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Submitted to Ms. Seana Willing, Executive Director, State Commission on Judicial Conduct

August 5, 2016

The Honorable Valerie E. Ertz, Chair
Honorable Members of the Texas State Commission on Judicial Conduct

RE: Testimony for August 11, 2016 post-suspension hearing for Judge Joel P. Baker

Distinguished Chair and Commission Members:

Citizens have a **reasonable** expectation that elected officials will obey the law – all of the law, all of the time – when conducting The People’s business. The following section of the law sets forth the reason Grassroots America filed the complaint against Smith County Judge Joel Patrick Baker and the Smith County Commissioners Court in May 2015 when we learned about the American Traffic Systems 10-year contract:

Texas Government Code, Title 5, Open Government; Section 552.001 (a) reads: *“Under the fundamental philosophy of the American constitutional form of representative government that adheres to the principle **that government is the servant and not the master of the people**, it is the policy of this state that each person is entitled, unless otherwise expressly provided by law, at all times to complete information about the affairs of government and the official acts of public officials and employees. **The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.** The people insist on remaining informed so that they may retain control over the instruments they have created. The provisions of this chapter shall be liberally construed to implement this policy.”*

Grassroots America considers an official’s oath of office, respect for the rule of law, and respect for the public trust to be very serious matters. While nobody was robbed at gunpoint or physically assaulted in this case, **we believe the public trust was violated and violated more than once.** We believe when all of the facts are known in this case, it will be abundantly clear that the citizens of Smith County deserved much better from their county government.

A community is known for what it tolerates. In Smith County, Texas, we should never accept a public official's disrespect for citizens, abuse of the public trust, and selective application of the rule of law. That is precisely why we filed the complaint and asked for a complete investigation.

Although it is an uncommon development in government – and even rarer for our community – Grassroots America believes the State Commission on Judicial Conduct's immediate suspension of Judge Joel P. Baker without pay was justified and right for the people of Smith County. **All public servants – and especially those in the judicial branch of government – must be held to a higher ethical standard than the general public.**

In addition, when a person ***chooses*** to run for office, is hired at the ballot box, and steps forward to take the oath of office – the taking of that oath is not a mere formality. In that oath-taking moment, the official assumes the full responsibility of upholding the rule of law – all of the law, all of the time – and is thereby charged with safeguarding the trust of the people. This is indeed the intent of Texas Open Meetings Act – valuing, respecting, and protecting the public trust through open government.

The Texas Open Meetings Act is not complicated, and unlike many who serve in the capacity of County Judge, Joel Patrick Baker is an attorney. Since he is an attorney, we find it highly disturbing that Judge Baker would ignore how clearly TOMA defines precisely how official meetings must be conducted, specifying the few subjects lawfully exempt from public view. Absent one of these specific exemptions, the law decrees the people are entitled to complete information about the affairs of their government and the official acts of public officials and employees. Again, the Texas Government Code states, ***“The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.”***

We believe the Attorney General's investigation and the resulting three counts on which the grand jury charged Judge Baker lend credence to what Grassroots America asserted in its formal complaint and its investigation request – that the County Judge and Commissioners had violated the Texas Open Meetings Act during the process which resulted in a ten-year contract with American Traffic Solutions, Inc. It is also important to note that a related investigation was opened by the Federal Bureau of Investigation and is an active and ongoing investigation. (I have been interviewed by the FBI Special Agent assigned to the case.)

Although we know the August 11, 2016, post-suspension hearing with Judge Baker does not address the SCJC's investigation into his alleged sexting activities, we nevertheless wish the Commission to know that we so strongly believe Judge Joel P. Baker has irreparably broken the public trust and lost the moral authority to serve in his role as Smith County Judge that we also filed a civil Petition for Removal by Trial. Our petition cited two causes of action prompting the

litigation as the “**Unconstitutional Traffic Camera Agreement**” and “**Inappropriate Sexting During State Commission for Judicial Conduct Meetings.**” The petition language detailed how the 2015 traffic camera agreement was approved and signed without full disclosure to the public, as well as describes our belief that Judge Baker’s inappropriate sexting behavior took place during official judicial-related business, during county business hours, and during taxpayer funded out-of-town conferences.

Once the Smith County Grand Jury’s three-count indictment of Judge Baker was handed down, presiding Judge David Peeples dismissed our civil petition, **but he did so without prejudice**, leaving the door open to our intent to refile our petition should Judge Joel Baker be acquitted of the three-count indictment charges (cited in your suspension) and remain in office.

While Judge Baker is innocent until proven guilty and deserves his day in court, a community is known for what it tolerates, and **we also contend the integrity of the judiciary rests in large measure upon what this body does to deter any conduct that would bring shame and discredit upon the judiciary or the administration of justice.**

Based on the seriousness of the indictment of Judge Joel Baker, wherein he is charged with three counts of violating Chapter 551 of the Texas Government Code, known as the Texas Open Meetings Act, and wherein one or more of the charges constitutes a misdemeanor offense involving **official misconduct**, which carries the penalty of automatic removal from office, if convicted, we believe the June 21, 2016 order issued by the State Commission on Judicial Conduct was correct and justified.

We therefore strongly believe it is in the best interest of the citizens of Smith County that Judge Joel Patrick Baker remains suspended from the Office of Smith County Judge without pay. We respectfully ask that you uphold your order.

Sincerely,

A handwritten signature in cursive script that reads "JoAnn Fleming". The signature is fluid and elegant, with a large initial 'J' and 'F'.

JoAnn Fleming
Executive Director, Grassroots America – We the People
Former Smith County Commissioner (self-retired)