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HON. NICOLE GAINES-PHELPS
Hearing: January 3, 2020 at 11:00 a.m.
With Oral Argument
0300
0300

SUPERIOR COURT OF WASHINGTON FOR COUNTY OF KING

LARGO WALES, a married woman,
Plaintiff,

vs.

CITY OF AUBURN, WA, a Washington State municipality; NANCY BACKUS, as Mayor of the City of Auburn, and Individually and her marital community; and The Committee to Elect Nancy Backus and its J. Doe committee members thereto; and ROB ROSCOE and his marital community,
Defendants.

JUDGE NICOLE GAINES-PHELPS
Hearing Date: January 3, 2020
Hearing Time: 11:00 a.m.
With Oral Argument

NO. 19-2-20274-2 KNT

DEFENDANT NANCY BACKUS' JOINDER IN THE CITY OF AUBURN'S CR 12(b)(6) MOTION AND CR 12(b)(6) MOTION TO DISMISS CLAIMS ASSERTED AGAINST HER INDIVIDUALLY AND MEMORANDUM IN SUPPORT THEREOF

I. INTRODUCTION /STATEMENT OF RELIEF REQUESTED

COME NOW defendants Nancy Backus, her spouse and their marital community only ("Backus Defendants") in their respective individual capacities only, by and through their undersigned counsel, and hereby join the City of Auburn's CR 12(b)(6) motion to dismiss all plaintiff's claims against the Backus Defendants.

1 This motion also seeks dismissal of the claims against the Backus Defendants on the
2 grounds that the Washington State Constitution does not apply to the actions of private
3 individuals for alleged violations of Washington State Constitutional provisions, unless there
4 is a specific statutory authority to the contrary. There is no such statutory authority creating a
5 private right of action against a private citizen or other non-governmental actor for the alleged
6 state constitutional violations asserted by plaintiff in this case. So in addition to the reasons
7 set forth in the City of Auburn’s CR 12(b)(6) motion, the claims against the Backus Defendants
8 in their individual, private capacities are simply not tenable under Washington law and also
9 must be dismissed for failure to state a claim upon which relief can be granted pursuant to CR
10 12(b)(6).

11 **II. FACTS RELEVANT TO MOTION TO DISMISS**

12 When ruling on a CR 12(b)(6) motion, the trial court presumes all facts alleged in the
13 plaintiff’s complaint are true. *Tenore v. AT & T Wireless Servs.*, 136 Wn.2d 322, 330, 962 P.2d
14 104 (1998). “If a plaintiff’s claim remains legally insufficient even under his or her proffered
15 hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate.” *Gorman v. Garlock, Inc.*,
16 155 Wn.2d 198, 215, 118 P.3d 311 (2005). So, the facts as asserted in plaintiff’s Complaint in
17 this matter must be considered true for purposes of the Backus Defendants motion to dismiss.
18 A copy of the plaintiff’s Second Amended Complaint to Correct Scrivener’s Error Violation
19 of Freedom of Speech, Right to Privacy (“Second Amended Complaint”) is attached hereto as
20 **Appendix 3.**

21 The assertions against the Backus Defendants¹ state in substance that defendant Rob
22 Roscoe, the former Director of Human Resources and Risk Management for the City of

23 ¹ This motion does not address the allegations asserted against Mayor Backus in her official capacity. That is the
24 subject of the City of Auburn’s CR12(b)(6) motion. Mayor Backus joins the arguments advanced by the City that
25 there is no private civil right of action for the alleged violation of Article I, sections 5 and 7 of the Washington
State Constitution against either governmental entities or private individuals.

1 Auburn, met with plaintiff Largo Wales² at City Hall in 2016 to discuss a statement she had
2 made while on official City business in the presence of City employees, and to advise her to
3 “attenuate” her speech around City employees. Second Amended Complaint, *Sect. III*, ¶¶ 1-2.
4 Councilmember Wales alleges this meeting occurred during a time that Mr. Roscoe was
5 “supervised” by the Mayor of Auburn, defendant Nancy Backus. *Id.*, *Sect. III*, ¶3. Then, during
6 an unidentified election campaign, the “Committee to Elect Nancy Backus” issued campaign
7 literature describing the meeting between Roscoe and Wales as “The City of Auburn chastised
8 Largo Wales....”. *Id. Sect. III*, ¶4.

9 Plaintiff Councilmember Wales filed the present lawsuit on August 1, 2019. It asserts
10 claims against the City of Auburn, Nancy Backus³ in both her capacity as Mayor of Auburn,
11 and individually, the Committee to Elect Nancy Backus and Rob Roscoe. Plaintiff then filed
12 an Amended Complaint on September 12, 2019 and then a Second Amended Complaint on
13 September 19, 2019. *See*, Plaintiff’s initial Complaint and Amended Complaint attached hereto
14 as **Appendices 1 and 2**, respectively. Then plaintiff clarified that she is pursuing claims for
15 damages and attorney fees against defendants based on two legal theories in her most recent
16 Second Amended Complaint (**Appendix 3**). Those causes of action are pled as follows in the
17 Second Amended Complaint:

18 **COUNT 1-Violation of Free Speech**

19 **1. The Rosco-Wales [sic] meeting was a violation of Ms. Wales State of**
20 **Washington Constitution Fifth Section right to free speech, to wit “Every**
21 **person may freely speak, write, and publish on all subjects, being**
22 **responsible for abuse of that right.”**

23 * * *

24 ² The Second Amended Complaint alleges that plaintiff is an Auburn City Council member. Second Amended
25 Complaint, *Sect. II*, ¶1.

³ As noted above, the Second Amended Complaint also asserts claims against Ms. Backus’ spouse and their
marital community in their individual capacities.

1 **COUNT 2- Violation of Right to Privacy**

- 2 1. The release of said meeting contents by and between Rob Roscoe and Ms. Wales
3 was a violation on [sic] Ms. Wales expectation of privacy, as enunciated by the
4 Washington State Supreme Court in State v Afana at paragraph 15, to wit:

5 “...our state constitution “clearly recognizes an individual’s right to privacy with
6 no express limitations.” State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982).
7 In contrast to the Fourth Amendment, article I, section 7 emphasizes “protecting
8 personal rights rather than curbing governmental actions.’ *State v. Afana*, 169
9 *Wn.2d 169*, 233 P.3d 879, 2010 Wash. LEXIS 539... ”.

10 **Article 1, section 7 of the Washington State Constitution reads as follows,**
11 **“No person shall be disturbed in his private affairs, or his home invaded,**
12 **without authority of law.”**

13 **<http://leg.wa.gov/LawsAndAgencyRules/Pages/consitution.aspx>**

14 (Boldface in original.) Second Amended Complaint, pp. 3 and 4, *passim*. In the Demand for
15 Relief section, the Second Amended Complaint seeks unspecified special and general
16 damages, statutory costs and attorney fees. *Id* at p.4.

17 **III. STATEMENT OF EVIDENCE RELIED UPON**

18 This motion is based upon the plaintiff’s various Complaints filed in this matter and
19 attached as **Appendices 1-3** hereto.

20 **IV. STATEMENT OF LEGAL AUTHORITIES**

21 **A. The Backus Defendants Are Entitled to Dismissal Pursuant to CR 12(b)(6)**

22 If a complaint fails to state a claim on which relief can legally be granted, CR 12(b)(6)
23 entitles a defendant to dismissal. When ruling on a CR 12(b)(6) motion, the trial court presumes
24 all facts alleged in the plaintiff’s complaint are true. *Tenore v. AT & T Wireless Servs.*, 136
25 Wn.2d 322, 330, 962 P.2d 104 (1998). “If a plaintiff’s claim remains legally insufficient even
under his or her proffered hypothetical facts, dismissal pursuant to CR 12(b)(6) is appropriate.”
Gorman v. Garlock, Inc., 155 Wn.2d 198, 215, 118 P.3d 311 (2005).

While not a model of clarity, plaintiff’s Second Amended Complaint basically asserts

1 that her civil rights were violated because: 1) her right of free speech under the Washington
2 Constitution (Wash. Const. Art. I, § 5) was infringed when a City of Auburn employee (Rob
3 Roscoe) allegedly cautioned her about allegedly inappropriate comments while acting as a City
4 of Auburn official; and, 2) her right of privacy (Wash. Const. Art. I, § 7) was invaded when
5 the actions allegedly taken by a City of Auburn employee (Rob Roscoe) were disclosed in
6 mayoral campaign literature. *See*, Second Amended Complaint at pp. 2-4. These causes of
7 action are not legally cognizable against the Backus Defendants because neither Article I § 5
8 nor § 7 of the Washington State Constitution creates a private civil cause of action for their
9 alleged violation.

10 When a complaint fails to adequately state a cognizable legal claim it should be
11 dismissed as expeditiously as possible. *See, Saade v. Dep't of Health*, WL 4464401, at *2
12 (W.D. Wash. Sept. 18, 2019). So whatever “facts” plaintiff may try to conjure up in opposition
13 to this CR 12(b)(6) motion will not alter the Washington Supreme Court’s numerous decisions
14 holding that there is no recognized private civil cause of action for the alleged violation of
15 Article I, §§ 5 or 7 of the Washington State Constitution.

16 And even if there were private civil causes of action for alleged violations of Article I,
17 §§ 5 and 7, (which there are not) they cannot be asserted against **private** individuals like the
18 Backus Defendants. The prohibitions of Article I, §§ 5 and 7 pertain only to actions undertaken
19 by governmental entities or persons acting under color of law. Plaintiff’s claims against the
20 Backus Defendants, in their **individual** (i.e., private) capacities do not, by definition, implicate
21 any governmental entities because they assert that Ms. Backus was acting in her private
22 capacity only and not as a representative of the City of Auburn or any other governmental
23 entity. Similarly, any private actions by the Backus Defendants **individually** are not under color
24 of law. When a Washington citizen acts in his or her own individual capacity they are, by
25 definition, not acting on behalf of the State. The Backus Defendants accordingly respectfully

1 request that the court grant their motion to dismiss all claims asserted against them in their
2 individual capacities.

3 **B. Even if True, the Facts Alleged in the Second Amended Complaint Fail to State**
4 **Claims Upon Which Relief Can Be Granted Because Article I, Sections 5 and 7 of**
5 **the Washington State Constitution Do Not Create Private Civil Causes of Action**

6 Plaintiff's Second Amended Complaint alleges the City of Auburn, Rob Roscoe, and
7 Mayor Nancy Backus acted in their capacities as City agents to violate Ms. Wales' "right" to
8 free speech and privacy based solely on the Washington State Constitution and that the Backus
9 Defendants also acted in their **individual** capacities to violate plaintiff's rights. Second
10 Amended Complaint, *Count I and II*. Plaintiff specifies her claims are based on the Washington
11 State Constitution Article I, § 5 and §7. *Id.*

12 But it is well-established that no cause of action exists for damages purportedly arising
13 from alleged violations of the Washington State Constitution. See, *Blinka v. Wash. State Bar*
14 *Ass'n*, 109 Wn.App. 575, 591, 36 P.3d 1094 (2001), *rev. den.* 146 Wn.2d 1021 (2002).
15 Washington courts have consistently rejected invitations to establish a private civil cause of
16 action for damages based upon state constitutional violations. *Id.*; *See also, Sys. Amuse., Inc.*
17 *v. State*, 7 Wn.App. 516, 517, 500 P.2d 1253 (1972) (while acts that violate constitutional
18 protection may be declared void by the courts, the state constitution does not provide a private
19 cause of action); *Spurrell v. Bloch*, 40 Wn.App. 854, 860–61, 701 P.2d 529 (1985) (no cause
20 of action for abuse of governmental position or due process violation of state constitution);
21 *Reid v. Pierce County*, 136 Wash.2d 195, 961 P.2d 333 (1998).

22 Because there is no private civil remedy for the alleged infringement of a provision of
23 the Washington State Constitution, claims such as those alleged in the Second Amended
24 Complaint are routinely dismissed as a matter of law. *Blinka, supra.*; *See also, e.g. Saade v.*
25 *Dept. of Health*, 2019 WL 4464401 (W.D.Wash. Sept. 18, 2019) (dismissing state
constitutional civil claims pursuant to FRCP 12(b)(6)); *Jackson v. Asotin Cty.*, 2019 WL

1 1245786, at *3 (E.D. Wash. Mar. 15, 2019) (no cause of action for search and seizure that
2 violated State Constitution); *Rorvik v. Snohomish Sch. Dist.*, at *6 (W.D. Wash. 2018), *appeal*
3 *dism.*, 2018 WL 7575588 (9th Cir. 2018) (no cause of action for allegation that school officials
4 violated student’s right to privacy under the Washington Constitution); *Lewis v. Soc’y of*
5 *Counsel Rep. Acc. Pers.*, 2013 WL 6513009, at *5 (W.D. Wash. 2013) (no cause of action for
6 “vindicating rights conferred by the state constitution” such as the right of accused to appear
7 an defend criminal charges in person).

8 As stated in *Oreskovich v. Eymann*, 2005 Wash. App. LEXIS 2425 (September 19,
9 2005):

10 [A]bsent express statutory authority, there is no cause of action for damages
11 arising from alleged violations of the state constitution. *Blinka v. Wash. State*
12 *Bar Ass’n*, 109 Wn. App. 575, 591, 36 P.3d 1094 (2001); *see also Peters v.*
13 *Vinatieri*, 102 Wn. App. 641, 649 n.2, 9 P.3d 909 (2000); *Waller v. State*, 64
14 Wn. App. 318, 336, 824 P.2d 1225 (1992).

15 After filing three versions of her Complaint, plaintiff has definitively clarified that her
16 claims against the defendants are based *solely* on the Washington State Constitution, Article I,
17 §§ 5 and 7. There is no statutory basis identified for any of plaintiff’s claims asserted in the
18 Second Amended Complaint. As the Washington Supreme Court has ruled on numerous
19 occasions, no civil causes of action exist for alleged violations of Article I of the Washington
20 State Constitution. Thus, Count I and Count II of the Second Amended Complaint do not state
21 any cognizable claims for relief. Plaintiff’s Second Amended Complaint should be dismissed
22 with prejudice, as a matter of law, as to all the defendants, including the Backus Defendants in
23 their individual capacities.

24 **C. Article I, Sections 5 and 7 of the Washington State Constitution Cannot Apply to**
25 **The Backus Defendants in Their Individual Capacities Because Those Provisions**
Only Apply to Governmental Entities or Governmental Personnel Acting Under
Color of Law

There is another basis to dismiss all the claims against the Backus Defendants
individually. By asserting that Nancy Backus, her spouse and their marital community acted

1 only in their *individual* capacities with respect to some or all of the activities that allegedly
2 infringed plaintiff's rights under the Washington State Constitution plaintiff has essentially
3 admitted that, by definition, the Backus Defendants' private actions were not undertaken on
4 behalf of any governmental entity. Washington appellate courts have held for years that
5 provisions of the Washington State Constitution are not enforceable against **private** non-
6 governmental actors. Rather, Washington State Constitutional protections limit the activities
7 and power of the state – not private citizens. *See, State v. Ludvik*, 40 Wn. App. 257, 262, 698
8 P.2d 1064, 1067 (1985) (Article I of Washington State Constitution does not apply to
9 individual acting in a private, non-governmental capacity). So, all the claims against the
10 Backus Defendants in their **individual** capacities should be dismissed. Article I of the
11 Washington State Constitution only applies to the State, not to private citizens.

12 V. CONCLUSION

13 The Backus Defendants are entitled to dismissal of plaintiff's case on two grounds:
14 **First**, there are no recognized civil causes of action for alleged violations of Article I, §§ 5 or
15 7 of Washington State Constitution. And **second**, even if such causes of action did exist, (and
16 they do not) they could only be enforced against state actor – like a government entity or
17 governmental official or employee acting under color of law. Because the Second Amended
18 Complaint alleges the Backus Defendants acted in their private, **individual** capacities, the
19 necessary corollary is that the required **state action** is not present as to those allegations. And
20 consequently, plaintiff's claims against the Backus Defendants **individually** should be
21 dismissed. The Backus Defendants respectfully request that the court grant this motion and
22 dismiss all claims against them in their individual capacities.

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DATED this 22nd day of November, 2019.

WAKEFIELD & KIRKPATRICK, PLLC

I certify that this memorandum contains 2,319 words, in compliance with the Local Civil Rules.

By s/ *Scott C. Wakefield*

Scott Wakefield

WSBA #11222

Attorneys for Defendant Nancy Backus





Appendix 1

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LARGO WALES, a married woman,)	
)	No.
Plaintiff,)	
v.)	COMPLAINT FOR DAMAGES
)	VIOLATION OF FREEDOM OF
CITY OF AUBURN, WA, a Washington)	SPEECH, RIGHT TO PRIVACY
State municipality; NANCY BACKUS, as)	
Mayor of the City of Auburn, and)	
Individually and her marital community; and)	
The Committee to Elect Nancy Backus and)	
its J. Doe committee members thereto; and)	
ROB ROSCOE and his marital community,)	
)	
Defendants)	
)	

Plaintiff LARGO WALES alleges:

I. JURISDICTION

1. This court has jurisdiction over the case pursuant to RCW 2.08.010.

II. PARTIES AND VENUE

1. Plaintiff LARGO WALES (Ms. Wales) resides in KING County, Washington and is a City of Auburn, WA Council member;
2. The City of Auburn is a Washington municipality co-located in King and Pierce Counties;

WALES COMPLAINT

AUBURN LAW OFFICES
220 1ST Street NE
Auburn, WA 98002
253-288-8015 (ph)
253-288-8016 (fax)

1
2 3. Rob Roscoe was the City of Auburn Director of Human Resources and Risk Management
3 during the period complained of; and
4

5 4. Nancy Backus is the Mayor of the City of Auburn, WA.
6

7 III. FACTUAL ALLEGATIONS
8

9 1. On or about September 2016, Rob Roscoe held a meeting with Ms. Wales on City
10 property. Said meeting was called by Rob Rosco and attended only by he and Ms. Wales.
11

12 2. During said meeting Rob Roscoe complained about a statement. allegedly made by Ms.
13 Wales in an open, non-government, forum and advising Ms. Wales that her speech should
14 be attenuated.
15

16 3. Rob Roscoe reported directly to Mayor Nancy Backus during September 2016.
17

18 4. Whereas the Roscoe – Wales discussion was private any characterization of its ends and
19 means would be unknown and speculative. However, Nancy Backus’ Committee to Elect
20 Nancy Backus issued a campaign notice describing the Roscoe – Wales interaction as
21 “The City of Auburn chastised Largo Wales...”
22

23 COUNT I – Violation of Free Speech
24

25 1. The Rosco – Wales meeting was a violation Ms. Wales right to free speech by the City of
26 Auburn. Mr. Roscoe was acting under color of law for the City.
27

28 2. Mr. Roscoe’s meeting with Ms. Wales served no legitimate city business.
29

30 3. Any Roscoe complained of allegations against Ms. Wales was based on hearsay.
31

32 4. The later release of said meeting contents came from Rob Roscoe, ostensibly to Nancy
33 Backus, and finally the Committee to Elect Nancy Backus.
34

35 5. Ms. Wales ultimately suffered damage to reputation from the Roscoe meeting, which was
36 illegitimately released and ultimately intentionally misused.
37

38 6. Rob Rosco proximately caused Ms. Wales damages by infringing on her right to exercise
39 free speech.
40

41 7. Nancy Backus proximately caused Ms. Wales damages by releasing the Roscoe – Wales
42 meeting alleged content to her Committee to elect her as Mayor.
43

- 1 8. Nancy Backus, as Mayor of the City of Auburn, violated Ms. Wales right to free speech
2 by using her position to create unfavorable information on a political opponent and then
3 releasing said information that Backus would not have had in her possession but for her
4 position as Mayor.
5
- 6 9. The Committee to Elect Nancy Backus and its members proximately caused the damages
7 to Ms. Wales by using information it knew or should have known was ill gotten.
8
- 9 10. Defendants Roscoe, Backus, the City of Auburn, and the Committee to Elect Nancy
10 Backus and its members, are jointly and severally liable to plaintiff in an amount to be
11 proved at trial.
12

13 **COUNT II – Violation of Right to Privacy**
14

- 15 1. The release of said meeting contents by and between Rob Roscoe and Ms. Wales was a
16 violation on Ms. Wales expectation of privacy.
17
- 18 2. There were no other attendees so anything said therein could have been factually true or
19 false.
20
- 21 3. Ms. Wales ultimately suffered damage to reputation from the Roscoe meeting when its
22 alleged substance was illegitimately released and ultimately intentionally misused.
23
- 24 4. Rob Rosco proximately caused Ms. Wales damages by infringing on her right to privacy
25 by releasing any version of the meeting substance.
26
- 27 5. Nancy Backus violated Ms. Wales right to privacy and proximately caused Ms. Wales
28 damages by releasing the alleged Roscoe – Wales meeting content to her Committee to
29 elect her as Mayor.
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- 31 6. Nancy Backus, as Mayor of the City of Auburn, violated Ms. Wales right to privacy by
32 using her position to create unfavorable information on a political opponent and then
33 releasing said information Backus would not have had in her possession but for her
34 position as Mayor.
35
- 36 7. The Committee to Elect Nancy Backus and its members violated Ms. Wales right to
37 privacy and proximately caused the damages to Ms. Wales by using information it knew
38 or should have known was ill gotten.
39
- 40 8. Defendants Roscoe, Backus, the City of Auburn and the Committee to Elect Nancy
41 Backus and its members, are jointly and severally liable to plaintiff in an amount to be
42 proved at trial.
43

V. DEMAND FOR RELIEF

Plaintiff requests that the court enter judgment against defendants Roscoe, Backus, the City of Auburn and the Committee to Elect Nancy Backus and its member as follows:

1. Awarding plaintiff special damages for lost potential future earnings.
2. Awarding plaintiff general damages for pain, suffering and mental anguish.
3. Awarding plaintiff her statutory costs and attorney fees incurred in this action.
4. Awarding plaintiff any additional or further relief which the court finds appropriate or just.

Dated: Aug 1, 2019


LARGO WALES, Plaintiff

Presented by:

AUBURN LAW OFFICES PLLC


John M. Torres, Jr.
Attorney for Plaintiff
WSBA# 26287

220 1st ST NE
Auburn, WA 98002
253-288-8015

main@auburnlawoffices.com



Appendix 2

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Individually and her marital community; and)
The Committee to Elect Nancy Backus and)
its J. Doe committee members thereto; and)
ROB ROSCOE and his marital community,)
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No. 19-2-20274-2 KNT

AMENDED COMPLAINT FOR
VIOLATION OF FREEDOM OF
SPEECH, RIGHT TO PRIVACY

Plaintiff LARGO WALES alleges:

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1. This court has jurisdiction over the case pursuant to RCW 2.08.010.

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1. Plaintiff LARGO WALES (Ms. Wales) resides in KING County, Washington and is a City of Auburn, WA Council member;
2. The City of Auburn is a Washington municipality co-located in King and Pierce Counties;

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- 2 3. Rob Roscoe was the City of Auburn Director of Human Resources and Risk Management
- 3 during the period complained of; and
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- 5 4. Nancy Backus is the Mayor of the City of Auburn, WA.
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- 9 1. On or about September 2016, Rob Roscoe held a meeting with Ms. Wales on City
- 10 property. Said meeting was called by Rob Rosco and attended only by he and Ms. Wales.
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- 12 2. During said meeting Rob Roscoe complained about a statement. allegedly made by Ms.
- 13 Wales in an open, non-government, forum and advising Ms. Wales that her speech should
- 14 be attenuated.
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- 16 3. Rob Roscoe reported directly to Mayor Nancy Backus during September 2016.
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- 18 4. Whereas the Roscoe – Wales discussion was private any characterization of its ends and
- 19 means would be unknown and speculative. However, Nancy Backus’ Committee to Elect
- 20 Nancy Backus issued a campaign notice describing the Roscoe – Wales interaction as
- 21 “The City of Auburn chastised Largo Wales....”
- 22

23 COUNT I – Violation of Free Speech

- 24
- 25 1. The Rosco – Wales meeting was a violation Ms. Wales United States First Amendment
- 26 right to free speech by the City of Auburn as prescribed by the Washington State Supreme
- 27 Court in *Sprague v. Spokane Valley Fire Department*, to wit:
- 28

29 “However, a reasonable restriction cannot be justified when it "is in fact based on

30 the desire to suppress a particular point of view." *Cornelius*, 473 U.S. at 812.

31 When the government targets particular views taken by speakers on a subject, it

32 violates the First Amendment's requirement of viewpoint neutrality. *Rosenberger*,

33 515 U.S. at 829. "[T]he government violates the First Amendment when it denies

34 access to a speaker solely to suppress the point of view he espouses on an

35 otherwise includible subject." *Lamb's Chapel*, 508 U.S. at 394 (quoting

36 *Cornelius*, 473 U.S. at 806). *Sprague v. Spokane Valley Fire Department* 93800-

37 8, 189 *Wn.2d* 858 (2018).

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- 39 2. Mr. Roscoe was acting under color of law for the City.
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- 41 3. Mr. Roscoe’s meeting with Ms. Wales served no legitimate city business.
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- 2 5. The later release of said meeting contents came from Rob Roscoe, ostensibly to Nancy
- 3 Backus, and finally the Committee to Elect Nancy Backus.
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- 5 6. Ms. Wales ultimately suffered damage to reputation from the Roscoe meeting, which was
- 6 illegitimately released and ultimately intentionally misused.
- 7
- 8 7. Rob Rosco proximately caused Ms. Wales damages by infringing on her right to exercise
- 9 free speech.
- 10
- 11 8. Nancy Backus proximately caused Ms. Wales damages by releasing the Roscoe – Wales
- 12 meeting alleged content to her Committee to elect her as Mayor.
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- 14 9. Nancy Backus, as Mayor of the City of Auburn, violated Ms. Wales right to free speech
- 15 by using her position to create unfavorable information on a political opponent and then
- 16 releasing said information that Backus would not have had in her possession but for her
- 17 position as Mayor.
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- 19 10. The Committee to Elect Nancy Backus and its members proximately caused the damages
- 20 to Ms. Wales by using information it knew or should have known was ill gotten.
- 21
- 22 11. Defendants Roscoe, Backus, the City of Auburn, and the Committee to Elect Nancy
- 23 Backus and its members, are jointly and severally liable to plaintiff in an amount to be
- 24 proved at trial.

COUNT II – Violation of Right to Privacy

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- 28 1. The release of said meeting contents by and between Rob Roscoe and Ms. Wales was a
- 29 violation on Ms. Wales expectation of privacy, as enunciated by the Washington State
- 30 Supreme Court in *State v Afana* at paragraph 15, to wit:
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- 32 “... our state constitution “clearly recognizes an individual's right to privacy with no
- 33 express limitations.” *State v. White*, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982). In
- 34 contrast to the Fourth Amendment, article I, section 7 emphasizes “protecting
- 35 personal rights rather than ... curbing governmental actions.” *State v. Afana*, 169
- 36 Wn.2d 169, 233 P.3d 879, 2010 Wash. LEXIS 539, 169 Wn.2d 169, 233 P.3d 879,
- 37 2010 Wash. LEXIS 539
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- 39 2. There were no other attendees to the Roscoe – Wales meeting so anything said therein
- 40 could have been factually true or false.
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- 43 alleged substance was illegitimately released and ultimately intentionally misused.

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10 using her position to create unfavorable information on a political opponent and then
11 releasing said information Backus would not have had in her possession but for her
12 position as Mayor.
13
14 7. The Committee to Elect Nancy Backus and its members violated Ms. Wales right to
15 privacy and proximately caused the damages to Ms. Wales by using information it knew
16 or should have known was ill gotten.
17
18 8. Defendants Roscoe, Backus, the City of Auburn and the Committee to Elect Nancy
19 Backus and its members, are jointly and severally liable to plaintiff in an amount to be
20 proved at trial.

21
22 V. DEMAND FOR RELIEF

23
24 Plaintiff requests that the court enter judgment against defendants Roscoe, Backus, the
25 City of Auburn and the Committee to Elect Nancy Backus and its member as follows:
26

- 27 1. Awarding plaintiff special damages for lost potential future earnings.
28
29 2. Awarding plaintiff general damages for pain, suffering and mental anguish.
30
31 3. Awarding plaintiff her statutory costs and attorney fees incurred in this action.
32
33 4. Awarding plaintiff any additional or further relief which the court finds appropriate or
34 just.
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37 Dated: 9/12/19

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42 LARGO WALES, Plaintiff
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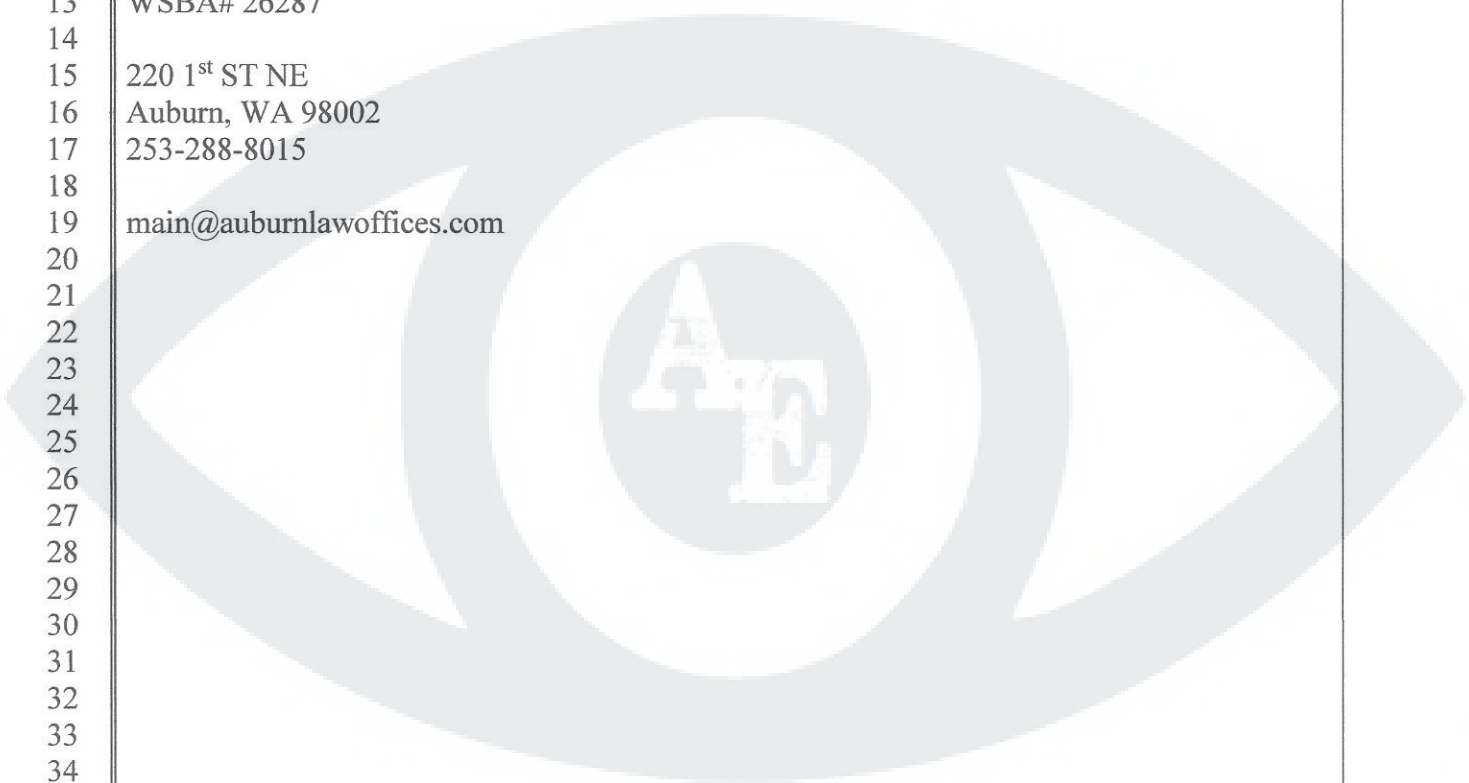
AUBURN LAW OFFICES PLLC



John M. Torres, Jr.
Attorney for Plaintiff
WSBA# 26287

220 1st ST NE
Auburn, WA 98002
253-288-8015

main@auburnlawoffices.com





Appendix 3

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

LARGO WALES, a married woman,)
)
Plaintiff,)
v.) No. 19-2-20274-2 KNT
)
CITY OF AUBURN, WA, a Washington) 2ND AMENDED COMPLAINT TO
State municipality; NANCY BACKUS, as) CORRECT SCRIVENERS ERROR;
Mayor of the City of Auburn, and) VIOLATION OF FREEDOM OF
Individually and her marital community; and) SPEECH, RIGHT TO PRIVACY
The Committee to Elect Nancy Backus and)
its J. Doe committee members thereto; and)
ROB ROSCOE and his marital community,)
)
Defendants)

Plaintiff LARGO WALES alleges:

I. JURISDICTION

1. This court has jurisdiction over the case pursuant to RCW 2.08.010.

II. PARTIES AND VENUE

1. Plaintiff LARGO WALES (Ms. Wales) resides in KING County, Washington and is a City of Auburn, WA Council member;
2. The City of Auburn is a Washington municipality co-located in King and Pierce Counties;
3. Rob Roscoe was the City of Auburn Director of Human Resources and Risk Management during the period complained of; and

1
2 4. Nancy Backus is the Mayor of the City of Auburn, WA.
3

4 III. FACTUAL ALLEGATIONS
5

- 6 1. On or about September 2016, Rob Roscoe held a meeting with Ms. Wales on City property.
7 Said meeting was called by Rob Roscoe and attended only by he and Ms. Wales.
8
9 2. During said meeting Rob Roscoe complained about a statement, allegedly made by Ms. Wales
10 in an open, non-government, forum and advising Ms. Wales that her speech should be
11 attenuated.
12
13 3. Rob Roscoe reported directly to Mayor Nancy Backus during September 2016.
14
15 4. Whereas the Roscoe – Wales discussion was private any characterization of its ends and
16 means would be unknown and speculative. However, Nancy Backus’ Committee to Elect
17 Nancy Backus issued a campaign notice describing the Roscoe – Wales interaction as “The
18 City of Auburn chastised Largo Wales....”
19

20 COUNT I – Violation of Free Speech
21

- 22 1. The Rosco – Wales meeting was a violation Ms. Wales **State of Washington Constitution**
23 **Fifth Section right to free speech, to wit “Every person may freely speak, write and**
24 **publish on all subjects, being responsible for the abuse of that right.”**
25
26 2. Mr. Roscoe was acting under color of law for the City.
27
28 3. Mr. Roscoe’s meeting with Ms. Wales served no legitimate city business.
29
30 4. Any Roscoe complained of allegations against Ms. Wales was based on hearsay.
31
32 5. The later release of said meeting contents came from Rob Roscoe, ostensibly to Nancy
33 Backus, and finally the Committee to Elect Nancy Backus.
34
35 6. Ms. Wales ultimately suffered damage to reputation from the Roscoe meeting, which was
36 illegitimately released and ultimately intentionally misused.
37
38 7. Rob Rosco proximately caused Ms. Wales damages by infringing on her right to exercise free
39 speech.
40
41 8. Nancy Backus proximately caused Ms. Wales damages by releasing the Roscoe – Wales
42 meeting alleged content to her Committee to elect her as Mayor.
43

- 1 9. Nancy Backus, as Mayor of the City of Auburn, violated Ms. Wales right to free speech by
2 using her position to create unfavorable information on a political opponent and then releasing
3 said information that Backus would not have had in her possession but for her position as
4 Mayor.
5
- 6 10. The Committee to Elect Nancy Backus and its members proximately caused the damages to
7 Ms. Wales by using information it knew or should have known was ill gotten.
8
- 9 11. Defendants Roscoe, Backus, the City of Auburn, and the Committee to Elect Nancy Backus
10 and its members, are jointly and severally liable to plaintiff in an amount to be proved at trial.
11

12 **COUNT II – Violation of Right to Privacy**
13

- 14 1. The release of said meeting contents by and between Rob Roscoe and Ms. Wales was a
15 violation on Ms. Wales expectation of privacy, as enunciated by the Washington State
16 Supreme Court in *State v Afana* at paragraph 15, to wit:
17

18 “... our state constitution “clearly recognizes an individual's right to privacy with no
19 express limitations.” *State v. White*, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982). In contrast
20 to the Fourth Amendment, article I, section 7 emphasizes “protecting personal rights
21 rather than ... curbing governmental actions.” *State v. Afana*, 169 Wn.2d 169, 233 P.3d
22 879, 2010 Wash. LEXIS 539, 169 Wn.2d 169, 233 P.3d 879, 2010 Wash. LEXIS 539
23

24 **Article 1, section 7 of the Washington State Constitution reads as follows, “No**
25 **person shall be disturbed in his private affairs, or his home invaded, without**
26 **authority of law.”** <http://leg.wa.gov/LawsAndAgencyRules/Pages/constitution.aspx>
27

- 28 2. There were no other attendees to the Roscoe – Wales meeting so anything said therein could
29 have been factually true or false.
30
- 31 3. Ms. Wales ultimately suffered damage to reputation from the Roscoe meeting when its
32 alleged substance was illegitimately released and ultimately intentionally misused.
33
- 34 4. Rob Rosco proximately caused Ms. Wales damages by infringing on her right to privacy by
35 releasing any version of the meeting substance.
36
- 37 5. Nancy Backus violated Ms. Wales right to privacy and proximately caused Ms. Wales
38 damages by releasing the alleged Roscoe – Wales meeting content to her Committee to elect
39 her as Mayor.
40
- 41 6. Nancy Backus, as Mayor of the City of Auburn, violated Ms. Wales right to privacy by using
42 her position to create unfavorable information on a political opponent and then releasing said
43 information Backus would not have had in her possession but for her position as Mayor.
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- 1 7. The Committee to Elect Nancy Backus and its members violated Ms. Wales right to privacy
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3 have known was ill gotten.
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6 and its members, are jointly and severally liable to plaintiff in an amount to be proved at trial.
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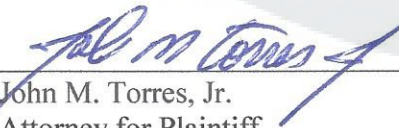
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21 Dated: 9/19/19
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26 LARGO WALES, Plaintiff
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29 Presented by:

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31 AUBURN LAW OFFICES PLLC
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34 
35
36 John M. Torres, Jr.
37 Attorney for Plaintiff
38 WSBA# 26287
39

40 220 1st ST NE
41 Auburn, WA 98002
42 253-288-8015
43

44 main@auburnlawoffices.com