

CASE NUMBER
2520071032
SN:34.0 PC:5

FILED
7/14/2025
Timothy W Fitzgerald
Spokane County Clerk

SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY

CITY OF SPOKANE VALLEY, a municipal
corporation,

Plaintiff,

v.

ALBERT W. MERKEL, an individual,

Defendant.

NO. 25-2-00710-32

DECLARATION OF ROD HIGGINS IN
SUPPORT OF PLAINTIFF'S MOTION
TO STRIKE DECLARATION OF
ALBERT W. MERKEL IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER

I, ROD HIGGINS, declare as follows:

1. I am over the age of 18, competent to testify, and I make the following statements based on my own personal knowledge.

2. I am currently, and have been for the last 12 years, an elected member of the City Council for the City of Spokane Valley. My current term expires at the end of this year, and I am not running for re-election. I make this declaration to correct false and misleading statements made regarding me in the "Declaration of Albert W. Mekel [sic] in Support of Motion for Protective Order" that was filed with this Court on July 7, 2025, in the above-captioned matter (hereinafter "Defendant's Declaration").

3. In Defendant's Declaration at ¶10, he alleges that I "peddled wild and false claims about [Defendant's] personal life and political affiliations" on eight (8) different occasions "on the local radio show 'Right Perspective Spokane'". As set forth below, Defendant's statements are false:

DECLARATION OF ROD HIGGINS: 1

1 3.1. I am not aware of any local radio show called "Right Perspective Spokane." I
2 therefore presume Defendant is referring to the "RIGHT Spokane Perspective" podcast
3 that I have been on and is hosted by Tim Benn and Shannon Benn.

4 3.2. I only appeared on RIGHT Spokane Perspective on two of the eight (8) occasions
5 alleged – i.e. 11/20/2024 and 1/8/2025. I was not interviewed for the other episodes
6 identified in Defendant's Declaration.

7 3.3. During those two episodes, I did not discuss Defendant's "personal life and
8 political affiliations" or make any statements that could be characterized as stating "wild
9 and false claims."

10 3.4. RIGHT Spokane Perspective makes their past podcasts available online at
11 <https://www.rightspokaneperspective.com/>. Since Defendant did not identify the
12 supposedly "wild and false" statements in his declaration, I listened to the recordings for
13 the 11/20/2024 and 1/8/2025 podcasts before signing this declaration. Below are
14 descriptions of my statements:

15 a. November 20, 2024: I was the only guest for this episode. Neither I nor
16 the hosts of RIGHT Spokane Perspective mentioned or otherwise discussed Defendant.
17 Therefore, Defendant's statement that I (or Jessica Yeager for that matter) made any
18 statement on that podcast is demonstrably false.

19 b. January 8, 2025: I was also the only guest for this episode. During the
20 episode, the host – not me – brought up Defendant and asked about Defendant using
21 personal social media in violation of established rules. I mentioned (1) the risk posed to
22 cities when they are found to have not complied with the Washington Public Records Act,
23 (2) the article written by Nick Gibson in the Spokesman-Review newspaper regarding
24 Defendant's use of social media that is the subject of this litigation, (3) stated my personal
25 belief that Defendant could be a very effective councilmember and make a difference but
 his agenda and personality have prevented him from doing so, and (4) noted that
 Defendant's actions have caused the City to incur approximately \$200,000 thus far (which

1 is a correct statement).

2 3.5. These are clearly not statements regarding Defendant's "personal life" or
3 "political affiliations." Rather, they are about his violation of the Council Governance
4 Manual's social media policy and the resulting risk of the City being in violation of the
5 Washington Public Records Act.

6 3.7. Nor are my statements "wild and false claims." They are supported by the
7 findings and conclusions adopted by an independent investigator and the City Hearing
8 Examiner. *See Rebecca Dean's Report*, attached as **Exhibit A** and *City Hearing Examiner*
9 *Decision*, attached as **Exhibit B** to the *Declaration of Reid Johnson in Support of*
10 *Opposition to Motion to Dismiss* (filed on 4/25/2025 in this matter). By way of example,
11 below are just a few of the City Hearing Examiner's findings and conclusions:

12 (a) Defendant violated the Council Governance Manual's social media policy
13 by posting on personal social media regarding City business. *See City Hearing*
14 *Examiner Decision*, ¶¶ 3.1 – 3.3.

15 (b) Defendant's social media posts on his personal account constitute public
16 records under the Public Records Act when they are "related to the conduct of
17 government" and are "prepared within a public official's . . . official capacity."
18 *Hearing Examiner Decision*, ¶ 3.48.

19 (c) Defendant's posts on his personal social media, as they related to the affairs,
20 business, debates, and actions of the City, were all made by Defendant as a
21 Councilmember. *Hearing Examiner Decision*, ¶ 3.49.

22 (d) Defendant's posts were made to advance Defendant's attempts to further
23 the City's business by affecting policy change and/or have the Council adopt his
24 position on how business before the Council should be conducted. *Id.*

25 (e) Defendant's use of personal social media to discuss City business and his
subsequent failure to produce them in response to public records requests "could be
placing the City at risk of claims under the PRA." *Hearing Examiner Decision*, ¶¶

1 3.43 and 3.47.

2 4. In ¶11 of Defendant's Declaration, he asserts that I coordinated with a private
3 investigator to contact Defendant's friends, family, and former workplaces "with intimidating and
4 defamatory questions." This allegation is false. I did not hire or participate in anybody's decision
5 to hire the private investigator. Nor did I "coordinate" any portion of such an investigation.
6 Defendant did not provide any evidence to the contrary – just his uncorroborated speculation.

7 5. At the June 4, 2024, Council meeting, a private investigator did give public comment
8 reporting his findings from an investigation requisitioned by a third party. Defendant was present
9 at the meeting during the comments. While the private investigator did not identify Defendant by
10 name, I understood from the context that he was talking about Defendant.

11 6. As a Councilmember, Defendant had the right to raise a "point of order" to object to
12 the private investigator's comments and ask the Mayor to end his comment period. Defendant did
13 not do so. Since the speaker was talking about the Defendant and Defendant was not objecting, I
14 did not see a reason compelling enough to interject myself and interfere with a citizen's right to
15 make public comment. Even when citizens make derogatory comments about me during Council
16 meetings, I rarely raise a point of order because I believe it is important for citizens to exercise
17 their right to make public comments unless it disrupts Council's ability to conduct City business.

18 I certify under penalty of perjury under the laws of the State of Washington that the
19 foregoing is true and correct.

20 DATED this 15th day of July, 2025 at Spokane Valley, Washington.

21
22 
23 ROD HIGGINS

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 11th day of July, 2025, I caused to be served a true
3 and correct copy of the foregoing by the method indicated below, and addressed to all entities
4 as follows:

5 Patrick J. Kirby
6 Patrick J. Kirby Law Office, PLLC
7 4353 S. Greystone Lane
8 Spokane, WA 99223
9 pkirby@pkirbylaw.com

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Via E-Filing
☒ Via Email

10 *Attorney for Defendant*

11 LUKINS & ANNIS, P.S.

12 
13 _____
14 KIRSTEN PRICE, Legal Assistant