

# Washington state cyberstalking law stands – for now - AvvoStories

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## Washington state cyberstalking law stands – for now

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A federal judge has refused to strike down a Washington law against cyberstalking, but he did so for procedural reasons and with reservations about the law's constitutionality. Now, the case for freedom of (harassing) speech isn't closed – it's just moved to a different court.

## Moriwaki v. Rynearson: cyberstalking, free speech, and the First Amendment

### The law

Stalking was completely legal until the state of California criminalized it in 1990. Since then, laws protecting people from stalking have been passed in every state and at the federal level. In response to new forms of technology, most states have amended or supplemented stalking laws to cover cyberstalking. The cyberstalking law passed by Washington state in 2004 was based on existing laws protecting people from telephone harassment. Telephone-harassment statutes are usually upheld by courts, but the behavior they criminalize is different from cyberstalking in one critical way – telephone harassment always occurs person-to-person. Cyberstalking can be similarly direct – through email or text-messaging – and in Washington state most cases of cyberstalking have been linked to domestic violence. But Washington's cyberstalking law also criminalizes content published to a broader audience. This could conflict with free speech rights, and similarly broad online harassment laws have been struck down in in New York and North Carolina, although no one has challenged Washington's law until now.

### The case

Clarence Moriwaki founded the Bainbridge Island Japanese American Exclusion Memorial Association. His organization dedicates itself to the creation of a national historical site to commemorate Japanese Americans who were interned because of their race during World War II. Retired Air Force major Richard Rynearson admired Moriwaki's work for Japanese Americans, but took issue with the fact that Moriwaki did not speak out against the National Defense Authorization Act (NDAA) which authorizes indefinite detention powers in the war on terrorism.

Rynearson started trolling Moriwaki, criticizing him in blog posts and on a web site created for that purpose. Rynearson also sent text messages and made critical posts on Moriwaki's Facebook page until Moriwaki blocked him. Finally, Moriwaki got a restraining order that prohibited Rynearson from both physical contact and specific forms of online harassment. Arguing that it depends on a law restricting protected free speech, Rynearson filed lawsuits challenging the order in U.S. District Court and Kitsap County Superior Court.

### The result

U.S. District Court Judge Ronald Leighton in Tacoma denied Rynearson's request for an injunction against the restraining order under the Younger abstention, which is the principle that federal courts should abstain from making decisions in cases that are still open in lower courts.

However, the judge commented that the arguments against the constitutionality of Washington's cyberstalking law (repeated by Rynearson's attorney in a Washington Post editorial) had some merit. For now, digital harassment remains illegal in Washington state, but there is a very good chance that the courts will restore Washingtonians' freedom to troll their neighbors.

Tagged 1st Amendment, cyberstalking, free speech, Moriwaki, online harassment, Rynearson

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