

CAUSE NO. 16-0831-A

JOANN FLEMING, ERNIE R. CLARK, RICK
 EISENBACH, JIM SNOW, J. ASHTON
 ORVATEZ, III, MATTHEW LEE, LAURA
 PERRYMAN, JIM SPEIRAN, ROSALIE
 HOWERTON, DENNIS RICHARDSON, AND
 JIMMIE RICHARDSON,

PLAINTIFFS,

VS.

JOEL BAKER,

DEFENDANT.

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IN THE DISTRICT COURT

SMITH COUNTY, TEXAS

____ JUDICIAL DISTRICT

**VERIFIED PETITION FOR REMOVAL OF JUDGE JOEL BAKER PURSUANT TO
TEXAS LOCAL GOVERNMENT CODE CHAPTER 87**

COMES NOW, JoAnn Fleming, Ernie R. Clark, Rick Eisenbach, Jim Snow, J. Ashton Orvatez, III, Matthew Lee, Laura Perryman, Jim Speiran, Rosalie Howerton, Dennis Richardson, and Jimmie Richardson, herein after collectively as Plaintiffs and file this Petition for Removal of Smith County Judge Joel Baker pursuant to Texas Local Government Code Chapter 87 (“Chapter 87”).

DISCOVERY CONTROL PLAN

1. Plaintiff intends to conduct discovery under a “Level 3” discovery control plan pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

JURISDICTION AND VENUE

2. This Court has personal jurisdiction over Smith County Judge Joel Baker because he resides in Texas, because he is an officer of Smith County, and because a substantial part of the events giving rise to this cause of action occurred in Texas.

3. Venue is proper in Smith County, Texas, whereupon information and belief, all or a substantial part of the causes of action set forth herein arose.

FACTUAL BACKGROUND

Unconstitutional Traffic Camera Agreement

4. On January 28, 2015, Judge Baker, on behalf of the Smith County Commissioners Court (“Commissioners Court”), executed a Professional Services Agreement (“Agreement”) with American Traffic Solutions, Inc.

5. The Agreement itself implements and contracts for the operation of an automated traffic control system which is otherwise prohibited under Attorney General’s Opinion No. GA-0846, citing Section 542.2035 of the Transportation Code.

6. The Agreement was discussed and approved during closed session on or about August 12, 2014, and no details were made available to the public at that time.

7. Upon information and belief, the Agreement was executed prior to the Commissioners Court having knowledge of the final terms of the agreement.

8. The Agreement is for an initial 10-year term, with a 5-year auto-renew provision. Upon information and belief, the initial bid process was not a thorough and competitive process.

9. The Agreement is much more expensive than comparable programs from the same contractor in other counties. The Agreement provides for fees of \$8,700 per camera during the “warning period.” This is an exorbitant charge compared to the \$2,900 per camera fee during the “warning period” under a similar agreement in Kaufman County.

Inappropriate “Sexting” During State Commission for Judicial Conduct Meetings

10. Prior to his March 4, 2016 resignation, Judge Baker served as vice chair on the State Commission for Judicial Conduct (“SCJC”).

11. Upon information and belief, and according to allegations made publicly¹, Judge Baker engaged in numerous communications with an anonymous female. Upon information and belief, the communications contained explicit sexual references and photographs.

CAUSE OF ACTION – REMOVAL

12. Plaintiff incorporates all preceding allegations in paragraphs 1-11 as if fully set forth herein verbatim.

13. Judge Baker is a county judge subject to removal under Chapter 87 of the Local Government Code (“Chapter 87”). Tex. Gov. Code 87.012. Such officers of the public may be removed for:

- (1) Incompetency;
- (2) Official misconduct; or
- (3) Intoxication on or off duty caused by drinking an alcoholic beverage.

Tex. Gov. Code 87.013.

14. Judge Baker showed both his incompetency and engaged in official misconduct in connection with his approval and execution of the Agreement. His incompetence was shown through his gross carelessness in failing to obtain the services at a competitive rate through a competitive bid process. Judge Baker’s approval and execution of an unconstitutional services agreement, and failure to adhere to appropriate procedures and processes concerning the same,

¹ Judge accused of sexting while sitting on judicial conduct board <http://www.kltv.com/story/31467865/texas-judge-accused-of-sexting-while-sitting-on-judicial-conduct-board> last visited April 13, 2016.

were an intentional or corrupt failure, refusal, or neglect of his duties sufficient to constitute official misconduct.

15. Judge Baker's inappropriate "sexting" of an anonymous female during SCJC meetings, while conducting county government business, and while on taxpayer-funded trips clearly amounts to official misconduct as well.

REQUESTED RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully requests that this Court order Removal of Judge Joel Baker from his seat as County Judge, and further prays that Plaintiffs be awarded their costs and all other relief, either at law or in equity, special or general, to which Plaintiffs may be justly entitled under the circumstances.

Respectfully submitted,

BEIRNE, MAYNARD & PARSONS, L.L.P.

By: /s/ James E. Trainor, III

JAMES E. "TREY" TRAINOR, III
State Bar No.: 24042052
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Austin, Texas 78701
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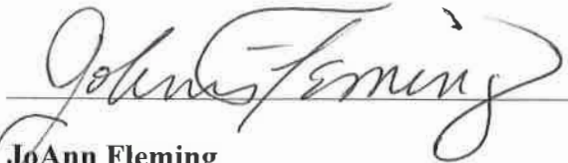
JOSEPH M. NIXON
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1300 Post Oak Blvd., 25th Floor
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Facsimile: (713) 960-1527
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ATTORNEYS FOR PLAINTIFFS

VERIFICATION

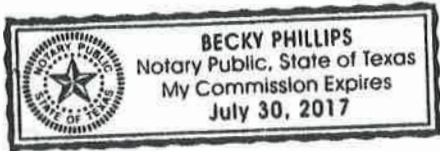
STATE OF TEXAS §
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COUNTY OF SMITH §


BEFORE ME, the undersigned authority, personally appeared **JoAnn Fleming**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within her personal knowledge and are true and correct.



JoAnn Fleming

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of April 2016, to which witness my hand and seal below.





Notary Public in and for the State of Texas

VERIFICATION

STATE OF TEXAS

COUNTY OF SMITH

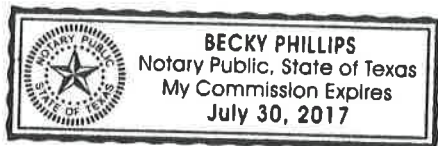
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BEFORE ME, the undersigned authority, personally appeared **Ernie R. Clark**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



Ernie R. Clark

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of April 2016, to which witness my hand and seal below.



Notary Public in and for the State of Texas

VERIFICATION

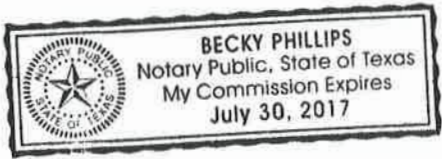
STATE OF TEXAS §
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COUNTY OF SMITH §

BEFORE ME, the undersigned authority, personally appeared **Rick Eisenbach**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



Rick Eisenbach

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of April 2016, to which witness my hand and seal below.



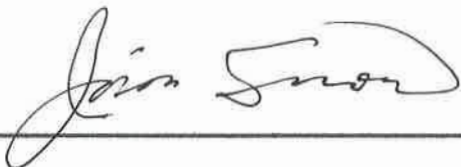


Notary Public in and for the State of Texas

VERIFICATION

STATE OF TEXAS §
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COUNTY OF SMITH §

BEFORE ME, the undersigned authority, personally appeared **Jim Snow**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.

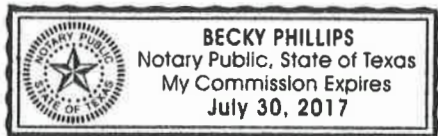


Jim Snow

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of April 2016, to which witness my hand and seal below.




Notary Public in and for the State of Texas



VERIFICATION

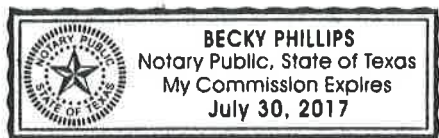
STATE OF TEXAS §
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COUNTY OF SMITH §


BEFORE ME, the undersigned authority, personally appeared **J. Ashton Oravetz, III**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



J. Ashton Oravetz, III

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of April 2016, to which witness my hand and seal below.



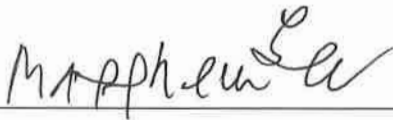


Notary Public in and for the State of Texas

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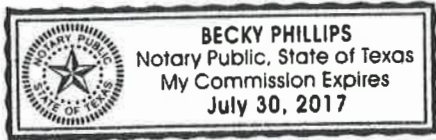
STATE OF TEXAS §
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COUNTY OF SMITH §

BEFORE ME, the undersigned authority, personally appeared **Matthew Lee**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



Matthew Lee

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of April 2016, to which witness my hand and seal below.





Notary Public in and for the State of Texas

VERIFICATION

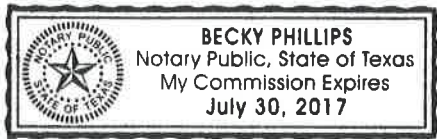
STATE OF TEXAS §
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COUNTY OF SMITH §

BEFORE ME, the undersigned authority, personally appeared **Laura Perryman**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within her personal knowledge and are true and correct.

Laura Perryman _____

Laura Perryman

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of April 2016, to which witness my hand and seal below.



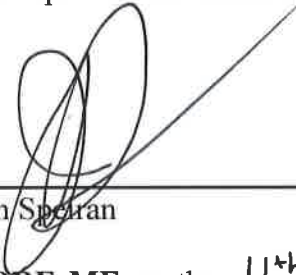
Becky Phillips _____

Notary Public in and for the State of Texas

VERIFICATION

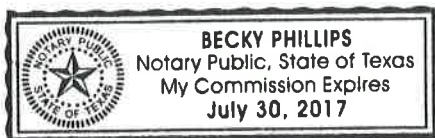
STATE OF TEXAS §
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COUNTY OF SMITH §

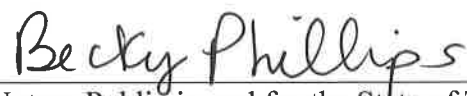
BEFORE ME, the undersigned authority, personally appeared **Jim Speiran**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



Jim Speiran

SUBSCRIBED AND SWORN TO BEFORE ME on the 11th day of April 2016, to which witness my hand and seal below.





Notary Public in and for the State of Texas

VERIFICATION

STATE OF TEXAS §
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COUNTY OF SMITH §

BEFORE ME, the undersigned authority, personally appeared **Rosalie Howerton**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within her personal knowledge and are true and correct.



Rosalie Howerton

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of April 2016, to which witness my hand and seal below.





Notary Public in and for the State of Texas

VERIFICATION

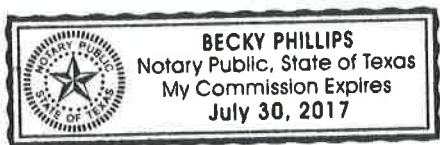
STATE OF TEXAS §
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COUNTY OF SMITH §


BEFORE ME, the undersigned authority, personally appeared **Dennis Richardson**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



Dennis Richardson

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of April 2016, to which witness my hand and seal below.





Notary Public in and for the State of Texas

VERIFICATION

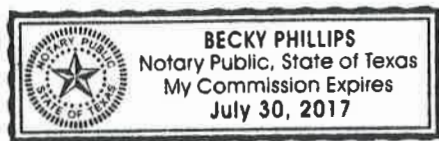
STATE OF TEXAS §
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COUNTY OF SMITH §

BEFORE ME, the undersigned authority, personally appeared **Jimmie Richardson**, who stated, upon oath, that the statements made in the foregoing Verified Petition for Removal of Judge Joel Baker Pursuant to Texas Local Government Code Chapter 87 are within his personal knowledge and are true and correct.



Jimmie Richardson

SUBSCRIBED AND SWORN TO BEFORE ME on the 12th day of April 2016, to which witness my hand and seal below.




Notary Public in and for the State of Texas