

CAUSE NO. 10-1428-c26

THE STATE OF TEXAS	§	IN THE DISTRICT COURT
Ex rel. JANA DUTY	§	
COUNTY ATTORNEY OF	§	
WILLIAMSON COUNTY, TEXAS	§	
	§	
VS.	§	WILLIAMSON COUNTY, TEXAS
	§	
DAN A GATTIS, COUNTY JUDGE	§	
OF WILLIAMSON COUNTY, TEXAS	§	26 TH JUDICIAL DISTRICT

**AMICUS BRIEF IN SUPPORT OF ORIGINAL PETITION FOR
REMOVAL OF WILLIAMSON COUNTY JUDGE DAN A. GATTIS**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, the undersigned individuals who file this *amicus curiae* brief in the above-entitled action in support of that certain Original Petition for Removal from Office of Williamson County Judge Dan A. Gattis, and in opposition to Defendant's Motion to Dismiss, and in connection therewith would show the Court as follows:

BACKGROUND

Defendant, Williamson County Judge Dan A. Gattis ("Defendant" or "Gattis"), was elected to the position of Williamson County Judge in November 2006. He was reelected to that position in November 2010. In his reelection campaign, he ran unopposed in both the March 2010 primary election and the November 2, 2010 general election.

The undersigned (as well as all taxpayers in Williamson County) have a strong interest in ensuring that their county government is operated with honesty, openness and integrity, and free

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Lisa David
District Clerk, Williamson Co., TX.

from misconduct, and therefore have a strong interest in this case. In fact, several county residents, including at least one of the undersigned, filed a complaint with the Williamson County Attorney Jana Duty (“Relator” or “Duty”) on November 19, 2010 (copy attached), urging her to investigate several of the actions by Defendant that are now the subject of this action. As pointed out in that complaint, the public did not become aware of the facts that are the subject of that complaint letter until the facts were published in the *Williamson County Sun* on November 10, 2010, after the November 2 general election.

In addition, in connection with the issues in this case that involve the hiring of legal counsel regarding the Williamson County landfill, the undersigned (as well as all taxpayers in Williamson County) have a strong interest in ensuring that the actions of Defendant and Williamson County Commissioner Ron Morrison did not adversely affect the landfill proceedings. In the “Original Petition for Removal from Office of Williamson County Judge Dan A. Gattis,” regarding the hiring of the Potts & Reilly law firm, Relator states: “Duty was told that Gattis wanted to retain this firm to take some 'political heat' off of Morrison due to pressure he was getting from the Hutto Citizen's (sic) Group.” The undersigned are thus concerned that the allegedly illegally hiring and use of the Potts & Reilly law firm was for a purely political purpose, namely helping the political situation of Morrison with his constituents, as opposed to pursuing in good faith the issue of whether or not the contract to retain a contractor for the Williamson County landfill should have been publicly bid.

I.

The undersigned fully support the Original Petition for Removal from Office of Williamson County Judge Dan A. Gattis, as well as Relator's subsequent filings in connection therewith (collectively, “Relator's Documents”), and to evidence our support therefor, and to

avoid repetition thereof, we simply adopt Relator's Documents which are incorporated herein by reference.

II.

In addition to the claims and arguments in Relator's Documents, the undersigned wish to make the following points:

1. Texas Local Government Code §87.001 states that "[a]n officer may not be removed under this chapter for an act the officer committed before election to office." Defendant seems focused on what he believes to be the plain meaning of that section. With regard to its plain meaning, we wish to point out that the language of the section covers acts committed "before election to office." In fact, Defendant was actually elected to office in November 2006. His alleged illegal acts did not occur before then.

In addition, the plain and literal language of §87.001 refers only to an officer's "election," it does not refer to an officer's "reelection," nor does it refer to an officer's *unopposed* election or reelection. Thus, the plain meaning of the section would not operate to shield Defendant from his own alleged illegal acts in this case in which the acts occurred *after* his election in November 2006 but before his *unopposed reelection* in November 2010. Had the legislature intended for §87.001 to cover **reelections and unopposed** elections or reelections, it could have easily done so. But it did not.

2. In connection with Defendant's Motion to Dismiss, it is critically important to point out that Defendant had no opponent in either the March 2010 Republican primary or in the November 2010 general election. While the voters in Williamson County were not aware and had no way of knowing that he had committed acts which could subject him to removal from office, *even if the voters had timely knowledge of such acts,*

Defendant nonetheless would have been reelected because he had no opponent in either race. Essentially, even if the voters were aware of Defendant's alleged acts (which they were not), and even if they therefore wanted to prevent him from being reelected, they were powerless to prevent his continuation in office. On public policy grounds alone, whether premised on the "forgiveness doctrine," on §87.001, or otherwise, there must be no "forgiveness" for Defendant in this case under circumstances in which the voting public was unaware of Defendant's alleged acts and even if they were aware, there was nothing they could do about it.

3. The undersigned agree that Relator is correct in pointing out that the alleged actions on the part of Defendant and Morrison in hiring the Potts & Reilly law firm, as described above and in the Relator Documents, as well as the other acts alleged to have been committed by Defendant, were not known to the public prior to the general election on November 2, 2010. There was an article that appeared in the Sunday, October 31, 2010 issue of *The Williamson County Sun*, two days before the election, which reported that the county attorney was pursuing an investigation of the Higginbotham case, but the article does not contain any information regarding the specifics of that case, and mentions only that an investigation was in the process of being conducted, but with no facts or details offered. And none of the other cases cited by the county attorney were publicized prior to the November 2, 2010 general election.

III.

In sum, whether based on the plain meaning of §87.001, or on public policy grounds, under these facts, neither §87.001 nor any "forgiveness doctrine" should result in dismissal of this action. There can be no forgiveness by the public for acts that were not known to the public.

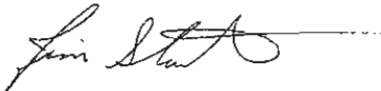
There can be no forgiveness by a public that had no choice. We respectfully argue that to allow §87.001 to result in dismissal of this action would fly in the face of good logic and would fly in the face of good public policy.

WHEREFORE, the undersigned pray that this Court deny Defendant's Motion to Dismiss, grant Relator's requests for relief, and for such other and further relief to which they may show themselves entitled.



Respectfully submitted,



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(512) 515-0486

As *pro se* signatories to this *amicus curiae* brief, neither of us has been offered or received compensation in the preparation and filing of this brief, and neither of us represents or purports to represent any other person or party in this filing.  (initial)  (initial)

Certificate of Service

This is to certify that on January 14, 2011, a true and correct copy of the above and foregoing document was forwarded by facsimile to Martha Dickie at (512) 478-7151, to County Attorney Jana Duty by facsimile to (512) 943-1431, and to District Judge Rick Morris at (254) 933-5990 and (512) 943-1188 in addition to being filed with the District Clerk of Williamson County, Texas.

A handwritten signature in cursive script, appearing to read "Jeff Maurice".

Jeff Maurice, *pro se*

Williamson County Public Policy Coalition
Williamson County, Texas

November 19, 2010

County Attorney Jana Duty
Williamson County
405 M.L.K., Suite 240
Georgetown, TX 78626

VIA FAX (512-943-1120)

County Attorney Duty,

The undersigned residents and taxpayers of Williamson County hereby file this complaint in connection with recently published events in which it appears that Round Rock attorney Mike Davis may have billed the county and been paid by the county for legal services rendered to Mr. Don Higginbotham without such transaction having been authorized or approved by the county. We hereby request that you, in your official capacity as county attorney, conduct a criminal investigation of the individuals and circumstances involved in these events. The public was recently made aware of this situation in an article titled "Gattis secretly hired attorney, Duty says" in the November 10, 2010 issue of *The Williamson County Sun*. Unfortunately, the events and statements contained in the article raise serious issues that, we believe, deserve an investigation.

If Mr. Davis' billing authorization or approval was provided by the county, then the circumstances and authorization for that approval should be specifically documented and made public, in the interest of establishing to the public's satisfaction that the county is not paying bills, claims or invoices which have not been properly authorized for payment.

In the absence of a proper authorization for payment to Mr. Davis by the county, then it is mandatory that Mr. Davis, who billed the county for those services, and the individual who was the recipient (Mr. Higginbotham) of those services from Mr. Davis, explain or otherwise document why their actions did not amount to an illegal receipt of something of value at the expense of county taxpayers and the county treasury.

We urge you to proceed expeditiously in this manner and, if appropriate, to make public the results of the investigation which you undertake.

Sincerely,



Jeff Mauriee
Jane Van Praag
Mary Ellen Kersch
Jose Orta
Jerry Tidwell
Lou Ward
Cheryl Rae
Virginia Bickley