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**To:** John Dahill

**Subject:** Urban Counties News, October 27, 2015: Urban Counties Files Amicus Brief in Galveston County Matter

October 27, 2015

To All Urban Counties:

Yesterday I filed the attached brief on behalf of Texas Conference of Urban Counties, as Amicus Curiae, in a Galveston County case that raises important questions regarding how a district court may exercise its inherent judicial authority to require court staffing and its supervisory jurisdiction over actions of a county commissioners court. At its August 2015 meeting, the Urban Counties Membership adopted a resolution expressing support for the position of the Galveston County Commissioners Court in this matter.

The case involves a dispute over a county employee who was terminated by the Galveston County Commissioners Court. While the employee supervised the court collections program, the personal bond office, and the county law library, her responsibilities had morphed over the course of several years to include performing some functions of a court administrator. Upon the employee's termination, one district judge issued orders – without prior notice to the commissioners court or an opportunity to be heard – demanding that the employee be restored to her former position. Subsequently, the district judge filed a lawsuit against only the Galveston County Judge, and requested the enforcement of his prior ex parte, sua sponte orders. The trial court granted a temporary restraining order – again, without notice to the County Judge or an opportunity to be heard – and subsequently issued a temporary injunction after hearing evidence. The district judge has asserted that he is exercising his inherent judicial authority to compel staffing necessary for the judiciary to operate, and the district court's supervisory jurisdiction over the actions of a commissioners court.

Texas case law is very clear: in exercising inherent authority or a district court's supervisory jurisdiction over the actions of a commissioners court, the judiciary must afford the commissioners court due process. That means the commissioners court must be given notice of the proposed exercise of authority and an opportunity to be heard. Further, a district court may not itself initiate its supervisory jurisdiction over the actions of a commissioners court; that jurisdiction may only be invoked by the filing of a cause of action with the district court.

In the Galveston County case, the district judge erred in attempting to invoke the district court's supervisory jurisdiction without a case being filed in the court. And the judge erred in issuing orders without providing the Galveston County Commissioners Court notice and an opportunity to be heard. The same mistake was made by another judge in granting the temporary restraining order.

One additional issue raised in this case is the appropriate standard of review to be used by a district court in exercising its supervisory jurisdiction over a commissioners court. A long line of cases, many from the Texas Supreme Court, hold that the actions of a commissioners court may be overturned only if the commissioners court acted beyond its authority or when the commissioners court has clearly abused its discretion, which requires a showing that the commissioners court acted arbitrarily and

capriciously. If there is any rational basis on which the commissioners court could have reached the decision it did, then the commissioners court has not acted arbitrarily and capriciously.

The case is on appeal in the First Court of Appeals (Houston). Oral arguments were held October 15.

Please do not hesitate to contact me if you have any questions on this or any other matter.

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