exists, because Mr. Gabriel's communications were intentionally provoked by Mr. Groenke in bad faith and for the cynical purpose of generating the instant protective order, in turn to gain leverage in an underlying civil trial.[5]

(3) The trial and district Courts erred in accepting Plaintiff-Respondent Mr. Groenke's incorrect interpretation of the evidence as correct and factual, over Mr. Gabriel's objections to the same.[6]

(4) The trial and district Courts erred by overlooking and therefore violating Mr. Gabriel's First Amendment rights under the US Constitution.

(5) The trial and district courts erred by ignoring or overlooking exculpatory evidence and testimony furnished by Mr. Gabriel.

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[4] *See 'State v. Berger'*, 2017 MT 229 ¶6; *and 'Bridger Del Sol, Inc. v. Vincent View, LLC'*, 2017 MT 293, ¶8.
[5] *See 'Motion to Enforce Foreign Judgment and Petition for Contempt, Statement of Charge, and Request for Attorneys' Fees'*, Mont. 11th Jud. Dist. Ct., Flathead Co., No. DR-24-394 (E).
[6] *See 'State v. Hoover'*, 2017 MT 236, ¶ 12, 388 Mont. 533, 402 P.3d 1224.

## STATEMENT OF THE FACTS / BACKGROUND

**1.** As of the time of this writing (January 7, 2025), the Court of Appeals of the State of Oregon has issued an *'Order'* reinforcing the Stay of an *'Amended General Judgment'* dated June 27, 2024, in Multnomah County Circuit Court No. 22DR04942 (Court of Appeals No. A184337)[7]. That Oregon lower court judgment, now affirmed by the Oregon Court of Appeals ***retroactively*** as stayed since July 2, 2024, is what Plaintiff/Appellee Mr. Groenke has been relying upon since July 2, 2024, to provoke, unlawfully harass and ensnare Defendant/Appellant Mr. Gabriel, targeting Mr. Gabriel at and through his own permanent residence (2000 Blacktail Rd., Lakeside, MT 59922). (Emphasis added.) (*See* **Exhibit 52**, attached here).

**2.** In the process of unlawfully leveraging the lower Oregon court stayed judgment, Mr. Groenke intentionally deceived the Flathead County Justice and District Court judges into issuing the instant protective order, thus pre-emptively shielding Mr. Groenke from future criminal prosecution for his unlawful intrusions into Mr. Gabriel's affairs. (*See 'Groenke v. Gabriel'* CV-2024-1021-OP, Flathead County Justice Court, State of Montana.)

**3.** The appellate court *'Order'*, signed on November 26, 2024, by Chief Judge Hon. Erin C. Lagesen, reads:

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[7] *'Olsen v. Gabriel'* Multnomah County Circuit Court, Oregon (Case No. 22DR04942) (2022); (Oregon Court of Appeals No. A184337).

> "In view of German Sav. Soc'y v. Kern, 42 Or 532, 70 P 709 (1902), appellant's [Mr. Gabriel's] request for a temporary stay is granted pending resolution of this motion. As a result of this temporary stay, appellant is entitled to remain in possession of the property at issue pending further ruling by this court. *See Kern*, 42 Or at 535-36 ("[I]f the appellant is in possession at the time of the filing of the undertaking, he is entitled to remain so until the matter is fully adjudicated in the appellate court.")."

(*See* **Exhibit 52**, attached here).

**4.** Per the November 26, 2024, ruling by the Oregon Court of Appeals, combined with the signed stipulated Multnomah County trial court *'Order Re: Objection to Undertaking'* dated August 14, 2024, this entitled Mr. Gabriel to "use and occupation" of his permanent residence and property located at 2000 Blacktail Rd. in Lakeside, MT 59922 for a period of 24 months. This 24-month period was agreed to by all parties in the Oregon trial Court on July 27, 2024, in anticipation of a 2-year process to conclude the appellate process in the State of Oregon. (*See* **Exhibit 9**, **Exhibit 45** *and* **Exhibit 52**, attached here).

**5.** Contrary to Mr. Groenke's false narrative in the instant matter, every one of Mr. Gabriel's communications and legal filings is strictly in defensive response to direct, unlawful actions initiated by Mr. Olsen, Mr. Groenke and her hired agents. For example, in March 2022, Mr. Olsen sued Mr. Gabriel for dissolution of "unregistered domestic partnership" in Oregon, a state in which Mr. Gabriel has never been domiciled. Olsen's now-withdrawn attorney, M/r/s. "Kai" Groenke, previously stated she intended to leverage an

amended Oregon judgment – indefinitely stayed on appeal – in Montana to hold Mr. Gabriel in contempt of court, explicitly for the purpose of jailing Mr. Gabriel to force his signature on the title documents relinquishing his possession of his own home and permanent residence.[8]

**6.** Contrary to the plans of Mr. and M/r/s. Groenke to oust Mr. Gabriel from his own residence, on December 12, 2024, the Oregon Court of Appeals further clarified the scope of the ***retroactive*** Stay previously ordered on Mr. Gabriel's behalf by Chief Judge Hon. Erin C. Lagesen:

> "Under ORS 19.335(2), to the extent that the judgment requires appellant to relinquish possession of the real property, his filing of the supersedeas undertaking "acts to stay" that requirement. Thus, having complied with the provisions of ORS 19.335(2), including depositing the agreed security with the court, appellant is entitled to maintain possession of the property at issue pending resolution of this appeal. On review of the trial court's order under ORS 19.360, the court rules that, to the extent that, under the judgment on appeal, appellant is required to transfer or deliver possession of the real property at issue, that portion of the judgment is stayed pending completion of the appeal."

(Emphasis added.) (*See* **Exhibit 17** *and* **Exhibit 55**, attached here.)

**7.** The Oregon Court of Appeals is, to date, is the highest Court to rule on the central question of whether Mr. Gabriel's actions to prevent his ouster from his own permanent residence are and were legally sound. Per Chief Judge Hon. Erin C. Lagesen, Mr. Gabriel has acted fully within his rights from

[8] *See 'Motion to Enforce Foreign Judgment and Petition for Contempt, Statement of Charge, and Request for Attorneys' Fees'*, Mont. 11th Jud. Dist. Ct., Flathead Co., No. DR-24-394 (E).

the moment Mr. Gabriel first filed his *'Notice of Appeal'* and *'Supersedeas Undertaking(s)'* in the underlying domestic dispute. That *'Notice of Appeal'* was filed on May 10, 2024, and the *'Supersedeas Undertaking(s)'* were filed on July 1, 2024, paused temporarily on August 14, 2024, and then perfected on October 18, 2024. (*See* **Exhibit 28, Exhibit 45** *and* **Exhibit 57**, attached here.)

**8.** Conversely, M/r/s. Groenke, Plaintiff-Appellee Mr. Groenke, M/r/s. DORINDA SUE GRAY ("M/r/s. Gray") and INSURED TITLES ("FSTE") have been relying on the stayed lower court judgment, combined with their authorities granted by the lower Montana courts, the Montana Bar Association, the Montana Dept. of Labor's realtor division and the State of Montana's title licensing division, to unlawfully harass, provoke and stalk Mr. Gabriel in his own home and permanent residence. (*See* **Exhibit 1, Exhibit 26,** *and* **Exhibit 27**, attached).

**9.** And now per the highest Court to yet rule on the matter, the parties including Plaintiff-Appellee Mr. Groenke did not have the legal authority to perform the foregoing acts ***in retrospect***. (Emphasis added.) (*See* **Exhibit 17, Exhibit 28, Exhibit 45** *and* **Exhibit 57**, attached here.)

## FIRST ASSIGNMENT OF ERROR

**10.** The trial and district Courts were in error in granting Mr. Groenke the instant protective order and affirming the same, as the Oregon Court of Appeals has retroactively ruled him to be the unlawful actor and not the victim, as it pertains to the events yielding the instant matter of her protective order. (*See* § 40-15-102, MCA; § 45-5-201(1)(d), MCA.) This inverts the aggressor-victim relationship described in MCA **§ 45-5-220 (2) (c),** Stalking -- exemption -- penalty.

> (2) For the purposes of this section, the following definitions apply:
>
> ***(c) "Reasonable person" means a reasonable person under similar circumstances as the victim. This is an objective standard."***

In this regard, the trial and district Courts further erred in accepting Mr. Groenke's incorrect interpretation of the evidence as correct and factual, over Mr. Gabriel's objections to the same[9].

### A. Preservation of Error

**11.** As counsel for Mr. Groenke has noted in Mr. Groenke's *'Answering Brief'*: "Because there is underlying litigation that connects the parties to the present case, some of the relevant facts must be derived from the underlying court decisions. Fortunately, this Court may take judicial notice of other court

[9] *See 'Affidavit in Support of Appellant's Briefs'* submitted herewith §§ i) through xii).

proceedings, pursuant to Montana Rule of Evidence 202. *Stokes v. First Am. Title Co. of Mont., Inc.*, 2017 MT 275, ¶ 8, 389 Mont. 245, 406 P.3d 439."

**12.** Mr. Gabriel concurs and has noted in his *'Opening Brief'* in the instant case (and has also noted repeatedly in the underlying litigation) that the Court of Appeals of the State of Oregon has issued an order granting an indefinite stay of the *'Amended General Judgment'* in Multnomah County Circuit Court No. 22DR04942 (Court of Appeals No. A184337). Mr. Groenke was relying upon this stayed judgment to justify his ongoing unlawful actions to interfere in Mr. Gabriel's affairs, contracts and permanent residence, even as he sought a protective order in the instant matter. (*See* CV-24-1021); (*See also* **Exhibit 52** *and* **Exhibit 55**, attached here.)

**13.** Additionally, a pivotal moment came in the JP trial court hearing in a related matter under Hon. Paul Sullivan, in which Mr. Gabriel asked M/r/s. Taylor "Kai" Groenke, who conceived Mr. Groenke's protective order scheme, whether the entire point of her sought-after protective order was to gain leverage in the underlying civil matter that she "was losing".[10] At time stamp 0:45:10 in the auditory recording, "CV-24-1010 **Part 2**" (Flathead Co. Justice Court, Kalispell, MT), Mr. Gabriel posed this pivotal question and ultimately drew out an admission from M/r/s. Groenke – at or shortly after time stamp 1:29:20 following substantial back-and-forth – that the central question (that determines

[10] *See 'Motion to Enforce Foreign Judgment and Petition for Contempt, Statement of Charge, and Request for Attorneys' Fees'*, Mont. 11th Jud. Dist. Ct., Flathead Co., No. DR-24-394 (E).

whether either Mr. or M/r/s. Groenke is Mr. Gabriel's victim or vice versa) is whether there was an Oregon court stay on the amended general judgment that Mr. and M/r/s. Groenke have been relying on for her unlawful actions.

**B. Standard of Review**

**14.** This Court reviews the lower court decision for any factual findings under the "clearly erroneous standard" and for both legal conclusions and mixed questions of law and fact under the "*de novo* standard". (*See 'Stanley v. Lemire'*, 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643.) Findings are clearly erroneous if the lower court misapprehended the effect of the evidence, or this Court is left with a conviction the lower court was simply mistaken. (*See 'State v. Hoover'*, 2017 MT 236, ¶ 12, 388 Mont. 533, 402 P.3d 1224).

**C. Argument**

**15.** Fritz Groenke's sought-after protective order is predicated on the notion that his interpretation of the Oregon court rulings in Mr. Gabriel's intertwined domestic relations lawsuit and appeal are correct. However, the Court of Appeals of the State of Oregon has confirmed that Mr. Gabriel's interpretation of the law is correct, and that Mr. Groenke's interpretation is incorrect. (*See* **Exhibit 17, Exhibit 52** *and* **Exhibit 55**, attached here.)

**16.** From there, Mr. Groenke's arguments in seeking the instant protective order collapse in near totality, and they also collapse ***in retrospect.*** (Emphasis added.) The December 12, 2024, ruling of the higher Oregon Court

(of Appeals) – pursuant to both Chief Judge Hon. Erin C. Lagesen's November 23, 2024, *'Order'* and Hon. Judge Henry's previous August 14, 2024, *'Order Re: Objection to Supersedeas Undertaking'* – retroactively unravels Mr. Groenke's arguments, because that foregoing December 12, 2024, ruling establishes that Mr. and M/r/s. Groenke's legal interpretation of the Oregon lower court judgment and subsequent Stays (via Supersedeas Undertakings) were just as incorrect then as they are incorrect now. In other words, ***at no point in time*** have Groenke's domestic relations legal theories furnished to their former client Mr. Olsen been correct (during all materially relevant events documented herein), and ***at no point in time*** have Groenke's communications and legal filings been correct wherever Mr. Gabriel's residency is concerned – per the Oregon Court of Appeals. (Emphasis added.) Therefore, the lower Courts were in error in granting Mr. Groenke the instant protective order, as these rulings ***retroactively*** reveal him to be the unlawful aggressor and not the victim in the instant matter of her protective order. (Emphasis added.) (*See* § 40-15-102, MCA; § 45-5-201(1)(d), MCA.)

**17.** Conversely, Plaintiff/Appellee Mr. Groenke has been unlawfully harassing, provoking and stalking Mr. Gabriel in his own home and permanent residence ever since he: a) unlawfully trespassed upon Mr. Gabriel's property; b) molested, vandalized and raided the property at dawn with guns drawn; and c) provoked, harassed and stalked Mr. Gabriel and his guests at his own private

residence beginning on or around July 15, 2024, and continuing on through mid-December of 2024. (*See* **Exhibit 49** *and* **Exhibit 50**, attached here).

**18.** And now per the highest Court to yet rule on the matter, Mr. Groenke did not have the legal authority to perform the foregoing acts ***at any point in time***. (Emphasis added.) (*See* **Exhibit 52** *and* **Exhibit 55**, attached.) This inverts the aggressor-victim relationship described Mont. Code Ann. § 45-5-201(1)(d). Under Montana law, the offense of assault includes (among other possible conduct) when an individual 6 "purposely or knowingly causes reasonable apprehension of bodily injury in another."

**19.** *Post mortem* proof that M/r/s. Groenke was never entitled to an order of protection against Mr. Gabriel at any time comes in the form of recent actions taken by Mr. Groenke and other parties. For example, as a result of the Oregon Court of Appeals latest rulings, Mr. Groenke (through Montana Regional MLS, LLC) has withdrawn the unlawful listing of Mr. Gabriel's permanent residence at 2000 Blacktail Rd. in Lakeside, MT, and M/r/s. Groenke has also withdrawn, in disgraced retreat, as legal counsel for the Plaintiff in Flathead County District Court Cause No. DR-24-394 (Hon. Danni Coffman presiding). (*See* **Exhibit 61**, attached here.) Furthermore, the Buy/Sell Agreement derived from the unlawful listing and dated August 7, 2024, has been cancelled by the Buyer (Lacey Purdy), who signed a sworn *'Affidavit'* under oath to sue Mr. Groenke and Mr. Olsen for misrepresentation. (*See* **Exhibit 78**, attached).

**D. Requested Relief.**

**20.** Mr. Gabriel respectfully asks this Court to direct a new trial, given that new developments since trial shed true clarity on the central question of whether Mr. Gabriel is the aggressor against whom a protective order ought to be granted, vs. whether Mr. Groenke is the aggressor against whom a protective order ought to be granted on Mr. Gabriel's behalf. (*See* MCA § 3-2-204 (1) – *'Powers and duties of court on appeals'*). Alternately, Mr. Gabriel respectfully asks this Court to award a discretionary protective order against Mr. Groenke on his behalf, strike Mr. Groenke's protective order against Mr. Gabriel, or both. Pursuant to Mont. Code Ann § 40-5-220 (2)(c): A "reasonable person" is an objective standard meaning a reasonable person under similar circumstances as the victim."

**21.** It is hard to imagine anyone in Mr. Gabriel's position reacting to the foregoing outrageous, sustained, unlawful incursions into his life by Mr. Olsen, Plaintiff-Appellee Mr. Groenke and M/r/s. Groenke in a more subdued manner, and without heavy sedation. But perhaps unlike *'The Ramones'*, Mr. Gabriel, having survived a 13-year fight with Stage 4, metastatic colorectal cancer (mCRC), has no further, ongoing interest in "being sedated", and simply wants to be left alone – at long last – to live his otherwise peaceful, ordinary life ***outside*** of the hospital and/or courts.[11] (Emphasis added.)

[11] *See* "Ramones - I Wanna Be Sedated" - https://www.youtube.com/watch?v=bm51ihfi1p4

## SECOND ASSIGNMENT OF ERROR

**22.** The trial and district courts erred in finding and affirming that any credible threat of the use of physical force against Mr. Groenke exists, because Mr. Gabriel's communications were intentionally provoked by Mr. Groenke, in bad faith, for the cynical purpose of generating the instant protective order to gain leverage in an underlying civil trial.[12] *See* MCA § 3-10-115(1); *'Order on Appeal'*.

**23.** When making a temporary order of protection permanent, a court must determine whether, "to avoid further injury or harm, the petitioner needs permanent protection" by considering "the respondent's history of violence, the severity of the offense at issue, and the evidence presented at the hearing." Mont. Code Ann. § 40-15-204(1).

### A. Preservation of Error

**24.** As counsel for Mr. Groenke has noted in Mr. Groenke's *'Answering Brief'*: "Because there is underlying litigation that connects the parties to the present case, some of the relevant facts must be derived from the underlying court decisions. Fortunately, this Court may take judicial notice of other court proceedings, pursuant to Montana Rule of Evidence 202. *Stokes v. First Am. Title Co. of Mont., Inc.*, 2017 MT 275, ¶ 8, 389 Mont. 245, 406 P.3d 439."

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[12] *See 'State v. Berger'*, 2017 MT 229 ¶6; *and 'Bridger Del Sol, Inc. v. Vincent View, LLC'*, 2017 MT 293, ¶8.

**25.** Mr. Gabriel concurs. In addition, Mr. Gabriel has preserved all the following statements and evidence throughout his appeals, briefs and motions to dismiss the instant matter.[13]

**B. Standard of Review**

**26.** This Court reviews the lower court decision (Cause No. DA-24-0665, Flathead County District Court, Montana) for any factual findings under the "clearly erroneous standard" and for both legal conclusions and mixed questions of law and fact under the "*de novo* standard". (*See 'Stanley v. Lemire'*, 2006 MT 304, ¶ 25, 334 Mont. 489, 148 P.3d 643.)

**C. Argument**

**27.** The foregoing fact pattern of deliberate, ongoing provocation of Mr. Gabriel by Mr. Groenke demonstrates that he does not believe Mr. Gabriel represents any credible threat of harm, which is the underlying alleged cause of his instant petition for Protective Order, and therefore the lower courts were in error in granting the same. § 40-15-102, MCA; § 45-5-201(1)(d), MCA.

**28.** This also demonstrates the entire purpose of Mr. Groenke's improper attempts to secure a protective order is to provoke and antagonize Mr. Gabriel, and to improperly seek leverage in the underlying civil dispute.[14]

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[13] *See 'Affidavit in Support of Appellant's Briefs and Responses to Motions'* submitted herewith.

[14] *See 'Motion to Enforce Foreign Judgment and Petition for Contempt, Statement of Charge, and Request for Attorneys' Fees'*, Mont. 11th Jud. Dist. Ct., Flathead Co., No. DR-24-394 (E).

**29.** Frederick "Fritz" Groenke did not have legal authorization to list the property at the time of its listing on or before July 23, 2024, nor at the time of the subsequent temporary withdrawal and re-listing weeks later, and he was advised as much by Mr. Gabriel's Oregon attorney (Andrew Newsom, Partner – Holtey Law Firm). Mr. Groenke listed it anyway, in active coordination with his alleged biological daughter, M/r/s. Groenke. (*See* **Exhibit 3**, attached here).

**30.** In addition, DORINDA SUE GRAY ("M/r/s. Gray"), acting on behalf of Idaho-based TITLE FINANCIAL CORPORATION / DBA INSURED TITLE ("Insured Title"), has been actively coordinating with Mr. and M/r/s. Groenke on how Mr. Gabriel might be forcibly and unlawfully removed from title and possession of his own permanent residence located at 2000 Blacktail Rd. in Lakeside, MT 59922. (*See* **Exhibit 27** *and* **Exhibit 29**, attached).

**31.** Mr. Gabriel's communications were intentionally provoked by Mr. Groenke for the cynical purpose of generating the instant protective order – not because he feared for anyone's safety, but rather to gain leverage in an underlying civil trial.[15]

**32.** In addition, Mr. Groenke would have been advised by M/r/s. Groenke's client Mr. Olsen that Mr. Gabriel (age 49) has no history of violent behavior whatsoever, and no prior criminal record whatsoever (not so much as a single DUI) – in any jurisdiction – when Mr. Groenke sought and renewed his

[15] *See Id.* - DR-24-394 (E).

claims for a protective order in the instant case. Beyond the foregoing, Mr. Olsen testified at trial in front of Mr. Groenke that Mr. Gabriel had no criminal history whatsoever nor any prior history of violence whatsoever. (*See* **Exhibit 54, pages 15-16,** attached here.)[16] Finally, in the exhibits adduced at trial, submitted as evidence by Mr. Groenke himself, Mr. Gabriel explicitly withdrew and disavowed any true threat to shoot Mr. Groenke in the face when asked (e.g., "… no, I won't shoot you in the face.") (*See* **Exhibit 5,** attached here.)

**D. Requested Relief**

**33.** Mr. Gabriel respectfully asks this Court to direct a new trial or revoke the protective order, given that trial and district courts erred in finding and affirming that any credible threat of the use of physical force against Mr. Groenke exists.[17] (*See also* MCA § 3-2-204 (1) – *'Powers and duties of court on appeals'*).

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[16] *See* October 29, 2024 *'Hearing Re: Order to Show Cause', Id. and* **Exhibit 54**, attached).
[17] *See* State v. Berger, 2017 MT 229 ¶6; *and* Bridger Del Sol, Inc. v. Vincent View, LLC, 2017 MT 293, ¶8.

## SPECIFIC REPLIES TO APPELLEE'S ANSWERING BRIEF

**34.** Mr. Groenke has argued in his *'Answering Brief'* that "Gabriel's evidence merely consisted of allegations of professional misconduct, unsubstantiated allegations that Fritz had disregarded orders from the court in Oregon and allegations of trespassing." (*See 'Answering Brief'*, **page 8**).

**35.** However, this statement and the ensuing narrative – upon which Mr. Groenke relies for the argumentation throughout his brief – is knowingly false, and Mr. Groenke through his counsel is thereby attempting to gaslight this Court. On the contrary, Mr. Gabriel has furnished to the trial courts extensive hard written evidence, hard video evidence and in-court testimonial evidence (including sworn affidavits), complete with exhibits, all of which were entered into the underlying trial court record and preserved for this instant court on appeal. (*See* **Exhibits #1-78**, attached herewith).

**36.** As Mr. Gabriel testified extensively at trial in both JP order of protection proceedings for Mr. and M/r/s. Groenke, and per his affidavit enclosed herewith, he has identified misrepresentations of evidence by Mr. Groenke. [18]

**37.** In particular, Mr. Gabriel has filed prior notices into the instant case (and its various precedents), including his previous appellate brief in the District Court appeal from which the instant case arises, alleging:

[18] *See 'Affidavit in Support of Appellant's Briefs'* submitted herewith §§ i) through xii).

> "The foregoing actions taken by both Mr. Groenke and M/r/s. Groenke also constitute felony violations of Federal Title 18, U.S.C., Section 242 – *'Deprivation of Rights Under Color of Law'*, which prescribes Federal criminal prosecution of "any government or licensed agent ... acting under color of law, statute, [etc.] ... to [deprive] any person those rights, [etc.] ... protected by the US Constitution." (*See* 18 US Code § 242)." [19]

**38.** All the allegations and evidence furnished by Mr. Groenke in his *'Answering Brief'* complain of e-mail and text communications (i.e, "speech") by Mr. Gabriel – and no violent physical actions whatsoever – that are protected under the First Amendment to the U.S. Constitution. Mr. Gabriel's U.S. Const. Amendment I rights have therefore been breached, pursuant to the decision in *Counterman v. Colorado*[20], which was authored by Justice Elena Kagan for a 7–2 court in 2023.

**39.** Mr. Groenke's attempts to leverage an erroneously granted order of protection into criminal stalking and intimidation charges directly contravene Mr. Gabriel's 1st Amendment rights under the U.S. Constitution, pursuant to the foregoing US Supreme Court's 2023 *'Counterman v. Colorado'* decision, and the lower court was therefore in error pursuant to Federal law.

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[19] *See 'Affidavit in Support of Appellant's Briefs'* submitted herewith §§ i) through xii).

[20] *See Counterman v. Colorado*, 600 U.S. ___, No. 22-138 (2023) (Kagan, J.)
In *'Counterman'*, the Defendant was accused of violating a Colorado "stalking" statute similar to Mont. Code Ann. § 40-5-220(2)(c) and also prohibits "[r]epeatedly follow[ing], approach[ing], contact[ing], [or] plac[ing] under surveillance" another person. But the Plaintiff had no evidence, beyond what Counterman claimed, that he actually had followed or physically surveilled the alleged victim. Similarly, Mr. Groenke has never noticed anything of that kind. So the plaintiff and prosecution based its case solely on Counterman's "[r]epeated[] . . . communication[s]" with the alleged victim.

**40.** In the Supreme Court's majority ruling in *'Counterman v. Colorado'*, Justice Kagan wrote:

> "True threats of violence, everyone agrees, lie outside the bounds of the First Amendment's protection. And a statement can count as such a threat based solely on its objective content. The first dispute here is about whether the First Amendment nonetheless demands that the State in a truethreats case prove that the defendant was aware in some way of the threatening nature of his communications. Colorado argues that there is no such requirement. Counterman contends that there is one, based mainly on the likelihood that the absence of such a mens rea requirement will chill protected, non-threatening speech. Counterman's view, we decide today, is the more consistent with our precedent. To combat the kind of chill he references, our decisions have often insisted on protecting even some historically unprotected speech through the adoption of a subjective mental-state element. We follow the same path today, holding that the [Plaintiff or State] must prove in true-threats cases that the defendant had some understanding of his statements' threatening character. "True threats" of violence is another historically unprotected category of communications. Virginia v. Black, 538 U. S. 343, 359 (2003); see United States v. Alvarez, 567 U. S. 709, 717–718 (2012) (plurality opinion). The "true" in that term distinguishes what is at issue from jests, "hyperbole," or other statements that when taken in context do not convey a real possibility that violence will follow (say, "I am going to kill you for showing up late"). Watts v. United States, 394 U. S. 705, 708 (1969) (per curiam)."
>
> "True threats are "serious expression[s]" conveying that a speaker means to "commit an act of unlawful violence." Black, 538 U. S., at 359. Whether the speaker is aware of, and intends to convey, the threatening aspect of the message is not part of what makes a statement a threat, as this Court recently explained. See Elonis v. United States, 575 U. S. 723, 733 (2015)."
>
> "Yet the First Amendment may still demand a subjective mental-state requirement shielding some true threats from liability. The reason relates to what is often called a chilling effect. Prohibitions on speech have the potential to chill, or deter, speech outside their boundaries. A speaker may be unsure about the side of a line on which

> his speech falls. Or he may worry that the legal system will err, and count speech that is permissible as instead not. See Philadelphia Newspapers, Inc. v. Hepps, 475 U. S. 767, 777 (1986). Or he may simply be concerned about the expense of becoming entangled in the legal system. The result is "self-censorship" of speech that could not be proscribed—a "cautious and restrictive exercise" of First Amendment freedoms. Gertz, 418 U. S., at 340. And an important tool to prevent that outcome—to stop people from steering "wide[] of the unlawful zone"—is to condition liability on the State's showing of a culpable mental state. Speiser v. Randall, 357 U. S. 513, 526 (1958). Such a requirement comes at a cost: It will shield some otherwise proscribable (here, threatening) speech because the State cannot prove what the defendant thought. But the added element reduces the prospect of chilling fully protected expression. As this Court has noted, the requirement lessens "the hazard of self-censorship" by "compensat[ing]" for the law's uncertainties. Mishkin v. New York, 383 U. S. 502, 511 (1966). Or said a bit differently: "[B]y reducing an honest speaker's fear that he may accidentally [or erroneously] incur liability," a mens rea requirement "provide[s] 'breathing room' for more valuable speech." Alvarez, 567 U. S., at 733 (Breyer, J., concurring in judgment)."

**41.** Perhaps the cherry on top of Mr. Groenke's false narrative and gaslighting of the courts came when he testified at trial that he was "constantly looking over [his] shoulder" outside his own work office in fear of Mr. Gabriel, but then quickly walked back and even retracted (e.g., "You know I'm not sure where they [the "threatening e-mails"] came from.") his prior testimony under cross-examination, when Mr. Gabriel observed the contradictions inherent in Mr. Groenke's own testimony. (*See* **Exhibit 54, pages 9-14,** attached here).[21]

**42.** Highlighting the extent to which Mr. Groenke did not ever "fear" Mr. Gabriel, Mr. Groenke was subsequently caught on Ring video camera on

[21] *See* October 29, 2024 *'Hearing Re: Order to Show Cause', Id. and* **Exhibit 54**, attached).

three separate occasions (different dates) casually walking around Mr. Gabriel's property, fiddling with the controls, molesting Mr. Gabriel's furniture and possessions, and taking photos. (*See* **Exhibit 49**, enclosed herewith).

## CONCLUSION

In conclusion and based on the foregoing, Mr. Gabriel respectfully requests reversal with clear instructions on remand as outlined above.

RESPECTFULLY SUBMITTED this 2nd day of March, 2025.

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## CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing were served upon the opposing parties on this 2nd Day of March, 2025, by the method and at the address as indicated below:

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***

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Form 11(4)(e)

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionally spaced typeface of 14 points, and is approximately 5,000 words in length, not including accessory documents and formatting characters.

DATED this 2nd Day of March, 2025.

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