

COPY

CAUSE NO. 42010CR

THE STATE OF TEXAS

)(

IN THE 443<sup>RD</sup> JUDICIAL

VS.

)(

DISTRICT COURT OF

MICHAEL WADE JONES

)(

ELLIS COUNTY, TEXAS

FILED FOR RECORD  
2017 MAR -7 AM 11:44  
MELANIE REED  
DISTRICT CLERK  
ELLIS COUNTY, TX

**MOTION FOR RECUSAL FOR CONFLICT OF INTEREST OR TO DISQUALIFY  
THE ELLIS COUNTY DISTRICT & COUNTY ATTORNEY'S OFFICE AND REQUEST  
FOR ATTORNEY PRO TEM**

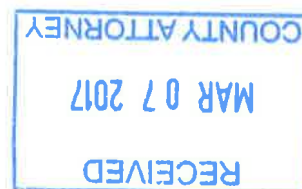
NOW COMES, MICHAEL WADE JONES, Defendant, by and through his counsel, Mark D. Griffith, Courtney G. Stamper, and Chad A. Hughes and files this Motion and in support of such would show the following:

**I.**

To not disqualify the Ellis County District & County Attorney's Office would violate the Defendant's rights under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution; Article 1, section 10 and 19 of the Texas Constitution; rules 1.05, 1.06, 1.09 and 3.09 of the Texas Disciplinary Rules of Professional Conduct; Texas Code of Criminal Procedure, art. 2.01; and other relevant Federal and Texas law, for an Order Disqualifying the Ellis County District & County Attorney's Office from further involvement in this case. In support thereof would show the following:

**II.**

Patrick Wilson, the elected County and District Attorney has filed a civil lawsuit to remove the Defendant from his duly elected office as Constable. The lawsuit is attached as **EXHIBIT A** and made a part of this Motion for all purposes. By filing this lawsuit Patrick Wilson has made



himself a witness in the criminal matter and cannot proceed as the prosecuting attorney nor can any attorney in his office. He has made himself a witness in this case by filing the civil lawsuit showing a personal bias against the Defendant. This violates due process and the proper ethical discharge of a prosecutor's duty.

Further, attached as **EXHIBIT B**, and made a part of this Motion for all purposes, is a personal e-mail from the County Judge to Patrick Wilson regarding some personal problem a citizen had with the Defendant. Further evidence of a bias against Mike Jones by Patrick Wilson. This, again, makes Patrick Wilson a witness in the criminal case for his motive to proceed with prosecution of the Defendant. No reasonable person looking from the outside in would believe that the Defendant has been or will be afforded due process by the Ellis County District & County Attorney's Office.

Further, attached as **EXHIBIT C**, and made a part of this Motion for all purposes, is a personal e-mail, not dealing with county business, from Patrick Wilson to the County Judge, Carol Bush indicating his pleasure that the Defendant is receiving bad press in the Star Telegram. This again goes towards Mr. Wilson's bias towards this prosecution of the Defendant and makes him a witness as towards that bias.

Further, attached as **EXHIBIT D**, and made a part of this motion for all purposes, is a personal e-mail, having nothing to do with county business, from Carol Bush, County Judge, to Patrick Wilson regarding a citizens complaint about the defendant's facebook posts.

The attached exhibits show that the Ellis County District & County Attorney's office and Patrick Wilson have a personal bias against the Defendant. Through this bias and the filing of the

civil lawsuit, Patrick Wilson made himself a witness in the criminal case, and he and his office should be disqualified. And, an attorney pro tem should be appointed immediately.

#### IV.

Attached as **EXHIBIT E**, and made a part of this Motion for all purposes, is a letter from Patrick Wilson to Texas Ranger Adam Sweeney indicating that Mike Jones, Defendant, is a threat to Carol Bush, the County Judge. This again shows bias towards the Defendant on the part of the elected District & County Attorney and is further evidence of bias by said elected DA to prosecute the Defendant for bias reasons rather than to see that justice is done and said bias is relevant inquiry of Patrick Wilson in the criminal matter that will be on trial in this case.

#### V.

Attached as **EXHIBIT F**, and made a part of this motion for all purposes is an e-mail sent by the elected District & County Attorney to all public officials and their staff regarding use of public computers for campaign purposes. Counsel for Defendant has personal proof that Patrick Wilson sends to most if not all public officials and support staff a request to come to the "Pull For Patrick" fundraiser for his campaign. This act by Patrick Wilson requires, by opening the e-mails he sends on public computers to have the person opening the e-mail violate the actual policy under which the Defendant is being indicted. This shows further bias that no other public official is charged with said offense, including Patrick Wilson, and therefore creates the personal bias and vendetta shown through these exhibits that prohibits the Defendant from receiving due process or due course of law if the Ellis County & District Attorney's office is allowed to continue to prosecute this case.

## VI.

Attached as **EXHIBIT G**, and made a part of this motion for all purposes is an e-mail from Patrick Wilson to Carol Bush basically congratulating a civilian from out of this County for writing a scathing report regarding personal posts of the defendant on his Facebook page. This is further evidence of the political motivation and bias on the part of the Ellis County & District Attorney's office towards the Defendant.

### THE LAW APPLICABLE TO THIS FILING

"Recusal is distinguishable from legal disqualification in that recusal refers to the voluntary removal of oneself as a prosecutor because of a conflict of interest or for other good cause." *See* Tex. Code Crim. Proc. Art. 2.07 (b-1); *Coleman*, 246 S.W.3d 76, 81 (Tex.Crim.App. 2008) "The recusal procedure allows the district attorney to avoid conflicts of interests and even the appearance of impropriety by deciding not to participate in certain cases." *Id.* "[A] district attorney should have enough integrity to take it upon himself to remedy such a situation long before it reaches the point of disqualification by the trial court." *Landers*, 256 S.W.3d at 312 (Meyers, J. and Holcomb, J. dissenting)

It is well established law in Texas that, although it is normally up to a district attorney to initiate he or her own recusal, a trial court may disqualify a prosecutor when the disqualification is based on a conflict of interest that rise to the level of a due process violation. *Pirtle*, 887 S.W.2d at 927; *In re Goodman*, 210 S.W.3d 805, 807-808 (Tex. App. – Texarkana 2006) "For example, if a prosecutor has a financial stake in the outcome of a prosecution, the conflict between that interest and the duties of the public office clearly presents constitutional concerns." *In re Guerra*, 235 S.W.2d 392, 430-431 (Tex.App. – Corpus Christi 2007) It is reasonable to assume that a

political motivation to remove a duly elected Constable from his office is of the same level of conflict as evidenced by the exhibits attached to this Motion.

Likewise, if a prosecutor may be called as a witness at a trial on the merits, due process may require a court to disqualify the prosecutor from prosecuting the case. *Id.* At 432 Patrick Wilson has created a record of disdain for the Defendant in this case and that disdain is certainly motive for the malicious prosecution and if counsel for Defendant is not allowed to develop this testimony by calling Mr. Wilson as a witness he will be denied the effective assistance of counsel and due process and due course of law. Wilson chose to assert himself and his assistants as potential witnesses by showing the bias he had for the Defendant well before any investigation or arrest occurred as evidenced by the exhibits.

Further, in an investigation against two County Commissioners Mr. Wilson saw enough conflict due to the people being investigated to ask for an attorney pro tem. Not asking for one in this case is further evidence of his bias and personal animosity towards this particular Defendant as compared to other elected officials who have been investigated. It should also be high-lighted that his office is filing suit to get him out of his duly elected office which is further evidence of his bias towards the defendant along with the County Judge, Carol Bush, who will be called as a witness in any trial that may occur in this case.

First, a defendant has a constitutional right to introduce evidence supporting his theory of defense before the jury. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). For example, in *Coleman v. State*, 545 S.W.2d 831,832 (Tex.Crim.App. 1977), the Texas Court of Criminal Appeals held a Defendant has a right to present evidence to support his defensive theory. There, the defendant wanted to present evidence that the Killeen Police Department had a grudge against him and, essentially, that the Killeen Police Department conspired to prosecute an innocent man. *Id.* At

832-834. The Court of Criminal Appeals held it was error for the trial court to deny the defendant the right to put on evidence in support of this conspiracy defense. *Id.* at 835.

In light of the foregoing principles, designed to insure a defendant a fair trial, the testimony of Patrick Wilson will be necessary at trial with regard malicious prosecution issues, retaliation issues, and a general conspiracy to put the Defendant out of his duly elected office, a place the District Attorney clearly never wanted him based on the exhibits contained herein.

WHEREFORE, PREMISES CONSIDERED, Defendant moves this court to disqualify the Ellis County & District Attorney's Office and appoint an Attorney Pro Tem to continue the prosecution of this case.

RESPECTFULLY SUBMITTED,



MARK D. GRIFFITH  
Attorneys for Defendant  
108 West Main Street, Waxahachie, TX 75165  
Griffith & Associates; Attorneys  
972-937-9555  
972-938-8333 (fax)  
e-mail ([mark@griffithlegal.com](mailto:mark@griffithlegal.com))

State Bar # 00785928

Courtney G. Stamper, Attorney for Defendant

State Bar # 24060967

#### CERTIFICATE OF SERVICE

On this the 7th day of March, 2017 a true and correct copy of this Motion was hand-delivered or faxed to the Ellis County & District Attorney.



Mark D. Griffith, Attorney for Defendant

## **EXHIBIT A**

COPT

THE STATE OF TEXAS  
COUNTY OF ELLIS  
CAUSE NO: 95552  
CITATION

TO: JONES, MICHAEL WADE  


Defendant, in the hereinafter styled and numbered cause: 95552

You are hereby commanded to appear before 40TH JUDICIAL DISTRICT COURT of ELLIS COUNTY, TEXAS to be held at the courthouse of said county in the City of Waxahachie, County of Ellis County, Texas, by filing a written answer to the PETITION FOR REMOVAL; MOTION TO SUSPEND THE DEFENDANT FROM OFFICE; AND MOTION TO APPOINT A TEMPORARY REPLACEMENT PENDING TRIAL of Plaintiff at or before 10:00 A.M. of the Monday next after the expiration of 20 days after the date of service hereof, a copy of which accompanies this citation, in cause number 95552 styled

STATE OF TEXAS  
VS.  
JONES, MICHAEL WADE

Filed in said court on the 02/27/2017

The name and address of the attorney for plaintiff, or the address of the plaintiff is: ELLIS COUNTY DISTRICT ATTORNEY, 109 S JACKSON, WAXAHACHIE, TX 75165.

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you or your attorneys do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of 20 days after you were served this citation and petition, a Default Judgment may be taken against you."

WITNESS: Melanie Reed, District Clerk of the District Court of Ellis County, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL OF SAID COURT AT COUNTY OF ELLIS, TEXAS, ON THIS THE 2nd day of March, 2017.

SEAL

Melanie Reed, District Clerk  
109 S. Jackson Street Rm. 209  
Waxahachie, TX 75165

By   
Mary Hinds, Deputy

THIS PROCESS SERVED	
BY CLERK TO SHERIFF OFC	
DATE	2-3-17
TIME	3:33pm
DEPUTY	L. Feb



**OFFICER'S RETURN - CAUSE # 95552**

STATE OF TEXAS  
VS.  
JONES, MICHAEL WADE

IN THE 40TH JUDICIAL DISTRICT COURT  
OF  
ELLIS COUNTY, TEXAS

NAME AND ADDRESS FOR SERVICE:  
JONES, MICHAEL WADE

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, o'clock \_\_\_\_m., and executed in \_\_\_\_\_ County, Texas by delivering to each of the within named defendants, in person, a true copy of this Citation with the date of delivery endorsed thereon, together with the accompanying copy of the PETITION FOR REMOVAL; MOTION TO SUSPEND THE DEFENDANT FROM OFFICE; AND MOTION TO APPOINT A TEMPORARY REPLACEMENT PENDING TRIAL, at the following times and places, to-wit:

Name	Date/Time	Place, Course and Distance from Courthouse
------	-----------	--

And not executed as to the defendant(s), \_\_\_\_\_

The diligence used in finding said defendant(s) being: \_\_\_\_\_

and the cause or failure to execute this process is: \_\_\_\_\_

and the information received as to the whereabouts of said defendant(s) being: \_\_\_\_\_

**FEES:**

Serving Petition and Copy \$ \_\_\_\_\_  
Total \$ \_\_\_\_\_

\_\_\_\_\_, Officer  
\_\_\_\_\_, County, Texas  
By: \_\_\_\_\_, Deputy

\_\_\_\_\_, Affiant

**COMPLETE IF YOU ARE A PERSON OTHER THAN A SHERIFF, CONSTABLE, OR CLERK OF THE COURT.**

In accordance with Rule 107: The officer or authorized person who serves, or attempts to serve, a citation shall sign the return. The return must either be verified or be signed under penalty of perjury. A return signed under penalty of perjury must contain the statement below in substantially the following form:

"My name is \_\_\_\_\_, my date of birth is \_\_\_\_\_, and my address is \_\_\_\_\_  
(First, Middle, Last)

\_\_\_\_\_  
(Street, City, Zip)

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed in \_\_\_\_\_ County, State of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Declarant/Authorized Process Server

\_\_\_\_\_  
(Id # & expiration of certification)

**RETURN TO:**

Melanie Reed Ellis County District Clerk  
109 S. Jackson Street Rm. 209  
Waxahachie, TX 75165

STATE OF TEXAS §  
COUNTY OF ELLIS §

SIGNED under oath before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

Ellis County - 40th District Court

Filed 2/27/2017 10:26:39 AM  
Melanie Reed  
District Clerk  
Ellis County, Texas

CAUSE NO. 95552

STATE OF TEXAS,	§	IN THE DISTRICT COURT
	§	
EX REL MICHAEL WADE JONES	§	ELLIS COUNTY, TEXAS
CONSTABLE, PRECINCT #4,	§	
ELLIS COUNTY, TEXAS	§	_____ JUDICIAL DISTRICT

**PETITION FOR REMOVAL;  
MOTION TO SUSPEND THE DEFENDANT FROM OFFICE;  
AND MOTION TO APPOINT A TEMPORARY REPLACEMENT PENDING TRIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, Patrick Wilson, County Attorney of Ellis County, Texas, and a resident of the State of Texas, having lived in Ellis County for more than six months, and not either presently or ever having been under indictment in Ellis County or any other county of the State of Texas, and would show the Court as follows:

**I. GROUNDS FOR REMOVAL**

Pursuant to Section 87.013, Texas Local Government Code, and Section 74.059 of the Texas Government Code, Petitioner asserts that Michael Wade Jones, who presently holds the office of Constable, Precinct #4, of Ellis County, Texas, should be removed from office for acts of official misconduct, as defined by said statute, and for incompetency.

Under applicable law, "official misconduct" is defined as:

1. "intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of law."
2. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed by law.

## II. FACTUAL ALLEGATIONS

In support of the contention that Michael Wade Jones has committed acts justifying removal from office, Petitioner would show the Court that Michael Wade Jones, as Constable, Precinct #4, of Ellis County, Texas, has engaged in conduct and behavior in a deliberate, intentional and willful manner as would constitute official misconduct and incompetency.

Such conduct and behavior, as demonstrated by the specific allegations below, depicts an elected official who violated the penal laws of the State of Texas. The following acts, each constituting a violation of the public trust vested upon Michael Wade Jones, have been committed in a manner that constitutes official misconduct and incompetency under the law:

1. On February 9, 2016, a citizen of Ellis County appeared in my office to make a complaint against Constable Mike Jones. In support of the complaint the citizen provided purchasing records from Ellis County which had been obtained through the Texas Public Information Act. The citizen also provided copies of Constable Jones' campaign finance reports as well screen shots from social media pages belonging to Constable Jones.
2. At that point in time Constable Jones was engaged in a contested political campaign. He was seeking re-election at the March 1, 2016, Republican primary. There was no other challenger for the November 2016 general election.
3. To help finance his re-election campaign, Constable Jones produced and sold decals and t-shirts of his own original design. Those items were advertised for sale by him on his social media pages.

4. The nature of the citizen's complaint against Constable Jones was to investigate whether Jones had used public funds to purchase the equipment and supplies necessary to produce the decals and t-shirts Jones sold for his political campaign.
5. Among the documents provided by the citizen were Ellis County purchasing documents which showed that Jones had, in fact, used public resources to purchase equipment and supplies which could be used in the manufacture of custom decals and t-shirts.
6. Jones' campaign finance reports failed to report any expenses or income related to the production of the decals and t-shirts, as required by law.
7. My office's Chief Investigator, Jeff Ward, was assigned to investigate the matter. One of Investigator Ward's first acts was to speak directly with Constable Jones about the investigation.
8. Constable Jones informed Investigator Ward, along with Investigator Marlena Pendley, that the equipment Jones had purchased with county funds was used only for the manufacture of t-shirts and signage used in the official capacity of his office; e.g., "Constable" t-shirts for Jones, his deputy, and reserves, plus signage Jones posted to promote public safety.
9. Jones also informed Investigators Ward and Pendley that Jones had a similar set of equipment and materials at Jones' home, which he used for the production of the political campaign-related decals and t-shirts, and which he allowed Investigators Ward and Pendley to view in Jones' home.
10. While at Jones' home, Investigators Ward and Pendley observed one of the decals that Jones sold for the benefit of his political campaign displayed on an Ellis County vehicle

that was issued to Jones for use in his official capacity. At that time Ward advised Jones that the display of the decal on a county vehicle was improper.

11. After investigating the matter that was first reported to my office by an Ellis County citizen on February 9, 2016, I was satisfied that, while Constable Jones' use of public money to purchase equipment and supplies for the making of decals and t-shirts for a two-person office could certainly be questioned from a practical standpoint, that use did not violate any laws. At that time I was further satisfied that Jones had separately purchased the equipment and supplies which he used to manufacture the t-shirts and decals he produced for the benefit of his political campaign.
12. On March 8, 2016, I personally advised the complainant that no criminal charges would arise from the original complaint. That should have been the end of the matter.
13. However, during the course of my office's investigation, Constable Jones voluntarily provided to Investigator Ward an email which Jones said would support his claim that his decal and t-shirt business was not improperly commingled with county resources. That email was forwarded by Jones to Ward through the Ellis County email system on February 17, 2016.
14. The email provided by Jones was a communication with a commercial merchandising company. In the communication Jones discussed his order for multiple t-shirts in multiple sizes, all of which displayed the custom design that Jones sold for the benefit of his political campaign. Jones' communication originated from his Ellis County email address, mike.jones@co.ellis.tx.us. In the email that Jones provided to Investigator Ward, Jones stated to the merchandising vendor, "I will use the Ellis County Tax number too for no tax like Johnny." "Johnny" is Ellis County Sheriff Johnny Brown.

15. The email provided by Jones proves that Jones used his county email to conduct personal and political campaign business, and that he may have used his status as a tax-exempt elected office holder to benefit his political campaign. That email triggered further investigation by my office.
16. That investigation quickly found that Constable Jones misused Ellis County resources to operate and promote his personal business of designing, producing, and selling custom decals and t-shirts, and to operate and benefit his political campaign.
17. In his Ellis County email, Constable Jones had a folder labeled "campaign 2016." The folder contained numerous emails related to Jones' political campaign.
18. On several occasions Jones sent voter lists from his county email address to a county email address assigned to Ken Singleton, who is Jones' sole employee, to email addresses assigned to reserve deputies that worked for Jones' office, and to email addresses assigned to other county employees.
19. Jones' wife is also employed by Ellis County. Jones and his wife used their respective Ellis County email addresses to exchange spreadsheets and invoices related to the financial operation of Jones' political campaign.
20. Jones used his Ellis County email as the point of contact for operating a "Go Fund Me" web page dedicated to raising money for his political campaign.
21. From his county email address to another county email address assigned to his sole employee, Jones sent a list of locations for the placement of signs that supported Jones' re-election campaign.
22. Jones used his Ellis County computer to produce graphics and videos he used to promote his political campaign.

23. Jones used his Ellis County cell phone to take photographs of his political opponent's campaign signs and to send and receive campaign-related emails.
24. Jones advertised and used his Ellis County cell phone as the point of contact for anyone interested in purchasing the decals and t-shirts he produced and sold for the benefit of his political campaign.
25. At a meeting with Constable Jones in Jones' office on May 2, 2016, Investigators Ward and Pendley informed Constable Jones that on the following day Investigator Ward planned to take possession of Jones' Ellis County-issued computers and cell phone. Jones was provided the courtesy of advance notice so that he could make arrangements for replacement equipment that would allow the operation of his public office to continue. Investigator Ward took a photograph of Jones' county issued equipment, and he cautioned Jones against any type of tampering with the equipment.
26. On May 3, 2016, Jones informed Investigator Ward that Ward could retrieve the Ellis County computers and cell phone from Jones' residence in Midlothian, Texas, which Jones had moved from his county office. After he confirmed that the equipment was the same as that identified the day before, and that it was in proper working order, Investigator Ward took possession of Jones' Ellis County-issued computers and cell phone.
27. On or about May 11, 2016, Michael Wade Jones, acting in his capacity as Constable, Precinct #4, of Ellis County, Texas, was indicted by the Ellis County grand jury for abuse of official capacity. See Exhibit A, attached.
28. A grand jury reviewed the facts as alleged above and found that probable cause exists to believe that a crime occurred, and issued a warrant for the arrest of Michael Wade Jones

based on said findings. Michael Wade Jones was arrested on May 13, 2016 on warrant DCW 4937.

29. The above allegation constitutes a Class A Misdemeanor and official misconduct under the penal laws of the State of Texas. TEX. PENAL CODE § 39.02 and TEX. LOCAL GOV'T CODE § 87.011(3).
30. On or about May 11, 2016, Kenneth Wayne Singleton, the chief deputy and sole employee of Mike Jones, was indicted by the Ellis County grand jury for tampering with physical evidence, a third degree felony. See Exhibit B, attached. The charged conduct is related to the investigation of Mike Jones.
31. The above allegation constitutes a Third Degree Felony under the penal laws of the State of Texas. TEX. PENAL CODE § 37.09.
32. Two computers and one cell phone, an Apple iPhone, which were issued by Ellis County to Constable Mike Jones remained in the secure possession of my office until they were transported to a forensic laboratory for analysis.
33. In October 2016, my office was notified by the forensic laboratory that Constable Jones' Ellis County-issued iPhone had been remotely erased, and all data on the phone had been deleted.
34. On December 6, 2016, in response to a lawfully executed search warrant, Apple provided my office with the exact date and time on which Jones' Ellis County-issued iPhone was remotely erased through the company's iCloud. Apple also provided the internet protocol (IP) address from which the command to remotely erase the iPhone was sent.
35. According to the information from Apple, Constable Jones' Ellis County-issued iPhone was remotely erased on May 3, 2016, at 7:05 p.m., after the iPhone was taken into my



office's possession. The command to erase the phone was sent from email address [REDACTED]@sbcglobal.net, the personal email address of Mike Jones.

36. On January 18, 2017, in response to a lawfully executed search warrant, AT&T provided my office with the physical address and subscriber information connected to the IP address from which the command to erase the Ellis County-issued iPhone was sent. That subscriber information and physical address belong to Mike Jones and his personal residence in Midlothian, Texas.
37. On or about February 8, 2017, Michael Wade Jones, acting in his capacity as Constable, Precinct #4, of Ellis County, Texas, was indicted by the Ellis County grand jury for tampering with evidence. See Exhibit C, attached.
38. The above allegation constitutes a third degree felony and official misconduct under the penal laws of the State of Texas. TEX. PENAL CODE § 37.09 and TEX. LOCAL GOV'T CODE § 87.011(3).
39. A grand jury has reviewed the facts as alleged above and found that probable cause exists to believe that a crime occurred, and issued a warrant for the arrest of Michael Wade Jones based on said findings. Michael Wade Jones was arrested on February 9, 2017 on warrant DCW 5464.
40. The conduct that is the basis of the misdemeanor charge of abuse of official capacity against Jones was not known to the electorate at the time of Jones' contested primary election in March 2016. The conduct that is the basis of the felony charge of tampering with evidence against Jones did not occur until after the contested primary of March 2016 and before the uncontested general election of November 2016. That conduct was also unknown to the electorate in November 2016. These facts and circumstances render the

forgiveness doctrine, as codified in Texas Local Government Code § 87.001, inapplicable to this removal petition. "Neither may removal be predicated upon acts antedating election, not themselves disqualifying under the Constitution and laws of this State, when such acts were a matter of public record or otherwise known to the electors and were sanctioned and approved or forgiven by them at the election." *In re Laughlin*, 153 Tex. 183, 265 S.W. 2d 805, 808 (1954). "The doctrine's rationale is that the public has the authority 'to forgive the misconduct of an elected official' following a campaign in which all the facts would presumably become known." *In re Bazan*, 251 S.W.3d 39, 42 (Tex. 2007), (citing *In re Brown*, 512 S.W.2d 317, 321 (Tex. 1974)). See also *Bazan*, 251 S.W.3d at 46 ("The protection provided by Section 87.001 applies only to acts committed before an officer's first 'election to office.' . . . An official who commits a high crime on the last day of his prior term is no less unfit than an official who commits a high crime on the first day of his present term.") (J. Willett, concurring).

41. In addition to the official misconduct described herein, Michael Wade Jones has demonstrated incompetence in his role as Constable, Precinct #4, of Ellis County, Texas. He has willfully refused to perform all of the functions of the office since February 16, 2017 by not executing any civil or criminal process in his precinct. Further, he has also failed to attend any session of justice court in Precinct #4 of Ellis County, Texas, in 2017, in violation of Section 86.021 Texas Local Government Code.

The above allegations constitute official misconduct and incompetency committed by Mike Jones in his capacity as Constable, Precinct #4, of Ellis County, Texas. To protect the public and to restore the integrity of the office to which he was elected, Mike Jones should be

removed from office in accordance with the procedures outlined in Chapter 87 of the Texas Local Government Code.

### **III. REQUEST FOR SUSPENSION AFTER CITATION**

After the Order Providing for the Issuance and Service of Citation has been entered of record, and only after the Citation has been served upon the Officer, Michael Wade Jones, the District Court judge sitting by assignment is respectfully requested to temporarily suspend Michael Wade Jones from the position of Constable, Precinct #4, of Ellis County, Texas, and to appoint a temporary replacement. Petitioner requests that the District Court set a bond in conformity with law to cover damages and costs of the officer suspended should the petition fail and the officer's right to resume the office be established. Such bond shall be posted by the person appointed to serve as the temporary replacement officer. See §87.017(b), Texas Local Government Code.

The Order of the District Court to temporarily suspend the officer is interlocutory in nature, and is not a final judgment or decree of removal. See *Ormes v. Quinn*, 113 S.W. 242 (Tex.Civ.App. 1938). The remedy for a suspended officer who successfully defeats a removal petition is against the bond posted by the temporary replacement appointee, but only if it can be shown that the temporary appointee "actively aided and instigated" the filing and prosecution of the removal suit. See §87.019(b), Texas Local Government Code. For this reason, the District Court is requested to appoint a person having no direct interest in, participation in, or role in the filing or prosecution of this Petition for Removal.

### **IV. RELIEF REQUESTED**

WHEREFORE, premises considered, Petitioner prays that the Court, after careful consideration of the allegations and proof herein attached, Order the Clerk to issue and authorize

the service of Citation; and after service of Citation, order the temporary suspension of Michael Wade Jones as Constable, Precinct #4, of Ellis County, Texas, pending final hearing upon the merits; and that after jury trial, the Court remove Michael Wade Jones from the office he has abused in the manner set forth herein. Petitioner also prays for such other and further relief as may be permitted by law.

Respectfully submitted,

PATRICK M. WILSON  
County Attorney – Ellis County, Texas

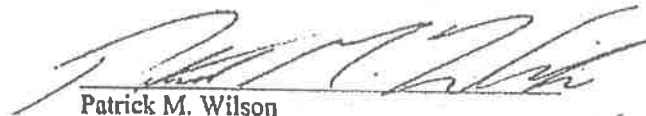


Patrick M. Wilson  
County Attorney, Ellis County, Texas  
State Bar No. 90001783  
109 S. Jackson Street  
Waxahachie, Texas 75165  
972-825-5035  
FAX 972-825-5047  
[patrick.wilson@co.ellis.tx.us](mailto:patrick.wilson@co.ellis.tx.us)

**VERIFICATION**

I, Patrick M. Wilson, do hereby swear and affirm that I am in excess of eighteen years of age, of sound mind, and competent to make this verification. All matters stated herein are, to my personal knowledge, true and correct, based upon my own investigation into the facts of the matters contained in this Petition for Removal.

Date: February 27, 2017.

  
Patrick M. Wilson

SUBSCRIBED AND SWORN before me, to certify which witness my hand and seal of office, this 27<sup>TH</sup> day of February, 2017.



  
Notary Public, State of Texas

FILED FOR RECORD  
2016 MAY 11 PM 2:12  
MELANIE REED  
DISTRICT CLERK  
ELLIS COUNTY, TX

1. **Introduction**  
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 5. **Discussion**  
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 20. **Figure 10**  
 21. **Figure 11**  
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**§ (This Space For Clerk's Use)**

**CO-DEFENDANTS:**

The Grand Jurors, duly selected, organized, sworn and impaneled as such for the County of Ellis, State of Texas, at the January 2016 Term of the 40th Judicial District Court for said County, upon their oaths present in and to said Court that on or about May 02, 2016, and before the presentment of this indictment, in the County and State aforesaid, MICHAEL WADE JONES did then and there, with intent to obtain a benefit, intentionally or knowingly misuse government property, government services, government personnel, or a thing of value belonging to the government, to-wit: a smart phone, a computer, email services, employees of Ellis County, and a motor vehicle, which had come into the defendant's custody or possession by virtue of the defendant's office as a public servant, namely, Ellis County Constable, Precinct 4, to operate and advertise his personal for-profit business, and to operate and advertise his political campaign, and the value of the use of said property, services, personnel, or other thing of value was \$750 or more but less than \$2,500;

Claude Hawthorn  
FOREMAN OF THE GRAND JURY

District Clerk, Ellis County, Texas  
ATTEST: 2-10-17 pgs 1  
[Signature] Deputy



FILED FOR RECORD  
2016 MAY 11 PM 2:12  
MELANIE REED  
DISTRICT CLERK  
ELLIS COUNTY, TX

**Figure 1**

§ (This Space For Clerk's Use)

**CO-DEFENDANTS:**

The Grand Jurors, duly selected, organized, sworn and impaneled as such for the County of Ellis, State of Texas, at the January 2016 Term of the 40th Judicial District Court for said County, upon their oaths present in and to said Court that on or about May 5, 2016, and before the presentment of this indictment, in the County and State aforesaid, KENNETH WAYNE SINGLETON did then and there, knowing that an investigation was in progress, to-wit: an investigation by the Ellis County and District Attorney's Office into alleged abuse of official capacity, intentionally or knowingly alter or destroy or conceal records, documents, or other things, to-wit: emails contained in his Ellis County email account, with intent to impair their availability as evidence in the investigation,

Carla Harthcock  
FOREMAN OF THE GRAND JURY

Dist. Clerk, Ellis County, Texas  
 ATTESD 12/11/11 pgs 1  
 Deputy







## **EXHIBIT B**

## County Judge

---

**From:** County Judge <carol.bush@co.ellis.tx.us>  
**Sent:** Friday, February 05, 2016 1:34 PM  
**To:** Patrick Wilson  
**Subject:** FW: Complaint against Constable Mike Jones  
**Attachments:** Mike Jones complaint.docx

Good afternoon,

I am forwarding the communication below which is addressed to the both of us.

CB

---

**From:** countyjudge [mailto:countyjudge@co.ellis.tx.us]  
**Sent:** Friday, February 05, 2016 11:51 AM  
**To:** County Judge <carol.bush@co.ellis.tx.us>  
**Subject:** FW: Complaint against Constable Mike Jones

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**From:** Roger & Kim Smotts [mailto:[REDACTED]@sbcglobal.net]  
**Sent:** Friday, February 05, 2016 11:44 AM  
**To:** countyjudge@co.ellis.tx.us  
**Subject:** Re: Complaint against Constable Mike Jones

***Kim Smotts***

[REDACTED]

On Friday, February 5, 2016 11:39 AM, Roger & Kim Smotts <[REDACTED]@sbcglobal.net> wrote:

Dear Mr. Wilson, District Attorney and Ms. Bush, County Attorney,

On or about Tuesday, February 2, 2016, my wife, Kim Smotts and I, while having dinner, discussed with Al, owner of Villa Italian, permission to place a Michael Delara campaign sign in the window of Villa Italian, located on 202 W. Main, Midlothian. Al granted permission for the sign to be placed anywhere in the window. Al further instructed that no signs could be displayed in the parking lot or on the sidewalk, since he does not

own that property. He further advised that anyone could place a sign and if anyone asked to place their sign in the window, he would grant the same permission.

On or about Monday, February 8, 2016, I, along with my family, during dinner, in the presence of and with permission of Al's wife, placed a Michael Delara campaign sign in the window opposite of Mike Jones campaign sign. We did not discuss with Al removing Mike Jones sign, nor would we entertain the possibilities of removing or defacing or moving Mike Jones' sign from the original placement in which it was placed.

On or about Tuesday, February 9, 2016, I received information that Mike Jones had personally contacted Al, owner of Villa Italian, concerning the campaign sign for Michael Delara. I was advised that Mike Jones made contact with elected official, Judge Steve Egan, Pct 4, Justice of the Peace, to place a formal complaint against me, alleging that I threatened Al, owner of Villa Italian, in placing a Michael Delara campaign sign in the window and that I placed the sign in the window after Al told me not to and I placed it in the window when he was not there. All of these allegations are false, slanderous, embarrassing, degrading, and deformation of my character and integrity.

Due to threats that have been made and the slanderous false statements and allegations being made about my wife and me, I am filing my official complaint against Constable Mike Jones, Pct. 4 Constable of Ellis County. Mike Jones has accused my wife and me of removing, defacing and vandalizing his campaign signs.

Mike Jones has continued to make slanderous and false accusations and insults threatening my integrity as a police officer, Dallas County Investigator and reputation in the community in which I have lived and have remained involved in.

In speaking to citizens of the community about the election, it has come to my attention that Mike Jones and his partner Chief Deputy Constable Kenneth Singleton are bullies; they intimidate citizens for their votes. Mike Jones and Kenneth Singleton use their official position to confront citizens of Ellis County who display a Michael Delara

sign. Mike Jones and Kenneth Singleton question and guilt citizens to either take their Michael Delara sign down or replace the sign with his. I am extremely upset about how he is treating me, my family, friends and citizens of Ellis County. At this point, I am prepared to contact TCOLE and file an official complaint. I am still a licensed peace officer with Midlothian PD, and these types of allegations could ruin my reputation and damage my character, as they still hold my commission. I want a Seize and Desist order filed on him due to his comments which may have included social media, his false and untruth comments he had made to elected officials and I want the harassing and inappropriate behavior to stop immediately. (Chapter 39 ABUSE OF OFFICE)

During the last election campaign where Michael Delara ran against Mike Jones, Mike Jones left me a threatening voice mail in which he threatened me with violence. At that time, I contacted Texas Ranger, Jason Bobo and an official with Midlothian PD. I was advised that the situation had been taken care of and was assured Mike Jones would not be threatening me or harassing me anymore.

Not long after being notified that Mike Jones had been “counseled”, Mike Jones came to my home and personally, face to face apologized and we remained cordial.

With the recent tyrants and irrational and unpredictable behavior, and taking into consideration the history of the same irrational and unpredictable behaviors, I reached out and contacted Sheriff Johnny Brown who previously advised me he was attempting to control and moderate and counsel Mike Jones and his actions. Sheriff Johnny Brown advised me, after he spoke with Mike Jones, a he has washed his hands of Mike Jones and his behavior and for me to do whatever I deemed necessary to protect myself and my family of continued threatening and harassing and slanderous outbreaks and behavior. Therefore, I have no other recourse than to officially file a complaint against Mike Jones. I am bringing my concerns to you for you to best handle and monitor to ensure mine and my family and friends safety concerning Mike Jones.

Roger Smotts



## **EXHIBIT C**

## County Judge

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**From:** County Judge <carol.bush@co.ellis.tx.us>  
**Sent:** Wednesday, December 16, 2015 4:46 PM  
**To:** Patrick Wilson  
**Subject:** Re: In+Oklahoma+and+also+Ellis+County,+lawmen+say+'Getcher+guns'

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Voices are being heard.

Sent from my iPhone

On Dec 16, 2015, at 1:22 PM, Patrick Wilson <[patrick.wilson@co.ellis.tx.us](mailto:patrick.wilson@co.ellis.tx.us)> wrote:

<http://www.star-telegram.com/opinion/opn-columns-blogs/bud-kennedy/article49979665.html>

<image002.jpg>Patrick M. Wilson  
County & District Attorney  
Ellis County & District Attorney's Office  
109 S. Jackson  
Waxahachie, TX 75165  
p: 972-825-5035  
f: 972-825-5047

Seeking justice, serving, protecting, and representing Ellis County and the State of Texas through partnerships with law enforcement and our community.

## **EXHIBIT D**



## County Judge

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**From:** County Judge <carol.bush@co.ellis.tx.us>  
**Sent:** Thursday, December 10, 2015 9:57 AM  
**To:** Patrick Wilson  
**Subject:** Fwd: Mike Jones  
**Attachments:** Untitled attachment 00069.htm

**From:** Max Mills [mailto: [REDACTED]@gmail.com]  
**Sent:** Thursday, December 10, 2015 8:52 AM  
**To:** countyjudge@co.ellis.tx.us  
**Subject:** Mike Jones

Good morning Judge Bush,

I hope this message finds you well. My name is Max Mills, and I am a current senior at the University of Texas at Austin, but a long time resident of Ellis County. I wish that I did not have to write this email out, but i feel that it is my moral calling to do so.

Yesterday evening, Constable Mike Jones wrote an inflammatory political tirade on his public Facebook page "Constable Mike Jones." The status was a reaction to the surge of South American refugee children coming to North Texas and, in particular, Ellis County. He notes how we should "be moving them closer to the border so we can kick their butts back across the Rio Grande." Again, most of these refugees are children. He writes that "I am told these illegal immigrants are NOT Syrians, but are South Americans! Are you kidding me? Are we supposed to believe anything the Obama Administration tells us?" Jones then concludes with more alarmist and incendiary rhetoric:

"My advice to everyone is to remain vigilant, and to carry your weapon at all times. Ellis County Law Enforcement (My Office Included) will be on a heightened State of Alert to provide a safety net for our citizens, We will increase patrolling in the affected areas you guys. Please pass this information along to everyone you know. Do not hesitate to call 911 if you suspect something is going on. Let us check it out. Meanwhile we will be working hard to get these folks out of Ellis County... Law Enforcement wasn't told until late this afternoon, but apparently the County Judge knew yesterday, but never told the Sheriff.."

When several of my friends and I posted on his status, we were met not with constructive dialogue, but instead with insults from the constable. One such comment read: Hey bonehead! It wasn't a news story yet!"

Constable Mike Jones' inarticulate grunts have been heard before. The Dallas Morning News has a headline dating from earlier in October of this year: "Ellis County Constable explains what he meant be 'rock monkeys in the Middle East.'" See: <http://thescoopblog.dallasnews.com/2015/10/ellis-county-constable-explains-what-he-meant-by-rock-monkeys-in-the-middle-east.html/>

It is an absolute shame that Constable Mike Jones represents Ellis County. His words are xenophobic, reactionary, and unprofessional. I realize that there are First Amendment protections, but as a public official, his words reflect the very worst things about Ellis County. I do not want such a

person representing me or my interests in Ellis County. His words do not make me feel more safe. I actually feel more in danger knowing that a constable and his posse will engage me with threatening language.

In short, I feel that the performance of Mike Jones as a county official warrants an investigation because of the threatening and hostile environment he is fostering.

I want to thank you for taking the time to read this email. I know you have a very busy schedule and I appreciate all that you do for Ellis County. Have a great rest of the day, and I look forward to hearing from you again!

Best wishes,

Max Mills

## **EXHIBIT E**



## ELLIS COUNTY & DISTRICT ATTORNEY

PATRICK M. WILSON

ELLIS COUNTY COURTS BUILDING • 109 S. JACKSON • WAXAHACHIE, TX 75165 • (972) 825-5035 • FAX (972) 825-5047

October 14, 2015

Adam Sweaney  
Texas Rangers  
Texas Department of Public Safety  
1720 E. Main Street  
Waxahachie, TX 75165

*re: report of possible threat toward Ellis County Judge*

Dear Ranger Sweaney:

Ellis County Judge Carol Bush believes her physical safety may be at risk because of comments made toward her by Ellis County Constable Mike Jones. A copy of Judge Bush's letter to me detailing her concerns is included with my letter. I have also included a related newspaper article from this date. For a number of reasons Judge Bush lacks confidence in the ability and willingness of certain county law enforcement agencies to ensure her safety. I am making you aware of this situation to respond as you deem appropriate.

Please call me with any questions or concerns.

Sincerely,

A handwritten signature in dark ink, appearing to read "Patrick M. Wilson", is written over a horizontal line.

Patrick M. Wilson  
County & District Attorney

encl.

## **EXHIBIT F**

## Patrick Wilson

---

**From:** Patrick Wilson <patrick.wilson@co.ellis.tx.us>  
**Sent:** Wednesday, December 11, 2013 9:54 AM  
**To:** Undisclosed  
**Subject:** Reminder about political activity

All Employees:

As you are aware, a new political campaign season is underway. Many statewide and local elections will be contested in the upcoming primaries in March 2014. As provided within Section 2.06 of the Ellis County Personnel Policy Manual, employees of the County are encouraged to vote and exercise other prerogatives of citizenship consistent with state and federal laws. These activities may include voting, participating as a voter registrar, contributing personal money to your preferred candidates or political parties, and actively engaging in campaigning or fund raising and endorsements during your non-working personal time. You will not be subject to retaliation for your political beliefs.

However, please remember that using public resources to affect the result of an election violates the County's personnel policy and the law. As a public employee, you must refrain from engaging in any campaign activity during your regular working time. You are expressly prohibited from using any county office equipment and supplies for the purpose of engaging in any campaign activity. This prohibition includes county office communication systems and devices, such as e-mail, telephones and inter-office mail. This reminder is particularly relevant in light of the fact that a member of our office is a candidate in a local election.

If you have any questions or concerns please speak to me personally.

- Patrick



**Patrick M. Wilson**  
County & District Attorney  
Ellis County & District Attorney's Office  
109 S. Jackson  
Waxahachie, TX 75165  
p: 972/825-5035  
f: 972/825-5047

## **EXHIBIT G**

## County Judge

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**From:** Patrick Wilson <patrick.wilson@co.ellis.tx.us>  
**Sent:** Thursday, December 10, 2015 10:05 AM  
**To:** County Judge  
**Subject:** RE: Mike Jones

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

That's great!!! Good for Max.



**Patrick M. Wilson**  
**County & District Attorney**  
**Ellis County & District Attorney's Office**  
**109 S. Jackson**  
**Waxahachie, TX 75165**  
**p: 972-825-5035**  
**f: 972-825-5047**

*Seeking justice, serving, protecting, and representing Ellis County and the State of Texas through partnerships with law enforcement and our community.*

**From:** County Judge [mailto:carol.bush@co.ellis.tx.us]  
**Sent:** Thursday, December 10, 2015 9:57 AM  
**To:** Patrick Wilson <patrick.wilson@co.ellis.tx.us>  
**Subject:** Fwd: Mike Jones

**From:** Max Mills [mailto:[REDACTED]@gmail.com]  
**Sent:** Thursday, December 10, 2015 8:52 AM  
**To:** [countyjudge@co.ellis.tx.us](mailto:countyjudge@co.ellis.tx.us)  
**Subject:** Mike Jones

Good morning Judge Bush,

I hope this message finds you well. My name is Max Mills, and I am a current senior at the University of Texas at Austin, but a long time resident of Ellis County. I wish that I did not have to write this email out, but i feel that it is my moral calling to do so.

Yesterday evening, Constable Mike Jones wrote an inflammatory political tirade on his public Facebook page "Constable Mike Jones." The status was a reaction to the surge of South American refugee children coming to North Texas and, in particular, Ellis County. He notes how we should "be moving them closer to the border so we can kick their butts back across the Rio Grande." Again, most of these refugees are children. He writes that "I am told these illegal immigrants are NOT Syrians, but are South Americans! Are you kidding me? Are we supposed to believe anything the Obama Administration tells us?" Jones then concludes with more alarmist and incendiary rhetoric:



"My advice to everyone is to remain vigilant, and to carry your weapon at all times. Ellis County Law Enforcement (My Office Included) will be on a heightened State of Alert to provide a safety net for our citizens, We will increase patrolling in the affected areas you guys. Please pass this information along to everyone you know. Do not hesitate to call 911 if you suspect something is going on. Let us check it out. Meanwhile we will be working hard to get these folks out of Ellis County... Law Enforcement wasn't told until late this afternoon, but apparently the County Judge knew yesterday, but never told the Sheriff.."

When several of my friends and I posted on his status, we were met not with constructive dialogue, but instead with insults from the constable. One such comment read: Hey bonehead! It wasn't a news story yet!"

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It is an absolute shame that Constable Mike Jones represents Ellis County. His words are xenophobic, reactionary, and unprofessional. I realize that there are First Amendment protections, but as a public official, his words reflect the very worst things about Ellis County. I do not want such a person representing me or my interests in Ellis County. His words do not make me feel more safe. I actually feel more in danger knowing that a constable and his posse will engage me with threatening language.

In short, I feel that the performance of Mike Jones as a county official warrants an investigation because of the threatening and hostile environment he is fostering.

I want to thank you for taking the time to read this email. I know you have a very busy schedule and I appreciate all that you do for Ellis County. Have a great rest of the day, and I look forward to hearing from you again!

Best wishes,

Max Mills

---

**From:** Melissa Finch Carr [mailto: [REDACTED]@gmail.com]

**Sent:** Thursday, December 10, 2015 8:16 AM

**To:** [countyjudge@co.ellis.tx.us](mailto:countyjudge@co.ellis.tx.us)

**Subject:** Constable Mike Jones is OUT OF CONTROL

Dear Judge Bush,

Last night Constable Mike Jones posted a fear mongering, racist, bigoted Facebook post. It is no longer posted and his Facebook page has been deleted, but I have snapshots of his post that I will attach.

I am in utter disgust that a man in his position of power an authority posted something with so much hate. He talked about the immigrants being brought here from the border. He NEVER Mentioned that it was Hispanic children. He led the citizens to believe these were terrorists. He took out pertinent information that needed to be in the announcement just so he could evoke FEAR in the citizens of Ellis County. He told the citizens they should "carry their guns and be alert". Someone needs to educate him on his responsibilities of protecting the public - even if it includes 300 illegal Hispanic children NOT waging a war on them. People were commenting that they needed to go over there and "scare these jihadist". He never corrected himself or them. I believe he purposely did this to create fear and discord and if believed in what he was saying why did he delete it and take down his Facebook?

I have so much to say, but trying to keep this email in a professional tone and not stoop to his level. Please advise me on any options I may have to censure this man, re-call him or bring about enticing riot charges against him.

Thank you,

Melissa Finch Carr

