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April 6, 2016

Mr. Bryan F. "Rusty" Russ, Jr., City Attorney  
City of Hearne  
Hearne, Texas 77859

Via facsimile and email  
(979) 279-3712 / [bryanruss@palmosruss.com](mailto:bryanruss@palmosruss.com)

Re: *City of Hearne v. Milton Johnson*, Cause No. 16-04-19,991-CV (82<sup>nd</sup>  
District Court of Robertson County)

Mr. Russ:

The City of Hearne's lawsuit against Milton Johnson is frivolous. Thirty-six years ago, the Texas Supreme Court held that a city may not postpone an initiative election by seeking a declaratory judgment regarding the enforceability of the proposed ordinance. *See Coalson v. City Council of Victoria*, 610 S.W.2d 744 (Tex. 1980)(attached). Your lawsuit makes about as much sense as suing the Texas Legislature to prevent it from voting on legislation that you think is unconstitutional. As a matter of common sense, the law must first be adopted before one can challenge it in court. Any opinion rendered prior to adoption would be merely advisory, and thus unconstitutional. 610 S.W.2d at 747.

Furthermore, your lawsuit is subject to dismissal because it retaliates against Mr. Johnson for exercising his First Amendment right to petition for redress of grievances. *See Tex. Civ. Prac. & Rem. Code § 27.001*, et seq. You should have known that before you filed suit, but you certainly know now. If your client does not nonsuit its claims by noon on Tuesday, April 12, 2016, Mr. Johnson will aggressively seek sanctions against both you and your client. He will also file a cross-claim against you personally under 42 U.S.C. § 1983 because you violated the First Amendment rights of Mr. Johnson (and many others) by intercepting the petitions and preventing their delivery to the county elections administrator.

Thank you for your attention to this matter.

Sincerely,



Ty Clevenger

cc: Mr. Milton Johnson  
Mr. Coty Siegert, District Attorney  
Robertson County  
Ms. Shirley Harris, Councilwoman  
City of Hearne  
Mr. Rodrick Jackson  
Ms. Martha Castaleja  
Ms. Kelly Brown, Editor  
*Bryan-College Station Eagle*  
Mr. Stephen Fullhart, Executive Producer  
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