

CAUSE NUMBER 352-301689-18

ZACK MAXWELL, § IN THE DISTRICT COURT
Plaintiff, §
v. § _____ DISTRICT
CITY OF ARLINGTON and §
JEFF WILLIAMS, in his individual §
and official capacity as Mayor, §
Defendants. § TARRANT COUNTY, TEXAS

**VERIFIED ORIGINAL PETITION,
APPLICATION FOR TEMPORARY RESTRAINING ORDER, TEMPORARY
INJUNCTION, PERMANENT INJUNCTION, DECLARATORY RELIEF, AND
VIOLATIONS OF THE TEXAS OPEN MEETINGS ACT**

COMES NOW plaintiff and petitioner ZACK MAXWELL ("Plaintiff") to seek injunctive relief preventing the City of Arlington from violating the notice requirements of the Open Meetings Act, particularly in regard to the City's apparent determination to sidestep a petition-citizen charter amendment limiting councilmember terms by illegally placing an inadequately-noticed second charter amendment on November's ballot to muddy the issue, rather than honestly defeating the citizen-driven measure which qualifies for inclusion on this November's general election ballot.

Plaintiff seeks injunctive relief in the form of an injunction to prevent the inclusion of the second improperly noticed proposed charter amendments and mandamus to force the City to comply with the Open Meetings Act, and a declaration that the City's attempted end-run around the citizen-driven charter amendment violates the Open Meetings Act.

1. DISCOVERY LEVEL

1.1. Plaintiff intends that this case be under Discovery Level 3.

2. VENUE and JURISDICTION

2.1. Plaintiff seeks monetary relief of \$100,000 or less and non-monetary relief, and all other relief to which they are entitled; such damages sought are within this Court's jurisdictional limits.

2.2. Venue is proper in Tarrant County, as all substantial events have occurred there.

3. PARTIES

3.1. Plaintiff Zack Maxwell is resident of Arlington, Texas and may be contacted at the address of his legal counsel, the undersigned.

3.2. Defendant City of Arlington is an incorporated political subdivision of the State of Texas and can be served with summons upon City of Arlington, Texas, through its mayor, W. Jeff Williams, wherever he may be found, including his workplace, 101 W. Abram St. Arlington, Texas, his residence, or wherever he may be found.

3.3. Defendant W. Jeff Williams is mayor of the City of Arlington (“City” or “Arlington”) and responsible for signing ordinances and represents the City in legal matters and may be served as stated above.

4. BACKGROUND

4.1. Plaintiff organized a petition drive forcing the City Council of Arlington (“Council”) to place a proposed charter amendment on the upcoming November 6th ballot as a special election.¹ If approved by the electorate, the charter amendment will limit the terms of city council members to three terms as city council and three terms as mayor. Plaintiff and his allies obtained more than 11,000 signatures in about ten weeks to meet the petition requirements and a city deadline.

¹ All dates in this document refer to 2018 unless otherwise stated.

4.2. The City Secretary's office performed its duties, and the Council placed the matter on the agenda for a regular meeting on August 7 for a first reading. A true copy of the relevant portion of the published agenda is attached as Exhibit 1; the relevant part, listed under "XII. ORDINANCES – FIRST READINGS" is repeated faithfully here:

12.4. Ordering a November 6, 2018 Special Election

First reading of an ordinance ordering a Special Election to be held on November 6, 2018 in the City of Arlington for the purpose of submitting an amendment to the Arlington City Charter to add a new Section 9 of Article IV to provide that the Mayor and City Council members shall be limited to three elected terms and that no person shall serve as a Council Member for more than three elected terms, and under no circumstances may any person ever serve for more than twelve years in combination as a Council Member and Mayor, and the term that each person as Mayor or as a Council Member is currently filling, and all terms served prior to that current term, shall be counted for purposes of determining whether three terms have been served, and that existing Section 9 of Article IV shall be renumbered to Section 10; prescribing the form of ballots; providing for notices; providing this ordinance be cumulative; providing for severability; providing for governmental immunity and providing for injunctions.

[Staff Report- Ordering a November 6, 2018 Special Election.doc](#)

[Ordinance- Ordering a November 6, 2018 Special Election.pdf](#)

4.3. A true copy of the referenced document of the above excerpt entitled "Ordinance- Ordering a November 6, 2018 Special Election" is attached as Exhibit 2, and the referenced Staff Report as Exhibit 3. No part of the agenda indicates to a reader that the Council may be considering the *length* of council members' terms in any way or any other ordinance. Rather, the reasonable reading of the agenda item indicates that the Council is doing exactly what is required of it in order to move the petition-driven proposed amendment through the required process so it can appear on the ballot in November as state law requires it to do.

4.4. On August 7th, the Council performed the first reading of the ordinance and voted in favor of the continuation of the petition process. Plaintiff expected that the second and final reading would occur as required on a special meeting on August 14th.

4.5. However, on August 11th (inexplicably on Saturday afternoon near the absolute 72-hour deadline dictated by the Open Meetings Act), the Council released its agenda for the Special Meeting on August 14th, which includes what it is calling a final reading of the ordinance. An excerpt of the relevant portion of this agenda is attached as Exhibit 4 and reads as follows:

ORDINANCES - FINAL READING

3.2. Ordering a November 6, 2018 Special Election

Final reading of an ordinance ordering a Special Election to be held on November 6, 2018 in the City of Arlington for the purpose of submitting amendments to the Arlington City Charter to provide: that Mayor and Council terms shall be for three years and notwithstanding any other provision in the City Charter, no more than three consecutive three-year terms and a person who has served as a Council member may be a candidate for Mayor at any time regardless of the number of terms served as a Council member, and the term limits shall not be applied retroactively; to add a new Section 9 of Article IV to provide that the Mayor and City Council members shall be limited to three elected terms and that no person shall serve as a Council member for more than three elected terms, and under no circumstances may any person ever serve for more than twelve years in combination as a Council member and Mayor, and the term that each person as Mayor or as a Council member is currently filling, and all terms served prior to that current term, shall be counted for purposes of determining whether three terms have been served, and that existing Section 9 of Article IV shall be renumbered to Section 10; and that levying of taxes shall be in accordance with State law; providing for notices; providing this ordinance be cumulative; providing for severability; providing for governmental immunity and providing for injunctions.

[Staff Report - Ordering a November 6, 2018 Special Election.doc](#)

[Ordinance - Charter Election final reading](#)

4.6. A true copy of the “Ordinance – Charter Election final reading” (“Final Ordinance”) referenced in the excerpt is attached as Exhibit 5, and the referenced Staff Report as Exhibit 6.

4.7. As the agenda for August 14th reads now, the ordinance ordering a special election is now adding *three* potential charter amendments, the original one required by the petition drive (“Citizens’ Amendment”), a new alternative which among other differences, lengthens council members’ terms (“Council’s Alternative”), and yet a third proposal that discusses tax levies.

4.8. The new Final Ordinance (Ex. 5) reflects this change, showing the Citizens' Amendment, the Council's Alternative, and the new proposal regarding state law on the levy of taxes².

4.9. Of course, the Council's Alternative has not had a first reading. It also addresses both term limits *and* also the length of the council members' terms. The Council's decision to lump all three of these proposals together means that a councilmember who does not want Arlington to have any term limits is being forced to vote in favor of the special election where voters will have multiple versions, one of which is arguably more palatable and less easily defeated than another. However, that councilmember has no choice but to vote for the ministerial act of placing the Citizens' Amendment on the ballot, and by that action place two other charter amendments on the ballot as well.

4.10. The Council has apparently decided to count the ministerial act of reading the Citizens' Amendment as a first reading for the entirely new proposed charter amendment, and further, such proposed amendments can consist of two multiple matters undisclosed by prior readings. It appears that the Council believes that it could, at the last second without any prior notice, place a new charter amendment that gives the mayor a salary, implements a \$15/hour minimum wage in the City of Arlington, institutes rent control, and bans straws.

4.11. It is no secret that the majority of council members is against term limits by the remarks they made during the August 7th public hearing on this matter during which they interrogated the plaintiff for more than a half-hour.³ From their own words, it is clear that the Council would not have sought to pass the Council's Alternative had the Citizens' Amendment not survived the

² While the tax levy issue is also objectionable, this pleading will focus on the Council's Alternative; the impact of the remedies sought will automatically limit the Council's activity on that proposed charter amendment.

³ The Council discussion is worth watching, as it demonstrates the disdain it has for the plaintiff that extended for more than 30 minutes, http://arlingtontx.granicus.com/MediaPlayer.php?view_id=9&clip_id=2810. The plaintiff incorporates this publicly available document admissible under the Texas Rules of Evidence as evidence and can provide a 'soft' copy recording upon request.

City Secretary's review intact. As Councilmember Moise explained in an email, the decision on whether to go forward with a 'next step' depended wholly on the validity of the petition.

From: [Helen Moise](#)
To: [REDACTED]
Subject: Re: Alternative term limits proposal
Date: Monday, July 30, 2018 10:58:24 AM

Thank you for your voice Mr. Piel. I am absolutely for a 3 year term and know the cost and time it takes to run every two years personally. A three year term would give us time to work on long term projects without taking 6 months off to run every two years.

I can live with term limits but also understand the argument against them. I have personally always told everyone I would serve 6-8 years if the voters continued to elect me. With that said, I bet some registered voters who signed the term limit petition never vote and it seems that with term limits they then affect city government without ever going to the polls. I want the voters to decide who represents them.

We should know later this week if there were enough valid signatures on the petition to reach the 10% of registered voters needed. **We need to know that outcome before we can really decide the next step.** Whatever the outcome, there is certainly dialogue now about term length and term limits.

Best regards, Helen Moise
City Council Member District 1

This email is also attached as Exhibit 7.

4.12. The above email is evidence that the Council has deliberated in secret and determined that it would not take action unless the petition was successful, and would then add an alternative proposed charter amendment at the last hour to offer a version more palatable in its view.

4.13. The Arlington Charter requires that ordinances shall not contain more than one subject which shall be clearly stated in their title. *See* Art. VII, Section 8, excerpt attached as Exhibit 8.

4.14. The Arlington Charter requires that ordinances must be read at two meetings and one of those meetings must be a 'regular' meeting, unless all members of the Council vote to dispense with the 'at least one regular meeting' rule. *See* Art. VII, Section 10, attached as Exhibit 8.

5. CLAIMS

5.1. SUMMARY

5.1.1. Plaintiff asserts that the Council has failed to properly title its ordinances with regard to these matters. Further, the Council cannot give notice and hold a first reading on a special election particularly for the ministerial act of passing a petition-driven proposed charter amendment which must be approved and then use that first reading as an umbrella for any and all new proposed charter amendments that strikes its collective fancy. Further, the Open Meetings Act disallows the secret deliberations that the Council apparently held to respond to the Citizens' Amendment, either to take action or refrain from acting. Further, the Council must have two readings of any new proposed ordinance, and thus may not introduce an entirely different subject with only one reading.

5.1.2. If the Council wanted the electorate to consider and vote on the Council's Alternative, it had months to properly give notice and pass its preferred version, and could have even waited until the same meeting on August 14th to perform the final reading. But the Council cannot ignore the Arlington Charter and Texas state law to slide a number of different proposed amendments just before a looming deadline and justify ignoring the 'one subject' rule preventing several different subjects to be passed by a single resolution by asserting that they all fall under the rubric of 'special election' when the proposed charter amendments include multiple subjects.

5.1.3. Plaintiff has standing in this suit as organizer of the petition drive upon which these events are based. *Blum v. Lanier*, 997 S.W.2d 259, 261-62, 264 (Tex. 1999).

5.2. MANDAMUS

5.2.1. TEX. LOC. GOV'T CODE ANN. § 9.004(a) and Chapter 277 of the Election Code outlines the right of the municipal voters to petition their governing body to amend its charter. When the requirements of § 9.004 are met, the proposed amendments must be put to a vote; the duty of municipal officials is purely ministerial.

5.2.2. The Supreme Court of Texas has spoke of TEX. LOC. GOV'T CODE § 9.004 as a type of initiative process which "affords direct popular participation in lawmaking; it is an implementation of the basic principle of Tex. Const. art. I, § 2." *Coalson v. City Council of Victoria*, 610 S.W.2d 744 (Tex. 1980).

5.2.3. A city council refusing to comply with the petition process is subject to a district court's injunctive powers. *Blum v. Lanier*, 997 S.W.2d 259, 261-62, 264 (Tex. 1999), cited by *Weiderman v. City of Arlington*, 480 S.W.3d 32 (Fort Worth 2015).

5.2.4. The Council's process handles proposed amendments to its charter by resolution and ordinance, but the state law trumps whatever local process is. The Council's members recognize that they must pass a citizen-driven petition proposal and have no choice to pass such resolutions and place them on a ballot for citizen consideration. However, the Council has added other subjects to the required special election and intends to vote on them en masse, making all of the proposed charter amendments into one required passage. This approach disallows council members from voting against the inclusion of one of the non-mandated proposed amendments which the council members would otherwise be able to vote against.

5.2.5. The email from council member Moise indicates that the Council has illegally deliberated on the subject of term limits and determined that it would refrain from

any action unless Plaintiff's petition passed the City Secretary's review. Such deliberations are illegal under the Texas Open Meetings Act ("Act") and mandamus may be sought to force a government body to comply with the Act.

5.2.6. Plaintiff seeks mandamus from this honorable Court that: a) the Arlington City Council must properly amend the title of the measure to be considered on the August 14 Council agenda from its current title "Ordering a November 6, 2018 Special Election" to "Ordering a November 6, 2018 Special Election for the Citizen-Based Term Limit Charter Amendment" or similar verbiage; b) as a ministerial act, the City Council must vote on Citizens' Amendment singly and apart from any proposed discretionary charter amendment; c) the Council must hold all deliberations regarding term limits in public and in compliance with the Texas Open Meetings Act; d) all proposed charter amendments to be considered for inclusion in the upcoming November ballot besides the Citizens' Amendment must be read a first time and considered as its own subject and then a final time at a later meeting without reliance on the August 7th reading of the Citizens' Amendment; and e) the Council must vote on each proposed charter amendment separately, irrespective of the common date for the special election during which they will be considered by the electorate.

5.3. DECLARATION

5.3.1. Plaintiffs' request for a declaratory judgment is authorized by Section 37.004 of the Texas Civil Practice and Remedies Code. Plaintiff, as the organizer of the petition drive resulting in the Citizens' Amendment has standing to seek the enforcement of state law and the city's ordinances with respect to the passage of the

Citizens' Amendment, which is endangered by the deliberate actions of the Mayor and City Council, which seeks to illegally provide distracting alternatives by refusing to follow even the City's own ordinances. Thus, an actual, substantial and justiciable controversy exists regarding Plaintiffs' rights, status, and legal relations. Unless there is a judicial declaration of Plaintiffs' rights under the Charter and the validity of the City's agenda and notice of proposed ordinances, the democratic process and rule of law is imperiled.

5.3.2. As required by law, the City Council began its ministerial duties to place the petition-supported resolution on the ballot, properly giving notice as required by the Open Meetings Act and provided a first reading at a regular meeting that occurred on August 7th, 2018. The agenda for the August 7th meeting speaks only of the ministerial action that the City is required to perform to place the petition-supported charter amendment on the ballot. However, at that meeting, the council began to deliberate a charter amendment of which the City's agenda gave no notice. Based on the City's agenda disclosed on Saturday, August 11, 2018, the Council appears to be planning to count the noticed ministerial act of reading the petition's charter amendment as also the first reading of the Council's favored version of term limits, which also changes the term of office length of two to three years.

5.3.3. The Citizens' Amendment as recognized and read on August 7th mentioned only the number of terms. The Citizens' Amendment did *not* discuss the length of city council terms. The introduction of the length of terms is a new subject requiring a change in Section 4 of Art. IV of the City's charter, which the Citizens' Amendment did not change.

- 5.3.4. By combining a statutorily required ministerial act with discretionary proposals into an ordinance, the Council is forcing its members to support discretionary proposals which they may not wish to support, causing unnecessary confusion regarding a matter should be straightforward.
- 5.3.5. The actions and statements by council members give evidence that they are illegally deliberating how to address the challenge of the Citizens' Amendment in secret, a violation of the Open Meetings Act.
- 5.3.6. Plaintiff recognizes that a declaration cannot impact an election proceeding once called, but notes for the Court that declarations can and are used to ensure that the process of calling an election is proper.
- 5.3.7. Plaintiff seeks a declaration from this honorable Court that: a) the Arlington City Council's title of the measure to be considered on the August 14 Council agenda, "Ordering a November 6, 2018 Special Election" does not comply with Art. VII, Section 8, in that it does not clearly state what subjects are covered by the election; b) the City Council cannot vote to place ministerial and optional charter amendments on a ballot using the same ordinance; c) now that the City Secretary has reviewed and approved the Citizens' Amendment, the City Council is required by state law to place the Citizens' Amendment on November 6th ballot irrespective of its internal processes; d) the City Council may not count the August 7th reading of the Citizens' Amendment as the first reading for the Council's Alternative or the third mentioned proposal regarding tax levies; and e) the Council has violated the Open Meetings Act with regard to term limit deliberations.

5.4. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTION

5.4.1. Plaintiff requests the Court temporarily restrain defendants immediately and issue a temporary injunction as soon as practicable to prevent placement of the Council's Amendment on the ballot until and unless its approved as required by the City's charter, which includes a) proper notice of its first reading, b) approval of the first reading, c) proper notice of its final reading, and d) approval of the second reading, at least until the Court can hear the plaintiff's motion for a temporary injunction while this suit is pending.

5.4.2. To obtain a temporary restraining order, an applicant must plead all of the necessary facts supporting the issuance of injunctive relief and must prove the following: (1) it has a valid cause of action against the other party; (2) it is likely to succeed on the merits of the underlying lawsuit; (3) it will suffer a probable injury if the injunction does not issue, and (4) granting of the TRO will not disserve any public interest. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Walling v. Metcalfe*, 863 S.W.2d 56, 57-58 (Tex. 1993).

5.4.3. Based on the above, a restraining order and injunction is appropriate.

5.4.3.1. Plaintiff has a valid cause of action; injunctive relief is available to enforce legal charter amendment processes. *Coalson v. City Council of Victoria*, 610 S.W.2d 744 (Tex. 1980). *Blum v. Lanier*, 997 S.W.2d 259, (Tex. 1999).

5.4.3.2. Plaintiff is likely to succeed. No reasonable person would suggest that a notice on an agenda regarding a proposed ordinance that is required to be passed as a ministerial act will be the springboard for multiple discretionary proposed charter amendments. No person would suggest that a vague

description "Ordering a November 6, 2018 Special Election" can be employed so that notice of a first reading of a ministerially required action by the Council can pretend to enable the Council to deceptively slide every manner of proposed charter amendment into a last minute ordinance amendment as asserted by the Council in this procedure.

5.4.3.3. Plaintiff will be harmed if the restraint is not ordered, as the goal of the insufficiently noticed and improperly named ordinance with multiple subjects seeks to deny Plaintiff the opportunity to make his case to his fellow residents and follow the petition process to its natural end without illegal interference.

5.4.3.4. The requested TRO and injunction will not disserve any public interest. Rather, the process as claimed by the Council is motivated by an illegitimate public interest, as no government body can assert a government interest in providing competing proposed charter amendments without the legally required notice that violates Texas law.

5.4.3.5. Plaintiffs request a temporary restraining order be issued immediately as outlined above, followed by a hearing application for temporary injunction.

5.5. PERMANENT INJUNCTION - As supported above, Plaintiff seeks a permanent injunction on the same basis as the temporary injunction discussed above.

5.6. EVIDENCE - An appendix is attached to this petition containing public documents admissible under Texas Rules of Evidence. Also attached is the Declaration of Plaintiff Zack Maxwell to provide support for these allegations and the Moise email, attached as Exhibit 9.

5.7. PROPOSED ORDER - A proposed temporary restraining order and mandamus sought in this case is attached as Exhibit 10.

5.8. CLAIM – ATTORNEY FEES - Plaintiff asks for an award of all costs and reasonable attorneys' fees regarding his claim for a declaratory judgment, as permitted by Section 37.009 of the Texas Civil Practices and Remedies Code and the Texas Open Meetings Act.

5.9. REQUEST FOR DISCLOSURE - Pursuant to Rule 194 of the Texas Rules of Civil Procedure, plaintiffs request that defendants disclose the information and materials described in 194.2(a-1) within 50 days of service of this request.

6. PRAYER for DAMAGES and REMEDIES SOUGHT

WHEREFORE, PREMISES CONSIDERED, plaintiff respectfully requests that the Court render judgment in favor plaintiff Maxwell; that plaintiff recover from defendants damages available pursuant to law or equity, reasonable and necessary attorney's fees, costs, and such other relief to which plaintiffs may show themselves justly entitled, with a temporary injunction during the pendency of the case.

Respectfully submitted,

NORRED LAW, PLLC

By: /s/ Warren V. Norred

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