

18-9518

IN THE SUPREME COURT OF THE UNITED STATES

ORIGINAL

Blayne Williams, Sr.

Petitioner,

v.

City of Austin, et. al,

Respondents

Supreme Court, U.S.
FILED

MAY 07 2019

OFFICE OF THE CLERK

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit

**PETITION FOR A WRIT OF CERTIORARI AND MOTION FOR
LEAVE TO PROCEED IN FORMA PAUPERIS**

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QUESTIONS PRESENTED

- I. Whether the City of Austin, as a municipal government employer violated the Appellant's federal and state law rights secured by the United States Constitution and Acts of the United States Congress.
- II. Whether Federal Rules of Civil Procedure, Rule 12 (b) (6) was used in contravention of the United States Constitution's Seventh Amendment right to jury trial.
- III. City of Austin officials, namely Art Acevedo engaged in fraud and negligence and violate the "due process" rights of employees, as it relates to their property interest in sick leave.
- IV. As a matter of Due Process and pursuant to the Civil Rights Act of 1866 which was enacted to protect All Persons in their Civil Rights, and furnish the Means of their Vindication.

JURISDICTION

Jurisdiction is properly conferred pursuant to The Judiciary Act of 1789 which gave the Supreme Court original jurisdiction to issue writs of mandamus (legal orders compelling government officials to act in accordance with the law), as well as, the All Writs Act of 28 U.S.C. §1651 and 28 U.S.C. §1658. This controversy arises under Article III of the United States Constitution. Also, pursuant to 28 U.S.C §1738 Full Faith and Credit State and judicial proceedings, as there is an official Court Writ issued from the 167th District Court out of Austin, Travis County Texas.

QUESTIONS PRESENTED

- I. Whether the City of Austin, as a municipal government employer violated the Appellant's federal and state law rights secured by the United States Constitution and Acts of the United States Congress.
- II. Whether Federal Rules of Civil Procedure, Rule 12 (b) (6) was used in contravention of the United States Constitution's Seventh Amendment right to jury trial.
- III. ~~City of Austin officials, namely Art Acevedo engaged in fraud and negligence and violate the "due process" rights of employees, as it relates to their property interest in sick leave.~~
- IV. As a matter of Due Process and pursuant to the Civil Rights Act of 1866 which was enacted to protect All Persons in their Civil Rights, and furnish the Means of their Vindication.

IDENTITY OF PARTIES AND COUNSEL

The undersigned Pro Se litigant of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualifications and recusal.

Appellant: Blayne Williams, Sr.

Represented: Pro Se

Appellees: City of Austin, Art Acevedo, et. al

Represented by: Paul Matula
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STATEMENT OF THE CASE

Blayne Williams ("Williams") has effectively exhausted every legal remedy that is afforded under both federal and state law. Specifically, Williams has exercised his constitutional rights and successfully petitioned the government for his "redress of grievances," which were violated without any due process by the City of Austin and its officials, namely Art Acevedo, the former Chief of Police. Equally, Williams asserts that multiple City of Austin officials from the law department unlawfully used, possessed, and disseminated records unlawfully. Williams was not afforded any due process protections in official proceedings as guaranteed by the United States Constitution. Effectively, Williams raises "color of law" violations, which trigger protections under the United States Constitution and pursuant to multiple Acts of the United States Congress. Moreover, Williams has asserted state law claims that are transactional and have a common nucleus of operative fact, as they "arise under" the zone of protection of federal law. City of Austin official's grossly and egregiously add new meaning to the "shock the conscious" standard as articulated by the United States Supreme Court.

A statement of the case is as follows: "This case buttresses one bad official and unofficial act after another." Wherever the fraud triangle is found, it can be conceived that there will be retaliation and conspiracy intertwined therein; Art Acevedo in nine (9) years of employment at the Austin Police Department brought back "Jacksonian" like administrative policies and procedures. The Civil Service reforms created by the Pendleton Act were rendered ineffectual, as Acevedo created a "spoils system" at the Austin Police Department. Under Acevedo, the civil service system became a system of appointment and Acevedo handpicked and appointed various positions within the agency, in violation of Texas civil service laws. This was done with the assistance and help of the City of Austin law department employee's, namely Ann Spiegel, Michael Cronig, Andralee Lloyd, Basil Ali and Carey Grace. This case addresses the Civil Wrongs done in contravention of the enacted United States Civil Rights, federal and state laws.

SUMMARY OF THE ARGUMENT

The trial court abused its discretion in granting the City of Austin's 12(b) (6) dismissal in granting the City of Austin's 12(b) (6) dismissal.

The current use of the Federal Rules of Civil Procedure, Rule 12 (b) (6) is being used in a manner that deprives the rights of United States citizens

~~to due process. The Seventh Amendment guarantees and preserves trial by jury under the common law.~~

by jury under the common law. By the stroke of his pen - Judge Sparks extinguished rights preserved under the constitution and terminated any due process that would have been material to this controversy. Moreover, the said judge made a citizen a "vexatious litigant" under the City of Austin's advisement, but Williams was never advised of any actions or put on notice or provided an opportunity to defend against those allegations. This was done without reviewing any evidence or utilizing any of the Federal Rules of Evidence. The veracity of this argument is

~~memorialized in the judge's order granting dismissal which a timely appeal was filed.~~

ARGUMENTS

I. Whether the City of Austin, as a municipal government employer violated the Appellant's federal and state law rights secured by the United States Constitution and Acts of the United States Congress.

A. Time Limitations have been clearly identified by federal law "arising under" the constitution and Acts of Congress.

~~Pursuant to 28 U.S.C. §1658, which states the following. (a) "Except as~~

~~otherwise provided by law, a civil action arising under an Act of Congress enacted after the date of the enactment of this section may not be commenced later than 4 years after the cause of action accrues."~~

~~Appellant's cause of action accrued, as late as 2017, which is within the federal statutes limitations period. The earliest accrual date of harm that could be pertinent to this claim would have been 2014. Appellant initiated this lawsuit in 2017, which is still within the timely filing of this cause of action.~~

B. Federal law pursuant to 28 U.S.C. §1738 provides Full Faith and Credit State and judicial proceedings.

~~Appellant was effectively deprived of due process rights pursuant to the Fifth and Fourteenth Amendments. The district court and the court of appeals failed to give full faith and credit to federal law, which states the following:~~

The Acts of legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

"Where a court failed to observe safeguards, it amounts to a denial of due

process of law, court is deprived of juris." *Merritt v. Hunter, Kansas C.A.*

170 F.2d 739. In addition, Art Acevedo ("Acevedo") and each one of the

named City of Austin officials committed criminal acts that deprived

Appellant of his constitutional rights. A government officer with some

discretion to interpret and apply law may nonetheless act 'without legal

authority,' and thus, if he exceeds the bounds of his granted authority, if

his acts conflict with the law itself. *Hous. Belt & Terminal Ry. Co. v. City*

of Houston, 487 S.W.3d 154 158 (Tex. 2016).

~~The Texas Code of Criminal Procedure ("CCP"), article 55.01 contains the~~

requirements for expunction of criminal records. Tex. Code Crim. Proc.

Art. 55.01. A person is not entitled to expunction until all of the statutory

conditions are met. *Tex. Dep't of Pub. Safety v. J.H.J.*, 274 S.W.3d 803,

806 (Tex. App. – Houston [14th Dist.] 2008, no pet.). Appellant was

~~effectively granted a Final Order by the 167th District Court, Judge~~

David Wahlberg presiding. In violation of Texas statute, as enacted in

the CCP – Chapter 55, each one of the named City of Austin officials,

unlawfully used expunged records. Statutes are to be analyzed “as

cohesive, contextual whole” with the goal of effectuating the Legislatures

intent and employing the presumption that the Legislature intended a

just and reasonable result. *Sommers for Ala. & Dunlavy, Ltd. v. Sand*

Castle Houses, Inc., 521 S.W.3d 749, 754 (Tex. 2017) (citing Tex. Gov’t

Code §311.023 (1), (3)). A court’s analysis is limited to the plain meaning

of the statutory language “unless a different meaning is apparent from

the context or the plain meaning leads to absurd or nonsensical results.”

Jaster v. Comet II Constr., Inc., 438 S.W.3d 556, 562 (Tex. 2014) (quoting

Molinet v. Kimbrell, 356 S.W.3d 407, 411 (Tex. 2011). This court must

give full faith and credit to the Final Order issued by the 167th District

Court, Judge Wahlberg on January 10, 2014, pursuant to 28 U.S.C.

§1738. Moreover, although the relevant expunction language is located in the CCP, an expunction proceeding is civil in nature. *State v. Beam*, 226 S.W.3d 392, 393 (Tex. 2007). The presumption of Courts is that the Texas Legislature intended for all of the words in a statute to have meaning and for none of them to be useless. *Id.* Pursuant to the CCP, art. 55.03 – The Effect of Expunction is stated as follows: "(1) the release, maintenance, dissemination, or use of the expunged records and files for any purpose is prohibited; (2) except as provided in Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and (3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged." Tex. Code Crim. Proc. Art. 55.03.

The City of Austin officials, namely Art Acevedo, Ann Spiegel, Michael Cronig, Andralee Lloyd, Basil Ali and Carey Grace, all have unlawfully violated the public policy mandate enacted by the Texas legislature and the statute, as codified in the CCP – Chapter 55. In doing

so, these officials have effectively deprived the Appellant of his due process rights and the legal effect of a Final Order, pursuant to the statute. There is a criminal provision in the statute, pursuant to article 55.04, which states the following:

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense. Sec. 3. An offense under this article is a Class B misdemeanor. In order of appearance in these pleadings, Art

Acevedo, Ann Spiegel, Michael Cronig, Andralee Lloyd, Basil Ali and

Carey Grace all knew of the Final Order issued by the district court.

Specifically, as government officials they were formally notified and put on notice on January 10, 2014, when Acevedo was mailed a certified copy

of the order by United States postal service. Also, on May 5, 2014, and

on June 16, 2014, at an official proceeding when they unlawfully used the

records in violation of the Final Order at an arbitration hearing. A formal

motion in limine was filed and disregarded by the Independent Third
Party Hearing Examiner, who exceeded his jurisdiction in allowing the
records to be used. The Independent Third Party Hearing Examiner, who
was a trained lawyer, violated the statute as well and his order reflects

the violation. The Austin Police Department ("APD") has an official

policy, which recites the statute from the CCP and mandates full
compliance with the law for all APD employees. "A municipality can be

found liable under 42 U.S.C.S. § 1983 only where the municipality itself
causes the constitutional violation at issue. It is only when the execution
of the government's policy or custom inflicts the injury that the

municipality may be held liable under § 1983." *City of Canton v. Harris*,
489 U.S. 378, 380, (1989). City of Austin officials are subject to criminal
punishment if they know of an expunction order when they release or use

arrest records subject to the order. Tex. Code Crim. Proc. Art. 55.04
(defining as a Class B misdemeanor the knowing release, dissemination,
or use of expunged records or files. Tex. Code Crim. Proc. Art. 55.04).

City of Austin officials acted "ultra vires" and committed fraud and other unlawful acts, thus violating the Appellants due process rights.
Appellant asserts that City of Austin officials committed and engaged in fraud. The elements of fraud in Texas are as follows: (1) defendant made a material misrepresentation that was false, (2) defendant knew the representation was false or made it recklessly as a positive assertion without any knowledge of its truth, (3) the defendant intended to induce the plaintiff to act upon the representation, and (4) the plaintiff actually and justifiably relied on the representation, which caused the injury.

Ernst & Young, LLP. v. Pac. Mut. Life Ins. Co., 51 S.W.3d 573, 577 (Tex. 2001). On May 5, 2014, during an official proceeding with City of Austin officials at the police headquarters building located at 718 E. 8th Street in Austin, Travis County Texas, the Appellant put city officials on notice by notating on an official government record, the initials T.I.A.C., (which stands for This Is A Crime). Acevedo never questioned, nor has any other APD police officer ever indicated such a notation by his signature. For a plaintiff to bring himself within the protection of due process claims, a right adversely affected by action of administrative body must be a vested property right. *Williams v. Hous. Firemen's Relief & Ret. Fund*, 121

S.W.3d 415, 422 (Tex. App. 2003) During this official proceeding, both Acevedo and Spiegel were present and handed the Appellant records that were not redacted, as if the law allowed such, but also, were observed committing a criminal act in the presence of a Texas peace officer. This criminal offense was later reported to APD without any legal effect. More importantly, the fraud committed and capitulated by Acevedo and Spiegel was (1) there was a material representation that was false as records were physically presented to the Appellant which were part of a judges Final Order; (2) Acevedo knew the representation was false, as one day later, May 6, 2014, he had his records manager Collen Waters materially represent that all records in APD's possession were obliterated and destroyed; (3) Acevedo and Spiegel intended that Appellant rely upon their representation and induced the Appellant to act upon their representation, as official records were signed by the parties, and (4) Appellant actually and justifiably relied on the representation, which caused him injury as it was a criminal offense and the records were used in multiple official proceedings afterwards. City of Austin officials engaged in individual "ultra vires" acts, and are jointly and severally liable.

Art Acevedo ("Acevedo"), has a past history of committing acts of civil rights violations. As an employee with the California Highway Patrol ("CHP"), Acevedo violated express provisions of the California Penal Code as a law enforcement supervisory official. California Penal Code §§630 – 637.5 were enacted by the legislature "to ensure an individual's right to control the firsthand dissemination of confidential communication, and ... to strongly protect an individual's privacy rights." More importantly, The CIPA, found at California Penal Code §630 et seq. was enacted in 1967 for the express purpose "to protect the right of privacy of the people of the state." Penal Code §630. Acevedo was hired by CHP in 1986, according to his affidavit. Acevedo as a CHP supervisor and employee engaged in illicit meretricious sexual conduct with a subordinate CHP officer, Cynthia Martinez. During one of their illicit sexual encounters, Acevedo urged and suggested that Martinez let him photograph her performing oral sex on him. Martinez acquiesced and allowed the explicit photographs to be taken by Acevedo. Acevedo betrayed Martinez's trust and showed the photographs to numerous CHP officials, including two (2) ranking Lieutenants who told CHP investigators that Acevedo showed them the photographs. Acevedo

when called on the carpet lied about the incident and tried to mitigate

his conduct as being 'de minimis' because the photographs were discretely kept in the glovebox of his state issued patrol unit. Further, Acevedo later behind closed doors in a settlement with Martinez and her lawyer, Craig J. Ackerman, who maintains his law practice in California

at 1180 South Beverly Dr. Suite 610, Los Angeles, California, phone

number (310) 277-0614, admitted to the entire incident. Appellant as a form of "due diligence" and in the interest and fairness of justice, called and spoke directly with Ackerman, who verified the comments that he made in the Sacramento Bee newspaper article, which he stated, "all of California would be appalled by Sgt. Acevedo's actions," and indicated that Acevedo acted maliciously and was grossly negligent in offending the laws of California and in violating the policies and procedures of CHP.

In light of Acevedo's unlawful actions, which ruined Martinez's career at CHP and which furthers the #ME TOO Movement, the Appellant asserts that his acts were not discrete, but those of a vindictive and retaliatory law enforcement official. Appellant is the "Black Serpico," and if nothing else, is known for fighting for the rights of the disenfranchised. Acevedo left CHP and was hired as the 8th Chief of

Police, by City of Austin – City Manager, Toby Hammett Futrell.

Appellant located Futrell, where she teaches at a local college in Corpus

Christie, Texas, but she has not returned any of the more than half a dozen emails sent referencing the negligent hiring of Acevedo. Acevedo

is no stranger to the Fifth Circuit Court of Appeals, as he violated other

police officers civil rights, namely Tony Smith. *Smith v. Hubert Acevedo,*

et al, No51236 (5th Cir. 2012). This court made the determination that

Acevedo, as the chief of police violated Smith's civil rights. A government

officer with some discretion to interpret and apply law may nonetheless

act 'without legal authority' and thus, if he exceeds the bounds of his

granted authority, if his acts conflicts with the law itself. *Hous. Belt &*

Terminal Ry. Co. v. City of Houston, 487 S.W.3d 154, 158 (Tex. 2016).

This court could have and should have done more to restrain Acevedo in

the Smith decision, but failed to do so, which is a collateral reason for the

injury and harm suffered by the Appellant. "Where a court failed to

observe safeguards, it amounts to a denial of due process of law, court is

deprived of juris." *Merritt v. Hunter C.A. Kansas*, 170 F.2d 739.

Appellant asserts that Acevedo retaliated and discriminated

against him in violation of the law and that his acts were "ultra vires."

APD had an official policy on expunction records. Acevedo was the sole

policy-maker and intentionally and knowingly violated his own policy. "A

municipality can be found liable under 42 U.S.C.S. § 1983 only where the

municipality itself causes the constitutional violation at issue. It is only

when the execution of the government's policy or custom inflicts the

injury that the municipality may be held liable under § 1983." *City of*

Canton v. Harris, 489 U.S. 378, 380, (1989). City of Austin officials are

subject to criminal punishment if they know of an expunction order when

they release or use arrest records subject to the order. Tex. Code Crim.

Proc. Art. 55.04 (defining as a Class B misdemeanor the knowing release,

dissemination, or use of expunged records or files. Tex. Code Crim. Proc.

Art. 55.04).

In the case on appeal, "a municipal policy" and the "custom" and

practice of a municipal official is the moving force behind the

constitutional violation, that municipal official is Art Acevedo, the policy

is APD policy 118.10 Expunction of Files, which states the following: "For

the purposes of this section, "expunge" means to remove all data or

materials relating to a particular arrest from all files in such a manner

that there is no indication that such data or materials ever existed or

have been removed.” The custom established by Acevedo is retaliation

Cynthia Martinez and Toney Smith’s cases evinces the retaliatory nature of Acevedo. However, because the court was not so convinced, Appellant has exerted effort and “due diligence” to provide this court with the requisite documentation which further evinces the retaliatory nature of

Acevedo. Appellant relies on and uses at least three examples, excluding

the Smith decision which evinces the retaliatory nature of Acevedo. The retaliatory acts are as follows: First, Acevedo on August 14, 2013 went after CLEAT Attorney, Nadia Stewart and expressly threatened to investigate her husband, APD officer Patrick Stewart. Acevedo’s actions were so egregious that Stewart hired an attorney to represent her. Stewart’s attorney wrote a formal letter to City of Austin officials regarding Acevedo’s unlawful conduct. Second, in a 2011, memorandum of discipline, Marc Ott, former City Manager communicated to Acevedo that he had concerns regarding his judgment and a few years later, in another memorandum, Ott gave Acevedo formal discipline which resulted in five (5) days off and loss of pay to Acevedo for insubordination. In his second memorandum, Ott conveyed to Acevedo that APD staff at

the training academy were fearful that he would retaliate and for him

not to do so.

Finally, Appellant has asserted since February of 2011, that Acevedo was

retaliating against him. Specifically, Appellant told two (2) dozen APD

officials about the unlawful acts of retaliation and verbally reported

complaints at least fifty (50) times, both on-duty and off-duty that

Acevedo was retaliating against him with no success. The acts

complained of were even to other law enforcement agencies such as, the

FBI, Texas Rangers, Travis County – DA's Office, Attorney General's

Office and the Texas Commission on Law Enforcement. None of these

agencies filed a formal report. However, on March 10, 2015, Appellant

in compliance with Texas law, which imposes a duty on its peace officers

to report offenses committed in their presence or view. The Appellant

formally reported and filed two (2) APD offense reports with physical

evidence to substantiate those allegations.

Acevedo commits unlawful acts that are felony offenses and an offense

classified as a misdemeanor. Misuse use of official information, pursuant

to the Texas Penal Code, section 39.06 is a Felony – Third Degree.

Tampering with and fabricating evidence is a Felony Third Degree. The

records used by Acevedo on May 5, 2014, were solely the Appellants property. Appellant gave no City of Austin official, including Acevedo the consent to use those records. The Travis County court clerk gave the Appellant the sole property rights to the records pursuant to the State of Texas statute under the CCP – Chapter 55. Acevedo engaged in the theft of the property when he unlawfully used those records which were effectively expunged under a Final Order from the district court. Acevedo engaged in acts of “cyber-smearing” and “cyber-bullying” both are terms of art. This court is encouraged to adopt “cyber-smearing” and “cyber-bullying,” as terms of art because it fosters protecting individuals from unlawful violations of privacy on the internet and social media outlets. Employers commit “cyber-bullying” when they allow their employees to use his or her authority to bully another employee on social media or through other forms of the media. Appellant is a victim of, as suffers from Acevedo’s unlawful acts of “cyber-smearing” and “cyber-bullying.” Specifically, Acevedo’s cyber smearing and bulling are violations of the Texas Labor Codes, Blacklisting statute which states the following: A person commits an offense under Texas Labor Code, section 52.031 if the person: (1) blacklists or causes to be blacklisted an employee; or (2)

conspires or contrives by correspondence or any other manner to prevent

an employee discharged by a corporation, company, or individual from

procuring employment. *Brim v. Exxon Mobile Pipeline Co.*, 2006 U.S.

Dist. LEXIS 27155, 2006 WL 1280949. Acevedo blacklisted the Appellant

and violated the Meet and Confer Agreement "confidentiality" clause and

"non-reveal" provisions as well. Clearly, obedience to all State and local

laws is not an unreasonable requirement to make of a policeman. *Vick v.*

Waco, 614 S.W.2d 861, 1981 Tex. App. LEXIS 3416.

Ann Spiegel Spiegel, intentionally and knowingly deprived the Appellant of his due process rights and violated Texas law on May 5, 2014, and June 16, 2014, when she intentionally and purposefully used records which were subject to the district courts Final Order. City officials are subject to criminal punishment if they know of an expunction order when they release or use arrest records subject to the order. *Tex.*

Code Crim. Proc. Art. 55.04 (defining as a Class B misdemeanor the

knowing release, dissemination, or use of expunged records or files). On

June 16, 2014, Spiegel was effectively put on notice during the official

proceeding brought against the Appellant. Spiegel wrongfully concluded

that she could simply redact the records, which contravenes the law.

According to the Texas Supreme Court, the proceedings under the expunction statute contemplate a uniform proceeding involving all of the agencies with an interest in the former defendant's criminal records, as these agencies "share not only interwoven but identical interests" with respect to uniform management of records. Expunction by only some, and not all, agencies would undermine these goals. The effect of a decision to invalidate the expunction of some records invalidates the order as to all of the records expunged." See *Ex parte Elliot*, 815 S.W.2d at 252. *City of Beaumont v. J.E.M.*, No. 09-10-00537-CV, 2011 Tex. App. LEXIS 7057, at 12-14 (App. Aug. 31, 2011). Appellant suffered injury, which is causally connected to the actions of Spiegel who effectively made the Final Order of no effect, essential invalidating the whole order without any due process. Article 55.02 does not appear to allow for selective, content-based redaction or return of records within an arrest file relating to one out of multiple offenses. *S.J. v. State*, 438 S.W.3d 838, 839 (Tex. App. 2014). The law required obliteration and destruction of the records. *D.P.S. v. Deck*, 954 S.W.2d 108, 112 (Tex. App. - San Antonio 1997, no pet.). Appellant appropriately filed a criminal offense report against Spiegel for her unlawful conduct, which constitutes a third

degree felony, but Acevedo obstructed justice and no enforcement action
was taken. Today, Spiegel works as a City Attorney – City of Houston, for none other than Art Acevedo.

Michael Croning. Michael Cronig (“Cronig”), another City of Austin law department employee violated the Appellant’s due process rights on March 19, 2015, and March 24, 2015, when he intentionally and knowingly used records that were part of the district courts Final Order. Cronig submitted the records electronically by email to the Independent Third Party Hearing Examiner, which constituted the criminal violation of Misuse of Official Information, which is a third degree felony. Cronig, as well as, the other city officials assert that the records were redacted, but they were not redacted. A copy of the records sent by Cronig are attached as an exhibit. Texas law precludes any use of the records once a Final Order has been issued, therefore the records submitted by Cronig could not have been used for any purpose. A government officer with some discretion to interpret and apply law may nonetheless act ‘without legal authority’ and thus, if he exceeds the bounds of his granted authority, if his acts conflicts with the law itself. *Hous. Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016).

Andralee Lloyd. Andralee Lloyd ("Lloyd"), violated the Appellants due process rights and committed fraud upon the court. In October of 2015, Lloyd deposed the Appellant and intentionally and knowingly used, possessed, and disseminated records that were part of the Final Order. The Fifth Circuit Court of Appeals held that when there is such an expectancy then due process applies. *Ferguson v. Thomas*, 430 F.2d 852, 856 (5th Cir. 1970). Appellant was deprived of due process in violation of the CCP and the Fifth and Fourteenth Amendments to the United States Constitution. A government officer with some discretion to interpret and apply law may nonetheless act 'without legal authority' and thus, if he exceeds the bounds of his granted authority, if his acts conflicts with the law itself. *Hous. Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016). Texas law pursuant to the CCP allows for the denial of an incident once the Final Order has been granted, Lloyd effectively extinguished that right without due process. In February of 2017, Lloyd committed fraud upon the court during oral arguments at the Fifth Circuit Court of Appeals. Lloyd intentionally and knowingly misrepresented material information that she was precluded from communicating in violation of public policy under the Texas Local

Government Code – Chapter 143 and Garrity rights, which are codified in the Meet and Confer Agreement, as part of collective bargaining under the Texas Local Government Code – Chapter 174.

Basil Ali. Basil Ali (“Ali”), intentionally and knowingly used records that were part of the district courts Final Order. On December 1, 2015, Ali

~~during the Appellant’s arbitration hearing can be observed on video disseminating and using information unlawfully. Ali’s actions were so egregious that the proceeding was momentarily halted to bring his attention to the unlawful act. A government officer with some discretion to interpret and apply law may nonetheless act ‘without legal authority’ and thus, if he exceeds the bounds of his granted authority, if his acts conflicts with the law itself. *Hous. Belt & Terminal Ry. Co. v. City of Houston*, 487 S.W.3d 154, 158 (Tex. 2016).~~

Carey Grace. Carey Grace (“Grace”) violated the Appellant’s due process rights and acted “ultra vires,” when she called a private citizen and communicated information that was part of the district courts Final Order as well. Grace was surreptitiously recorded in the process and without question disseminates and uses information that she knew was part of the Final Order. Also, Grace violated specific City of Austin

... policies and public policy. The Texas Local Government Code, section 143.089 (g) makes law enforcement records confidential, but Grace goes further to retaliate against the Appellant in violation of the Meet and Confer Agreements, "confidentiality" clause and "non-reveal" provision which are memorialized in the collective bargaining agreement. The agreement states the following:

Additionally, all individuals who have access by virtue of this AGREEMENT to IAD files or investigative information, including the information contained within the 143.089(g) files of Officers, shall be bound to the same extent as the Austin Police Department and the City of Austin to comply with the confidentiality provisions of this AGREEMENT, Chapter 143 of the Texas Local Government Code, and the Texas Public Information Act. All such individuals shall further be bound to the same extent as the Austin Police Department and the City of Austin to respect the rights of individual Officers under the Texas Constitution and the Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution, including not revealing information contained in a compelled statement protected by the doctrine set forth in *Garrity v. New Jersey*, 385 U.S. 493 (1967), and *Spevack v. Klein*, 385 U.S. 511 (1967).

Grace has not been formally reprimanded or disciplined for violating the Appellant's due process rights. Prior discipline imposed by the City Austin would not be appropriate, as this is a separate and distinct violation.

**II. Whether Federal Rules of Civil Procedure, Rule 12 (b) (6)
~~was used in contravention of the United States Constitution's
Seventh Amendment right to jury trial.~~**

The Framers of the Constitution, namely Elbridge Gerry and others, were so strongly and passionately moved by the lack of a "Bill of Rights" at the Constitutional Convention that they each refused to sign the document. Imparted into the Bill of Rights is the "Historical test of 1791." This right embodies the judicial doctrine of the English Common Law of 1791, which is the effective date of the Seventh Amendment.

Dimick v. Schiedt, 293 U.S. 474, 476 (1935). The Seventh Amendment was adopted in 1791 to safeguard the common law right of jury trial in

civil cases, the Seventh Amendment states the following:

In suits at common law, where the value in controversy shall exceed twenty dollars the right to trial by jury shall be preserved, and no fact tried by jury shall be otherwise reexamined in any court of the United States, than according to the rules of common law.

Appellant in his initial complaint, on the face of the record makes a jury trial demand in accordance with the United States Constitution's Seventh Amendment and pursuant to the Fed. R. Civ. P. "The constitutional right to trial by jury cannot be made to depend upon the choice of words used in the pleadings. The controlling question should be ~~whether there exists any legal claim cognizable at common law -~~ regardless of the characterization of the claim. "[A]s long as any legal cause is involved, the jury rights it create control. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469 (1962). Appellant was effectively denied due process, as there was no jury trial as preserved by the Seventh Amendment. Fed. R. Civ. P, Rule 12(b) (6), as it has been used is unconstitutional. Rule 12 (b) (6) does not comport with the Historical test of 1791 and procedurally has been used by judges to deny citizens their due process rights. The history of the Federal Rules of Civil Procedure was adopted in 1938, yet ~~it appears that these rules are being applied in an arbitrary and capricious manner, almost as if, they originated with the Historical test and the English Common Law of 1791.~~ "Where the rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Davis v. Wechsler*, 263 U.S. 22, 24 (1923).

Appellant plainly and reasonably has asserted his federal constitutional right to trial by jury. "The assertion of federal rights, when plainly and reasonably made, are not to be defeated under the name of local practice."

NAACP v. Alabama, 375 U.S. 449 (1964).

III. City of Austin official, namely Art Acevedo engaged in fraud and negligence and violates the "due process" rights of employees, as it relates to their property interest in sick leave.

City of Austin officials intentionally and purposefully engages in unlawful acts that amount to conversion of City of Austin – APD, employee's sick leave in violation of their own Civil Service Rules and Regulations and the enacted public policy, as codified in the Texas Local Government Code – Chapter 143. There is no "due process" hearing or procedures for redressing the misappropriation and misapplication of the rules. Appellant seeks the federal courts plenary powers to address this deprivation as APD employees have been unlawfully deprived of millions of dollars in sick leave and the City of Austin has been unjustly enriched in the process. City of Austin – Civil Service, Rule 15.01 – Sick leave states the following. "Employees in the classified service shall be allowed accrual of sick leave with full pay in accordance with Chapter 143.045."

Chapter 143.045, was enacted by the Texas legislature. Statutes are to

be analyzed "as a cohesive, contextual whole" with the goal of effectuating the legislature's intent and employing the presumption that the legislature intended a just and reasonable result. *Sommers for Ala & Dunlavy, Ltd. v. Sandcastle Homes, Inc.* 521 S.W.3d 749, 754 (Tex. 2017).

The Texas legislature codified Chapter 143, for the purpose of securing

~~permanent employment free from political influence for Texas Police and~~

Firemen. Specifically, 145.045 of the Tex. Loc. Gov't Code expressly states the following:

Sec. 143.045. ACCUMULATION AND PAYMENT OF SICK LEAVE. (a) A permanent or temporary fire fighter or police officer is allowed sick leave with pay accumulated at the rate of 1-1/4 full working days for each full month employed in a calendar year, so as to total 15 working days to a person's credit each 12 months. (b) A fire fighter or police officer may accumulate sick leave without limit and may use the leave if unable to work because of a bona fide illness. If an ill fire fighter or police officer exhausts the sick leave and can conclusively prove that the illness was incurred in the performance of duties, an extension of sick leave shall be granted.

(c) Except as otherwise provided by Section 143.116, a fire fighter or police officer who leaves the classified service for any reason is entitled to receive in a lump-sum payment the full amount of the person's salary for accumulated sick leave if the person has accumulated not more than 90 days of sick leave. If a fire fighter or police officer has accumulated more than 90 working days of sick leave, the person's employer may limit payment to the amount that the

person would have received if the person had been allowed to use 90 days of accumulated sick leave during the last six months of employment. The lump-sum payment is computed by compensating the fire fighter or police officer for the accumulated time at the highest permanent pay classification for which the person was eligible during the last six months of employment. The fire fighter or police officer is paid for the same period for which the person would have been paid if the person had taken the sick leave but ~~does not include additional holidays and any sick leave or vacation time that the person might have accrued during the 90 days.~~

(d) To facilitate the settlement of the accounts of deceased fire fighters and police officers, all unpaid compensation, including all accumulated sick leave, due at the time of death to an active fire fighter or police officer who dies as a result of a line-of-duty injury or illness, shall be paid to the persons in the first applicable category of the following prioritized list: (1) to the beneficiary or beneficiaries the fire fighter or police officer designated in writing to receive the compensation and filed with the commission before the person's death; (2) to the fire fighter's or police officer's widow or widower; (3) to the fire fighter's or police officer's child or children and to the descendants of a deceased child, by representation; (4) to the fire fighter's or police officer's parents or to their survivors; or (5) to the properly appointed legal representative of the fire fighter's or police officer's estate, or in the absence of a representative, to the person determined to be entitled to the payment under the state law of descent and distribution. (e) Payment of compensation to a person in accordance with Subsection (d) is a bar to recovery by another person.

In addition, 143.116, states the following:

PAYMENT OF SICK LEAVE ON TERMINATION OF SERVICE. (a) A fire fighter or police officer who leaves the classified service for any reason or the beneficiaries of a fire fighter or police officer who dies as a result of a line of duty injury or illness are entitled to receive in a lump-sum payment the full amount of the fire fighter's or police officer's accumulated sick leave as provided by Subsections (b)-(e). (b) A fire fighter or police officer ~~hired before September 1, 1985,~~ is entitled to have sick leave accumulated without limit. Sick leave accumulated before September 1, 1985, is valued at the amount of the fire fighter's or police officer's salary on August 31, 1985. Sick leave accumulated after September 1, 1985, is valued at the fire fighter's or police officer's average salary in the fiscal year in which the sick leave was accumulated.

(c) Each day or part of a day of sick leave used by a fire fighter or police officer is charged to that person's earliest acquired unused accumulated day of sick leave, in the same manner as is used in the "first in, first out" accounting principle. (d) Each fire fighter or police officer hired before September 1, 1985, may select coverage under the municipal ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this chapter. This option is a onetime only option that expires on December 31 of the year in which this section takes effect in that municipality.

(e) The sick leave of a fire fighter or police officer who becomes a member of the fire or police department on or after September 1, 1985, is covered by the municipal ordinance governing sick leave benefits and policy for the municipal employees who are not subject to this chapter.

(f) The municipality shall provide in its annual budget a sum reasonably calculated to provide funding for sick leave benefits for the fiscal year covered by that budget.

Acevedo through unlawful conversion has unlawfully misappropriated Appellant's sick leave which Appellant has both a ~~property and liberty interest in. There has been no procedural due~~ process to recover the monetary value of the sick leave, as codified by Texas law and City of Austin - Civil Service, Rule 15.01. A person whose rights are affected by a statute may petition a court to determine a question of construction under the statute and may request a declaration of his rights under statute.

The Texas legislature is clear and has unambiguously communicated through statutory enactment that Texas peace officers, pursuant to 143.045 and 143.116 are to be compensated for sick leave ~~once they are in the classified service of the civil service act. Acevedo~~ through retaliation has denied the legal effect of both the CSA and the City of Austin - Civil Service Rules and Regulations, Rule 15.01. Acevedo intentionally and purposefully for nine (9) years has withheld APD officers sick leave, thus depriving them of any property or liberty interest

in the accrued leave, which violates their due process rights. City of Austin officials colluded with Acevedo by doing nothing to enforce their own policies and regulations. Texas appellate courts have defined a cause of action as a plaintiff's primary right to relief and the defendant's act or omission that violates that right. *Krchnak v. Fulton*, 759 S.W.2d 524, 526 (Tex. App. Amarillo 1988, writ denied) (citing *Stone Fort Nat'l Bank v. Forbes*, 126 Tex. 568, 91 S.W.2d 674, 676 (1936)). The right to a remedy for an injury is a constitutionally protected right. *TEX. CONST. art. 1, § 13* (All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law).

Appellant specially requests that the court issues declaratory relief for the property interest in the sick leave hours, as it amounts to conversion. In Texas the elements of conversion are as follows: (1) the plaintiff owned or had possession of the property or entitlement to possession; (2) the defendant unlawfully and without authorization assumed and exercised control over the property to the exclusion of, or inconsistent with, the plaintiff's rights as an owner; (3) the plaintiff demanded return of the property; and (4) the defendant refused to return

the property. *Khorshid, Inc. v. Christian*, 257 S.W.3d 748, 758-59 (Tex. App.—Dallas 2008, no pet.). Appellant asserts his property rights in the sick leave and entitlement to the leave time, which Acevedo has not lawfully compensated him for. Acevedo unlawfully exercised control over Appellants sick leave hours to his exclusion. Appellant has demanded ~~the sick leave hours with no effect and makes an open demand through~~ these pleadings. Acevedo has not returned or compensated the Appellant for the sick leave hours.

IV. As a matter of Due Process and pursuant to the Civil Rights Act of 1866 which was enacted to protect All Persons in their Civil Rights, and furnish the Means of their Vindication. Appellant, Blayne D. Williams, Sr. is of African descent and belongs to the class of people that the Civil Rights Act of 1866 was intended to protect. Pursuant to Sec. 10: "And be it further enacted, That upon all questions of law arising in any cause under the provisions of this act a final appeal may be taken to the Supreme Court of the United States."

Civil Rights Act of 1866, as enacted.

To my friend, advocate and counselor, Gary L. Bledsoe, as the Appellant, I apologize for the ignominious comments that Judge Sparks made in his ruling, you fought valiantly and with integrity, despite the

odds – thank you! To the judges of this court, Acevedo “compromised my good name, reputation, honor and integrity in a way that requires that beforehand the person receive notice of what is proposed, notice of a time for the matter to be heard and an opportunity to be heard.” *Bd. of Regents of State College v. Roth*, 408 U.S. 564, 576 (1972). As Justice ~~Frankfurter said in McGrath, it should be a fair proceeding.~~ Justice Frankfurter quoted Daniel Webster in his opinion. “In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done.” *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 71 S. Ct. 624, 95 L. Ed. 817, 1951 U.S. LEXIS 2349.

REASONS FOR GRANTING THE WRIT

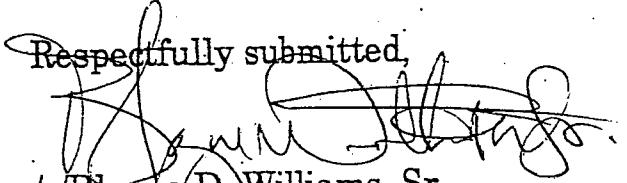
This Writ should be granted pursuant to this courts holding in *Throckmorton*, “where the court held that fraud vitiates everything to which it enters.” This case is manifestly, patently and invidiously infected with fraud, which was capitulated by a governmental agency. To date, there has been no justice rendered and this court is the court of last resort to render such an extraordinary writ of constitutional protection.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Pursuant to the federal law enacted under 28 U.S.C. §1988, Plaintiff petitions the court for the reasonable attorney's fees in the amount of \$3,200.00 for the invalidation of the Final Order issued by the

167th District Court, Judge David Wahlberg.

Respectfully submitted,


/s/Blayne D. Williams, Sr.

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