

NO. _____

IN THE SUPREME COURT OF TEXAS

IN RE: JAVIER CERDA, CULLEN COX and RICKEY TURNER

Original Proceeding

PETITION FOR WRIT OF MANDAMUS

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Real Party in Interest

¹ Counsel for Relators has attempted to determine whether the Respondents or the Real Party in Interest are represented by counsel concerning this matter. To date, neither the Respondents nor the Real Party in Interest have indicated that they are represented by counsel concerning this matter.

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STATEMENT OF THE CASE

Nature of Case. This case concerns the eligibility of candidate Wendy Davis to seek the Democratic nomination for State Senator for Texas Senate District 10, geographically located entirely within Tarrant County.

Respondents. Respondent Art Brender is the duly elected Chair for the Tarrant County Democratic Party who is charged with the responsibility to accept applications for candidacy in the Democratic primary election under Texas Election Code §172.022(a)(2), and to determine the eligibility of potential candidates to run for the offices they seek under Texas Election Code §145.003(c). Mr. Brender's office is located at 600 8th Avenue, Fort Worth, Texas 76104. Respondent Boyd Richie is the duly elected Chairman for the Texas Democratic Party who is authorized to determine the eligibility of potential candidates to run for the offices they seek under Texas Election Code §145.003(b)(1). Mr. Richie's office is located at 505 West 12th Street, Suite 200, Austin, Texas 78701.

Action from which Relators seek Relief. On January 2, 2008, Respondent Brender refused to declare potential candidate Wendy Davis ineligible to be a candidate for State Senator for Texas Senate District 10 despite her failure to meet constitutional eligibility requirements specified in Article 3, §19 of the Texas Constitution. Relators seek a writ of mandamus ordering Respondents to comply with their ministerial duty to declare Ms. Davis ineligible to be a candidate for State Senator.

Prior Proceedings. This is an original action filed in the Supreme Court. No prior petition was filed in the Court of Appeals.

STATEMENT OF JURISDICTION

The Court has jurisdiction of this action under Texas Election Code §273.061, which confers original jurisdiction over petitions seeking writs of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election.

Although the Fort Worth Court of Appeals has concurrent jurisdiction under §273.061, urgent necessity requires filing this original action in the Supreme Court because of the very limited time remaining before the Primary Election on March 4, 2008. Under Texas Election Code §145.003(c), Respondent Brender loses authority to declare Ms. Davis ineligible on February 18, 2008, the last day before early voting by personal appearance begins.² More importantly, under Texas Election Code §86.004(a), balloting materials for voting by mail may be mailed as early as January 28, 2008. Thus, there is insufficient time remaining to obtain a final decision on appeal to this Court from an adverse ruling in the Court of Appeals in order to apprise voters of Ms. Davis' true status (i.e., eligible or ineligible) prior to the time voting in the Primary Election begins. The need to inform voters of the true effect of their votes cast in the Primary Election provides the compelling reason why this petition was not first presented to the Court of Appeals. Further, as one of thirty-one State Senate Districts, this case raises issues of statewide importance. *Compare Sears v. Bayoud*, 786 S.W.2d 248, 249-50 (Tex. 1990) (mandamus action to have State Supreme Court candidate declared ineligible raised

² Under Texas Election Code §172.057, the deadline for withdrawing Wendy Davis' name from the General Primary Election ballot has already run.

constitutional issue of statewide application and necessitated final decision prior to the commencement of absentee voting, thus making original jurisdiction in the Supreme Court appropriate). *Accord Thiel v. Harris County Democratic Executive Committee*, 534 S.W.2d 891, 895 (Tex. 1976); *In re: Newton*, 146 S.W.3d 648, 650 & 652-3 (Tex. 2004).

ISSUE PRESENTED

Article 3, §19 of the Texas Constitution prohibits a person holding a “lucrative office under ... this State” from being eligible to the Legislature during the term for which the person is elected. In *Wentworth v. Meyer*, this Court held that resignation prior to the end of the officeholder’s elected term ends the ineligibility otherwise imposed by Article 3, §19. However, the Court left unresolved the issue of whether the officeholder must resign the lucrative office *before* filing to run for the Legislature. The Court had no occasion to, and therefore did not decide, the related question of whether a candidate who resigns a lucrative office before filing to run for the Legislature, but continues to hold that office under the Constitutional “holdover” provision (Article 16, §17) *after* filing, is thus made ineligible by Article 3, §19.

This case squarely presents both these issues left unresolved by *Wentworth*, issues upon which election officials desperately need guidance from this Court.³ Here, Wendy Davis resigned her position on the Fort Worth City Council before filing as a candidate for Senate District 10, but continued to occupy her Council position under the holdover

³ See, e.g., Attorney General Greg Abbott’s 2006 publication “Public Officers: Traps for the Unwary,” at pp. 61-62 (noting that both questions are unresolved and require clarification by the courts). A copy of excerpts from this publication, available on the Attorney General’s website, are appended hereto for ease of reference at Tab J.

provision after she filed to run for the Legislature. The issue thus presented is stated simply as follows:

Did Respondent violate his mandatory duty under Article 3, §19 of the Texas Constitution by declaring Wendy Davis eligible as a candidate in the Democratic Primary for Senator for State Senate District 10 despite the fact that she filed to become a candidate for the State Senate seat prior to the date her tenure on the Fort Worth City Council ceased?

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

STATEMENT OF FACTS⁴

Each of the Relators is a Fort Worth Fire Fighter and a citizen of Tarrant County who is a registered Democratic voter residing in Texas Senate District 10. Respondent Art Brender is the duly elected chair of the Tarrant County Democratic Party, and as such has the duties imposed upon him by the Texas Election Code in connection with the conduct of the Democratic Primary Election. Respondent Boyd Richie is the duly elected Chairman of the Texas Democratic party.

On May 1, 1999, Wendy Davis joined the Fort Worth City Council as the duly elected council member for Council District 9. She served as the duly elected council member for District 9 at all times subsequent thereto, gaining re-election in 2001, 2003, 2005 and 2007. Her last elected term of office does not expire until May 2009.

The office of City Councilperson for the City of Fort Worth constitutes a lucrative office in that the incumbent is paid a salary of \$25,000.00 per year and receives other benefits for service as a councilperson, including an office and staff.

On August 9, 2007, at a duly called City Council meeting, Ms. Davis announced her resignation from the Council effective immediately in order to run for Texas State Senate District 10. A true and correct copy of excerpts from the meeting minutes for the August 9, 2007 Council meeting which reflect Ms. Davis' announcement are appended

⁴ The Statement of Facts is supported by the sworn affidavit of Relator Javier Cerda, appended hereto at Tab A. Documents appended hereto at Tabs B-I are referenced and authenticated in Mr. Cerda's affidavit.

hereto at Tab B. However, Chapter III, §8 of the Fort Worth City Charter states, in pertinent part:

If a member of the council shall become a candidate for nomination or election to any public office, other than that of councilperson, he/she shall forfeit his place in the council; but shall continue to hold the office until a successor is duly qualified in cases in which such holdover is required by state law

Article 16, §17 of the Texas Constitution, the so-called "holdover" provision, states:

All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

In accordance with these provisions, Ms. Davis remained in her elected council position after her resignation, continuing to retain her office and staff, draw her salary, attend and participate as a voting member in City Council meetings, and travel on City business.

Under Chapter III, § 4 of the Fort Worth City Charter, "vacancies in the City Council shall be filled by special elections from the districts whose places have been vacated" on the first available election date specified in the Texas Election Code. On November 6, 2007, Fort Worth conducted a special election to fill Council District 9 for the remainder of Ms. Davis' term. However, none of the candidates received a majority of the votes cast in that election, and a run-off election was set for December 18, 2007.

On December 3, 2007, while continuing to perform her duties as council member for District 9, Ms. Davis filed with Respondent Brender her sworn application to appear on the March 4, 2008 Democratic Party General Primary Ballot as a candidate for State Senate, Texas Senate District 10. A true and correct copy of Ms. Davis' application is found at Tab C appended hereto. On information and belief, Respondent Brender

informed Ms. Davis at some point thereafter that her application was premature and might render her ineligible to run under Article 3, §19 of the Texas Constitution.

On December 18, 2007, the run-off election for Fort Worth City Council District 9 was conducted. At that election, Joel Burns received a majority of the votes cast. At the special City Council meeting thereafter on December 27, 2007, the Fort Worth City Council canvassed the election results of the run-off election and declared Joel Burns had been elected to replace Ms. Davis as council member for District 9. A true and correct copy of the City Council meeting minutes for December 27, 2007 is appended hereto at Tab D. Chapter III, §5 of the Fort Worth City Charter states, in pertinent part:

At the first City Council meeting after the City Council meeting canvassing the election results, the elected members of the new Council shall meet at City Hall and take the oath of office.

The next regularly scheduled meeting of the City Council was set to occur on January 8, 2008, and the Council declared its intention to qualify Mr. Burns for the City Council by giving him the oath of office at the January 8, 2008 Council meeting. A true and correct copy of the City Council agenda for the January 8, 2008 City Council meeting is appended hereto at Tab E. Thus, under the above-cited holdover provisions of the Texas Constitution and City Charter, Ms. Davis was to remain in office as council member for District 9 until Mr. Burns was sworn on January 8, 2008.

The period to apply for a place on the Democratic Party General Primary Ballot ended on Wednesday, December 2, 2008 at 6:00 p.m. Because Ms. Davis' term as City Council member would not expire until after the filing deadline, Relators believed her to be ineligible to be a candidate for State Senate District 10 under the operation of Article

3, §19 of the Texas Constitution. On December 31, 2007, Relators therefore filed with Respondent Brender an official challenge to Ms. Davis' candidacy and asked that Respondent Brender rule Ms. Davis ineligible for a place on the 2008 Democratic primary ballot. A true and correct copy of the Relators' written challenge filed with Respondent Brender is appended hereto at Tab F.

Upon learning of the Relators' challenge to her candidacy, Ms. Davis caused retired Court of Appeals Justice John Hill to administer the oath of office to Mr. Burns on January 1, 2008 at Mr. Burns' home. This purported oath of office was not done in accordance with the above-quoted requirement of the City Charter. Relators therefore contested its legality. Relator Cerda delivered a letter to the Fort Worth City Attorney questioning the legality and asked him for clarification. A true and correct copy of that letter is appended hereto at Tab G. The City Attorney did not respond to the letter, but provided advice concerning the matter to the City Council.

By letter dated January 2, 2008, Respondent Brender denied the challenge to Ms. Davis' eligibility made by the Relators. A copy of Brender's letter is appended hereto at Tab H. In the letter, Brender noted that the Relators' challenge under Article 3, §19 of the Constitution raised an issue which this Court had failed to address in *Wentworth v. Meyer*. Finding no subsequent case which had specifically decided the issue raised, and interpreting the constitutional provision strictly against ineligibility, Brender denied the challenge.

On January 2, 2008, Ms. Davis purported to withdraw as a candidate for Texas State Senate District 10. However, she failed to file a written withdrawal request with

Respondent Brender as required by Texas Election Code §172.052. For that reason, Ms. Davis failed to effectively withdraw as a candidate for Texas Senate District 10 at any time after she filed her application with Respondent Brender on December 3, 2007. Nonetheless, on January 2, 2008, prior to the filing deadline of 6:00 p.m., Ms. Davis filed a second application to be placed on the Democratic primary ballot for the position of State Senator for Texas Senate District 10. A true and correct of this second application is appended hereto at Tab I.

After receiving advice from the Fort Worth City Attorney, the Fort Worth City Council on January 8, 2008 declined to allow Mr. Burns to attend the executive session of the Council that preceded the regular session at which his oath of office was to be administered. In accordance with the City Charter, the mayor administered the oath of office to Mr. Burns at the regular session of the City Council meeting at approximately 7:00 p.m., after which Mr. Burns was allowed to take his seat as a councilperson. Thus, Ms. Davis' tenure as City Council member for District 9 did not end until Mr. Burns became duly qualified for office on January 8, 2008 at 7:00 p.m.

ARGUMENT

The facts giving rise to the Relators' claims are straightforward. Ms. Davis was elected to the Fort Worth City Council in May 2007 for a term to end in May 2009. Only three months after her new term began, she announced her resignation from the City Council and her intent to run for Senator for Texas Senate District 10. However, her resignation did not end her term of office. Under the City Charter and Texas constitutional provisions quoted in the Statement of Facts at page one, she continued to

hold her City Council office until January 8, 2008, when her duly elected replacement became qualified by taking the official oath of office in the manner required by the City Charter.⁵ Yet, on December 3, 2007, and in any event no later than January 2, 2008, Ms. Davis filed to become a candidate for the Texas Legislature. In effect, Ms. Davis became a candidate for the Legislature at the same time she continued to hold office and exercise her duties as a City Councilperson.

Ms. Davis' actions bring into play the proscription of Article 3, §19 of the Texas Constitution, which states, in pertinent part:

No ... person holding a lucrative office under ... this State ... shall during the term for which he is elected or appointed, be eligible to the Legislature.⁶

There can be no serious doubt that Ms. Davis' position on the City Council constituted a "lucrative office." *See Willis v. Potts*, 377 S.W.2d 622, 627 (Tex. 1967) (Forth Worth City Council member held lucrative office under the State within meaning of Article 3, §19, and therefore was ineligible to serve as State Senator). Thus, the only question presented is whether the overlapping of Ms. Davis' service as a City Council person with her candidacy for State Senate brought her within the prohibition of Article 3, §19.

The seminal case dealing with Article 3, §19 is *Wentworth v. Meyer*, 839 S.W.2d 766 (Tex. 1992). In that case, Wentworth was appointed in 1987 to the Board of Regents for a state university for a term of six years. However, he resigned one year later in 1988

⁵ A candidate elected to an office becomes "qualified" for same by taking the oath of office prescribed by Article 16, §1 of the Texas Constitution. *See Buchanan v. Graham*, 81 S.W. 1237, 1239 (Tex. Civ. App. -- 1904, no writ) (statute impliedly fixes the time within which elected candidates were "required to qualify by taking the necessary oath of office"); *McGuire v. Hughes*, 452 S.W.2d 29, 32 (Tex. Civ. App. -- Dallas 1970, no writ) (person elected to office who qualified for same by taking the oath of office had property right in it).

⁶ The constitutional provisions cited herein are appended to this brief at Tab K.

and was replaced on the Board. Four years later in 1992, he became a candidate for the State Senate. The question presented was whether his “term” ended in 1993 at the conclusion of his appointed six year term, or earlier when he resigned. A majority of the Court ruled that Wentworth’s resignation ended the constitutional prohibition on his running for the Legislature. Writing for a three-member plurality, then-Justice Cook noted that the purpose of §19, which was to protect the Legislature from undue influence by certain officeholders, was not advanced by denying legislative office to a candidate who had resigned his position four years earlier and had been replaced by someone else. *Id.* at 767-8. Justice Hightower joined this plurality opinion.

Justice Hecht, who also joined in the plurality opinion and wrote a separate concurring opinion, summarized the Court’s decision by noting that five members of the Court had ruled “that article III, section 19 of the Texas Constitution does not prohibit an officeholder who resigns his position from serving in the Legislature during a time when he would otherwise have remained in his former office.” *Id.* at 772 (footnote omitted). Justice Hecht further noted that the word “term” as used in the constitutional provision most logically referred “to an officeholder’s time of service.” *Id.* at 775.

Justice Cornyn, whose concurring opinion was joined by Justice Hecht, also appeared to join in the plurality opinion endorsed by Cook, Hightower and Hecht, “but for reasons in addition to those expressed in the plurality’s opinion. *Id.* at 776. In his concurring opinion, Justice Cornyn stressed that “the constitutional prohibition on its face applies only to ‘any person *holding* a lucrative office,’ which Wentworth plainly is not.” *Id.* at 778 (emphasis in original) (footnote omitted).

Finally, Justice Gonzalez concurred, but went a step further than the other four Justices by holding that the constitutional prohibition applies to an officeholder who files to run for the Legislature prior to resigning. "One who has filed for an office without resigning a current office with an overlapping term risks disqualification which later resignation after the filing deadline would not cure." *Id.* at 771.⁷ To date, this Court has not ruled further on the ineligibility created by Article 3, §19. *Wentworth* thus does not specifically answer the questions posed by this case. In *Wentworth*, the candidate clearly resigned the prior office and was replaced before becoming a candidate for the Legislature. Here, on the other hand, Ms. Davis "resigned" but continued to serve on the City Council after filing to run for the Legislature.

However, subsequent rulings by the Attorney General have shed some additional light on the questions presented while noting the need for further judicial clarification. In Letter Opinion No. 95-069, the Attorney General discussed *Wentworth* at length and noted that while Justice Gonzalez took a strict view that resignation must always precede the filing deadline, other of the opinions suggested that a later resignation might suffice to end the constitutional ineligibility. *Id.* at p. 4. The Attorney General's own conclusion was as follows.

Article III, section 19 as interpreted in *Wentworth*, does not disqualify the holder of a lucrative office from running from the legislature even though the term of the lucrative office overlaps the legislative term, if the officeholder resigns from the lucrative office *before filing for the legislature*"

⁷ Justices Mauzy and Gammage likewise concurred in the result, but for reasons different from those expressed by the five other Justices. *Id.* at 771-2, 780.

Id. at p. 5 (emphasis added); *accord* Attorney General Letter Opinion No. 97-092. In so ruling, however, the Attorney General further elaborated on what constituted “resignation.”

In referring to “resignation” from the lucrative office, we will not overlook the effect of article XVI, section 17, the holdover provision, which provides that “[a]ll officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.” Even though an officer resigns and his resignation is accepted by the appropriate authority, the law operates to continue him in office until his successor qualifies. [citation omitted] A holder of a lucrative office who resigns the office to run for the legislature in reliance on *Wentworth v. Meyer* may be disqualified from the legislative office until his or her successor has qualified. As Justice Cook expressly noted, *Wentworth’s* position as regent was filled by someone else. 839 S.W.2d at 769. Thus, the effect of article XVI, section 17 was not an issue in *Wentworth*.

Id. at p. 4, n. 3. The Attorney General has reiterated these same opinions regarding the correct interpretation of Article 3, §19 and Article 16, §17 in Letter Opinion No. 97-092.

The Attorney General likewise has further elaborated on the effect of Article 16, §17 of the Texas Constitution on the effect of resignations. In Attorney General Opinion DM-377 (1996), the Attorney General ruled that the holdover provision prevails even over other constitutional provisions. *Id.* at 5. In Letter Opinion No. 96-014, the Attorney General ruled that the constitutional holdover provision overrides the effect of a Fort Worth City Charter provision stating that a councilperson’s becoming a candidate for nomination or election to other public office requires immediate forfeiture of his/her place on the Council. Applying that same reasoning here militates the conclusion that Ms. Davis’ term as City Councilperson ended only on January 8, 2008, when her successor qualified for office.

Nonetheless, the Attorney General's opinions do not carry the weight of judicial interpretation. The Attorney General himself has noted the need for judicial clarification of two points unanswered by *Wentworth*: (1) whether an officeholder who resigns from lucrative office after filing for the Legislature is disqualified; and (2) whether, under Article 16, §17, an officeholder who resigns nonetheless remains in office until a successor is qualified. Greg Abbott, "2006 Public Officers: Traps for the Unwary," at 61-2 (Tab J).

However, study of the Attorney Generals' opinions, coupled with further examination of *Wentworth*, support the Relators' claims that both questions must be answered in such a way as to render Ms. Davis ineligible for the State Senate seat she seeks. Justice Gonzales in *Wentworth* clearly stated his opinion that failure to resign prior to filing for office is fatal under the constitutional prohibition. *Wentworth, supra* at 771. Justice Cornyn, in a concurring opinion joined by Justice Hecht, related "term" as used in the constitutional provision to the time the person actually holds the office. *Id.* at 778. A person who, like Ms. Davis, "resigns" but continues to perform the full duties and enjoy the full benefits of the position under the holdover provision, continues to hold a lucrative office. Justice Hecht, in his own concurring opinion, related "term" to the officeholder's time of service. Again, Ms. Davis' time of service clearly ended only on January 8, after her successor qualified for office.

The purpose of Article 3, §19 is to bolster the separation of powers doctrine by mitigating the executive's influence on the Legislature. *Dawkins v. Meyer*, 825 S.W.2d 444, 448-9 (Tex. 1992). It would certainly defeat that purpose to allow a candidate to

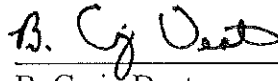
continue to hold a lucrative office while actually running for the Legislature. As Justice Gonzalez aptly stated in his concurring opinion in *Wentworth*, allowing candidates to avoid the constitutional prohibition by resigning one office prior to running for another “should not, however, be viewed as license to hang on to one office while prospecting for another.” *Id.* at 771. This Court should clarify the issues left unanswered by *Wentworth* by ruling in this case, which squarely presents those issues, that (1) an officeholder must effectively resign that office prior to filing as a candidate for the Legislature, and (2) a candidate who has “resigned” a lucrative office but who continues to hold that office under the constitutional holdover provision has not effectively resigned so as to avoid the ineligibility created by Article 3, §19.

Only the Respondents possess the power and the obligation under the Texas Election Code to initially declare potential candidates ineligible for the offices they seek. *See* Texas Election Code §145.003(g). When those officers fail to fulfill their statutory duty, resort to mandamus in the appellate courts is appropriate and in fact necessary. *See Sears v. Bayoud*, 786 S.W. 2d 248 (Tex. 1990) (Supreme Court had original jurisdiction under Election Code §273.061 to consider mandamus action seeking to require elections officials to declare Republican candidate for Texas Supreme Court ineligible). Texas Election Code §145.003 establishes the Respondents’ duty to make eligibility determinations, and they violate that plain statutory duty if they make eligibility determinations inconsistent with the requirements of the Texas Constitution. In such cases, a writ of mandamus compelling compliance with those constitutional requirements is necessitated.

PRAYER FOR RELIEF

For the foregoing reasons, Relators respectfully request that this Court issue a writ of mandamus compelling Respondents to rule Wendy Davis ineligible to run as a candidate for Senator, Texas State District 10; to deliver to Wendy Davis written notice of the reason for rejection; and to certify in writing a declaration of ineligibility to the canvassing authority for the election. *See* Texas Election Code §145.003(c), (h) & (i).

Respectfully submitted,

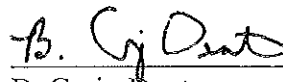


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ATTORNEY FOR RELATORS

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been served on Respondent Art Brender at 600 8th Avenue, 2004 West Lancaster Avenue, Fort Worth, Texas 76107, Fax (817) 334-0274. by fax and first class mail; and to counsel for Respondent Boyd Richie, 505 West 12th Street, Suite 200, Austin, Texas 78701, Fax (512) 480-2500, by fax and first class mail; and on Real Party in Interest Wendy Davis at 2737 Calder Court, Fort Worth, Texas 76107-3077 by certified mail, return receipt requested, on this 14th day of January, 2008



B. Craig Deats

Tab A

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

AFFIDAVIT OF JAVIER CERDA

I, Javier Cerda, am over twenty-one years of age and am competent to make this affidavit. I have never been convicted of a felony or a misdemeanor involving moral turpitude. Having been placed under oath and sworn to tell the truth, I hereby do solemnly swear that the following facts are of my own personal knowledge and are true and correct.

1. Each of the Relators in this action – Cullen Cox, Rickey Turner, and me - is a Fort Worth Fire Fighter and a citizen of Tarrant County who is a registered Democratic voter residing in Texas Senate District 10. Respondent Art Brender is the duly elected chair of the Tarrant County Democratic Party. Respondent Boyd Richie is the duly elected Chairman of the Texas Democratic party.

2. On May 1, 1999, Wendy Davis joined the Fort Worth City Council as the duly elected council member for Council District 9. She served as the duly elected council member for District 9 at all times subsequent thereto, gaining re-election in 2001, 2003, 2005 and 2007. Her last elected term of office does not expire until May 2009.

3. The office of Fort Worth City Councilperson is a paid position. Councilpersons receive a salary in the amount of \$25,000.00 per year and receive other benefits, including an office and staff.

4. On August 9, 2007, at a duly called City Council meeting, Ms. Davis announced her resignation from the Council effective immediately in order to run for Texas State Senate District 10. A true and correct copy of pages 3-5 of the official minutes of the August 9, 2007 City Council meeting, reflecting Ms. Davis' announcement, is attached to this petition at Tab B.

5. Chapter III, §8 of the Fort Worth City Charter states, in pertinent part:

If a member of the council shall become a candidate for nomination or election to any public office, other than that of councilperson, he/she shall forfeit his place in the council; but shall continue to hold the office until a successor is duly qualified in cases in which such holdover is required by state law

6. After she announced her resignation on August 9, 2007, Ms. Davis remained in her elected council position, continuing to retain her office and staff, draw her salary, attend and participate as a voting member in City Council meetings, and travel on City business.

7. Chapter III, §4 of the Fort Worth City Charter states in pertinent part that "vacancies in the City Council shall be filled by special elections from the districts whose places have been vacated" on the first available election date specified in the Texas Election Code. On November 6, 2007, the City of Fort Worth conducted a special election to fill Council District 9 for the remainder of Ms. Davis' term. However, none of the candidates received a majority of the votes cast in that election, and a run-off election was set for December 18, 2007.

8. On December 3, 2007, while continuing to perform her duties as council member for District 9, Ms. Davis filed with Tarrant County Democratic Chair Art Brender her sworn application to appear on the March 4, 2008 Democratic Party General Primary Ballot as a candidate for State Senate, Texas Senate District 10. A true and correct copy of Ms. Davis' application is attached to this petition at Tab C. On information and belief, Respondent Brender informed Ms. Davis at some point thereafter that her application was premature and might render her ineligible to run under Article III, §19 of the Texas Constitution.

9. On December 18, 2007, the run-off election for Fort Worth City Council District 9 was conducted. At that election, Joel Burns received a majority of the votes cast. At a Special City Council meeting thereafter on December 27, 2007, the Fort Worth City Council canvassed the election results of the run-off election and declared Joel Burns had been elected to replace Ms. Davis as council member for District 9. A true and correct copy of the Minutes for the December 27, 2007 City Council meeting is attached to the petition at Tab D. Ms. Davis is listed in the minutes as an absent Council member.

10. Chapter III, §5 of the Fort Worth City Charter states, in pertinent part:

At the first City Council meeting after the City Council meeting canvassing the election results, the elected members of the new Council shall meet at City Hall and take the oath of office.

11. The next regularly scheduled meeting of the City Council was set to occur on January 8, 2008, and the Council announced its intention to qualify Mr. Burns for the City Council by giving him the oath of office at the January 8, 2008 Council meeting. A true and correct copy of the posted Agenda for the January 8, 2008 City Council meeting is attached to this petition at Tab E. Item V therein states "Administration of oath of office to Joel Burns for City Council District 9."

12. The period to apply for a place on the Democratic Party General Primary Ballot ended on Wednesday, January 2, 2008 at 6:00 p.m. Because Ms. Davis' term as City Council member would not expire until after the filing deadline, Mr. Cox, Mr. Turner and I believed her to be ineligible to be a candidate for State Senate District No. 10 under the operation of Article III, §19 of the Texas Constitution. On December 31, 2007, we therefore filed with Democratic Party Chair Art Brender an official challenge to Ms. Davis' candidacy and asked that Respondent Brender rule Ms. Davis ineligible for a place on the 2008 Democratic primary ballot. A true and correct copy of this written challenge is attached to this petition at Tab F.

13. Upon information and belief, Ms. Davis learned of our challenge to her eligibility shortly after we filed it. After learning of our challenge to her candidacy, Ms. Davis caused retired Court of Appeals Justice John Hill to administer the oath of office to Mr. Burns on January 1, 2008 at Mr. Burns' home. This purported oath of office was not done in accordance with the above-quoted requirement of the City Charter.

14. Upon learning of the informal swearing in ceremony in Mr. Burns' home, I immediately wrote and hand delivered a letter to the Fort Worth City Attorney, requesting his opinion on the legality of it and whether Mr. Burns was now the City Councilperson for District 9 or whether Ms. Davis remained the City Councilperson until Burns could be officially sworn in as required by the City Charter. A true and correct copy of my letter to the Fort Worth City Attorney is attached to the petition at Tab G.

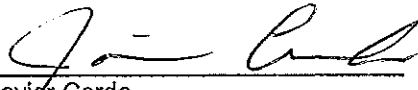
15. By letter dated January 2, 2008, Mr. Brender denied our challenge to Ms. Davis' eligibility. A true and correct copy of Brender's letter is appended to this petition at Tab H. In the letter, Brender noted that our challenge under Article 3, §19 of the Constitution raised an issue that the Supreme Court had failed to address in *Wentworth v. Meyer*. Finding no subsequent case which had specifically decided the issue raised, and interpreting the constitutional provision strictly against ineligibility, Brender denied our challenge. I am not aware of any administrative method by which we may challenge Mr. Brender's decision.

16. On January 2, 2008, Ms. Davis purported to withdraw as a candidate for Texas State Senate District 10. However, on information and belief, she failed to file a written withdrawal request with Mr. Brender as required by Texas Election Code §172.052. In response to an Open Records Act request, Mr. Brender orally indicated he had no written withdrawal letter from Ms. Davis. For that reason, it is my belief that Ms. Davis never effectively withdrew as a candidate for Texas Senate District 10 at any time after she filed her application with Mr. Brender on December 3, 2007. Nonetheless, on January 2, 2008, prior to the filing deadline of 6:00 p.m., Ms. Davis filed a second application to be placed on the Democratic primary ballot for the position of State Senator for Texas Senate District 10. A true and correct of this second application is appended to the petition at Tab I.

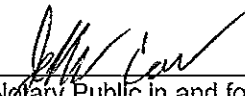
17. After receiving advice from the Fort Worth City Attorney, the Fort Worth City Council on January 8, 2008 declined to let Mr. Burns attend the executive Council session that preceded the regular session at which his oath of office was to be administered. In accordance with the City Charter, the City Secretary administered the oath of office to Mr. Burns at the regular session of the City Council meeting at approximately 7:00 p.m., after which Mr. Burns was allowed to take his seat as a councilperson. Thus, it is my belief that Ms. Davis' tenure as City Council member for District 9 did not end until Mr. Burns became duly qualified for office on January 8, 2008 at 7:00 p.m.

The foregoing statements are based on my personal knowledge and are true and accurate.

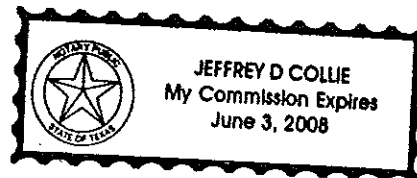
Further the affiant sayeth not.


Javier Cerda

Sworn to and subscribed before me this 10 day of January 2008.


Notary Public in and for
The State of Texas

My commission expires: 6/3/2008



Tab B

CITY OF FORT WORTH, TEXAS
REGULAR CITY COUNCIL MEETING
AUGUST 9, 2007
PAGE 3 of 36

Council Member Scarth announced that the Girls Under 16 Softball Tournament was held last week and sponsored by the Parks and Community Services Department, headed by Richard Zavala. He expressed appreciation for the wonderful job that they did and stated that over 32 teams from six or seven states attended. He also stated that the "National Night Out" was a huge success in District 4.

Council Member Espino announced that there would be a public meeting concerning the possible rezoning of Marine Park Neighborhood, a historic neighborhood behind the Rose Theater on August 16, 2007, at 7:00 p.m. at the Catholic Men's Club and invited everyone to attend. He also stated that there would be a special Town Hall meeting for the Chadwicks Farm Community at 7:00 p.m., August 22, 2007, at the Texas Motor Speedway Club.

Mayor Moncrief stated that the "National Night Out" was a time to show off Fort Worth's finest, and he acknowledged the Police, Fire, and Code Compliance Officers who served the City of Fort Worth. He also commended the Code Blue program and COPS participants for helping to keep the crime rate low and for their participation throughout the communities. He then asked for the audience to direct their attention to Council Member Davis.

Council Member Davis announced that she was resigning from the City Council and read the following letter into record:

Good Evening,

I would like to take a moment of personal privilege. I have had the honor of serving the City of Fort Worth and the citizens of District 9 for the last eight years. The challenges have been great, but the rewards have been far greater.

I have enjoyed the opportunity to serve with the wonderful colleagues and fellow public servants that sit here with me today as well as with our former Mayor and Council members. It has been my honor to work alongside the dedicated, smart and hardworking Fort Worth City staff, ranging from Police and Fire to Transportation/Public Works, from Parks and Recreation and Economic Development and Planning and Development and from Code Compliance to Animal Control. Our staff is nothing short of remarkable. But, most remarkable of all, and without whom I could not have serve my district as I have, is my loyal, intelligent, compassionate Council Aide and friend, Kristi Wiseman.

Mostly, I am proud to have worked with so many Fort Worth citizens to keep Fort Worth a world class city. Through a shared commitment to our community we have:

- Protected citizens from burdensome City tax increases
- Created jobs through smart economic development
- Cared for our children through innovative partnerships to provide free, safe and fun care for the youth of working families
- Provided for quality affordable housing in mixed income communities through innovative public private partnerships
- Made our neighborhoods safer, cleaner and more stable
- Revitalized commercial corridors and designated a number of urban villages
- Worked to protect our neighborhoods from airborne pollutants
- And championed a proposed regional transit system to relieve congestion, address air quality and promote quality transit oriented development.

In short, we have worked together to make our home a better place.

These accomplishments were made in partnership with you, the citizens of District 9 and in the City as a whole. My work for you for these past eight years has been motivated by our common goals, and I have been driven to work hard because I have come to know you personally. To know your families, to know the things you desire for them, for your neighborhoods and for the larger community. We have worked hand in hand with the shared desire to improve quality of life in this place we jointly call home. Because we are a local government, Council Members and the Mayor have the opportunity and responsibility to work directly with their constituents and are directly accountable. I have enjoyed this honest brand of partnership and I know it is responsible for our success.

But, while our partnership here in Fort Worth benefits our City, the partnership in Austin is badly broken. Failed leaders sent to Austin have forgotten who they represent, forgotten their way home, failed to remember that it is you and I, those who elect them, who called them to serve, not powerful special interests.

Therefore so that we may renew the partnership with Texans and the Legislature to restore trust, integrity and a representation of the interests of our mutual home, today I am resigning as a member of the Fort Worth City Council to seek the honor of serving as Senator to the 10th Senatorial District.

**CITY OF FORT WORTH, TEXAS
REGULAR CITY COUNCIL MEETING
AUGUST 9, 2007
PAGE 5 of 36**

United and committed, I know that we have the faith and the strength to mend the relationship between Texans and their Legislature and overcome the challenges that keep our families from realizing the full promise this country and this state offer.

Texas is ready for a change and I am prepared to deliver that change by continuing the brand of representation that I have always delivered, which is to:

- Listen closely;
- To work hard with all the good people of Tarrant County;
- And to bring ethical representation that reflects the desires of our tax paying citizens, not powerful special interests.

I have worked hard for eight years to represent this home, and I will take those local interests with me to the state level, remaining committed to being your local representative.

Thanks to each one of you, particularly the constituents of District 9, for the honor to serve as your Council Member and for your contributions to the success we have achieved working together. I look forward to continuing to work together on this next great challenge. I am most appreciative to my generous friends and family, particularly my daughters Amber and Dru, who have supported me during my service on Council and who join me tonight in the Council Chamber and will join me in our next endeavor. Thank you Mayor Moncrief and my fellow Council Members for the privilege of these remarks this evening.

Council Member Espino stated that although he had only worked with Council Member Davis for two years, he valued her participation in the revitalization of the LaGran Plaza. He indicated that she had a fair and balanced understanding of diversity and a unique perspective.

Council Member Scarth stated that Council Member Davis' work with economic development in District 9 was remarkable and that he had learned a lot from her. He wished her continued success.

Mayor Pro tem Hicks applauded Council Member Davis' dedication and her work with central city revitalization projects. She stated that when she faced challenges with the Evans Avenue and East Berry TIF projects, Council Member Davis showed her what could be done.

Tab C

APPLICATION FOR A PLACE ON THE Democratic PARTY GENERAL PRIMARY BALLOT
(APLICACION PARA UN LUGAR EN LA BOLETA DE LA PRIMARIA GENERAL DEL PARTIDO)

TO: State/County Chair (A: Nombre o Título del Propio Oficial del Partido) I request that my name be placed on the above-named official primary ballot as a candidate for nomination to the office indicated below. (Solicito que mi nombre esté puesto en la arriba nombrada boleta oficial de esta primaria como candidato para la nominación al puesto oficial indicado abajo.)					
OFFICE SOUGHT (PUESTO OFICIAL SOLICITADO) Include any place number or other distinguishing number, if any. (Incluya cualquier número de lugar u otro número que hace al puesto oficial diferente a otros, si hay alguno.) State Senate, Texas Senate District 10				INDICATE FULL OR UNEXPIRED TERM (INDIQUE SI EL TERMINO DEL PUESTO OFICIAL ES TERMINO COMPLETO O NO COMPLETADO) FULL	
FULL NAME (First, Middle, Last) (NOMBRE COMPLETO) (Nombre de Pila, Segundo Nombre, Apellido) Wendy Russell Davis		PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT (ESCRIBA SU NOMBRE COMO DESEA QUE APAREZCA EN LA BOLETA) Wendy R. Davis			
PERMANENT RESIDENCE ADDRESS (Street address and apartment number. If none, describe location of residence. Do not include P.O. Box or Rural R.) (DIRECCION DE RESIDENCIA PERMANENTE: Calle y Número de Departamento; si no tiene, describa la localidad de su residencia. No incluya su caja postal o P.O. Box.) 2737 Calder CT		MAILING ADDRESS (If different from residence address) (DIRECCION POSTAL (Si es diferente a su dirección de residencia)) PO BOX 1039			
CITY (CIUDAD) PORT WORTH	STATE (ESTADO) TX	ZIP (ZONA POSTAL) 76107	CITY (CIUDAD) PORT WORTH	STATE (ESTADO) TX	ZIP (ZONA POSTAL) 76101
OCCUPATION (Do not leave blank) (EMPLEO) (No lo deje en blanco) CEO, Republic Title Fort Worth Division		DATE OF BIRTH (FECHA DE NACIMIENTO) 05/16/1963		COUNTY OF RESIDENCE (CONDADO DE RESIDENCIA) Tarrant	
TELEPHONE NUMBER (Include area code) (Optional) (NUMERO DE TELEFONO - Incluya el código de la zona) (Opcional) OFFICE: (DE SU OFICINA) HOME: (DE SU DOMICILIO)		Length of Continuous Residence as of Date Application Sworn (Tiempo en que ha Residido en un Solo Lugar en la Fecha en que Prestó Juramento Sobre la Solicitud) IN STATE (EN EL ESTADO) 13 yr(s) 6 mos IN COUNTY (EN EL CONDADO) 13 yr(s) 6 mos IN DISTRICT OR PRECINCT (EN EL DISTRITO O PRECINCTO) 13 yr(s) 6 mos			
If using a nickname as part of your name to appear on the ballot, you are also signing and swearing to the following statements: I further swear that my nickname does not constitute a slogan nor does it indicate a political, economic, social, or religious view or affiliation. I have been commonly known by this nickname for at least three years prior to this election. Para poder incluir un apodo como parte de su nombre completo en la boleta, Ud. deberá firmar la siguiente declaración: Además, juro que se me ha conocido por este apodo por más de tres años. Además, juro que el apodo no es un tema político ni una indicación de mis intereses o afiliaciones políticas, económicas, sociales, o religiosas.					
Before me, the undersigned authority, on this day personally appeared (name) <u>Wendy R. Davis</u> who being by me here and now duly sworn, upon oath says: "I, (name) <u>Wendy R. Davis</u> of <u>Tarrant</u> County, Texas, being a candidate for the office of <u>State Senate, TX Senate District 10</u> , swear that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the Constitution and laws of this state. I have not been finally convicted of a felony for which I have not been pardoned or had my full rights of citizenship restored by other official action. I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. I am aware of the nepotism law, Chapter 573, Government Code.					
I further swear that the foregoing statements included in my application are in all things true and correct."					
(Ante mí, la autoridad, subscripta o por mí, quien habiendo aquí y ahora prestado juramento debido, bajo juramento dice: "Yo, <u>Wendy R. Davis</u> del condado de <u>Tarrant</u> , Texas, siendo candidata para el puesto oficial de <u>State Senate, TX Senate District 10</u> , juro que apoyaré y defenderé la Constitución y las leyes de los Estados Unidos y del Estado de Texas. Soy ciudadana de los Estados Unidos elegible para ocupar tal puesto oficial bajo la Constitución y las leyes de este Estado. No me han determinado por un juicio final de una corte de la legitimación de un testamento, ser totalmente incapacitada mentalmente o parcialmente incapacitada sin el derecho de votar, ni he sido probada culpable finalmente de una felonía por la cual no he sido perdonada o por la cual no se me han restituido enteramente mis derechos de ciudadanía por medio de otra acción oficial. Yo tengo conocimiento de la ley sobre el nepotismo según el capítulo 573 de Código Gubernativo.					
Además juro que las procedentes declaraciones que incluyen en mi solicitud son verdaderas y están correctas en todos sentidos."					
X <u>Wendy R. Davis</u> SIGNATURE OF CANDIDATE (FIRMA DEL CANDIDATO)					
Sworn to and subscribed before me at <u>1:05 pm</u> , this the <u>3rd</u> day of <u>December</u> , <u>2007</u> (Jurado y suscrito ante mí en <u>1:05 pm</u> , esta día <u>3</u> de <u>Diciembre</u> , <u>2007</u>)					
<u>Adrian Zimmerman</u> Signature of Officer administering oath (Firma del oficial administrando el juramento)		<u>Notary Public</u> Title of Officer administering oath (Título del oficial administrando el juramento)			
TO BE COMPLETED BY CHAIR:					
THIS APPLICATION IS ACCOMPANIED BY THE REQUIRED FILING FEE, PAID BY CASH ☐ CHECK ☒ MONEY ORDER ☐ CASHIERS CHECK ☐ OR A PETITION IN LIEU OF FILING FEE ☐					
This document and \$ <u>1,250.00</u> filing fee or a nominating petition of <u>12/3/07</u> pages received.					
(See Section 1.007) <u>12/3/07</u> Date Signature of Chair					

Tab D

**CITY OF FORT WORTH, TEXAS
CALLED - SPECIAL CITY COUNCIL MEETING
DECEMBER 27, 2007**

Present

Mayor Mike Moncrief
Mayor Pro tem Kathleen Hicks, District 8
Council Member Daniel Scarth, District 4
Council Member Frank Moss, District 5
Council Member Jungus Jordan, District 6
Council Member Carter Burdette, District 7

Absent

Council Member Salvador Espino, District 2
Council Member Chuck Silcox, District 3
Council Member Wendy Davis, District 9

City Staff

Libby Watson, Assistant City Manager
David Yett, City Attorney
Marty Hendrix, City Secretary

With a quorum of the City Council Members present, Mayor Moncrief called the called-special session of the Fort Worth City Council to order at 10:00 a.m. on Thursday, December 27, 2007, in the City Council Chamber of the Fort Worth City Hall, 1000 Throckmorton Street, Fort Worth, Texas 76102, with Council Members Espino, Silcox and Davis absent.

**Agenda Item II
Canvass Election
Results for Special
City Council Run-
Off Election for City
Council Member,
District 9**

Marty Hendrix, City Secretary, advised the City Council that the official canvass documents, both cumulative and by precinct, had been provided to the Council. She stated the count of the Special City Council Run-Off Election for City Council Member, District 9, held on December 26, 2007, was completed on December 26, 2007, and the returns of the election, as reported by the presiding officers of the voting precincts to the Tarrant County Elections Administrator and by the Tarrant County Elections Administrator to the City Secretary of Fort Worth, were as follows:

<u>Candidate Name</u>	<u>Early Voting</u>	<u>Election Day</u>	<u>Total Votes</u>
Joel Burns	468	1,328	1,796
Juan Rangel	364	1,161	1,525

Total Ballots Cast: 3,349
Total Registered Voters: 24,137
Percentage Voting: 13.87%

**CITY OF FORT WORTH, TEXAS
CALLED-SPECIAL CITY COUNCIL MEETING
DECEMBER 27, 2007
PAGE 2 of 2**

City Secretary Hendrix stated that this concluded the canvass report.

**Agenda Item III
Res. No. 3569-12-
2007
Declare Results of
Special City Council
Run-Off Election
for City Council
Member, District 9
Held on December
18, 2007**

There was presented a resolution of the City Council of the City of Fort Worth, Texas, canvassing the returns and declaring the results of the Special City Council Run-Off Election held on December 18, 2007, for the purpose of electing a Council Member, District 9.

City Secretary Hendrix recited the resolution into the record which reflected that Joel Burns be declared elected to the office of City Council District 9.

Council Member Jordan made a motion, seconded by Council Member Moss, that Resolution No. 3569-12-2007 be adopted. The motion carried unanimously six (6) ayes to zero (0) nays with Council Members Espino, Silcox and Davis absent.

**Agenda Item IV
Presentation of
Certificate of
Election**

Mayor Moncrief presented a Certificate of Election to Joel Burns.

Mr. Burns stated that he looked forward to getting up every day and working for the City of Fort Worth.

Mayor Moncrief advised Mr. Burns that he would receive his Oath of Office during the January 8, 2008, Council meeting. He stated that the Council was a great team to work with and that 2008 held tremendous challenges for the City.

Mayor Pro tem Hicks referred to today's assassination of Pakistani leader Benazir Bhutto in Pakistan and stated that it served as a reminder of the democracy that everyone in the United States enjoyed. She extended Happy New Year wishes to everyone in the City.

**Agenda Item V
Executive Session**

Mayor Moncrief passed over the following Executive Session item.

The City Council may conduct a closed meeting as authorized by Section 551.071 of the Texas Government Code to seek the advice of its attorneys on legal issues regarding any matter listed on today's City Council Agenda.

**Agenda Item VI
Adjournment**

There being no further business, the meeting was adjourned at 10:09 a.m.

Tab E



Fort Worth, Texas, is a city focusing on its future. Together, we are building strong neighborhoods, developing a sound economy and providing a safe community.

1/11/2008



Did you know...

Official Web Site for the City of Fort Worth, Texas

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M&C Council Dates: 1/8/2008

[Print Agenda](#)

CITY COUNCIL AGENDA

FOR THE MEETING AT 7:00 P.M. TUESDAY, JANUARY 08, 2008

CITY COUNCIL CHAMBER, CITY HALL

1000 THROCKMORTON, FORT WORTH, TEXAS

- I. CALL TO ORDER
- II. INVOCATION - Pastor Gary Bandy, The Baptist Church of Park Glen
- III. PLEDGE OF ALLEGIANCE
- IV. CONSIDERATION OF MINUTES OF THE:
 - CITY COUNCIL WORK SESSION OF NOVEMBER 28, 2007
 - CITY COUNCIL WORK SESSION OF NOVEMBER 29, 2007
 - CITY COUNCIL WORK SESSION OF NOVEMBER 30, 2007
 - CITY COUNCIL TOUR OF CITY OF FORT WORTH AIRPORTS OF DECEMBER 14, 2007
 - REGULAR MEETING OF DECEMBER 18, 2007
 - CITY COUNCIL WORK SESSION TO CONDUCT CITY AUDITOR INTERVIEWS OF DECEMBER 19, 2007
 - CALLED-SPECIAL CITY COUNCIL MEETING OF DECEMBER 20, 2007
 - CALLED-SPECIAL CITY COUNCIL MEETING OF DECEMBER 27, 2007
- V. ADMINISTRATION OF OATH OF OFFICE TO JOEL BURNS FOR CITY COUNCIL DISTRICT 9
- VI. REMARKS AND INTRODUCTIONS BY COUNCIL MEMBER JOEL BURNS
- VII. REMARKS AND INTRODUCTIONS BY FORMER COUNCIL MEMBER WENDY DAVIS
- VIII. PRESENTATION FROM THE CITY COUNCIL AND OTHERS TO FORMER COUNCIL MEMBER WENDY DAVIS
- IX. SPECIAL PRESENTATIONS, INTRODUCTIONS, ETC.
 1. Presentation of Proclamation for Charles Boswell Day
- X. ANNOUNCEMENTS BY CITY COUNCIL MEMBERS AND STAFF
- XI. ITEMS TO BE WITHDRAWN FROM THE CONSENT AGENDA
- XII. ITEMS TO BE CONTINUED OR WITHDRAWN BY STAFF
- XIII. CONSENT AGENDA

All items with asterisks (**) are a part of the Consent Agenda and require little or no deliberation by the City Council. Approval of the Consent Agenda authorizes the City Manager, or his designee, to implement each item in accordance with staff recommendations.
- XIV. PRESENTATIONS BY THE CITY COUNCIL
 1. Changes in Membership on Boards and Commissions

XV. PRESENTATIONS AND/OR COMMUNICATIONS FROM BOARDS, COMMISSIONS AND/OR CITY COUNCIL COMMITTEES**XVI. PRESENTATIONS BY THE CITY SECRETARY**

1. **OCS-1639 - Notice of Claims for Alleged Damages and/or Injuries

XVII. RESOLUTIONS

1. A Resolution Appointing Members of the Aviation Museum Task Force
2. A Resolution Setting a Public Hearing to be Held During the City Council Meeting Beginning at 7:00 P.M. on Tuesday, February 12, 2008, in the City Council Chambers of the City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas, to Consider Adoption of the Transportation Impact Fee Land Use Assumptions and Capital Improvements Plan for Transportation Impact Fees

XVIII. REPORT OF THE CITY MANAGER**A. General**

- **1. M&C G-16005 - Authorize the City Manager to Execute a Six-Month Agreement for Investment Advisory Services with Patterson and Associates
- **2. M&C G-16006 - Authorize a Transfer from the Capital Projects Reserve Fund to the General Fund for Elevator Controls and Associated Equipment Upgrades, Replacement of Fire Alarm Panels, Replacement of Emergency Generators at Various City Facilities, and the Restoration of Operating Supply Funds in the Facilities Maintenance Division and Adopt Appropriation Ordinances
- **3. M&C G-16007 - Authorize the Temporary Closure of a Portion of Glen Garden Drive North from Trueland Drive to Jackson Street from January 1, 2008, until February 29, 2008
- **4. M&C G-16008 - Authorize Temporary Closure of a Portion of W. R. Walt Drive, Burnett-Tandy Drive, Gendy Street and Trinity Park Drive during Specified Times Beginning Monday, January 7, 2008, until Monday, February 4, 2008, for the Southwestern Exposition and Livestock Show
- **5. M&C G-16009 - Authorize Acceptance of an Anonymous Donation of \$25,645 to the Fire Department, Authorize Purchase of Equipment for Various Fire Stations and Adopt Appropriation Ordinances
- **6. M&C G-16010 - Consideration of Application to Grant Operative Authority to American Eagle Limousine Service to Operate Five Limousines upon the Streets, Alleys and Public Thoroughfares of the City of Fort Worth and Adoption of Ordinance
- **7. M&C G-16011 - Consideration of Application to Grant Operative Authority to Sedan One, LLC, to Operate Three Limousines upon the Streets, Alleys, and Public Thoroughfares of the City of Fort Worth and Adoption of Ordinance
- **8. M&C G-16012 - Authorization to Submit Applications for Grant Funds for an Adoption Center and Animal Care and Control Programs in the Public Health Department
9. M&C G-16013 - Adoption of Amendments to the Gas Well Revenues Distribution Policy of the City of Fort Worth Financial Management Policy Statements, Establishing a Section 115 Trust Fund, Setting Procedures for Distribution and Allocation of Revenues Derived from Gas Well Bonus and Royalty Lease Revenues and Ad Valorem Tax Revenues, Establishing Expenditure Criteria for Gas Well Revenues and Rescinding the Moratorium for Expenditure of Gas Well Revenue Funds

- 10. M&C G-16014 - Approve Acceptance of Donations to the Vaquero Sculpture Project and Adopt Appropriation Ordinance
- 11. M&C G-16015 - Authorize Reallocation of Community Facilities Agreement Funds from North Beach Street to Timberland Boulevard and Authorize Payment to Mehrdad Moyedi for Reimbursement of Additional Costs to Construct Timberland Boulevard
- 12. M&C G-16016 - Authorize Payment for Relocation and Moving Expense to AT&T from 4309 West Vickery Boulevard, in the Vickery Corridor, Parcel No. 79X, for Right-of-Way for the Southwest Parkway Project (DOE 3777)
- 13. M&C G-16017 - Authorize Payment for Relocation and Moving Expense to Gorecki Auto Services from 4337 West Vickery Boulevard, in the Vickery Corridor, Parcel No. 83, for Right-of-Way for the Southwest Parkway Project (DOE 3777)

B. Purchase of Equipment, Materials, and Services

- **1. M&C P-10704 - Authorize a Purchase Agreement for Gate Valves with Ferguson Waterworks for the Water Department and Authorize Execution of Interlocal Agreements Allowing other Local Governments to Participate in the Bid Award
- **2. M&C P-10705 - Authorize the Purchase of a Telemetrix Pan/Tilt System from Burst Communications, Inc., for the Cable Office
- **3. M&C P-10706 - Authorize a Purchase Agreement with Tolman Building Maintenance, Inc., for Temporary Employment Services for the Public Events Department and Authorize Execution of Interlocal Agreements Allowing other Local Governments to Participate in this Bid Award
- **4. M&C P-10707 - Authorize Non-Exclusive Purchase Agreements for Pump Repair Service with Grundfos CBS, Inc., - Paco Pumps, and Smith Pump Company, Inc., for the City of Fort Worth and Authorize Execution of Interlocal Agreements allowing other Local Governments to Participate in this Bid Award
- **5. M&C P-10708 - Authorize Purchase Agreements for Copy Services with Document Solutions as Primary Vendor and Texas Printing and Litigation as a Secondary Vendor for the City of Fort Worth
- **6. M&C P-10709 - Authorize the Purchase of Five 20-Kilowatt Generators from Diversified Power Systems, Inc., for the Transportation and Public Works Department

C. Land

- 1. M&C L-14426 - **(Revised)** Authorize Conversion of 0.252 Acres of Trinity Park for a Gas Pipeline to Transport Natural Gas and Execution of a License Agreement with Texas Midstream Gas Services **(Continued from a Previous Meeting) (PUBLIC HEARING)**
 - a. Report of City Staff
 - b. Citizen Presentations
 - c. Council Action
- **2. M&C L-14445 - Authorize the Direct Sale of a Tax-Foreclosed Property Located at 1505 Evans Avenue, in Accordance with Section 34.05 of the Texas Property Tax Code, to Margie Thompson and Authorize Execution and Recording of Appropriate Instruments (DOE 920)

- **3. M&C L-14446 - Authorize the Direct Sale of a Tax-Foreclosed Property Located at 4729 Mansfield Highway, in Accordance with Section 34.05 of the Texas Property Tax Code, to Marsha L. Sides and Authorize Execution and Recording of Appropriate Instruments (DOE 920)
- **4. M&C L-14447 - Approve Acceptance of Lease Agreement with Chesapeake Exploration, L.L.C., for Natural Gas Drilling under 3.457 Acres, More or Less, of City-Owned Properties Located in Tarrant County, Texas, known as the Mercado Parking Lot in the Stockyards
- **5. M&C L-14448 - Authorization of Final Lease Renewal with Robert Wade for Lake Worth Property Located at 4244 Lakewood Drive, Lot 14, Block 9, Lake Worth Lease Survey
- 6. M&C L-14449 - Authorize Execution of an Underground Pipeline Easement Agreement with Cowtown Pipeline, L.P., and Quicksilver Resources, Inc., for Natural Gas Pipelines Across Tax Foreclosed Property at 2700 Quail Road, Handley Heights South Addition, Block 2, Lot 11 and 11 North East and 6312 Elizabeth Road, Handley Heights South Addition, Block 3, Lot 9B1
- 7. M&C L-14450 - Authorize an Exception to the Existing Moratorium on the Use of Gas Well Revenue, Authorize the Appropriation of Funds from the Gas Well Revenue Account in the Lake Worth Trust Fund, Adopt Appropriation Ordinance, Authorize the Use of the Appropriated Funds for the Purchase of the Combined 1.54 Acres of Land and Improvements Located at 8536 Marks Lane, Fort Worth, Tarrant County, Texas, for the Purpose of Expansion of the Fort Worth Nature Center and Refuge (DOE No. 5786 - Project No. 271), and Authorize Acceptance and Recording of Appropriate Instruments
- 8. M&C L-14451 - Authorize Conversion of 0.174 Acres of Trinity Park for a Gas Pipeline to Transport Natural Gas and Execution of a License Agreement with Texas Midstream Gas Services (**PUBLIC HEARING**)
 - a. Report of City Staff
 - b. Citizen Presentations
 - c. Council Action

D. Planning & Zoning

- 1. M&C PZ-2765 - Adopt Ordinance for the City Initiated Annexation of Approximately 40.4 Acres of Land in Tarrant County, Texas, Located South of Meadowbrook Drive and West of Dottie Lynn Parkway (AX-07-003 R.R. Ramey Survey) (**Continued from a Previous Meeting**)

E. Award of Contract

- **1. M&C C-22598 - Authorization to Enter into an Artwork Conservation Contract with John Dennis for Conservation Maintenance and Treatment of Various Works of the Art in the Fort Worth Public Art Collection
- **2. M&C C-22599 - Authorize Payment of City of Fort Worth's Assessed Pro Rata Allocation of the Tarrant Appraisal District's Budget for January through December 2008
- **3. M&C C-22600 - Authorize Execution of an Engineering Services Agreement with Dunaway Associates, L.P., for the Design of East First Street from Beach Street to Oakland Boulevard (2004 CIP Project No. 00145)

- **4. M&C C-22601** - Authorize Execution of Change Order No. 2 to City Secretary Contract No. 35793, with Centerline Construction Services, Inc., for the Construction of Fire Station No. 11
- **5. M&C C-22602** - Authorize Execution of Amendment No. 4 to City Secretary Contract No. 28977, an Engineering Agreement with CH2M Hill, Inc., for Southside II Water Transmission Main from Rolling Hills Treatment Plant to the Crowley Road/Risinger Road Intersection (City Project No. 00303)
- **6. M&C C-22603** - Authorize Execution of Change Order No. 1 to City Secretary Contract No. 33930 with Humphrey and Morton Construction Company, Inc., for 2004 CIP Minor Miscellaneous Channel Improvements, Contract D (Project No. 00096) and Adopt Appropriation Ordinance
- **7. M&C C-22604** - Execute an Annual Evaluation Service Contract Funded by a Grant from the United States Department of Health and Human Services for a Child Mental Health Initiative Co-operative Agreement
- **8. M&C C-22605** - Authorize the City Manager to Execute a Contract with Input Systems, Inc., for Software and Support for Consumer Health Activities in the Public Health Department
- **9. M&C C-22606** - Authorize Execution of Contracts to Provide Emergency Spill Response Services with Eagle Construction and Environmental Services, L.P., and TAS Environmental Services, L.P.
- **10. M&C C-22607** - Authorize Grant Applications to and Execute Grant Contracts with North Central Texas Council of Governments for Environmental Projects, Authorize Use of Various Funds for In-Kind Matches and Adopt Appropriation Ordinance
- **11. M&C C-22608** - Authorize Execution of a Hangar Lease Agreement with HLP Aviation, LLC, for City-Owned Hangar 28 at Fort Worth Spinks Airport
- **12. M&C C-22609** - Authorize Execution of a Hangar Lease Agreement with HLP Aviation, LLC, for City-Owned Hangar 32 at Fort Worth Spinks Airport
- **13. M&C C-22610** - Authorize Execution of an Engineering Agreement with TCB, Inc., for the Design of the Water and Sewer Main Connections for the Northwest Water Treatment Plant
- **14. M&C C-22611** - Authorize Execution of a Contract with Dirtco, LP, d/b/a Styles Contracting, for Trail Improvements at Overton Park
- **15. M&C C-22612** - Reject Bids Received for Park Road and Drainage Improvements at Trinity Park
- **16. M&C C-22613** - Authorize Acceptance of the Loan Star Libraries Grant from the Texas State Library and Archives Commission, Execute a Related Grant Agreement and Adopt Appropriation Ordinance
- 17. M&C C-22614** - Authorization to Enter Into an Artwork Commission Contract with David Keens, Inc., for Design, Fabrication and Installation of a Work of Public Art for the North Park YMCA and Community Center
- 18. M&C C-22615** - Authorize Execution of a Tax Abatement Agreement with M and M Building and Equipment Company for Property Located at 200 Adolph Street in the Trinity Park Neighborhood Empowerment Zone
- 19. M&C C-22616** - Authorize Execution of a Contract with S.J. Louis Construction of Texas, Ltd., for the Trinity River Pipeline Crossing at the Village Creek Wastewater Treatment Plant (City Project No. 00186)

XIX. ZONING HEARING**a. Cases Recommended for Approval**

1. **Zoning Docket No. ZC-07-191 - (CD 8)** - Segundo Ruiz, 2727, 2729 East Lancaster Avenue, 2722, 2728 Purington Avenue; from "C" Medium Density Multifamily Residential and "F" General Commercial to "FR" General Commercial Restricted (**Continued from a Previous Meeting**)
2. **Zoning Docket No. ZC-07-206 - (CD 5)** - City of Fort Worth, 2500, 2700, 2750 & 2754 Dottie Lynn Parkway, from Unzoned to "A-5" One Family Residential and "AG" Agricultural (**Continued from a Previous Meeting**)
3. **Zoning Docket No. ZC-07-212 - (CD 3)** - Raymond V. Tupper, 3229, 3233 Joyce Drive; from "A-5" One Family Residential to "I" Light Industrial
4. **Zoning Docket No. ZC-07-213 - (CD 7)** - Medical Reviewers, L.L.C., 9601 White Settlement Road; from "G" Intensive Commercial to "E" Neighborhood Commercial
5. **Zoning Docket No. ZC-07-214 - (CD 7)** - Jarvis Porter, 11850 Willow Springs Road; from "A-5" One Family Residential to "E" Neighborhood Commercial
6. **Zoning Docket No. ZC-07-219 - (CD 8)** - City of Fort Worth, 2501 Oakland Boulevard; from "A-5" One Family Residential to "A-21" One Family Residential
7. **Zoning Docket No. ZC-07-223 - (CD 7)** - City of Fort Worth, (Monticello Drive Petition), 3800 & 3900 Blocks of Monticello Drive, from "A-5" One Family Residential, "A-5/HC" One Family Residential/Historical & Cultural Overlay to "A-10" One Family Residential, "A-10/HC" One Family Residential/Historical & Cultural Overlay
8. **Zoning Docket No. ZC-07-224 - (CD 4)** - City of Fort Worth, (White Lake Hills Neighborhood), generally bounded by Randol Mill Road to the north, Woodhaven to the east, IH-30 to the south and Oakland Boulevard to the west; from "A-5" One Family Residential and "C" Medium Density Multifamily Residential to "A-21", "A-10" and "A-7.5" One Family Residential

b. Cases Recommended for Approval/Denial

1. **Zoning Docket No. ZC-07-203 - (CD 7)** - (A) Marine Quest - Harbor One, L. P., 9157, 9165 & 9177 Boat Club Road (**Continued from a Previous Meeting**)
Recommended for Approval
 from "F" General Commercial to "R2" Townhouse/Cluster Residential for 8 townhomes
Recommended for Denial
 (ZC-07-203A)9177 Boat Club Road, from "F" General Commercial to "R2" Townhouse/Cluster Residential for 8 townhomes, Lot 1
2. **Zoning Docket No. ZC-07-222 - (CD 3)** - (A) City of Fort Worth, Overton Woods Neighborhood, Generally bounded by the Trinity River to the north, Hulen Street to the east, Arborlawn Drive to the south and Bryant Irvin Road to the west
Recommended for Approval
 from "A-5" One Family Residential to "A-10" One Family Residential
Recommended for Denial
 from "B" Two family Residential to "A-10" One Family Residential, 4763 & 4767 Overton Woods Drive

c. Cases Recommended for Denial

1. **Zoning Docket No. ZC-07-201 - (CD 7) - Poisson Rouge Property Company, L.L.C., 3700 Linden Avenue; from "A-5" One Family Residential to "PD/R2" Planned Development for "R2" Townhouse/Cluster Residential. Site plan required. (SP-07-058) (Continued from a Previous Meeting)**
2. **Zoning Docket No. SP-07-058 - (CD 7) - Poisson Rouge Property Company, L.L.C., 3700 Linden Avenue; Site plan for townhouse/cluster residential (ZC-07-201) (Continued from a Previous Meeting)**

XX. CITIZEN PRESENTATIONS

XXI. EXECUTIVE SESSION (Pre-Council Chamber)

XXII. ADJOURNMENT

According to the City Council Rules of Procedures, individual citizen presentations shall be limited to three minutes, and group presentations shall be limited to ten minutes. The Mayor, at his discretion, may reasonably extend these limits.

This facility is wheelchair accessible. For accommodations or sign interpretive services, please call the City Manager's Office at 817-392-6143, 48 hours in advance.

Tab F

Monday, December 31, 2007

To: Tarrant County Democratic Party Chairman Art Brender

As Democratic primary voters in State Senate District 10, we respectfully call upon the Tarrant County Democratic Party Chairman to disqualify Fort Worth City Councilwoman Wendy Davis from the 2008 Democratic Party State Senate District 10 ballot based on her ineligibility described below. (Note also that Tarrant County election records document that Ms Davis voted in the 2006 Republican primary and has voted in other recent Republican primaries over the past ten years.)

Also as you may recall, former Fort Worth City Council member Doyle Willis and former Mayor Woody Woods were also deemed ineligible for the Texas Legislature and taken off the ballot for similar ineligibility violations of the Texas Constitution.

Noting that Ms Davis is currently serving, and will continue serving, on the Fort Worth City Council until Tuesday, January 8, 2008, which is well past the January 2nd deadline for primary filing... we respectfully direct your attention to the attached copy of the Texas Attorney General's document titled: "2006 Public Officers: Traps for the Unwary" which clearly states that there has been NO court cases (including "Wentworth") which have overturned the Texas Constitutional prohibitions intended to prevent holders of local lucrative offices with overlapping terms of the Legislature from abusing taxpayer funds to run for the Texas Legislature unless, and until, they resign AND their successors are sworn into office. Based on the fact that Ms. Davis is still a member of the Fort Worth City Council (see attached copy of City of Fort Worth website) and that her successor will not be sworn into office until Tuesday, January 8, 2008, Ms. Davis is clearly in violation of the Texas Constitution and is ineligible to run for the Texas Legislature.

The language of Article III, Section 19 of the Texas Constitution is clear:

"No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible for the Legislature."

TEX. CONST. art. III, § 19.

The policy for such provision is equally apparent. The framers of the Texas Constitution do not want the democratic process to be subverted by the use of one's position as an elected officer to campaign and unduly influence the election for another office at the expense of taxpayers. *Wentworth v. Meyer*, 839 S.W.2d 766, 767 (Tex. 1992); *Dawkins v. Meyer*, 825 S.W.2d 444 (Tex. 1992).

In the scenario at hand, the facts are certain and in direct contravention of the Texas Constitution. Councilwoman Wendy Davis was elected to another term as the representative for Council District 9 on the Fort Worth City Council on May 12, 2007. Along with the other benefits of being an elected councilperson, the City of Fort Worth

pays each council member an annual salary of \$25,000. She became qualified for this additional term of office on the date of her taking the oath of office shortly after the election. The full term to which she was elected is two years, expiring in May 2009.

On August 7, 2007, Councilwoman Davis purported to announce her "resignation" of her position on the Fort Worth City Council and her simultaneous intention to be a candidate for the 2008 Democratic nomination for Texas Senate, District 10. However, due to the clear language of Art. III, Sec. 19 of the Texas Constitution, Councilwoman Davis should be deemed ineligible for any nomination for the Texas Legislature.

There are two issues for discussion in determining the applicability of Art. III, Sec. 19 to the instant scenario. First, Texas law clearly provides that a City Council position, such as that currently held by Councilwoman Davis, is considered to be a "lucrative office" for the purposes of Article III, Section 19 of the Texas Constitution.¹ An office is considered lucrative even if the compensation is insignificant. *Dawkins*, 825 S.W.2d at 446-47. Certainly, the position of Fort Worth City Council member with an annual salary of \$25,000 fits within the definition of "lucrative office" under Art. III, Section 19 of the Texas Constitution.

Secondly, in order for Councilwoman Davis to be prohibited by Art. III, Section 19 of the Texas Constitution from running for the Texas Legislature, she must be a "holder" of a lucrative office. The facts of this matter definitively establish Councilwoman Davis is indeed currently holding a lucrative office. Since August 7, 2007, there has been virtually no change in Councilwoman Davis' service to the citizens of Fort Worth City Council District 9. Councilwoman Davis still collects a paycheck from the City for her service, she continues to place votes on behalf of her constituency and she continues to work out of her taxpayer funded office at City Hall. Indeed, as of December 29, 2007, Councilwoman Davis' profile and contact information as a member of the Fort Worth City Council still appear on the City of Fort Worth website. Clearly, she is still acting as the "holder of a lucrative office" and is considered by all as such.

The only true change in Councilwoman Davis' service to Fort Worth City Council District 9 since August 7, 2007 has been her willingness to ignore the laws of the State of Texas by continually utilizing taxpayer funded resources to advertise for her political campaign for Texas State Senate, District 10. (This particular act is a clear violation of Tex. Elec. Code § 255.003 and the subject of a separate complaint to the Texas Ethics Commission).

¹ See e.g. *Dawkins*, 825 S.W.2d at 446-47 (state agency board member who received \$30 per diem in addition to expenses held lucrative office within meaning of Tex. Const. art III, § 19); *Willis v. Potts*, 377 S.W.2d 622, 623 (Tex. 1967) (Fort Worth City Council member who received \$10 per diem in addition to expenses held lucrative office within meaning of Tex. Const. art. III, § 19).

Texas law has considered related scenarios such as this of Councilwoman Davis, but the identical fact scenario, marred with pure contempt for the provisions of the Texas Constitution as seen by repetitive and blatant disregard for the policies surrounding its provisions, have never been squarely addressed. Even so, a careful study of the Texas Constitution, Texas Supreme Court opinions and Texas Attorney General opinions interpreting both make it abundantly clear that Councilwoman Davis is in violation of the language, spirit and intent of the framers of the Texas Constitution. As such, the Tarrant County Democratic Party Chair, as the elections authority has no choice but to declare Councilwoman Davis ineligible for the ballot for the March 4, 2008 general primary election.

The preeminent case dealing with Art. III, Section 19 of the Texas Constitution is *Wentworth v. Meyer*. In *Wentworth*, Jeff Wentworth was seeking the 1992 Republican nomination for Texas Senate, District 25. At the time of his run for Senate, Wentworth was a Texas State Representative. He had previously resigned his post as a member of the Texas State University System Board of Regents. A successor for Wentworth's post on the Board of Regents was immediately appointed by the Texas Governor and confirmed by the Texas Senate in 1988. Having resigned in 1988, Wentworth was not currently serving as a Regent at the time of his Senate candidacy and his replacement was firmly in place. Nevertheless, his eligibility had been questioned due to the prevailing view of the time that Art. III, Section 19 of the Texas Constitution prevented a holder of a lucrative office from being eligible for the Texas Legislature prior to the end of the full term of the lucrative office. *Wentworth* changed that interpretation, holding that the Texas Constitution intended for term of office to only apply for the term of office for that particular person. Thus, once Wentworth resigned his post as Regent and a successor was installed, his personal term of office ended for the purposes of Art. III, Section 19 of the Texas Constitution.

Wentworth is important for the instant scenario in one way: Councilwoman Davis would be eligible for the ballot for Democrat nominee for Texas Senate when, and only when, her personal term of office expires.

Wentworth stopped well short of the main issue confronting Councilwoman Davis' eligibility as a candidate for the Texas Legislature; her current status as a Councilwoman until her successor has qualified for office. At present, her successor, Joel Burns, will not qualify for office until he takes the oath of office on January 8, 2008; six days after the filing deadline. Because Wentworth's position on the Board of Regents had long been filled by a replacement and Wentworth had not served on the Board of Regents for over four years, there was no issue with Art. XVI, Section 17 of the Texas Constitution. This section, commonly referred to as "the holdover provision", states:

"All officers within this State shall continue to perform the duties of the office until their successors shall be duly qualified."

Tex. Const. art. XVI, § 17 (emphasis added).

Wentworth's personal term of service ended with the appointment and qualification of his successor on the Board of Regents. Councilwoman Davis continues to serve her council district by voting on issues, representing as the sitting councilperson for Fort Worth City Council District 9 and receiving and accepting a salary as a Councilwoman. None of these indicia of service have ceased since her purported "resignation" of August 7, 2007. Now, Councilwoman Davis enjoys the unique benefit of serving her constituency in Council District 9 while using her position and taxpayers' money to campaign for office in the Texas Legislature. This scenario is precisely that of the Constitutional drafters' concern in Art. III, Section 19. Even in the limited applicability of *Wentworth* to this case, we find the Supreme Court's clear language that "today's opinion should not, however, be viewed as license to hang onto one office while prospecting for another." *Wentworth*, 839 S.W.2d at 771 (Gonzalez, J., concurring). Councilwoman Davis is attempting to hold onto her current office, which provides for a campaign platform at taxpayers' expense, in order to gain advantage in her quest for the Democrat nomination for Texas Senate, District 10. It is of little wonder that no other Democrat in this atmosphere of excitement and rejuvenation of the Party is willing to combat the distinct advantage seized unlawfully by Councilwoman Davis.

Our interpretation of the applicable sections of the Texas Constitution is not without authority. As stated by the Texas Attorney General in the publication entitled "2006 Public Officers: Traps for the Unwary", the courts have yet to squarely address the question of whether a potential candidate resigns from lucrative office and is eligible immediately or is ineligible until the successor has qualified. However, the Texas Attorney General has written numerous opinions that can be used to aid in the analysis should this issue be brought before the court.

The City Charter of the City of Fort Worth provides for the immediate vacation of any office when a member of the council becomes a candidate for any office other than councilperson. However, as pointed out by the Texas Attorney General in Letter Opinion No. 96-014, the Texas Constitution supercedes any City Charter provision. Thus, the "holdover" requirement of Art. XVI, Section 17 of the Texas Constitution provides that, despite the City Charter, Councilwoman Davis did not immediately vacate her position upon tendering her "resignation." Instead, she is "deemed to continue to hold (her) office until such special election has occurred and a replacement has been elected and qualified." Op. Tex. Att'y Gen. DM-014 (1996).

This interpretation falls nicely in line with the *Wentworth* decision. As *Wentworth* decided that the determination of "term" for the purposes of Art. III, Section 19 shall be the personal term of office, the holdover provision of Art. XVI, Section 17 provides that the personal term of office does not end until the successor has qualified. Op. Tex. Att'y Gen. JM-106 (1989). Reading *Wentworth* in the context of the holdover provision requires that a person remain a "holder of a lucrative office" until the successor has fully qualified. Op. Tex. Att'y Gen. JC-318 (2000).

The special election for Councilwoman Davis' replacement was finally decided with the election of Joel Burns on December 18, 2008. However, Mr. Burns will not fully qualified for office until taking the oath of office on January 8, 2008.

Even putting aside the interpretation of the Texas Constitutional language by the Texas Attorney General, the actions show that Councilwoman Davis has not "immediately vacated" her office. She continues to act as Councilwoman for her district at every meeting; voting on issues before the City Council, taking the allocated salary for serving as a councilperson, representing on the City of Fort Worth website that she continues in her office as Councilwoman and continuing to occupy and utilize her taxpayer-funded office. It is not necessary to be a constitutional scholar to determine that Councilwoman Davis continues in her capacity as an elected councilperson while seeking and actively campaigning for the Texas Senate.

Further, Councilwoman Davis' behavior relies on an untenable interpretation of the language of the Texas Constitution and tramples on the very spirit in which those words were written. Councilwoman Davis has abused her position of trust and the taxpayers' money for mere political gain by repeatedly publicizing her campaign from the platform of the Fort Worth City Council during meetings when important city business was at hand. Councilwoman Davis has made no effort to remove herself from the taint of this ethical dilemma, instead reveling in her enormous advantage of having a taxpayer funded platform in which to launch her campaign. Because of her unique position of "holding a lucrative office" while campaigning for the Texas Legislature, the Tarrant County Democratic Party Chair has no choice but to deem her to be in violation of Art. III, Section 19 of the Texas Constitution and ineligible for the 2008 General Primary Ballot.

As real Democratic primary voters who reside in State Senate District 10, we respectfully submit this challenge to Ms Davis eligibility and request that she be declared ineligible as a candidate in the 2008 Democratic primary for the Texas Legislature.

Cullen Cox
2610 South Adams Street
Fort Worth, Texas 76110
Precinct #1062



Rickey Turner
1725 Deauville Court
Fort Worth, Texas 76112
Precinct #1126

Javier Cerda
2235 Washington Avenue
Fort Worth, Texas 76110
Precinct #4049



Tab G

Javier Cerda
2235 Washington
Fort Worth, TX 76110
firefighterr4u@yahoo.com

City Hall, Fort Worth
City Attorney's Office
1000 Throckmorton Street
Fort Worth, Texas 76102

Dear Mr. Yett-

I am writing this letter to request that you seek an immediate opinion from the Texas Secretary of State and/or Office of the Attorney General of Texas regarding the legality and enforceability of the "informal" oath of office administered to Mr. Joel Burns by retired Justice John Hill on January 1, 2008.

Specifically, I believe that, prior to the next scheduled Fort Worth City Council meeting on January 8, 2008, the City of Fort Worth needs to take an official position on who will be the recognized councilperson for District 9 when the meeting begins. It is my understanding that the Chapter III, Section 5 of the Fort Worth City Charter clearly provides for a specific procedure in which the oath of office to newly elected city council members is to be administered. Within the language of this Section, it is clearly provided that Mr. Burns, as a newly elected council member shall take the oath of office "at the first City Council meeting after the City Council meeting canvassing the election results" and "at City Hall." Indeed, a careful study of the Fort Worth City Charter shows clear intent as to the specific nature of the administration of the oath of office for newly elected city council members as contrasted by more general procedures for general officers of the City.

From my research of similar issues in Texas cities, the Texas Secretary of State specifically noted in Election Advisory No. 2006-09 that "in some political subdivisions, the newly-elected officers may not assume the duties of office until a certain date." It seems evident the Fort Worth City Charter envisions this "certain date" to be "at the first City Council meeting after the City Council meeting canvassing the election results." Thus, the "certain date" for Joel Burns' ability to take office shall occur at the regularly scheduled and noticed meeting of the Fort Worth City Council on January 8, 2008.

Mr. Burns was sworn in at his home amongst only friends and family. To my knowledge, aside from Wendy Davis, no other council members were present. As such, this "swearing-in" appears to clearly violate the required procedure for a council member's oath of office as promulgated by the Fort Worth City Charter.

The importance of this opinion's expedience is self-evident. It is imperative that the citizens of Fort Worth and the other members of the Fort Worth City Council know who is the authorized and duly sworn-in representative for District 9 when the next scheduled meeting of January 8, 2008 convenes. If Mr. Burns "informal" ceremony does not comply with the City Charter and the procedure is deemed ineffectual, Ms. Wendy Davis must resume as the sitting councilperson until the proper procedure is followed. Without being duly sworn-in as provided by the Fort Worth City Charter, Mr. Burns remains the Council Member-Elect and not authorized to participate in any fashion in any Executive Session of the City Council nor take any official action.

Given the clear and specific language of this statute, I believe that the proper authority (whether Texas Secretary of State, the Office of the Attorney General of Texas, or both) should determine, at the earliest possible time, the validity of Chapter III, Section 5 of the Fort Worth City Charter and the effect that this provision has on the unscheduled and unnoticed purported administration of the oath of office to Mr. Joel Burns on January 1, 2008 at his home before no other members of the Fort Worth City Council, other than Ms. Davis.

Thank you for your prompt attention to this important matter. Please feel free to contact me should you have any questions.

Sincerely,

Javier Cerda

Cc:

Mayor Mike Moncrief
Members of Fort Worth City Council
Fort Worth Star-Telegram

Tab H



January 2, 2008

Mr. Cullen Cox
2610 South Adams Street
Fort Worth, Texas 76110

Mr. Rickey Turner
1725 Deauville Court
Fort Worth, Texas 76112

Mr. Javier Cerda
2235 Washington Avenue
Fort Worth, Texas 76110

RE: Challenge to Texas State Senate District 10
Candidate

Dear Messrs. Cox, Turner, and Cerda:

This letter serves as my response to the above referenced challenge to Wendy Davis' candidacy for Texas Senate District 10.

At about 2:30 p.m., on December 31, 2007, I received your challenge, pursuant to the Texas Election Code, to the candidacy of Wendy Davis for the office of Texas State Senate District 10. Art. III, § 19, TEX. CONST., prohibits a person holding a lucrative public office from being eligible for election to the Texas Legislature "during the term for which he is elected or appointed." This long standing provision of the Texas Constitution has been subject to a great deal of litigation here, in Tarrant County for over five decades, beginning with the landmark decision, in *Willis v. Potts*, 377 S.W.2d 622 (Tex. 1967). In *Willis*, then

Mr. Cullen Cox
Mr. Rickey Turner
Mr. Javier Carda
January 2, 2008
Page 2

Fort Worth City Council Member, Doyle Willis, sought nomination for this same Senate seat. The Supreme Court strictly construed this constitutional provision, thus, preventing Doyle Willis from becoming a candidate for the Senate seat in 1964.

However, in 1992, the Texas Supreme Court decided the case of *Wentworth v. Myer*, 839 S.W.2d 766 (Tex. 1992) (which your challenge has very ably briefed). In that case, Jeff Wentworth's term of office as a member of the Board of Regents of Texas State University System came under similar challenge. The Texas Supreme Court reversed the decision of the Republican State Chairman denying Wentworth a position on the ballot, holding that any constitutional or statutory provision which restricts the right to hold public office "must be strictly construed against ineligibility." The Court then held that since Wentworth had resigned his position on the Board of Regents some four years before he sought to be nominated to the State Senate, and because he had not continued to exercise any right, privilege or obligation of that office in the intervening four years, his resignation effectively ended his term of office and he was thus not subject to the restriction of art. III, § 19, TEX. CONST.

The *Wentworth* case, which consists of eight separate opinions by the nine Justices who decided the case, specifically withheld ruling on "when an officeholder must resign to avoid art. III, § 19." Thus, *Wentworth* avoided any determination on the application of the Texas holdover provision, contained in art. XVI, § 1, TEX. CONST. which is the subject of your challenge. Following *Wentworth*, Texas Attorney General Dan Morales, in Letter Opinion No. 95-069, specifically addressed this issue, pointing out that the issue presented in your challenge was not decided by the *Wentworth* court.

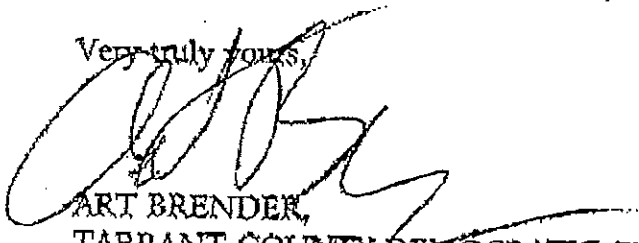
Your research has not presented any subsequent case discussing the issue. Neither I nor the attorney for the Secretary of State have found any other applicable authority.

Mr. Cullen Cox
Mr. Rickey Turner
Mr. Javier Cerda
January 2, 2008
Page 3

Consequently, and pursuant to *Wentworth*, I must construe your challenge strictly against ineligibility. I have been provided evidence from the public record indicating that Wendy Davis resigned her position from the Fort Worth City Council on August 9, 2007. Accordingly, I am denying your challenge to the candidacy of Wendy Davis in the 2008 Democratic Primary for the position of State Senator for Texas State Senate District 10.

Thank you for your interest and support in the Democratic Party.

Very truly yours,



ART BRENDER,
TARRANT COUNTY DEMOCRATIC CHAIR

AB/mbg

cc: Ms. Wendy Davis

Texas Secretary of State
Attention: Attorney Elizabeth Winn

Tab I

APPLICATION FOR A PLACE ON THE Democratic PARTY GENERAL PRIMARY BALLOT (APLICACION PARA UN LUGAR EN LA BOLETA DE LA PRIMARIA GENERAL DEL PARTIDO)					
TO: State/County Chair (A: Nombre o Título del Propio Oficial del Partido) I request that my name be placed on the above-named official primary ballot as a candidate for nomination to the office indicated below. (Solicito que mi nombre esté puesto en la arriba nombrada boleta oficial de esta primaria como candidato para la nominación al puesto oficial indicado abajo.)					
OFFICE SOUGHT (PUESTO OFICIAL SOLICITADO) Include any place number or other distinguishing number, if any. (Incluya cualquier número de lugar o otro número que haga el puesto oficial diferente a otros, si hay alguno.) Texas State Senate District 10				INDICATE FULL OR UNEXPIRED TERM (INDIQUE SI EL TERMINO DEL PUESTO OFICIAL ES TERMINO COMPLETO O NO COMPLETADO) FULL	
FULL NAME (First, Middle, Last) (NOMBRE COMPLETO) (Nombre de Pila, Segundo Nombre, Apellido) Wendy Russell Davis			PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT (ESCRIBA SU NOMBRE COMO DESEA QUE APAREZCA EN LA BOLETA) Wendy R. Davis		
PERMANENT RESIDENCE ADDRESS (Street address and apartment number, if none, describe location of residence. Do not include P.O. Box or Rural Rt.) DIRECCION DE RESIDENCIA PERMANENTE: Calle y Número de Departamento; si no tiene, describa la localidad de su residencia. No incluya su caja postal o ruta rural. 2737 Calder CT			MAILING ADDRESS (if different from residence address) (DIRECCION POSTAL, (Si es diferente a su dirección de residencia)) P.O. Box 1039		
CITY (CIUDAD) Fort Worth	STATE (ESTADO) Texas	ZIP (ZONA POSTAL) 76107	CITY (CIUDAD) Fort Worth	STATE (ESTADO) Texas	ZIP (ZONA POSTAL) 76101
OCCUPATION (Do not leave blank) (EMPLEO) (No lo deje en blanco) CEO, Republic Title, Fort Worth Division		DATE OF BIRTH (FECHA DE NACIMIENTO) 05/16/1963		COUNTY OF RESIDENCE (CONDADO DE RESIDENCIA) Tarrant	
TELEPHONE NUMBER (Include area code) (Optional) (NUMERO DE TELEFONO-Incluya el código de la zona) (Facultativa) OFFICE: (817) 350-4772 (DE SU OFICINA) HOME: (DE SU DOMICILIO)		Length of Continuous Residence as of Date Application Sworn (Tiempo en que ha Residido en un Solo Lugar en la Fecha en que Presto Juramento Sobre la Solicitud) IN STATE (EN EL ESTADO) 15 yr(s) 7 mos (años) (mes(es)) IN COUNTY (EN EL CONDADO) 15 yr(s) 7 mos (años) (mes(es)) IN DISTRICT OR PRECINCT (EN EL DISTRITO O PRECINCTO) 15 yr(s) 7 mos (años) (mes(es))			
If using a nickname as part of your name to appear on the ballot, you are also signing and swearing to the following statements: I further swear that my nickname does not constitute a slogan nor does it indicate a political, economic, social, or religious view or affiliation. I have been commonly known by this nickname for at least three years prior to this election. Pero poder incluir un apodo como parte de su nombre en la boleta, usted debe firmar la siguiente declaración: Además, juro que se me ha conocido por este apodo por más de tres años. Además, juro que el apodo en su nombre político ni una indicación de una creencia o afiliación política, económica, social, o religiosa.					
Before me, the undersigned authority, on this day personally appeared (name) <u>Wendy R. Davis</u> , who being by me here and now duly sworn, upon oath says: "I, (name) <u>Wendy R. Davis</u> , of <u>Tarrant</u> County, Texas, being a candidate for the office of <u>Texas State Senate Dist. 10</u> , swear that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the Constitution and laws of this state. I have not been finally convicted of a felony for which I have not been pardoned or had my full rights of citizenship restored by other official action. I have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote. I am aware of the nepotism law, Chapter 573, Government Code. I further swear that the foregoing statements included in my application are in all things true and correct."					
(Ante mí, la autoridad, suscrita compareció en persona <u>Wendy R. Davis</u> , quien habiendo aquí y ahora prestado juramento debido, bajo juramento dice: "Yo, <u>Wendy R. Davis</u> , del condado de <u>Tarrant</u> , siendo candidato para el puesto oficial de <u>Texas State Senate Dist. 10</u> , solemnemente juro que apoyaré y defenderé la Constitución y las leyes de los Estados Unidos y del Estado de Texas. Soy ciudadano de los Estados Unidos elegible para ocupar tal puesto oficial bajo la Constitución y las leyes de este Estado. No me han determinado por un juicio final de una corte de la legislación de un testimonio, ser totalmente incapacitado mentalmente o parcialmente incapacitado sin el derecho de votar, ni he sido probado culpable finalmente de una felonía por la cual no he sido perdonado o por la cual no se me han restituido enteramente mis derechos de ciudadanía por medio de otra acción oficial. Yo tengo conocimiento de la ley sobre el nepotismo según el capítulo 573 de Código Gobierno. Además juro que las precedentes declaraciones que incluyo en mi solicitud son verdaderas y están correctas en todos sentidos."					
X <u>Wendy R. Davis</u> SIGNATURE OF CANDIDATE (FIRMA DEL CANDIDATO)					
Sworn to and subscribed before me at <u>4:14 pm</u> this <u>2nd</u> day of <u>January</u> , <u>2008</u> . (Jurado y suscrita ante mí en <u>4:14 pm</u> , este día <u>2nd</u> de <u>January</u> , <u>2008</u> .)					
Signature of Officer administering oath (Firma del oficial administrando el juramento) <u>Jo Ann Zimmerman</u>		Title of Officer administering oath (Título del oficial administrando el juramento) <u>Notary Public</u>			
TO BE COMPLETED BY CHAIR: THIS APPLICATION IS ACCOMPANIED BY THE REQUIRED FILING FEE, PAID BY CASH ☒ CHECK ☐ OR A PETITION IN LIEU OF FILING FEE ☐ CHECK ☐ OR A PETITION IN LIEU OF FILING FEE ☐ This document and \$ <u>1,250.00</u> filing fee or a nominating petition of <u>12/08</u> pages received. (See Section 1.007)					

Tab J

PUBLIC OFFICERS:
TRAPS

for the Unwary

2006



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

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Automatic Resignation & Other Constitutional Limitations on Sequential Office Holding

1. Article III, Section 19: Limitations on Officers' Subsequent Service in the Texas Legislature

Article III, section 19 limits the eligibility of a broad spectrum of officeholders to serve in the Texas Legislature.⁴⁴⁸

No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

Below we examine the offices embraced by this provision and the duration of section 19 ineligibility.

a. Offices Affected

Section 19 makes a broad array of officeholders ineligible to serve in the legislature—not just judges, the Secretary of State, the Attorney General, and court clerks—but also “any person holding a lucrative office under the United States, or this State, or any foreign government.” The latter phrase has been the subject of several judicial opinions. These cases hold that an officer who receives a salary, fees or any other compensation holds a “lucrative office” within this provision.⁴⁴⁹ An office is lucrative even if the officeholder’s compensation is quite insignificant, such as a small per diem.⁴⁵⁰ Reimbursement for expenses alone, however, does not render an office lucrative.⁴⁵¹ An “office under . . . this State” embraces not only elected and appointed state offices⁴⁵² but also positions held by

⁴⁴⁸The United States Supreme Court upheld article III, section 19 against a claim that it violates the Federal Equal Protection Clause because it bars officeholders from running for the legislature but not for other offices. *See Clements*, 457 U.S. 957.

⁴⁴⁹*See Whitehead v. Julian*, 476 S.W.2d 844, 845 (Tex. 1972).

⁴⁵⁰*See, e.g., Dawkins v. Meyer*, 825 S.W.2d 444, 446-47 (Tex. 1992) (state agency board member who received \$30 per diem in addition to expenses held lucrative office within meaning of article III, section 19 of the Texas Constitution); *Willis*, 377 S.W.2d at 623 (city council member who received \$10 per diem in addition to expenses held lucrative office within meaning of article III, section 19).

⁴⁵¹*See Whitehead*, 476 S.W.2d at 845 (mayor who received only \$50 monthly expense allowance and whose expenses exceeded allowance did not hold lucrative office within meaning of article III, section 19); *see also* Tex. Att’y Gen. Op. No. JC-0464 (2002) (board member of state agency who was entitled only to reimbursement for actual and necessary travel expenses did not hold lucrative office within meaning of article III, section 19). Article XVI, section 12 of the Texas Constitution in effect extends article III, section 19 by making a person who holds an unpaid office of *trust* under the United States, another state, or a foreign government ineligible to serve in the legislature. *See* TEX. CONST. art. XVI, § 12 (“No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State.”).

⁴⁵²*See, e.g., Dawkins*, 825 S.W.2d at 447-50 (state agency board member).

Automatic Resignation & Other Constitutional Limitations on Sequential Office Holding

officers of political subdivisions who exercise a portion of the sovereign power of the state,⁴⁵³ including, for example, a city council member or county commissioner.⁴⁵⁴

b. Duration of Ineligibility

The effect of section 19 became somewhat unsettled after the Texas Supreme Court's decision in *Wentworth v. Meyer*.⁴⁵⁵ Prior to that decision, section 19 had been construed to provide that an officeholder was ineligible to serve as a legislator during the entire term of the office to which he or she was elected or appointed, even though the officeholder resigned before running for the legislature.⁴⁵⁶ In *Wentworth*, the Texas Supreme Court held that article III, section 19, did not make an individual ineligible for the state senate, even though the officeholder had been appointed to a state board for a term that overlapped the legislative term by twenty-one days. The court equated the phrase "term for which he is elected or appointed" with an officeholder's tenure in office as opposed to the duration of the term.

This office has concluded that "section 19, as interpreted in *Wentworth*, does not disqualify the holder of a lucrative office from running for the legislature even though the term of the lucrative office overlaps the legislative term, if the officeholder resigns from the lucrative office before filing for the legislature."⁴⁵⁷ Thus, an officeholder who resigns prior to filing for office is eligible to serve in the legislature. It is not clear from *Wentworth*, however, whether an officeholder who resigns from lucrative office *after* filing for office is disqualified.⁴⁵⁸ This question must be clarified by the courts.

Also unsettled in the wake of *Wentworth* is the relationship between article III, section 19, and the constitutional holdover provision, article XVI, section 17. Under article XVI, section 17, an officeholder who resigns remains in office until a successor is qualified. The effect of article XVI, section 17, was not an issue in *Wentworth* because there the first office had been filled by

⁴⁵³*Willis*, 377 S.W.2d at 624-25.

⁴⁵⁴*See, e.g., id.* (city council member holds office under this state within meaning of article III, section 19 of the Texas Constitution); *Lee v. Daniels*, 377 S.W.2d 618 (Tex. 1964) (county commissioner holds office under this state within meaning of article III, section 19).

⁴⁵⁵839 S.W.2d 766 (Tex. 1992).

⁴⁵⁶*See Lee*, 377 S.W.2d 618, *overruled by Wentworth v. Meyer*, 839 S.W.2d 766 (1992); *Willis*, 377 S.W.2d 622; *Kirk v. Gordon*, 376 S.W.2d 560 (Tex. 1964), *overruled by Wentworth*, 839 S.W.2d 766 (1992); Tex. Att'y Gen. Op. Nos. MW-513 (1982), H-278 (1974); *see also Dawkins*, 825 S.W.2d 444.

⁴⁵⁷Tex. Att'y Gen. LO-95-069, at 3.

⁴⁵⁸*See id.* (concluding that five of *Wentworth* justices agreed "that resignation prior to the filing date would remove an officeholder from the restrictions of article III, section 19, and individual justices among them might find a later resignation sufficient"); *see also* Tex. Att'y Gen. LO-97-092.

Automatic Resignation & Other Constitutional Limitations on Sequential Office Holding

appointment of a successor.⁴⁵⁹ It remains for the judicial branch to clarify whether an officeholder who resigns to run for the legislature in reliance on *Wentworth* is immediately eligible to seek legislative office or is ineligible to do so until a successor has qualified.⁴⁶⁰

2. Article III, Section 18: Limitations on Legislators' Eligibility to Hold Subsequent Offices

Article III, section 18, which affects legislators' eligibility to hold subsequent elected and appointed offices, provides in pertinent part⁴⁶¹ as follows:

No Senator or Representative shall, during the term for which he was elected, be eligible to (1) any civil office of profit under this State which shall have been created, or the emoluments of which may have been increased, during such term, or (2) any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature; provided, however, the fact that the term of office of Senators and Representatives does not end precisely on the last day of December but extends a few days into January of the succeeding year shall be considered as de minimis, and the ineligibility herein created shall terminate on the last day in December of the last full calendar year of the term for which he was elected.

Below we examine the circumstances under which section 18 applies to bar a legislator from subsequent office, the duration of a legislator's term of office under section 18, and the effect of a legislator's resignation.

a. Offices Affected

Section 18 makes a legislator ineligible for subsequent office under three circumstances: (1) when the "civil office of profit under this State" has been created by the legislature during the legislator's term of office; (2) when the emoluments of the "civil office of profit under this State" have been increased by the legislature during the legislator's term of office; and (3) when "the appointment . . . may be made, in whole or in part, by either branch of the Legislature" during the legislator's term of office. The phrase "civil office of profit under this State" embraces any compensated state or local office,⁴⁶² including, for example, a state office like governor or attorney general⁴⁶³ or a local

⁴⁵⁹*Wentworth*, 839 S.W.2d at 769.

⁴⁶⁰In Letter Opinion 89-106, this office concluded that an officer-elect who declined to qualify for a new term in office was not ineligible under article III, section 19 and that the officer-elect's term in office was not extended by the holdover provision. See Tex. Att'y Gen. LO-89-106.

⁴⁶¹For the complete text of article III, section 18, see app. at 82.

⁴⁶²For purposes of article III, section 18, the determining factor in distinguishing an officer from a mere employee "is whether any sovereign function of the government is conferred upon the individual to be exercised by him for the benefit of the public largely independent of the control of others." Tex. Att'y Gen. LO-96-080 (concluding that position of chancellor of state university system was not civil office of profit within the meaning of article III, section 18 of the Texas Constitution). This office has also stated that a civil office of profit must involve service for a fixed term. See (continued...)

Tab K

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Vernon's Ann.Texas Const. Art. 3, § 19

Page 1

C

Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness
Constitution of the State of Texas 1876 (Refs & Annos)
 ▣ Article III. Legislative Department
 → § 19. Ineligibility of persons holding other offices

Sec. 19. No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

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Vernon's Ann. Texas Const. Art. 16, § 1

Page 1

C

Effective: November 6, 2001

Vernon's Texas Statutes and Codes Annotated Currentness
Constitution of the State of Texas 1876 (Refs & Annos)
 Article XVI. General Provisions
 → § 1. Official Oath

Sec. 1. (a) All elected and appointed officers, before they enter upon the duties of their offices, shall take the following Oath or Affirmation:

"I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God."

(b) All elected or appointed officers, before taking the Oath or Affirmation of office prescribed by this section and entering upon the duties of office, shall subscribe to the following statement:

"I, _____, do solemnly swear (or affirm) that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money or thing of value, or promised any public office or employment for the giving or withholding of a vote at the election at which I was elected or as a reward to secure my appointment or confirmation, whichever the case may be, so help me God."

(c) Members of the Legislature, the Secretary of State, and all other elected and appointed state officers shall file the signed statement required by Subsection (b) of this section with the Secretary of State before taking the Oath or Affirmation of office prescribed by Subsection (a) of this section. All other officers shall retain the signed statement required by Subsection (b) of this section with the official records of the office.

CREDIT(S)

Amended Nov. 8, 1938; Nov. 6, 1956; Nov. 7, 1989; Nov. 6, 2001.

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Vernon's Ann.Texas Const. Art. 16, § 17

Page 1

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Effective:[See Text Amendments]

Vernon's Texas Statutes and Codes Annotated Currentness

Constitution of the State of Texas 1876 (Refs & Annos)

▣ Article XVI. General Provisions

→ § 17. Officers to serve until successors qualified

Sec. 17. All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

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Tab L

CHAPTER III. THE CITY COUNCIL

Section 1. [Powers of city vested in] the City Council [;composition, terms.]

The powers of the city government shall be vested in a body to be known as the City Council, composed of nine (9) members, one of whom shall be the mayor. Their terms of office shall be for a period of two (2) years and until the election and qualification of their successors.

Section 2. [Election, powers, duties, term of mayor.]

The City Council shall be composed of nine (9) places. The person elected as councilperson, Place No. 1, shall be the presiding officer who shall be known as the mayor of the City of Fort Worth. He shall have a vote on all matters coming before the council, but no power of veto. He shall represent the city on all ceremonial occasions and be known as the official head of the city government. The mayor shall be elected at each biennial election and shall serve for a period of two (2) years, or until the election and qualification of his successor.

Section 3. Compensation of the members of the City Council.

Commencing on October 1, 2006, each member of the City Council, except the mayor, shall receive as compensation for such member's services the sum of twenty-five thousand dollars (\$25,000.00) per annum and the mayor shall receive as compensation for the mayor's service, the sum of twenty-nine thousand dollars (\$29,000.00) per annum. In addition to the above, all necessary expenses incurred by the City Council in performance of their official duties shall be paid by the city. Nothing herein shall prohibit a council member from waiving the right to all or any part of such compensation or payment of expenses.

(Ord. No. 10272, § 1(I), 3-16-89, approved 5-6-89; Ord. No. 16797, § 1(I), 1-24-06, approved 5-13-06)

Section 4. Vacancies in the City Council; how filled.

Vacancies in the City Council shall be filled by special elections from the districts whose places have been vacated. Vacancies in the office of mayor shall be filled under the provisions applicable to other council members except that the district of the mayor shall be the city as a whole. These special elections shall be held on the first available election date specified in the Texas Election Code unless the council shall request, and receive, permission from the governor to call an emergency special election. If vacancies should occur within thirty (30) days of the special election date, the council may set the election for the next date following the impending special election date or it may request permission for an emergency special election from the governor.

In the event any candidate for a vacancy fails to receive a majority of all votes cast for all the candidates for such vacancy at such special election, the mayor shall on the first day following the completion of the official count of the ballots cast at said special election issue a call for a run-off election pursuant to Chapter IV, section 2, to be held in accordance with the Texas Election Code to determine who shall be elected. Such new council members, when duly qualified and elected, shall serve for the unexpired period

of the terms of the council members whose offices are being filled. However, no such elections shall be held where said vacancy shall occur within a period of less than ninety (90) days prior to a general election as specified in Chapter IV, section 2. When a vacancy shall occur less than ninety (90) days prior to the general election as specified in Chapter IV, section 2, a majority of the remaining council members may appoint a qualified person from the district whose place has been vacated to serve the unexpired term.

Should a vacancy occur in the office of mayor, the mayor pro tem shall serve until a special election shall be called under the rules pertaining to filling vacancies among the other councilmembers. If members of the City Council seek the office of mayor in such a special election, they shall first resign from the City Council, and special elections, simultaneous to the mayoral election, shall be held in their districts under the terms specified above.

(Ord. No. 10272, § I(II), 3-16-89, approved 5-6-89; Ord. No. 16797, § 1(III), 1-24-06, approved 5-13-06)

Section 5. Meetings of council and committees open to public; quorum; regulations of proceedings; council to provide rules of procedure.

At the first City Council meeting after the City Council meeting canvassing the election results, the elected members of the new Council shall meet at City Hall and take the oath of office. Special meetings may be called by the Mayor or by any three (3) Councilmembers. Such call shall be in writing and shall state the object of the meeting, and no business shall be transacted at such meeting other than that specified in the call. The Council shall meet at such times and places as may be prescribed by ordinance or resolution but not less than forty-four (44) regular and special meetings shall be held each calendar year.

A quorum shall consist of six (6) members unless there are vacancies, in which event the quorum shall be reduced by the number of vacancies existing. All official meetings of the Council and all sessions of the Committees of the Council shall be public except as authorized by law. The ayes and nos shall be taken upon the passage of all ordinances or resolutions and entered upon the minutes of the proceedings of the Council, and every ordinance or resolution shall require on final passage the affirmative vote of a majority of all of the remaining members.

No member shall be excused from voting except on matters involving the consideration of his own official conduct, or where his financial interests are involved, or unless excused by the Council for other valid reasons by majority vote. The Council shall determine its own rules of procedure, and may punish its members for misconduct, and may compel the attendance of absent members.

(Ord. No. 16797, § 1(II), (V), 1-24-06, approved 5-13-06)

Section 6. Mayor pro tem; duties of.

The City Council shall elect one of its members as mayor pro tem, who shall perform the duties of mayor in case of the absence or inability of the mayor to perform the duties of his office, and shall for the time being be vested with all the powers belonging to the mayor. In case of the absence of both the mayor and the mayor pro tem, the remaining councilpersons shall elect one of their members to act in the place of the mayor or mayor pro tem.

Section 7. City secretary.

The City Council shall appoint a city secretary and prescribe the duties and compensation of said officer, and shall provide him with such assistance as it may deem necessary. He shall hold office during the pleasure of the City Council. During his term of office, the city secretary shall be a resident citizen of the City of Fort Worth.

Section 8. Relating to City Councilpersons accepting different office and providing for forfeiture of offices and positions of aspirants for compensated office.

No person elected to the City Council shall, during the term for which he/she was elected, be appointed to any office or position in the service of the city. If a member of the council shall become a candidate for nomination or election to any public office, other than that of councilperson, he/she shall forfeit his place in the council; but shall continue to hold the office until a successor is duly qualified in cases in which such holdover is required by state law and any appointive officer or employee of the city who shall become a candidate for nomination or election to any public office shall immediately forfeit the office or employment held under the city.

(Ord. No. 16797, § 1(VI), 1-24-06, approved 5-13-06)