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October 21, 2014

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney
City of Hearne
Hearne, Texas

Via facsimile
(979) 279-3712

Re: Recall election for Councilwoman Maxine Vaughn

Mr. Russ:

Yesterday I was retained by Councilwomen Joyce Rattler, Hazel Embra, and Lashunda White regarding the City's refusal to schedule a recall election for Councilwoman Maxine Vaughn. I am informed that the petitioners have submitted sufficient signatures for the recall, but Councilwoman Vaughn, Councilman Michael Werlinger, and Mayor Ruben Gomez are voting to block the recall election.

As you know, the city charter mandates the scheduling of an election once a sufficient number of signatures are presented. Texas courts have consistently held that the duty to hold the election is ministerial, and that failure to schedule the election is grounds for mandamus relief. *See, e.g., In re Jones*, 335 S.W.3d 772 (Tex.App.–Beaumont 2011); *In re Porter*, 126 S.W.3d 708, 711 (Tex.App.-Dallas 2004); and *Duffy v. Branch*, 828 S.W.2d 211, 213 (Tex.App.-Dallas 1992). If Ms. Vaughn, Mr. Werlinger, and Mr. Gomez continue to flout the will of the voters, my clients intend to file a petition for mandamus with the Tenth Court of Appeals, and that court will almost certainly order the City to comply with the law.

Under normal circumstances, Ms. Vaughn, Mr. Werlinger, and Mr. Gomez could not be held personally liable for their votes as council members. However, this appears to be the rare circumstance – violation of a ministerial duty – that may subject them to personal liability for damages under 42 U.S.C. § 1983 for violating the civil rights of the petitioners and the voters. *See, generally, Tamez v. City of San Marcos*, 118 F.3d 1085, 1097 (5th Cir. 1997) (official immunity applies to discretionary but not ministerial acts). In fact, the City itself could later sue these council members to recover any funds that were expended (*e.g.*, your legal fees in any dispute before the Tenth Court) as a result of their refusal to perform their ministerial duties.

On the other hand, and as a purely practical matter, my clients have the votes to block any expenditure of city funds in representing the interests of Ms. Vaughn, Mr.

Werlinger, and Mr. Gomez before the Tenth Court. In other words, rather than using taxpayer money to pay you to represent their interests, Ms. Vaughn, Mr. Werlinger, and Mr. Gomez would have to retain and pay their own attorney, just as my clients have done.

Please let me know not later than October 27, 2014 whether Ms. Vaughn, Mr. Werlinger, and Mr. Gomez intend to respect the law and the voters by scheduling a recall election. If not, we will proceed with litigation.

Thank you in advance for your attention to these matters.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: The Hon. Coty Siegert, Robertson County District Attorney