

he “believes it is justifiable to kill gay activists.” Memorandum at p. 3. Aside from being false and a deliberate distortion of Mr. Spingola’s views, such a statement is immaterial to the issue presented to this Court: whether the Appellees published with actual malice.

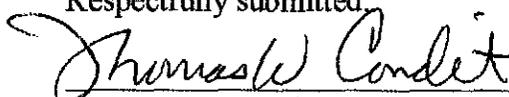
Appellees know from Mr. Spingola’s testimony (i) that his beliefs about the grave sin of homosexuality are rooted in the Old Testament (Leviticus 20:13); and (ii) that Spingola neither claims the right to kill gay activists nor harbors an intention to do so. “I don’t execute the law of God... no, I wouldn’t do that.” *Spingola Depo.* at 38-40.

Consequently, the only reason for Appellees to have misrepresented such material in their Memorandum is to prejudice the justices of this Court against Mr. Spingola as they consider whether to accept this case for review. Mr. Spingola harbors no illusions about the difficulty in persuading this Court to exercise its discretionary review of a case. Nor does he doubt that the human emotions – and therefore the decisions - of any judicial officer can be influenced by an impression that a case is being brought by a lawless madman. Mr. Spingola therefore has no choice but to ask this Court to strike the misleading, immaterial and scandalous statements from the Appellees’ Memorandum.

CONCLUSION

Based upon the foregoing, this motion to strike should be granted.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been served by First Class U.S. Mail
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