

CAUSE NO. 96-03788

WILLIAM SPELMAN
PLAINTIFF,

VS.

BEVERLY WATTS DAVIS,
SECRETARY OF THE AUSTIN
COMMUNITY COLLEGE BOARD OF
TRUSTEES,
DEFENDANT.

§ IN THE DISTRICT COURT OF
§
§
§ TRAVIS COUNTY, TEXAS
§
§
§
§
§ 98TH JUDICIAL DISTRICT

ORDER GRANTING DEFENDANTS' PLEA TO THE JURISDICTION

On this day came on to be heard Defendants' Plea to the Jurisdiction and the court having heard argument of counsel for both sides finds that it should be granted.

It is therefore ORDERED, ADJUDGED and DECREED, that Defendants' Plea to the Jurisdiction is GRANTED.

SIGNED, this 2nd day of April, 1996.


SUZANNE COVINGTON
JUDGE PRESIDING

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WILLIAM SPELMAN,
PLAINTIFF

VS.

BEVERLY WATTS DAVIS, SECRETARY
OF THE AUSTIN COMMUNITY
COLLEGE BOARD OF TRUSTEES,
DEFENDANT

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98 JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR TEMPORARY RESTRAINING ORDER
DECLARATORY JUDGMENT, INJUNCTION, AND DAMAGES**

TO THE HONORABLE JUDGE OF SAID COURT:

William Spelman, Plaintiff, complains of Beverly Watts Davis, Secretary of the Austin Community College Board of Trustees (hereinafter referred to as "ACC"), Defendant and for cause of action would respectfully show the following:

I.

1. The Plaintiff petitions this Court pursuant to Uniform Declaratory Judgments Act, TEX. CIV. PRACT. & REM. CODE § 37.001 *et seq.*, for a declaration that William Spelman's application for a place on the ACC election ballot was filed timely and fully complies with the requirements of the Election Code.
2. Plaintiff is also petitioning the Court for damages for the taking of the Plaintiff's right to be placed on the ACC election ballot without due process.
3. Plaintiff further petitions the court for a temporary restraining order, temporary injunction, and permanent injunction against the defendant prohibiting her from taking his name off of the ACC election ballot for May 4, 1996. In support of this petition, Plaintiff shows:

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II.

96 APR -2 PM 1:31

4. Plaintiff, William Spelman, resides in Austin, Travis County, and timely filed an *Original Petition*
DISTRICT CLERK
TRAVIS COUNTY, TEXAS

application for a place on the ACC election ballot on March 20, 1996. A true and correct copy of the application is attached hereto as Exhibit 1 and incorporated herein as if fully set out.

5. Defendant, Beverly Watts Davis is the Secretary of the ACC Board of Trustees and the authority with whom an application to be placed on the ballot for ACC must be filed. ACC is a duly authorized Junior College and political subdivision of the State of Texas with its principal office located in Travis County, Texas. The Defendant is sued in her official and individual capacity. Defendant may be served with citation at ACC, 5930 Middle Fiskville Road, Austin, Texas.

III.

6. At 8:45 a.m. on March 20, 1996, William Spelman filed an application to be placed on the ACC election ballot. This was prior to the deadline of 5:00 p.m., March 20, 1996. The application was presented to Larry Bassett, Election Administrator for ACC. Larry Bassett reviewed William Spelman's application and informed William Spelman that his application complied with the requirements of the Election Code.

7. William Spelman completed the application in his own handwriting and signed it on March 20, 1996. His signature was notarized by a proper notary, provided by ACC. Within the section containing the oath, William Spelman signed his name with the intent to attest and authenticate his application. A signature line beneath the Spanish version of the oath was not signed by William Spelman.

8. On April 1, 1996, at approximately 10:30 p.m., Larry Bassett appeared at William Spelman's home, carrying a letter signed by Beverly Watts Davis, the Defendant. The letter is attached, marked as Exhibit 2, and is incorporated herein by reference as if fully set out. The

letter states that the application which William Spelman filed with ACC was unsigned, and that Defendant was directing the election authority to delete Plaintiff's name from the ballots to be printed for the May 4, 1996 ACC election. Larry Bassett further notified William Spelman that the ballots would be printed on April 2, 1996.

IV.

9. Such action took Plaintiff's right to be on the ACC ballot without due process. Once the Plaintiff presented an application for the ACC election that was signed, timely filed, and otherwise complete, he was entitled to have his name placed on the ballot for the May 4, 1996 election. The decision by the Defendant to declare him ineligible without a hearing is a violation of his right to due process under the Fourteenth Amendment of the United States Constitution. This cause of action is brought pursuant to 42 U.S.C. § 1983.

10. The Election Code, § 141.031(2) requires that an application be signed and sworn to by the candidate. The application in this case is notarized, indicating that it was sworn to and signed in front of a notary. Plaintiff signed the oath in presence of a notary. Government Code § 311.005(6) gives the definition of "signed." "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing. Black's Law Dictionary contains this definition of "sign":

To affix one's name to a writing or instrument, for the purpose of authenticating or executing, or to give it effect as one's act. To attach a name or cause it to be attached to a writing by any of the known methods of impressing a name on paper. To affix a signature to; to ratify by hand or seal; to subscribe in one's own handwriting. To make any mark, as upon a document, in token of knowledge, approval, acceptance or obligation.
Black's Law Dictionary, 5th Ed., 1979, p. 1239.

It is obvious from the application that all of the information was handwritten and only the notary's

writing is different. Therefore, the face of the document with a statement from the notary that such document was sworn to and subscribed leads one to only one conclusion: that the handwriting was that of the Plaintiff, William Spelman. Therefore, when he wrote his name on the oath in front of a notary and swore to the truth of the contents and adopted the loyalty oath, the application was "signed." In addition, in *Baker v. Tucker*, 249 S.W.2d 80 (1952), the Court approved a loyalty affidavit as being properly executed even though the signature did not appear in the blank space provided in the form. Furthermore, the Election Code does not specify where on the application that it must be signed.

11. To assist in this matter, the Court can use the OP. ATTY. GEN. JM-504 (1966) at page 4. This opinion states,

Ordinarily, any mark made with the present intention to adopt or authenticate the document is a legally sufficient signature. See *Delespine v State*, 396 S.W.2d 133, 136 (Tex. Crim. App. 1965), cert. denied 384 U.S. 1019 (1966). See also Gov't. Code Sections 31.005(6), 312.011(14) (Definition of "signed" and "signature").

Section 141.031 of the Election Code does not specify where a candidate's application must be signed in order for the application to be valid.

12. In *Leal v Mather*, 709 S.W.2d 269, 271 (Tex. App.-Houston, 1986), the Court interpreted Section 141.063 of the Election Code. The case involved the validity of signatures on a petition that did not include the year in the date, e.g., "4-13." The Court recognized that there were several other signatures with the full dates on the same page and that each page was sworn to by an affiant. The Court concluded that the dates that did not include the year did not make the signatures invalid because it was obvious when they were signed by looking at the affiant date of signature and to hold otherwise, the Court would be required to close its eyes to reality. There is no question that in this case William Spelman signed the application. The Court, in this case,

should not close its eyes to reality.

V.

13. As a direct and proximate result of the Defendant's conduct as above described Plaintiff has suffered mental anguish, humiliation, and embarrassment as a result of Defendant's declaring Plaintiff ineligible to be placed on the ballot for the May 4, 1996 ACC election. For the time and money expended in campaigning for the May 4, 1996 election, and the mental anguish and humiliation, the Plaintiff cannot accurately measure his damages. Unless the Defendant is compelled to comply with State law by the equitable power of the Court, the Plaintiff will continue to suffer mental anguish and humiliation and be prevented forever from running for Place 2 on the ACC election ballot on May 4, 1996. For the harm and damage done to Plaintiff, and for the harm and damage that will continue but for the intervention of this Court, Plaintiff has no adequate remedy at law. Such damages are continuing, and to a large degree intangible. If the Court does not intervene immediately, the Defendant will not have time to place William Spelman's name on the ACC ballot for the May 4, 1996 election.

14. Furthermore, Plaintiff requests the Court to interpret the Election Code and declare that William Spelman's application for a place on the ballot for the May 4, 1996 ACC election was filed in a timely manner and fully complies with the requirements of the Election Code.

WHEREFORE, Plaintiff requests and prays that:

1. The Court declare that William Spelman's application for a place on the ACC election ballot was filed in a timely manner and fully complies with the requirements of the Election Code.

2. A temporary restraining order be issued without notice to the Defendant, restraining


Defendant, her agents, servants, and employees, from directly or indirectly removing William Spelman's name from the ACC ballot for the ACC Board of Trustees elections on May 4, 1996 or declaring him ineligible.

3. Defendant be cited to appear and show cause and that upon such hearing, a temporary injunction be issued, enjoining Defendant, her agents, servants, and employees, from directly or indirectly removing William Spelman's name from the ACC ballot for the ACC Board of Trustees elections on May 4, 1996 or declaring him ineligible.

4. A permanent injunction be ordered on final trial of this cause, enjoining Defendant, her agents, servants, and employees from directly or indirectly removing William Spelman's name from the ACC ballot for the ACC Board of Trustees elections on May 4, 1996 or declaring him ineligible.

5. On final trial hereof, Plaintiff have judgment against Defendant for damages with interest thereon at the legal rate, reasonable attorney's fees, together with all costs of court, and such other and further relief at law or in equity as to which he may be entitled by this pleading or proper amendment thereto show himself entitled to receive.

Respectfully submitted,


W. Scott McCollough
W. SCOTT MCCOLLOUGH, P.C.
State Bar No. 13434100
717 West 7th Street
Austin, Texas 78701
(512) 322-9992
(512) 322-0940 FAX

State of Texas)
County of Travis)

BEFORE ME, the undersigned notary public, on this day personally appeared **William Spelman** who being by me duly sworn on his oath deposed and said that he is the Plaintiff in the above-entitled and numbered cause; that he has read the above and foregoing Plaintiff's Original Petition; and that every statement contained therein is within his personal knowledge and true and correct.

WILLIAM SPELMAN

William Spelman

William Spelman

Subscribed and sworn to before me on the 2nd day of April, 1988 to certify which witness my hand and official seal.



Brenda J. Doyle

Notary Public, State of Texas
Notary's name printed:
Brenda J. Doyle
My commission expires:
12/28/88

RECEIVED

MAR 28 1966

ELEC 6491, 1191
Prescribed by Secretary of State
Sections 141.001, 141.002-141.005, Election Code
Section 21.08, Election Code
All information is required to be provided unless indicated as optional. No return will be accepted if any information is missing.

APPLICATION FOR A PLACE ON THE AUSTIN C.C.D. GENERAL ELECTION
(APLICACION PARA UN LUGAR EN LA BOLETA DE AUSTIN C.C.D.)

TO: Secretary of State

Al: Secretario de Estado

I request that my name be placed on the above-named ballot as a candidate for the office indicated below.
Solicito que mi nombre sea puesto en la arriba mencionada boleta como candidato para el cargo abajo indicado.

OFFICE SUGGESTED (OFFICE SUGGERIDO)
Indicate any place number or other identifying number.
Indique cualquier numero de lugar u otro numero que hace al punto oficial diferente a otro(s).

PLACE TWO

INDICATE FULL OR COMMON NAME
AND TYPE OF OFFICE OR POSITION FOR WHICH YOU ARE RUNNING
Indique el nombre completo o comun y el cargo o puesto para el cual esta corriendo.

MAIL

FULL NAME (Last, Middle, First)
Nombre completo (Apellido de Pila, Segundo Nombre, Apellido)

WILLIAM CLYDE STELMAN

FULL NAME (Last, Middle, First)
Nombre completo (Apellido de Pila, Segundo Nombre, Apellido)

WILLIAM STELMAN

PERMANENT RESIDENCE ADDRESS (Street address and apartment number, if any, describe location of residence (do not include P.O. Box or Rural R.F.))
DIRECCION DE RESIDENCIA PERMANENTE: Calle y Numero de Departamento; si no tiene, describe la localizacion de su vivienda. No incluye su caja postal o ruta rural.

2502 HARTFORD ROAD

CITY, STATE AUSTIN, TX

ZIP 78702

PERMANENT RESIDENCE ADDRESS (Street address and apartment number, if any, describe location of residence (do not include P.O. Box or Rural R.F.))
DIRECCION DE RESIDENCIA PERMANENTE: Calle y Numero de Departamento; si no tiene, describe la localizacion de su vivienda. No incluye su caja postal o ruta rural.

CITY, STATE

OCCUPATION
Ocupacion

COLLEGE PROFESSOR

DATE OF BIRTH
FECHA DE NACIMIENTO

9 JUN 28 1957

VOTER REGISTRATION CERTIFICATE (If you are not a registered voter, you must register before you can vote.)
CERTIFICADO DE REGISTRO DE VOTANTE (Si usted no es un elector registrado, usted debe registrarse antes de poder votar.)

TELEPHONE NUMBER (Indicate area code (Optional))
NUMERO DE TELEFONO (Indique el codigo de la zona (Opcional))

OFFICE: 512/471-0862
DE SU OFICINA

HOME: 512/700-8262
DE SU RESIDENCIA

IN STATE
EN EL ESTADO

7 yrs 7 mos

IN SCHOOL DISTRICT
EN EL DISTRITO DE LA ESCUELA

7 yrs 7 mos

Before me, the undersigned authority, on this day personally appeared WILLIAM STELMAN, who being duly sworn, depose and say that he is the person named in the foregoing application and that he is qualified to hold the office or position therein designated. I further certify that the foregoing statement is correct to the best of my knowledge and belief.
Antes de mi, la autoridad abajo firmante, en este dia personalmente comparecio WILLIAM STELMAN, quien habiendo jurado, declara y afirma que es la persona nombrada en el formulario de aplicacion arriba mencionado y que es calificado para ocupar el cargo o puesto que se indica en el mismo. Yo tambien certifico que el contenido de la declaracion arriba mencionada es correcto segun lo que yo sepa o conozca.

SIGNATURE OF CANDIDATE

Seems to me and subscribed before me at _____ on the 20th day of March 1966.

Me parece y suscribi me en _____ el dia _____ de _____ 1966.

Paul G. O'Neil
Signature of Officer administering oath
(Firma del oficial administering el juramento)

ok and
Title of Officer administering oath
(Titulo del oficial administering el juramento)

TO BE COMPLETED BY SECRETARY OF BOARD:

This document received on 3/20/66.

J. [Signature]

This document received on _____

SIGNATURE OF SECRETARY OF STATE



Bill Segura
President

Austin
Community
College

5930 Middle Fiskville Road
Austin, Texas 78752

(512) 483-7598
FAX 512 483-7820

BOARD OF TRUSTEES

Della May Mason
Chairman

Hester Ellinger
Vice Chairman

Beverly Watts Davis
Secretary

Pete Foster

Mark Ray Hernandez

Allen Kaplan

Paul Lindholm

Dr. Carol Neunorthe

Dr. John Worley

April 1, 1996

EXHIBIT 2

Mr. William Glenn Spelman
2502 Hartford Road
Austin, Texas 78703

RE: Notice to Candidate of Administrative Declaration of Ineligibility for
Place on General Election Ballot

Dear Mr. Spelman:

As the Secretary to the Board of Trustees of Austin Community College District, I hereby notify you that the application which you filed with the District on March 20, 1996 for a place on the Austin Community College District General Election Ballot, has been reviewed pursuant to Texas Election Code Section 145.003 and that I am hereby declaring that the application does not comply with the applicable requirements for filing.

Specifically, the application which you filed with our office is unsigned. Texas Election Code Section 141.031(2) requires that a candidate's application for a place on the ballot must be signed by the candidate. A copy of your application is attached to this notice.

Because the application has been rejected and because the deadline for filing such application closed at 5:00 p.m. on March 20, 1996, I am also notifying the election authority preparing the ballot to delete your name from the ballot which will be printed for the May 4, 1996 election.

Sincerely,

Ms. Beverly Watts-Davis
Secretary
Board of Trustees
Austin Community College District

c: Mr. Eldon Aldridge
City Clerk, City of Austin
Enclosure