

IN THE
INDIANA SUPREME COURT

No. 25A-CR-22

CRAIG R. HENDRY,
Appellant-Defendant,

v.

STATE OF INDIANA,
Appellee-Plaintiff.

Appeal from the
Vermillion Circuit Court,

No. 83C01-2310-F6-111,

The Honorable Hunter Reece,
Special Judge.

BRIEF IN RESPONSE TO PETITION TO TRANSFER

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TABLE OF CONTENTS

Table of Authorities3

Argument

 The Court of Appeals correctly affirmed Hendry’s conviction for
 stalking, and Hendry has identified no legal issue warranting
 any further review by this Court.....4

Conclusion9

Word Count Certificate.....9

Certificate of Service.....10

TABLE OF AUTHORITIES

Cases

Anderson v. State, 881 N.E.2d 86 (Ind. Ct. App. 2008) 7

Hendry v. State, __N.E.3d__, No. 25A-CR-22, slip op.
(Ind. Ct. App. Nov. 12, 2025)..... 4

Katz v. State, 179 N.E.3d 431 (Ind. 2022)..... 7

McGuire v. State, 132 N.E.3d 438 (Ind. Ct. App. 2019) 8

Price v. State, 622 N.E.2d 954 (Ind. 1993) 5, 7

Stites v. State, 627 N.E.2d 1343 (Ind. Ct. App. 1994) 7

Stone v. State, 128 N.E.3d 475 (Ind. Ct. App. 2019)..... 8

Whittington v. State, 669 N.E.2d 1363 (Ind. 1996)..... 4, 5, 7

Other Authorities

Ind. Const. art. 1, § 9 4, 5, 8

INTRODUCTION

For over a year, Hendry repeatedly harassed and encouraged others to harass P.K., the Clinton County mayor’s assistant. Hendry went to her office and banged on her closed door, filmed her through closed blinds, waited for her in the parking lot, and followed her to her car. He recorded his interactions and posted the videos on his YouTube channel, leading to floods of harassing phone calls to P.K. Hendry’s conduct and the phone calls caused P.K. to feel frightened, threatened, and terrorized. The Court of Appeals correctly held that Hendry’s conviction did not violate Article 1, Section 9 of the Indiana Constitution because he abused his right to speak. *Hendry v. State*, __N.E.3d__, No. 25A-CR-22, slip op. at 14–18, 26–28 (Ind. Ct. App. Nov. 12, 2025). The court properly applied the framework from *Whittington v. State*, 669 N.E.2d 1363 (Ind. 1996), to conclude that Hendry’s speech was not unambiguously political, so the State could reasonably restrict it. There is no reason to grant transfer.

ARGUMENT

The Court of Appeals correctly affirmed Hendry’s conviction for stalking, and Hendry has identified no legal issue warranting any further review by this Court.

The Court should deny transfer because the Court of Appeals correctly held that Hendry’s conviction for stalking does not violate Article 1, Section 9 of the Indiana Constitution. Under that provision, “No law shall be passed, restraining the free interchange of thought and opinion, or restricting the right to speak, write, or print, freely, on any subject whatever: but for the abuse of that right, every person

Brief in Response to Petition to Transfer
State of Indiana

shall be responsible.” Ind. Const. art. 1, § 9. It is Hendry’s burden to prove “that the State could not reasonably conclude that the restricted expression was an ‘abuse.’” *Whittington v. State*, 669 N.E.2d 1363, 1369 (Ind. 1996). He could meet his burden by showing that his “expressive activity was political.” *Id.* To be political, expression must “comment on government action, whether applauding an old policy or proposing a new one, or opposing a candidate for office or criticizing the conduct of an official acting under color of law.” *Id.* at 1370. But “where an individual’s expression focuses on the conduct of a private party—including the speaker himself or herself—it is not political.” *Id.* And to meet his burden, Hendry’s speech must have been purely political: “If the expression, viewed in context, is ambiguous, a reviewing court should find that the claimant has not established that it was political and should evaluate the constitutionality of any state-imposed restriction of the expression under standard rationality review.” *Id.* (citing *Price v. State*, 622 N.E.2d 954, 959–60 (Ind. 1993)).

Hendry’s assertion that his speech and conduct toward P.K. was political because the video footage aired depicts him “criticizing the conduct of government officials” and was an effort “to raise the curtain on what he believed to be irregularities in the Clinton City government” is not supported by the record (Trans. Pet. 6). Rather, the record shows that Hendry actively sought out P.K. and targeted her on a personal level unrelated to her capacity as a government employee so that he could create sensational videos to post to his YouTube channel and make a profit.

Brief in Response to Petition to Transfer
State of Indiana

Hendry visited P.K.'s office on numerous occasions and camped outside her door after she refused to answer his knocks (Tr. Vol. III 240, Vol. IV 37, 93). He also "bang[ed]" on P.K.'s door and "jangl[ed]" the doorknob, filmed P.K. through her closed blinds, and loudly accused her of having a sexual relationship with the mayor while just outside her door (Tr. Vol. IV 38–39, 76-77, 93; State's Ex. 18 at 7:40–10:50; State's Ex. 30). After Hendry was banned from city hall, he twice waited for P.K. outside in the parking lot (Tr. Vol. IV 41, 73). On one of those occasions, he followed P.K. to her car as she was being escorted by police for her protection from Hendry, yelled at police when they tried to stop him, and then posted a video of that interaction on YouTube (Tr. Vol. III 207, 227; State's Ex. 3; State's Ex. 24 at 6:30–7:40). Hendry also featured P.K. in numerous other videos, using an image of her face as a video thumbnail, making accusations about her, and calling her the mayor's "little play toy" (Tr. Vol. III 111, 160, Vol. IV 40, 170; State's Ex. 1, 2 at 11:44–12:24; State's Ex. 6–8, 19).

None of this speech constituted a comment on government action or criticism of P.K.'s public duties as a government employee. Rather, it showed that most of Hendry's conduct and speech involving P.K. focused on him justifying his own harassing conduct toward her, or her response to him, rather than bringing to light legitimate concerns about the government. This interpretation is bolstered by the fact that Hendry's interactions with P.K. led her to distance herself from him to a degree obvious even to him, yet Hendry continued to return to her place of work and accost her, which triggered a negative reaction that he could record and post on his

Brief in Response to Petition to Transfer
State of Indiana

YouTube channel. As the Court of Appeals concluded, slip op. at 27, this evidence shows that Hendry’s “expression focuses on the conduct of a private party—including the speaker himself or herself,” so—it was “not political.” *Whittington*, 669 N.E.2d. at 1370.

The Court of Appeals’ opinion tracks *Whittington*. In *Whittington*, the defendant’s conduct was not political because his remarks were not directed to the police officer, and the substance of his comments pertained to private individuals, not State action. *Whittington*, 669 N.E.2d at 1370–71. This is similar to Hendry’s circumstances because his conduct was not focused on P.K. in her public capacity or on public concerns but on his own personal treatment by Clinton government employees and P.K.’s response to him following her. The fact that P.K. was a government employee was secondary to Hendry’s speech and conduct, and the mere fact that P.K. was a government employee does not, by itself, automatically make any speech directed toward her political speech. *See Price*, 622 N.E.2d at 961 n.8; *Anderson v. State*, 881 N.E.2d 86, 90 (Ind. Ct. App. 2008); *Stites*, 627 N.E.2d at 1345.

Because the speech at issue was not unambiguously political, any governmental restraint of that speech only needed some reasonable relation to or tendency to promote legitimate state interests. *Whittington*, 669 N.E.2d at 1369. The State may exercise its police power to promote the health, safety, comfort, and welfare of the public. *Katz v. State*, 179 N.E.3d 431, 447 (Ind. 2022). Criminalization of communications that constitute stalking easily satisfies rationality review as a

Brief in Response to Petition to Transfer
State of Indiana

valid exercise of the State's police power. The State has a legitimate interest in protecting citizens from repeated harassing communications that cause them to feel terrorized, frightened, intimidated, or threatened. Such conduct obviously poses a threat to a person's peace, safety, and well-being. No person should be subjected to someone repeatedly seeking them out at their place of employment, knocking on their office door, camping outside their office, filming them when they close their blinds for privacy, following them through the parking lot, calling them names, making unproven scandalous accusations against them, and posting the interactions to a public forum for strangers to repeatedly watch. As the evidence at trial showed, the effect of Hendry's conduct caused P.K. to feel terrorized, frightened, intimidated, or threatened in the exact way the governmental restraint on speech is designed to protect (Tr. Vol. IV 42–43). *See McGuire v. State*, 132 N.E.3d 438, 445 (Ind. Ct. App. 2019) (holding that the criminalization of harassing speech that was not unambiguously political easily satisfied rationality review under Article 1, Section 9); *Stone v. State*, 128 N.E.3d 475, 483-84 (Ind. Ct. App. 2019) (holding that harassment charges predicated on speech that was not unambiguously political was rational under Section 9).

The Court of Appeals correctly determined that Hendry's stalking conviction should not be reversed because his speech did not unambiguously pertain to government conduct and he did not meet his burden to show that his conduct did not constitute an abuse of the right to speak. There is no reason for this Court to grant any further review of his constitutional claim.

CONCLUSION

This Court should deny transfer.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I verify that this response contains no more than 4,200 words.

/s/ Jennifer Anwarzai
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Brief in Response to Petition to Transfer
State of Indiana

CERTIFICATE OF SERVICE

I certify that on December 24, 2025, I electronically filed the foregoing using the Indiana Electronic Filing System (IEFS), and that on the same date the foregoing document was served upon the following person(s) via IEFS.

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