Response to Petition for Review
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SUPREME COURT OF TEXAS
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No. 15-0993

In the Supreme Court of Texas

THE HONORABLE MARK HENRY,COUNTY JUDGE OF GALVESTON COUNTY,
Petitioner

v.

THE HONORABLE LONNIE COX,
Respondent

On Petition for Review from the First Court of Appeals, Case No. 01-15-00583-CV

RESPONSE OF THE HON. LONNIE COX TO PETITION FOR REVIEW

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April 18, 2016

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v.

THE HONORABLE LONNIE COX,
Respondent

RESPONSE OF THE HON. LONNIE COX TO PETITION FOR REVIEW

TO THE HONORABLE SUPREME COURT OF TEXAS:

"The Judiciary must have the authority to prevent any interference with or impairment of the administration of justice in this state."

Vondy v. Commissioners Court of Uvalde County, 620 S.W.2d 104, 110 (Tex. 1981)

Overview

The Court should deny review with the notation **"refused"** in accordance with TRAP 56.1(c), promptly restoring this case to the trial court and emphatically preserving the separation of powers contained in Texas Constitution art. II, Sec. 1, and the general supervisory control of the courts established in Texas Constitution art. V, Sec. 8. In so doing, the Court will dissuade numerous other commissioners courts from attempting similar assaults on Texas' independent judiciary.

Course of Proceedings

July 24, 2014—Justice Director Bonnie Quiroga is fired by Mark Henry.

September 24, 2014—Judge Cox orders County Judge Henry to rescind firing of Bonnie Quiroga.

September 23, 2014—Office of Court Administration (OCA) requests Opinion from the Attorney General.

October 8, 2014—County Judge Henry ***and all Commissioners*** join in filing a Petition for Mandamus, No. 01-14-00820-CV, seeking to void Judge Cox's September 24 Order.

October 10, 2014—Attorney General, advised by County Judge Mark Henry's Counsel of mandamus proceedings, declines to issue Opinion Letter.

February 4, 2015—First Court of Appeals denies mandamus in No. 01-14-00820-CV without opinion.

April 14, 2015—First Court of Appeals denies rehearing en banc in No. 01-14-00820-CV without opinion. Concurring Opinion denial of rehearing filed and published.

June 5-7, 2015—Judge Cox orders Ms. Quiroga to return to work. County Judge Henry unsuccessfully attempts to have Ms. Quiroga arrested or prosecuted.

June 8, 2015—Ms. Quiroga returns to work under escort of Judges and Galveston County Sheriff; doors to office have been locked and are subsequently relocked, barring Ms. Quiroga.

June 9, 2015—Instant Case No. 15CV0583 filed in District Court; TRO Granted; Hearing set for July 19, 2016.

June 11, 2015—Petition for Mandamus filed by County ***Judge and all Commissioner***s in No. 15-0445, *In Re Mark Henry*.

June 19, 2016—Texas Supreme Court denies Mandamus in No. 15-0445, *In Re Mark Henry*, allowing case to proceed in trial court that date.

June 19-23, 2015—Hearings in Trial Court.

July 6, 2015—Temporary Injunction signed; Interlocutory Appeal filed immediately. Trial on the merits set for January 11, 2016.

July 14, 2016—Attorney Joseph Nixon enters this case by letter in which he declares that the Order of Temporary Injunction will not be obeyed (Tab E; TRE 202).

September 17, 2015—Judge Cox filed Petition for Emergency Writ of Mandamus in No. 01-15-00797-CV, in light of recent (August) actions of County HR department toward certain Justice Administration workers.

September 21, 2015—Justice Jennings in No. 01-15-00797-CV denies County Judge Henry's request for delay, describing potential gravity of situation. (Tab B, TRE 202).

December 22, 2016—Opinion and Judgment issued in No. 01-15-00583-CV by First Court of Appeals, with Opinion Concurring in Part and Dissenting in Part by one Justice. Court of Appeals issues immediate mandate under TRAP 18.6.

December 22, 2015 County Judge Henry files Motions to Recuse **both** Judge Sharoly Wood **and** Administrative Judge Olen Underwood, in an obvious attempt to "paralyze[]" the justice system. See Underwood Order, Tab C (TRE 202)

December 23, 2015—Petitioner Henry files Motion to Stay Mandate in this case No. 15-0993;

December 29,, 2015—Judge Underwood issues order denying motion to recuse himself and appoints judge to hear recusal (Tab C)(Per TRE 202).

December 30, 2015--Motion to recuse Judge Wood heard and denied.

January 6, 2016—Motion to Stay Mandate granted in No. 15-0993.

January 7, 2016—In No. 01-15-00797-CV, Court of Appeals denies mandamus (Tab D, per TRE 202) referring to opinion of December 22 and to assurances received from County Judge **and all commissioners** ("Respondents")

that no adverse action would be taken. No mention therein of the order of the previous day by the Supreme Court in staying mandate in No. 01-15-00583-CV.

Facts

The Majority Opinion below amply and accurately recited the facts. However, a few facts should be emphasized.

Petitioner Henry misrepresents the decision of the First Court of Appeals below. The Court of Appeals panel ruled unanimously in favor of Respondent Cox. One Justice, (H. Brown, J.) wrote in a partial dissent that he believed the trial judge (The Hon. Sharolyn Wood, Assigned) exceeded her authority in "setting" the salary of the Director at $113,000 after Judge Wood ruled that certain minor tasks would be excluded from the Director's temporary duties. See Petition, Appx. B. There continues to be a dispute as to those duties, and that dispute can and will be resolved at trial on the merits.

The issue now before this honorable court is not the ultimate merits of the case, but simply whether the trial judge in the exercise of her injunctive authority under Tex. Const. art. V, Sec. 8 *abused her discretion*. Petitioner's claim that the trial judge's actions amounted to "...requiring the County Judge ...to reinstate the employment of Ms. Quiroga to a new job position and pay her a salary set by the district court that pertained to a different job" is a gross mischaracterization of the trial court's decision and the present procedural posture. The temporary removal

of three minor tasks was well within the trial court's prerogative to preserve the *status quo*.

The dissent below stresses that a "new" position had been created, absorbing some of the former duties of the director. However, the "new" position was filled by the same person who had previously been a finalist for the Director's job and who was on State Bar suspension through the year 20**25**. PX-17 (State Bar Record). 4 RR 44; 4 RR 167-68. See Temporary Injunction, Tab A, CR 329, p. 3. Furthermore, the salary of that person in the newly created "jail sweeper" job was the same as had been previously proposed for the Director's replacement following the ouster of Ms. Quiroga and efforts at "compromise", without any reduction for the diminished responsibilities of the "new" position. The very creation of that position was arbitrary—and in fact a sham.

Petitioner has engaged in studied and deliberate obstruction in all phases of this case and the underlying dispute. This court may take judicial notice (TRE 202) of its own records, i.e., of the filing by Petitioner *and all commissioners* of a petition for mandamus in Case No. 15--00445, which was promptly denied by this court on June 19, 2015, allowing this case to proceed to hearing.

Obstruction continued *during* the hearing, as for example attempts to replace or reassign an important employee in the Justice Administration Office whose duty

was to collect drug compliance specimens each morning from the various district and county Courts. 4 RR 189-90.

The Temporary Injunction Order, Tab A hereto, demonstrates the skill and ingenuity applied to the process of obstruction. Following page 5 of the injunction there appears the first "Notice of Interlocutory Appeal" filed by Respondent. Judge Wood signed the order at **4:16** pm on July 6, and the signed order was hand "stamped" by the deputy clerk at that time. The Notice of Appeal –clearly prepared well in advance—was electronically filed at **4:18** on the same date, apparently so close on the heels of the Judge's signature that it was automatically or mechanically inserted into the internal electronic filing of the Temporary Injunction Order.

There was method in these maneuvers. The Order of Temporary Injunction commanded Petitioner Henry to deliver a certified copy to each of the County Commissioners and all Department Heads. That would have removed any doubt of their knowledge of the injunction for purposes of the binding effect of TRCP 683.

Respondent Henry and apparently his counsel never had any intention of complying with the injunction in the slightest. Following the Notice of Appeal, Henry's present lead counsel, Mr. Joseph Nixon, sent a defiant letter (Tab E, July

14, 2015) announcing that the injunction was somehow void and would not be heeded.

Worse followed. This Court is requested under TRE 202 to take judicial notice of the proceedings in a subsequent petition for Writ of Mandamus in Case No. 01-15-00797-CV, *In Re Lonnie Cox,* summarized in Tab B hereto. In Approximately August of 2015, Petitioner Henry and others at his direction attempted to coerce various Justice Administration employees into leaving that department (and their service to the judiciary) and accepting specially created and subsidized positions in different county departments. Petitioner Henry requested a delay in filing a requested response. That request was emphatically denied by Justice Jennings' Order of September 21,2015, Tab B, stating:

> The allegations presented in the petition and supporting affidavitsare serious. See, e.g., TEX. LOC. GOV'T. CODE ANN. Sec. 151.004 (Vernon 2008)("The commissioners court or a member of the court may notattempt to influence the appointment of any person to an employee position authorized by the court under this subchapter."); TEXAS PENAL CODE ANN. Secs. 36.05 (felony offense of "Tampering with Witness"), 36.06 (felony offense of "Obstruction or Retaliation"), 39.02 (offense of "Abuse of Official Capacity")(Vernon 2011), 39.03 (Offense of "Official Oppression")(Vernon Supp. 2014).

The First Court of Appeals dismissed the Petition for Mandamus in No. 01-15-00797-CV in its Order of January 7, 2016 (Tab D; TRE 202), apparently because it had issued a mandate under TRAP 18.6 ("Mandate under Accelerated

Appeals") and was possibly unaware that the Supreme court had stayed that mandate on the previous day.

THIS COURT DOES NOT HAVE INTERLOCUTORY JURISDICITON

I. No "Conflicts" Jurisdiction

Petitioner relies on the 2003 expansion of potential conflict jurisdiction under Texas Govt. Code Sec. 22. 225(e). However, even that expanded jurisdiction is not without limits which militate against the exercise of interlocutory jurisdiction in this case. The cases cited as a basis for "conflicts" jurisdiction are so factually and legally distinct from this case that there is no risk of uncertainty or need for clarification, i.e., no "conflict" under any standard. None of the cases relied upon involved attempts to control the selection process of *judicial personnel* by artificially deflating the salary, as was found here. See Injunction, CR 329, p. 5. Specifically:

- *Commissioners Court of Shelby County v. Ross,* 809 S.W.2d 754 (Tex. App.—Tyler 1991, no writ) did not involve judicial appropriations, but instead dealt with commissioners' determining the number of deputies to be appointed and their compensation.
- *Renfro v. Shropshire*, 566 S.W.2d 688 (Tex. Civ. App.—Eastland 1978, writ ref'd n.r.e.), presents no plausible conflict, holding that the

commissioners court had no right to screen applicants or to veto appointments made by the *county clerk* at various salary steps.

- *Abbott v. Pollock*, 946 S.W.2d 513 (Tex. App.—Austin 1997, writ denied) held that the Commissioners Court could not terminate or appoint *sheriff's office* employees.
- *In the Matter of the El Paso County Courthouse,* 765 S.W.2d 876 (Tex. App. El Paso 1989)(orig. proceeding) and *In Re El Paso County Commissioners Court,* 281 S.W.3d 16 (Tex. App.—El Paso 2005)(orig. proceeding) merely reaffirmed the constitutional and inherent power of the courts to compel funding. They obviously differ from this case, i.e., those disputes did not involve judicial personnel or a scheme which would have the potential for throttling the independence of the judiciary, but instead were clearly major capital investments clearly within the legislative purview of the commissioners courts.

"Arbitrary" and "Fraudlent" Behavior Forfeits Legislative Independence

The linchpin in this case is Tex. Const. art. V, Sec. 8, which gives District courts "general supervisory control" over commissioners courts. Article V, Section 8 was modified to its present form in 1891. Subsequent cases equate the term "arbitrary" with other concepts, such as "collusively" or "fraudulently." See, e.g., *Hooten v. Enriquez*, 863 S.W.2d 522 , 528(Tex. App.—El Paso 1993 no writ),

noting that a district court may enjoin an act of a commissioner's court that is performed "arbitrarily, capriciously, collusively, fraudulently, or in abuse of its discretion." Article V, Section 8 was amended in 1891. Soon thereafter, this court gave meaning to the ambit of that provision by exploring and defining what constituted "arbitrary" behavior.

For example, in *Oden v. Barbee*, 129 S.W. 602, 603 (Tex. 1910), this court found jurisdiction under art. V, Sec. 8 where citizens of an objecting county would have been deprived of their constitutional election franchise by the cynical actions of a commissioners court in an adjacent county. See, also, *Doyle v. Slaughter,* 250 S.W. 1090, 1092 (Tex. Civ. App. –Amarillo 1923)(following *Doyle*).

In *Rodriguez v. Vera,* 249 S.W.2d 689 (Tex. Civ. App.—San Antonio 1952, no writ) the court of appeals gave additional form to the term "arbitrary". *Vera* was the product of Starr County politics, and held that art. V, Sec. 8 conferred jurisdiction to void a commissioners court order changing polling places. The previous polling site had been very adequate. However, the "new" site was located on an unpaved road, in an uncomfortably small building which lacked "utility conveniences". The change in polling places was a transparent attempt to neutralize the votes of about 1,000 citizens of the precinct.

II. No "Dissent" Jurisdiction

"In my opinion, the judiciary's inherent authority
does not provide Authority under these facts for the
district court to set Quiroga's salary."

--Dissent below at p. 15 (Slip Opinion).

"Everybody has a right to their own opinion, but
there's only one set of facts."

--Phil Gramm (Attributed)

There is no "dissent" jurisdiction under Tex. Govt. Code Sec. 22.225(e) because the dissent below did not address its analysis to the **facts as found by the trial court and binding on the Court of Appeals.** *INEOS Grp. Ltd. v. Chevron Phillips Chem. Co.*, 312 S.W.3d 843, 848 (Tex. App.—Houston [1st Dist.] 2009, no pet.) Instead, the dissent repeatedly bases its opinion on its own view of the record, either contradicting the district court's fact findings or suggesting additional fact findings which no appellate judge has the power to make.

Thus, the dissent's "opinion" on matters of law are not "material to the decision" per Sec. 22.225(e) because they did not address the binding facts which limit the scope of interlocutory appeal. *INEOS Grp. Ltd. , supra.* If it were otherwise, then virtually any Court of Appeals justice could alter the binding facts as found below to create further interlocutory appellate jurisdiction in defiance of Tex. Govt. Code Sec. 22. 225(e).

Paradoxically, although the dissent questions the authority of the district court to "set" the salary of Ms. Quiroga, it proceeds to find its own legislative "facts" as to the salaries of the "new" director ." See Dissent, p. 26, n. 17.

Like Oscar Wilde's definition of a cynic, Petitioner and the Dissent seem to know the price of everything and the value of nothing. This case was never just a budgetary beef. It is about County Judge attempting to establish **control** over trial judges in violation of the Separation of Powers Clause, Tex. Const. Art. II, Sec. 1.

At p. 27, the dissent suggests an unworkable solution:

> [T]he district court should have returned the issue of setting Quiroga's salary to the commissioners court to be determined in accordance with its legislative functions, rather than performing that function itself."

The Dissent ignores the district court's finding that Respondent and his fellow commissioners had undermined the independence of the judiciary and *would continue to do so*.Opinion, p. 22. That fact finding was amply supported, e.g.:

- Prior to the institution of suit, Respondent and others filed a bogus and ill-received mandamus precisely for the purpose of preventing the Attorney General from issuing an opinion that might have led to a settlement—or simply undermined Respondent's arguments.

- The Commissioners Court attempted to bully judges by using the commissioners court agenda to announce plans to complain about Respondent Cox to judicial authorities. Order, Tab a, p. 6, second item.
- Petitioner Henry tried block Ms. Quiroga out of her office on June 8, 2015; Tab A, p. 5, and later that day and evening again changed the locks on Ms. Quiroga's (Order, Tab A, p. 6);
- Petitioner then denied phone and computer facilities to Ms. Quiroga (Order, Tab A, p. 6)
- Ultimately, Petitioner Henry attempted to create a justice administration *"answerable only to the county judge"* and thereby undermining the independence of the courts. (Order, Tab A, p. 4)

The subject matter of this case is not money or salary—it is judicial independence and *public confidence in that independence*. The district court found that in a variety of ways Petitioner had attempted to obstruct ("stymie") the trial judges by attempting to control the selection of the person who would occupy a sensitive position directly impacting the operation of the courts. As found by the district court, the salaries "set" for the Director were were merely the means to an unconstitutional end—undermining the independence of the judiciary. Order, Tab A, pp. 2 et seq; See Tex. Const. art. II, Sec. 1.

III. Review Should be Refused perTRAP 18.6

The majority opinion below correctly stated the law in all respects.

Moreover, the grant of review—even if it resulted in affirmance-- would incalculable harm to the Separation of Powers by encouraging other commissioners courts to exert improper influence over trial courts and thus force them to capitulate or enter into expensive wars of courtroom attrition. Those contests too often could be "won"—without supervisory judicial review-- by misguided commissioners, whose power of the purse extends to the extravagant and virtually unlimited employment of counsel—as is well illustrated in this case.

Petitioner claims that, "This suit boils down to a salary dispute." Petition, p. 7. It is not. The "salary dispute" was just a means to an end. The trial court (Temporary Injunction, Tab A, p. 5) found that Judge Henry had used a salary survey process *"...to orchestrate the salary of the replacement administrator for the courts at the lowest possible level, undermining the independence of the judiciary."*

Even if interlocutory jurisdiction were found to theoretically exist, judicial discretion would militate against its exercise. *In re H.V.,* 252 S.W.3d 319, 323-24 (Tex. 2008) illustrated factors to be considered in deciding whether **interlocutory** jurisdiction should be asserted:

A. **Need for clear and easy application of law**—In *In re H.V.*, the Court held that interlocutory review was appropriate in part to facilitate the frequent – almost daily—needs of law enforcement to have clear guidance in searches. No such factor exists here. The post of Director as it previous existed was unique—as are the extreme and transparent methods employed by Petitioner and his co-actors, counsel and subordinates. *Id.*

B. **Time and urgency**. As *H.V.,* expressed it, "We do not have the luxury of waiting for a final appeal...." *Id.* That factor does not apply here—except in reverse. When the Opinion and mandate below were issued on December 22, 2015, the parties were **twenty days** away from a trial setting on January 11, 2016, The judiciary of Galveston County does not have the luxury of delay. Likewise, trial judges in many courts across the State of Texas cannot "afford" to wait for interlocutory judicial review because the intervening time, it is likely that other county judges and commissioners will mount similar attacks on judicial independence.

See, e.g., *amici* briefs herein and below. The immediate and lasting casualty will be judicial independence in Texas.

C. Fairness to litigants. In *H.V.*, jurisdiction was exercised in part because in the absence of a definitive ruling, such that the State might be prejudiced due to its inability to appeal from an acquittal. *Id.* No such factor is at work here. Petitioner Henry and all other defendants when joined will have ample opportunity to appeal any adverse judgment.

IV. The Dual Fallacies of Petitioner's Position

Petitioner and the Dissent urge that the budgetary or legislative functions of the commissioners court are an inviolable prerogative which cannot be exercised in the least by the courts, even under the supervisory authority of art. V, Sec. 8. That view relies on two false assumptions, even apart from the clear wording of that constitutional provision.

First, the demarcation line between legislative and judicial functions under art. II, Sec. 1 has never been absolutely rigid. There are occasions when one department may appear to intrude on the functions of the other, but only pursuant to a specific constitutional grant of authority. See, e.g., *Hooten, supra.* Here, that grant is the supervisory control found in art. V, Sec. 8.

Second, Petitioner and the Dissent apparently assume that the budgetary prerogatives of the commissioners court may never be forfeited, and may survive

despite unchallenged findings that they have been applied arbitrarily for an improper purpose and that Petitioner and that he will continue to do so.

That cannot be the law. As the majority below correctly stated, the legislative function of the Commissioners Court is protected only "when properly performed." Opinion, p. 58, citing *Griffin v. Birkman*, 266 S.W.3d 189, 195 (Tex. App. – Austin 2008, pet. denied). There is no reason to even hope that the Dissent's disposition would lead to responsible behavior by Petitioner—or other commissioners in other counties. For example, County Judge Henry or his subordinates could conjure up a "new, improved" salary survey that would lead to an increase in the proposed salary of , say, one whole dollar per year above the previously rejected figure. *See and compare, Commissioners Court of Houston County v. Rodgers*, 691 S.W.2d 753, 754-55 (Tex. App.—Tyler 1985, no writ)(salary of $1 per year equivalent to no salary at all); *Vondy v. Commissioners Court of Uvalde County,* 620 S.W.2d 104 (Tex. 1981).

Even if this fight return to court again-- and again, *ad infinitum*-- the ultimate result would be an endless game of "Mother, May I?", forcing the judiciary into endless litigation until time, attrition and undisciplined commissioners prevail. *Compare, Hallco Texas, Inc. v. McMullen County,* 221 S.W.3d 50, 63 (Tex. 2007)(Hecht, J., dissenting in connection with the use of

"ripeness" standards to delay and "whipsaw" landowners). Article V, Sec.8 and art. II, Sec. 1 would both be nullified.

V. Non-Joinder of Commissioners Neither a "Fundamental" Defect nor Basis for Interlocutory Jurisdiction

There is no statute which expands the interlocutory jurisdiction of this court beyond Tex. Govt. Code Sec. 22.225(e). Petitioner nevertheless attempts to assert that the non-joinder of the other members of the Commissioners Court was "fundamental" error.

That assertion is in the first place "fundamentally" incorrect. The Opinion quote (pp. 55-56) from *Brooks v. Northglen Assn.,* 141 S.W.3d 158, 162-63 (Tex. 2004) is particularly apt:

> ....The doctrine of fundamental error should no longer protect persons from the binding force of judgments when they have had an opportunity to raise the absence of the non-joined person and waived it.

All four county commissioners in question have been intimately involved with attempts to hobble the resolution of this dispute and then to scamper for cover (and to provide "funding" on minimal notice) when the First Court of Appeals fired a shot across their bow. See Orders of Justice Jennings, Tabs B and D, e.g. by:

--Purporting to "ratify" the "sua sponte" firing of Ms. Quiroga by County Judge Henry;

--Filing a the original mandamus action No. 01-14-0820-CV for the purpose of preventing the Attorney General from issuing an Opinion; Injunction (Order, Tab A, p. 4);

--Filing a Mandamus proceeding in this Court in No. 01-0445, In Re Mark Henry et al, seeking to stay the June 19 hearing in the trial court; and

--Filing a "response" in No. 01-15-00797-CV giving "assurances" that no further action would be taken (Tab D; Order Of First Court of Appeals on January 7, 2016).

It was of course Petitioner Henry (presumably acting with the authority of his fellow commissioners) who attempted to sabotage the Order of Injunction and its directive to inform all other commissioners by filing a notice of interlocutory appeal within two minutes of the trial judge's signing the order on July 6. See Petition, Tab A, inserted Notice of Appeal.

In this case, it appears that **all four** commissioners and the county itself were virtually represented by County Judge Henry because they were bound by the judgment, i.e., by operation of TRE 683 and the order contained in the injunction (p. 9) requiring that the County Judge "...immediately provide written notice by

copy of this order to *each county commissioner* and all County Department heads ...." (emphasis added). The privity of interest is patent and there is obvious common interest between Petitioner Henry and the remaining members of the commissioners court. *State v. Naylor*, 466 S.W.3d 783, 789 (Tex. 2015).

VI. A Note on *Amici Curiae*

This fight has lots of cheerleaders. Before the Court of Appeals, something called the "Texas Conference of Urban Counties" filed an amicus brief. Before this court, the Office of the County Attorney of Harris County recently filed an amicus, purportedly on behalf of "Harris County."

The *amicus* filings show that a disturbing number of Texas politicians are upset because they might not, after all, be able to pressure trial judges in their own bailiwicks. It may be that such office holders simply "...misunderstand the constitutional role and function of the judiciary as a separate, independent and equal branch of government...." Opinion, p. 75, quoting *Mays v. Fifth Circuit Court of Appeals,* 755 S.W.2d 78, 83 (Tex. 1988). However, that will not stop them from acting on those misapprehensions if review is not **promptly refused.**

The grant of review, with nothing more, could and probably would ignite numerous similar disputes in counties across Texas. In the interval of time

necessary to brief, argue and dispose of appeal in this case, incalculable damage could be done to the independence of the judiciary.

Conclusion

This case constitutes an assault on judicial independence conducted with extreme defiance and obstruction. *See and compare* , *In Re Reed,* 901 S.W.2d 604 (Tex. App.—San Antonio 1995)(orig. proceeding):

> This court recognizes that some of the procedures utilized in the present matter appear to be somewhat unusual. However, this court was faced with a situation apparently lacking in precedent--the refusal of a subordinate court to obey the direct order of a superior court

Reed, supra, 901 S.W.2d at 611-12.

The issues presented and the likelihood of permanent impairment of judicial independence amply justify prompt refusal of review under TRAP 56.1 (c).

Prayer

For the above reasons, it is prayed that this honorable court promptly REFUSE the Petition for Review and immediately rescind its prior order staying mandate, or alternativelyissue an immediate mandate under TRAP 18.6.

Respectfully submitted,

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Certificate of Compliance

The foregoing instrument in relevant parts contains 4,416 words in Times New Roman Type.

Mark W. Stevens

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Certificate of Service

The foregoing was efiled and e-mailed PDF N. Terry Adams, Jr. at the firm of Beirne Maynard Parsons LLP (tadams@bpmllp.com) and to Mr. Joseph M. Nixon at the same firm (jnixon@bpmllp.com) ; Nicholas Stepp (nstepp@bmpllp.com) ; and James E. "Trey" Trainor (ttrainor@bmpllp.com); as well as to amicus counsel Bruce S. Powers (bruce.powers@cao.hctx.net) on April 18, 2016.

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