

NO. _____

MARK WILLIAMS

V.

JEFFREY NORWOOD and
ANTHEM MEDIA, INC.

§
§
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§
§
§

IN THE DISTRICT COURT OF

GREGG COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MARK WILLIAMS, Plaintiff herein, and files this Original Petition against Jeff Norwood and Anthem Media, Inc., Defendants herein, and in support thereof would respectfully show the following:

I.

Discovery Control Plan

Plaintiff requests that discovery in this action be conducted by Rule (Level 2).

TEX. R. CIV. P. 190.3.

II.

Parties

Plaintiff Mark Williams is a resident of Gregg County, Texas.

Jeff Norwood ("Norwood") may be served at his residence located at 5811 Carry Back Lane, Austin, Travis County, Texas 78746.

Anthem Media, Inc. ("Anthem Media") is a Texas corporation. It may be served through its registered agent for service of process, Jeff Norwood, 5811 Carry Back Lane, Austin, Travis County, Texas 78746.

III.

Jurisdiction and Venue

The damages incurred by Mark Williams exceed the minimum jurisdictional limits of this Court.

Venue is proper in this county because all or a substantial part of the events giving rise to this suit occurred in Gregg County, Texas. TEX. CIV. PRAC. & REM. CODE ANN. § 15.002.

IV.

Factual Background

A. Overview

Norwood is the sole owner and principal of Anthem Media, a political consulting firm. In the fall of 2005, Norwood conceived of a scheme to unseat certain "liberal" Republican incumbents in the 2006 Republican Primary election. To that end, Norwood, along with Bill Crocker and David Porter, formed the Texas Republican Legislative Campaign Committee ("TRLCC"), a political action committee, to sponsor conservative challengers. To fund his endeavor, Norwood solicited or approached Dr. James Leininger, a wealthy man living in San Antonio. Leininger had been a prolific contributor to Republican and conservative causes in the past, and Leininger agreed to help fund the TRLCC which would in turn finance the campaigns of those Republican challengers who were not opposed to school choice vouchers and who challenged Republican incumbents who were opposed to vouchers. Leininger was generous in his help. He contributed \$2,608,706.66 to the TRLCC from November 15, 2005 through

March 31, 2006.¹ In fact, Leininger funded over 99.9% of the total funds received by the TRLCC during that period. The TRLCC received a mere \$2100 from sources other than Leininger.

With impending filing deadlines, Norwood acted quickly to locate and secure candidates who would be satisfactory to Leininger. Norwood's plan ultimately targeted five Republican incumbents: Tommy Merritt, Texas House of Representatives, District 7; Roy Blake, Texas House of Representatives, District 9; Carter Casteel, Texas House of Representatives, District 73; Delwin Jones, Texas House of Representatives, District 83; and Charlie Geren, Texas House of Representatives, District 99. In four of the five races, Norwood recruited the challenger-candidate. Anthem Media profited from Norwood's scheme. It acted as the media consultant for all five Leininger-backed challengers. The TRLCC was funded by Leininger and managed, on a day-to-day basis, by Norwood. Norwood paid Anthem Media a total of \$1,809,172.69 from the TRLCC for services it provided to the five campaigns.² Norwood paid Anthem Media \$512,115.76 from the TRLCC for its services to the Mark Williams campaign alone.³ Rather than cash contributions, Williams' campaign, and campaigns of the other challengers, received "in kind donations" for services rendered by Anthem Media and paid for directly by the TRLCC.

B. The District 7 Campaign

Norwood's original challenger for the District 7 seat was White Oak, Texas Mayor Tim Vaughn, but in December of 2005, Vaughn reconsidered and decided against

¹ Tex. Ethics Comm'n General-Purpose Comm. Campaign Finance Reports for Texas Republican Legislative Campaign Committee *available at*

<http://www.ethics.state.tx.us/php/filer.php?acct=00058081gpac> (last visited June 18, 2007).

² *Id.*

³ *Id.*

running. Norwood sought out a replacement. He contacted Mark Williams whom he had met when Williams worked as a volunteer in two congressional campaigns. Norwood promised that funding for the cost of the campaign was in place and that Williams, or any other candidate Norwood recruited, would not need to raise money. Although initially declining interest, Williams was attracted to the opportunity to contend for office without the burden of constant fundraising. After reflection, he called and accepted Norwood's offer and timely filed as candidate in District 7.

Norwood assisted Williams, a relative political novice. He located senior campaign staff. Anthem Media acted as the Williams Campaign's (the "Campaign") media consultant. Norwood was Williams' political advisor. Even before Williams entered the race, Norwood and/or Anthem Media commissioned opposition research on the incumbent, Tommy Merritt, and arranged a preference poll of the likely Republican Party Primary voters in District 7. Norwood and Anthem Media used the information developed through the opposition research and the polling to create Mark Williams' media campaign. In conjunction with Targeted Creative Communications, Inc. ("TCC"), Norwood and Anthem Media prepared the Campaign's direct mail literature. The Campaign was financed by Dr. Leininger's contributions to the TRLCC and its political strategy was designed by Norwood and Anthem Media. After several weeks of positive advertising about Mark Williams, the campaign turned negative, attacking aggressively the incumbent's voting record in blitzes of radio and television commercials and direct mailer advertising.

C. The Lawsuit

The Norwood/Anthem Media strategy enjoyed early success. At the time of his campaign filing, Williams was a virtual unknown to the District 7 voters, and his opponent, Tommy Merritt, was a 5 term incumbent. By mid-February of 2006, approximately three weeks prior to the primary election, the race was, according even to Merritt's polling, "within the margin of error in a dead heat." On Friday, February 24, 2006, Merritt responded with a *negative* campaign of his own by filing suit against Williams, alleging defamation in Williams' campaign advertising. The lawsuit was styled *Tommy Merritt v. Mark Williams*, Cause No. 2006-448-B, 124th Judicial District Court, Gregg County, Texas (the "Lawsuit"), and a copy of the original petition, including a schedule of the specific advertisements and alleged defamatory statements is attached hereto as Exhibit A. Although Williams and his campaign manager approved each of the advertisements prior to publication and each of the advertisements was based upon the opposition research, the advertisements themselves were created by Norwood/Anthem and/or TCC, reputedly experienced professional political consultants.

D. The Defense and Resolution of the Lawsuit

Williams immediately provided Norwood with a copy of Merritt's petition. Norwood expressed outrage, describing the Lawsuit as "absur[d]." In assuaging Williams' concerns with funding a defense of the Lawsuit, Norwood promised Williams in an email: "[f]inancially don't worry about the legal bills. It (sic) will be covered." See Exhibit B attached hereto. In a later email, Norwood again confirmed his earlier promise: "I confirmed *all legal bills related to this*, if any, will be taken care of by *our* many friends." See Exhibit C (emphasis added). Norwood continued to reassure

Williams that the legal expenses would be covered repeating that all legal bills in the Merritt defamation Lawsuit would be "taken care of."

In the weeks that followed, Merritt used the Lawsuit and his allegations as the theme of his negative attack campaign. In public statements coordinated with, and following the filing of, the Lawsuit, Merritt called Williams a "liar" and a "coward." He accused him of "breaking the law." Merritt's wife, in television advertisements and direct mailers, decried: "Shame on you Mark Williams." On Primary Election Day, March 7, 2006, Merritt prevailed. Merritt garnered 58.5% of the vote while Williams' finished with 41.5% of the Republican Primary Vote.⁴

Despite his victory, Merritt persisted. The lawsuit did not end. Norwood located counsel for Williams, repeatedly assuring Williams that the expenses related to the Lawsuit were taken care of. In August of 2006, Merritt joined Anthem Media, TCC and Leininger as defendants in the Lawsuit, and each of the other defendants relied upon Williams' counsel to take the lead in defending the lawsuit. In addition to defending himself, Williams counterclaimed against Merritt, alleging defamation in Merritt's campaign attacks. The Lawsuit resolved only on the eve of trial and more than a year after it was filed. The consideration for the settlement consisted of no payment of monies, but merely the issuance of a joint statement by Merritt and Williams. A copy of the joint statement is attached hereto as Exhibit D.

Despite Norwood's promises and reassurances, no money whatsoever has been paid to Williams, or his campaign, or his counsel for legal costs incurred by Williams as

⁴ Texas Secretary of State, 2006 Republican Primary Election Returns *available at* <http://elections.sos.state.tx.us/elchist.exe> (last accessed June 18, 2007).

a result of the lawsuit filed by Tommy Merritt. As of May 31, 2007, fees and expenses incurred by Mark Williams total \$667,903.41.

V.

Causes of Action

A. Breach of Contract

Norwood contacted Williams in December of 2005 and made an offer: if Williams would challenge Representative Tommy Merritt in the Republican Party Primary, Williams would not need to raise money – the cost of the campaign would be covered. Norwood promised that campaign funding was in place and/or would not be a problem. Williams accepted the offer and entered the race. He challenged Representative Merritt. Norwood's offer and Williams' acceptance created a valid and enforceable contract. Williams performed his obligation fully. He campaigned, using Anthem Media and Norwood as his consultants, sincerely and in good faith through his defeat in the primary election. Norwood, however, has failed to perform. Merritt sued Williams in Gregg County, and Williams hired counsel recommended by Norwood and defended the Lawsuit. The cost of the defense of the Lawsuit is a campaign cost. Funding has not been made available for payment of the cost of defense, including both expenses and attorneys' fees, of the Lawsuit.

Furthermore, after the filing of the Lawsuit, Norwood assured Williams and encouraged him to remain in the campaign and to contest the lawsuit with the offer that the legal bills would be "covered" and that "all legal bills related to the lawsuit would be taken care of by our many friends." Norwood identified and contacted legal counsel to represent Williams in the Lawsuit and continuously assured Williams that the legal bills would be paid. Williams accepted Norwood's offer, and he performed fully. He

remained in the race. He engaged counsel recommended by Norwood. He defended the lawsuit vigorously and successfully. Williams' performance notwithstanding, neither Norwood nor Anthem Media has paid or secured payment for the cost of defending the Lawsuit.

Norwood was acting both individually and on behalf of Anthem Media in entering these contracts. Both Norwood and Anthem Media are in breach of the contract to provide funding to pay all costs of the campaign. Both Norwood and Anthem Media are in breach of the contract to pay all legal bills related to the Lawsuit. Williams has been injured by those breaches, and the injury occurred in Gregg County.

B. Negligence and Negligent Misrepresentation

Norwood, both individually and through Anthem Media, acted as campaign and media consultants to Mark Williams and the Campaign. Although having worked as a campaign volunteer in two congressional primaries, Williams had never been a candidate for office. Norwood and Anthem Media, on the other hand, held themselves out to be experienced political professionals. Anthem Media advertises itself to be "one of the most successful political consulting companies in America." It claims to "provide sound strategic advice and winning media" and to be "[e]xperienced at the federal, state, and local levels." Anthem Media bills Norwood as "[a] veteran political strategist [with] over 20 years of experience in campaigns at the national, state and local levels."

Norwood and Anthem Media orchestrated an aggressive and negative campaign attacking Merritt's legislative record in Gregg County. Because of the ready funding from Leininger, the media campaign was unrelenting. Merritt described it as a "pounding with false advertising." According to his testimony, the intensity of the media

campaign was unique and caused Merritt and/or members of his family to suffer stress, anxiety, sleepless nights, and high blood pressure. Despite his status as the incumbent, Merritt lacked the financial wherewithal to respond with a correspondingly intense media campaign. Litigation was foreseeable, and the Lawsuit resulted.

Merritt alleged in the Lawsuit that the Williams' campaign advertising contained false and defamatory statements. The advertisements were created by Norwood and Anthem Media, and/or Norwood, Anthem Media and TCC. The advertisements were based upon research commissioned by Norwood and Anthem Media, but the District Court refused to find as a matter of law that the advertising was neither false nor defamatory nor that it was not made with reckless disregard for their truth. Norwood and Anthem Media failed to use ordinary care in the creation and implementation of the media campaign and in the advice and representations they gave to Williams.

Williams relied upon the skill, expertise and experience of Norwood and Anthem Media in preparing and conducting his campaign. Norwood was aware of Williams' relative lack of experience, and Norwood was aware that Williams was relying upon Norwood's reputed experience and expertise. Norwood and Anthem Media owed Williams a duty of care. Each of the campaign advertisements and each of the allegedly defamatory statements made in those advertisements was created by Norwood and Anthem Media or by TCC, which was engaged by and operating under instructions and supervision of Norwood and Anthem Media, and Norwood and Anthem Media arranged publication of the statements. Those advertisements and their publication precipitated Representative Merritt's Lawsuit against Williams. Norwood

and Anthem Media breached their respective duties to Williams, including but not limited to the following:

1. In managing the Williams' media campaign, Norwood and Anthem Media failed to exercise that degree of care, skill, and competence that a reasonable, competent political consultant would have exercised;
2. Failing to warn Williams of possible adverse consequences, including litigation, of the aggressive and negative campaign;
3. Failing to exercise reasonable care to avoid a foreseeable risk of injury to Williams;
4. Failing to use ordinary care in making representations and in ascertaining the accuracy of information given to Williams and others, including representations regarding funding of campaign costs and other expenses, including attorneys fees and other costs related to the Lawsuit; and,
5. Failing to exercise reasonable care in performing services as a professional political campaign and media consultant, including the creation and publication of the campaign advertising.

As a proximate result of Norwood's and Anthem Media's negligence, Williams was sued. In addition to the stress and anxiety of the suit, he hired counsel and incurred costs and expenses in the defense of the Lawsuit. Norwood and Anthem Media's negligent design and creation of the advertising campaign, negligent rendering of political advice, and negligent misrepresentation with respect to the payment of the legal fees incurred in defending the defamation Lawsuit filed by Representative Merritt have proximately caused damages to Williams. Those damages exceed the minimum

jurisdictional limits of the court, and Williams is continuing to incur “*legal bills related to*” the Lawsuit.

C. Breach of Fiduciary Duty

Norwood and Anthem Media owed a fiduciary duty to Mark Williams. Williams placed a high degree of trust and confidence in Norwood and Anthem Media. Norwood and Anthem Media were no mere political campaign and media consultants. Norwood recruited Williams to challenge Merritt. Norwood, acting individually and on behalf of Anthem Media, induced Williams with the promise of a fully funded political race. Norwood was aware that Williams was a political novice. He assured Williams that money would be in place for the campaign. In addition to the political and campaign advice, Norwood was the de facto trustee for Williams’ campaign finances and/or special agent for the purpose of soliciting and receiving campaign contributions, creation and preparation of the media advertising campaign, and payment of Williams’ media campaign related obligations.⁵ Norwood and Anthem Media enjoyed a special relationship to Williams, and they acquired a high degree of trust, influence and confidence. They, however, breached their fiduciary obligations.

Norwood and Anthem Media placed their own interests ahead of the interest of Mark Williams. Anthem Media was compensated for its services by a commission or percentage of the cost of each “media buy,” and Norwood, as its owner, profited correspondingly. As a result, the more they saturated the District 7 market with media advertising for the Williams’ Campaign, the more money Norwood and Anthem Media

⁵ Mark Williams received \$695,310.62 in mostly “in kind” donations of services from the TRLCC. These donations represent 97.8% of his total campaign contributions of \$710,943.96. See Tex. Ethics Comm’n Candidate/Officeholder Campaign Finance Report for Mark Williams *available at* <http://www.ethics.state.tx.us/php/filer.php?acct=00058469coh> (last visited June 18, 2007).

made. And they made a lot of money. The TRLCC paid Anthem Media \$512,115.76 in fees for the Williams Campaign, and a total of \$1,809,172.69 in the five Leininger-funded challenger campaigns.⁶ They encouraged Williams to enter the campaign with promises that all costs would be paid. The promise has proved false, but Norwood and Anthem Media made their money nonetheless. They orchestrated a media campaign which provoked a harsh counter-attack, including the Lawsuit. When the Lawsuit was filed, they quickly assuaged Williams concerns and urged him to stay the course and to hire counsel upon the representation that all legal bills would be covered. However, their aggressive campaign strategy continued, and they continued to earn commissions on media buys. All the while, Norwood and Anthem represented to Williams that the legal costs related to the Lawsuit would be "taken care of" and that Dr. Leininger would pay the legal costs, including fees and expenses.

In their pursuit of making money for themselves, Norwood and Anthem Media breached their fiduciary duties to Mark Williams, including the following duties:

1. duty of loyalty and good faith;
2. duty of candor;
3. duty to refrain from self-dealing;
4. duty to act with integrity of the strictest kind;
5. duty of fair, honest dealing; and,
6. duty of full disclosure.

⁶ Tex. Ethics Comm'n General-Purpose Comm. Campaign Finance Reports for Texas Republican Legislative Campaign Committee *available at* <http://www.ethics.state.tx.us/php/filer.php?acct=00058081gpac> (last visited June 18, 2007).

As a result of Norwood's and Anthem Media's breaches of fiduciary duty, Williams has suffered damages for which Williams sues and for a disgorgement of profits.

D. Fraud

Norwood induced Williams to challenge Representative Merritt on the representation that campaign funding was in place, and/or that Williams would not need to raise money and/or funding for the campaign costs would not be a problem. That promise was a material representation. Williams relied upon that representation in deciding to enter the campaign. Williams entered the campaign and challenged Representative Merritt, and he campaigned fully and sincerely through his defeat in the primary election. The cost of the defense of the Lawsuit is a campaign cost. Funding has not been made available for payment of the cost of defense of the Lawsuit.

After filing of the suit, Norwood induced Williams to remain in the campaign against Merritt and to defend the Lawsuit by representing that the legal bills would be "covered" and that "all legal bills related to the lawsuit would be taken care of by our many friends." He represented specifically that Dr. Leininger would pay the legal bills. Those representations were material, and Williams relied upon those representations. Norwood located legal counsel to represent Williams in the Lawsuit and represented repeatedly during the course of the litigation that the legal bills would be paid. Williams remained in the race. Williams engaged counsel. Williams defended the lawsuit vigorously and successfully. However, no payments have been made on the legal bills related to the Lawsuit.

Norwood apparently did not have funding to cover the full cost of the campaign, nor did he, according to Leininger, have the agreement or undertaking of *any* friend, let

alone “many friends,” to take care of “all legal bills related to [the Lawsuit].” The singular friend of the TRLCC campaigns was Leininger. According to Leininger’s counsel, Laura L. Prather, Leininger made no direct representation regarding payment of fees and further was not involved in the process.⁷ Norwood made these representations with knowledge of their falsity or recklessly and without knowledge of the truth of the assertions. Williams relied upon the representations, and he has accordingly suffered injury and damages, including the amount of legal bills (fees, costs, and expenses) related to the Lawsuit.

E. Promissory Estoppel

Norwood induced Williams to challenge Representative Merritt with the promise that Williams would not need to raise money – the cost of the campaign would be covered. He promised that campaign funding was in place and/or would not be a problem. Williams reasonably and substantially relied upon Norwood’s promise in deciding to enter the campaign, and Williams’ reliance was foreseeable. Williams entered the campaign and challenged Representative Merritt, and he campaigned, using Anthem Media and Norwood as his consultants, sincerely and in good faith through his defeat in the primary election. Merritt sued Williams, and Williams hired counsel and defended the Lawsuit. The cost of the defense of the Lawsuit is a campaign cost. Although Williams’ performed, neither Norwood nor Anthem Media has paid or secured payment for the cost of defending the Lawsuit. Williams relied to his detriment on Norwood’s promises, and injustice can be avoided only by enforcing Norwood’s promise.

⁷ See Laura L. Prather email of November 10, 2006, attached hereto as Exhibit E.

After Representative Merritt filed suit, Norwood induced Williams to remain in the campaign against Merritt, to engage counsel and to defend the Lawsuit, promising that the legal bills would be "covered" and that "all legal bills related to the lawsuit would be taken care of by our many friends." Through the duration of the litigation Norwood continuously assured Williams that the legal bills would be paid. Williams reasonably and substantially relied upon Norwood's promise in deciding to enter the campaign and to remain in the race after the Lawsuit was filed. Williams' reliance was foreseeable: he remained in the race, engaged counsel, and vigorously and successfully defended the Lawsuit. Despite Norwood's promises, neither Norwood nor Anthem Media has paid or secured payment for the cost of defending the Lawsuit. Accordingly, Williams relied to his detriment on Norwood's promises, and injustice can be avoided only by enforcing Norwood's promises.

F. Breach of Implied Warranty

In the alternative, Norwood represented and impliedly warranted to Williams that he was acting as an agent for Leininger, a disclosed principal, with authority to make representations and to enter into a valid and enforceable contract to pay bills related to the litigation. Williams justifiably relied on such representation, warranty, and authority. Leininger and/or his attorney, have denied Norwood's authority and Leininger's involvement in any undertaking to "take care of" Williams' legal bills. Accordingly, Norwood is liable for the legal bills, including attorneys' fees and expenses, incurred by Williams in defense of the Lawsuit.

G. Attorneys' Fees

Williams has suffered damages in the form of legal fees and expenses incurred in defending the Lawsuit. In addition, Williams is also entitled to recover reasonable attorneys' fees incurred in prosecuting this suit. TEX. CIV. PRAC. & REM. CODE § 38.001(8). Williams presented his claim through the undersigned counsel to Norwood's and Anthem Media's counsel, and neither Norwood nor Anthem Media has tendered payment of the amount then owed within 30 days of presentment.

H. Alter Ego Liability

At all relevant times, Norwood acted in two separate capacities. Norwood acted in his individual capacity and as the alter ego, agent and/or representative of his company, Anthem Media. When it is alleged herein that Norwood and/or Anthem Media did an act, it is alleged in the alternative that Norwood acted in both or either of those two capacities.

VI.

Damages

Mark Williams has been damaged in an amount in excess of the minimum jurisdictional limits of this Court. Those damages include:

1. Costs and expenses, including attorneys' fees, incurred in the defense of and otherwise related to the Lawsuit;
2. Consequential damages;
3. Attorneys' fees for breach of contract. TEX. CIV. PRAC. & REM. CODE ANN. § 38.001(8);
4. Disgorgement of profits;
5. Exemplary Damages;

6. Costs of Court;
7. Prejudgment interest; and
8. Post-judgment interest.

VII.

Conditions Precedent

All conditions precedent to Williams' claim for relief herein have been performed or have occurred.

VIII.

Jury Demand

Mark Williams demands a trial by jury and has tendered the appropriate fee.

IX.

Prayer

WHEREFORE, PREMISES CONSIDERED, Mark Williams prays that Jeff Norwood and Anthem Media, Inc. be cited in terms of law to appear and answer herein, and that upon final trial or hearing, judgment be rendered against defendants jointly and severally, that Williams be awarded recovery as sought herein, that Williams have prejudgment and post-judgment interest at the legal rate, that Williams' recover his costs of court; and for such other and further relief, both general and special, whether at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

STRASBURGER & PRICE, LLP

By: 

William A. Worthington
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**ATTORNEYS FOR PLAINTIFF MARK
WILLIAMS**

FILED
GREGG COUNTY, TEXAS

FEB 24 2006

11:17 AM
SHERARAH WILSON, DISTRICT CLERK
BY: [Signature]

NO. 0006-448-B

TOMMY MERRITT

IN THE 04 JUDICIAL COURT

vs.

IN AND FOR

MARK WILLIAMS

GREGG COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, TOMMY MERRITT, hereinafter referred to as "Plaintiff" and makes and files his Plaintiff's Original Petition against Mark Williams, hereinafter referred to as "Defendant," and would show unto the Court as follows:

A. Discovery Control Plan

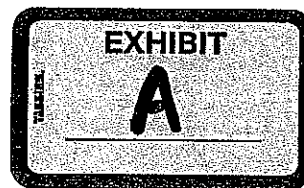
1. Plaintiff intends to conduct Discovery under Level II of the Texas Rules of Civil Procedure.

B. Parties

- 2. Plaintiff is an individual residing in Gregg County, Texas.
- 3. Defendant, Mark Williams, is an individual residing in Longview, Gregg County, Texas and may be served with process at 1603 McCann Road, Longview, Texas 75601.

C. Venue

4. Venue is proper in Gregg County, Texas pursuant to Section 15.002(a)(1) and (2) of the Texas Civil Practice and Remedies Code.



Received by Streiburger & Price, L.L.P. on 3/13/2006 1:48:07 PM [Central Standard Time]

D. Facts

5. On numerous dates beginning in and around January 2006, defamatory statements about Plaintiff were published by Defendant. Those defamatory statements have been published in the form of television and radio political advertisements and directly mailed to the citizens of District 7. Defendant has also defamed Plaintiff by falsely reporting and distorting Plaintiff's conservative voting record in the Texas House of Representatives on issues important to the citizens of District 7. A review of Plaintiff's conservative voting record in the Texas House clearly and unequivocally demonstrates that Defendant's defamatory statements about Plaintiff are false.

E. Defamation

6. Statements published by Defendant were defamatory in that they tend to injure the reputation of the Plaintiff and expose the Plaintiff to public scorn, distrust, contempt and ridicule and are an attempt to cast Plaintiff in a false light in an effort to sway the public vote in the election between Plaintiff and Defendant. The statements which have been published by Defendant, or which Defendant caused to be published, were false. (See Affidavit of Plaintiff attached hereto as Exhibit "A"). Plaintiff will show that Defendant, in publishing the defamatory statements or causing the defamatory statements to be published, acted with actual malice in that Defendant knew that the defamatory statements were false or published or had the statements published with reckless disregard for the truth or falsity of the statements.

F. Damages

7. The publication of the defamatory statements by Defendant has resulted in actual injury to the Plaintiff. Additionally, Plaintiff is and will in the future be seriously injured in his good name and reputation in the community, and exposed to the scorn, distrust, contempt and ridicule of

the general public due to these defamatory statements published or caused to be published by Defendant. Plaintiff's damages are in excess of the minimum jurisdictional limits of this Court.

G. Demand for Jury

8. Plaintiff demands a jury trial and tenders the appropriate fee with this Petition.

H. Prayer

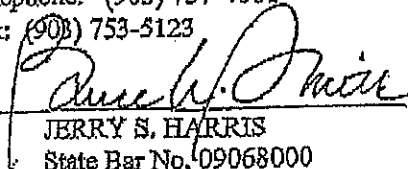
9. For these reasons, Plaintiff asks that the Defendant be cited to appear and answer and, on final trial, that Plaintiff have judgment against Defendant for:

- (1) damages in an amount in excess of the minimum jurisdictional limits of this Court;
- (2) pre-judgment and post-judgment interest;
- (3) cost of suit; and
- (4) all other relief, in law and inequity, to which Plaintiff be entitled.

Respectfully submitted,

HARBOUR, SMITH, HARRIS & MERRITT
P.O. Drawer 2072
Longview, Texas 75606-2072
Telephone: (903) 757-4001
Fax: (903) 753-5123

By:


JERRY S. HARRIS
State Bar No. 09068000
BRUCE A. SMITH
State Bar No. 18542800

ATTORNEYS FOR PLAINTIFF

NO. _____

TOMMY MERRITT

vs.

MARK WILLIAMS

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IN THE ___ JUDICIAL DISTRICT

IN AND FOR

GREGG COUNTY, TEXAS

AFFIDAVIT OF TOMMY MERRITT

STATE OF TEXAS §
 §
COUNTY OF GREGG §

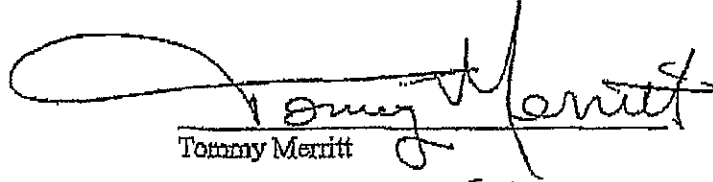
BEFORE ME, the undersigned notary public, appeared Tommy Merritt, and who having been sworn upon his oath, stated as follows:

1. My name is Tommy Merritt. I am over the age of 21, have never been convicted of a crime, am competent to make this Affidavit, state that all matters contained in this Affidavit are true and correct and are within my personal knowledge.
2. I have read the Plaintiff's Original Petition to which this Affidavit is attached. The facts stated in the Petition are true and correct and I hereby verify to the truthfulness of the statements contained in the Petition and everything contained therein is within my personal knowledge.
3. Mark Williams has published or caused to be published defamatory statements in the form of television and radio political advertisements and direct mailings to the citizens of District 7 which contain statements about myself that are false. Attached to my Affidavit as Exhibit "1" is a listing of statements that have been made by Mark Williams along with an explanation which shows how each of those statements are false.
4. The statements made by Mark Williams and referenced in Exhibit "1" are defamatory by their very nature and are false. It is my opinion that Mark Williams knew that the statements set out in Exhibit "1" were false at the time that they were made or that the statements were made by Mr. Williams with a reckless disregard for the truth or falsity of the statements.
5. The false and defamatory statements made by Mark Williams and referenced in Exhibit "1" were made in an effort to sway the public vote in the election between myself and Mr. Williams. The false and defamatory statements made by Mr. Williams have caused and will


EXHIBIT "A"

continue to cause injury to the reputation of myself and my family and expose me to public scorn, distrust, contempt and ridicule.

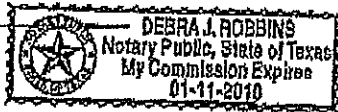
Further Affiant sayeth not.


Tommy Merritt

SUBSCRIBED AND SWORN TO BEFORE me this 24th day of FEBRUARY, 2006
by Tommy Merritt.

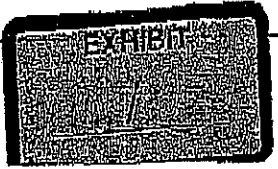

Notary Public

My Commission Expires:



FOUNTAIN REPORTS (PHONE) 913-511-0002/913-511-0011 & JOHNSONS (PHONE) 913-511-0002

Item	Document	Truth
A	<p>BK10 direct mail - "Neither is he."</p> <p>"The social promotion program that Representative Merritt supports would result in some kids graduating from high schools without learning how to read or write." (77th Regular Session, Record Vote 342)</p>	<p>Truth</p> <p>The bill would have delayed by one year the law requiring students in grades 3, 5, and 8 to pass the TAMS test in order to be promoted to the next grade level. TSTA was in support of the bill. Similar language was in other legislation this session.</p> <p>Midstream students may not graduate without a diploma demonstrating their ability to read or write. (Education Code Section 28.0211)</p>
B	<p>BK10 direct mail - "Representative Tommy Merritt isn't getting the job done."</p> <p>"Representative Tommy Merritt has established a record of getting nothing done for East Texas."</p>	<p>Rep. Merritt authored the first Texas Legislative Medal of Honor legislation in the State of Texas (HCR 238, Rallier Senate Sponsor).</p> <p>Rep. Merritt helped secure the funding for the Kilgore Leon.</p> <p>Rep. Merritt helped secure local area calling for Kilgore, Tyler, Gladewater, and Longview.</p> <p>Rep. Merritt secured a 2001 & 2005 Presidential Inaugural Parade spot for the Kilgore Rangelites.</p> <p>Rep. Merritt help secure the Main Street project grant for the City of Gladewater.</p> <p>Rep. Merritt established the Texas-Louisiana Border Region and set the initiative for working regionally in East Texas.</p> <p>Rep. Merritt worked to maintain commercial air service at the East Texas Regional Airport.</p> <p>Rep. Merritt has co-authored and authored or sponsored the passage of 186 bills. (Source: www.house.state.tx.us)</p>
	<p>"Tommy Merritt has passed only 8 bills in 10 years...."</p> <p>"...The worst record of any Republican in the legislature."</p>	<p>Rep. Merritt is one of the most effective Republican legislators with a proven track record of representing the citizens of his district.</p> <p>Capitol Inside listed Rep. Merritt as a "Player". Merritt has received numerous awards from Veterans, Educators, Transportation Advocates, NASA, and the Legislative Black Caucus. He has received endorsements from local public school superintendents, teachers, and parents along with endorsements from Texas Medical Association (TEXMA), Texas State Teachers Association, Texas Federation of Teachers, Texans for Lawless Reform, Texas Farm Bureau (AGFUND), Texas Association of Realtors (TREPAC), Texas Classroom Teachers Association, Texas Parent PAC and numerous others.</p>



[Email prepared by Legistar] and 41.151.11.0002/6/1/E no "P" "T" "S" and 8 jabungarats 44 paxa0000R

<p>Tommy Merritt voted against protecting homeowners from unfair property tax appraisals." (79th Regular Session Record Vote 277)</p>	<p>Tommy Merritt voted against protecting homeowners from unfair property tax appraisals." (79th Regular Session Record Vote 277)</p>	<p>Rep. Merritt voted for an amendment to remove the enabling clause from HJR25. The resolution proposed caps on property tax appraisals. The resolution was opposed by a broad coalition of interests, including the Texas Association of Business. Dr. Ray Perryman, President of The Perryman Group, a well-respected economic and financial analysis firm out of Waco, testified in committee that HJR 35 would hurt the Texas economy. It would not have resulted in a tax deduction, only a tax shift to working and middle-class homeowners. Rapidly growing appraisal districts would not be able to pay for rapidly growing service needs of their area, and working middle class homeowners would shoulder the burden. (Source, House Journals, 79th)</p>
<p>Backed higher sales taxes that hurt families" (78th Regular Session HB 3382)</p>	<p>"...Votes with liberal Democrats and against tax relief for families."</p>	<p>Rep. Merritt authorized HB3382 (Texas Great Teachers & Facilities Fund) during the 78th Regular Session and was the only Republican member to place public education as a priority. HB3382 lowered property taxes, provided a long-term solution for funding public education, brought teacher salaries to a par with 80% of all college-graduate wage earners in Texas and empowered discretion and local control to school districts. In addition fully funded teacher health insurance and provided limited property tax exemptions for teachers.</p>
<p>8X10 direct mailer "Tommy Merritt voted for \$21 billion in new spending..."</p>	<p>"Tommy Merritt voted for a massive increase in state spending but didn't give teachers a pay raise or provide enough funding for textbooks." (79th Regular Session Record Vote 946)</p>	<p>Rep. Merritt voted for the sales tax holiday and Gov. Bush's tax cuts. Voted 3 times to increase the homestead exemption to \$45,000. This would have taken 9,000 Gregg Co. homes and 4,000 Smith Co farms off of the taxes rolls.</p> <p>Rep. Merritt voted with the Republican majority and Republican leadership to pass SB1. After accounting for inflation and population growth, the budget was only a 2.5% increase over the previous biennium, according to Appropriations Chairman Jim Pitts. Overall general government, or state agencies, were cut by 10%. It provided emergency reforms for Child Protective Services and Adult Protective Services. SB1 was signed by Gov Perry 6/15/06. (Source House Journals)</p> <p>Rep. Merritt authored HB53 and HJR24 (79th 2nd Special Session) fully restoring teachers health insurance spend, increase homestead exemption to \$22,500 offering a tax cut to 85 and older residents and funding textbooks. Bills received bipartisan support from 13 co-authors. (Source House Journals)</p>

Received by State Street, P.O. Box 91000, Phoenix, AZ 85061-0000

	<p>"Tried to increase the tax on gasoline by an additional 10 cents per gallon." (79th Regular Session, Record Vote 489)</p>	<p>Rep. Maritt supported the amendment offering local choice in how transportation projects are funded. The amendment to CS HB 3450 added a local gas tax option for certain communities with both an RMA and an MPO. Areas suffering from high tolls could impose a gas tax if it was approved by the voters. The revenue generated by the gas tax would not go into the general revenue fund and could only be applied to toll relief or other prescribed transportation activities. (Source: House Journals)</p>
<p>D 8x10 direct mailer "F is for Failure"</p>	<p>"Proposed a 2.6 cent sales tax increase" (78th Regular Session HB 3982) "Voted to raise gas tax" (78th Regular Session Record Vote 489) "Voted against property tax relief" (78th Regular Session, Record Vote 212) "Voted for largest state spending increase in Texas history" (78th Regular Session Record Vote 948) "Voted against protecting homeowners from unfair appraisals" (78th Regular Session Record Vote 277) "That's why he received an F on the Taxpayer Report Card from Americans for Prosperity-Texas."</p>	<p>See Item C See Item C See Item C See Item C See Item C Americans for Prosperity-Texas did not base their scorecard on the Record votes referenced on this mailer with the exception of 78th Regular Session Record Vote 277. 76 State Representatives received an "F" from this organization. Of this number 17 State Representatives are Republicans with 6 holding Chairmanships. (Source: www.americanasp.org/index.php?id=838)</p>



"A"
Neither
is he.

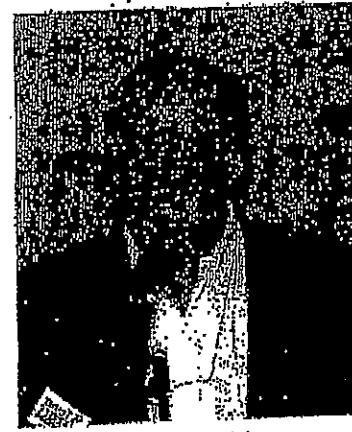
But Tommy Merritt voted for social promotion of kids.

Representative Tommy Merritt apparently thinks that our children should rise through grade levels in school regardless of whether they are academically prepared.

That's why he voted to continue the irresponsible practice of social promotion in our public school system. (77th Regular Session, Record Vote 342)

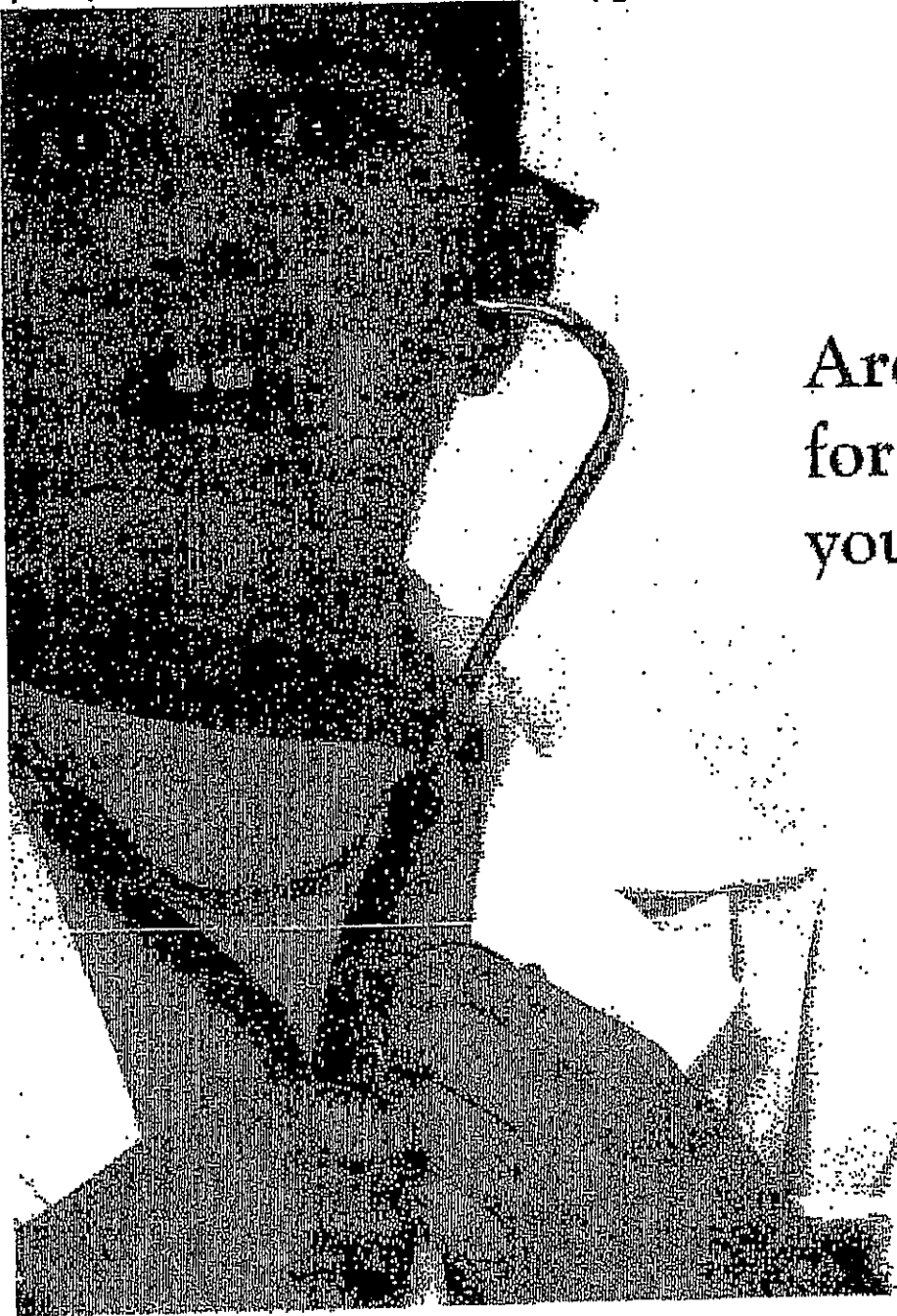
Social promotion allows students to move up to the next grade level without meeting the basic academic requirements of their current grade. This false promotion actually puts children further behind in their studies.

The social promotion program that Representative Tommy Merritt supports would result in some kids graduating from high school without learning how to read or write.



Tommy Merritt is one of the most liberal members of the Texas Legislature. (Young Conservatives of Texas)

On March 7th, Vote NO on Tommy Merritt



Are you ready
for him to be
your doctor?

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Received by Strasburger & Price, L.L.P. on 3/13/2006 1:15:14 pm (Central Standard Time)

Representative Tommy Merritt Isn't Getting the Job Done.

State Representative Tommy Merritt is the least effective Republican legislator in the House. After a decade in office, Representative Tommy Merritt has established a record of getting nothing done for East Texas.

Ineffective

Tommy Merritt has passed only 8 bills in 40 years - the worst record of any Republican in the legislature.

Liberal

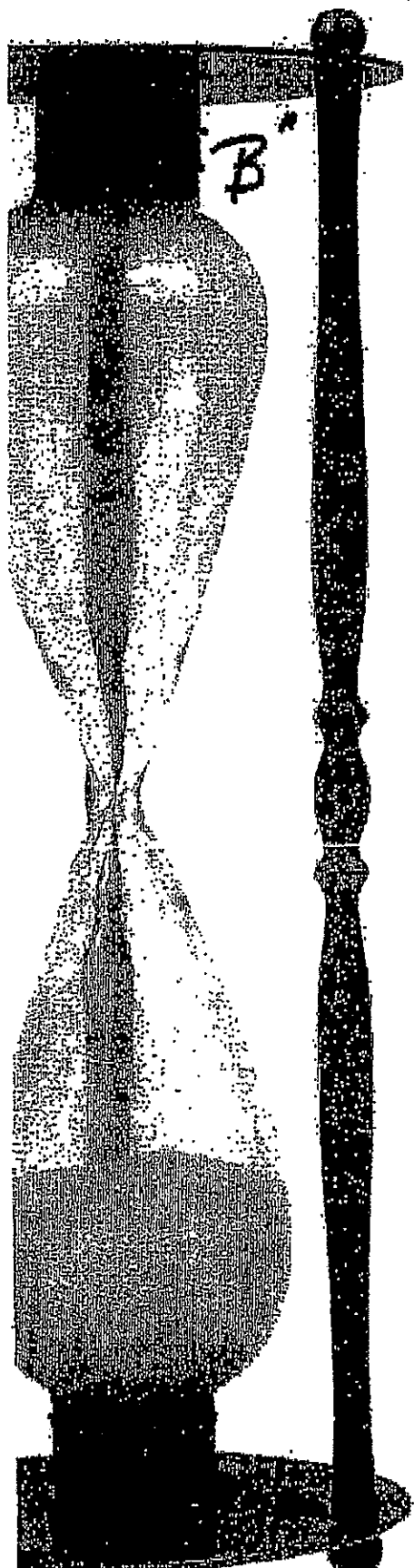
Tommy Merritt ran as a Republican, but in Austin he votes with the Democrats. In fact, Tommy Merritt is rated one of the most liberal Republicans in the Texas House (Young Conservatives of Texas, 2005).

Wrong

- Voted against protecting homeowners from inflated property tax appraisals (79th Regular Session, Record Vote 274)
- Voted to increase the tax on gasoline by 10 cents a gallon (79th Regular Session, Record Vote 407)
- Backed higher sales taxes that hurt families (78th Regular Session, 116-136)
- Scored an F on the Taxpayer Report Card - (Advocate for Prosperity - Fall, 2005)

Vote NO on Tommy Merritt.
He's been ineffective
for long enough.

TIME'S UP



Pol. Ad Mark Williams

Tommy Merritt voted for \$21 billion in new spending...

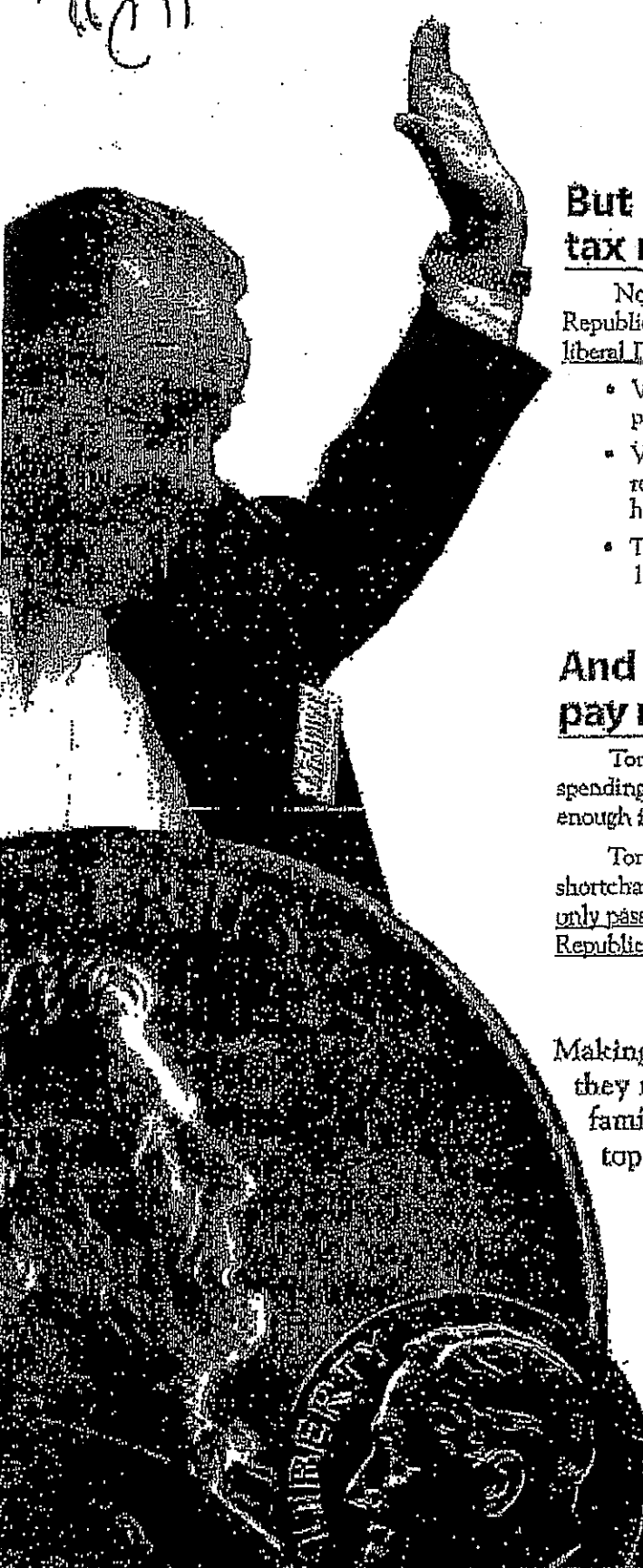


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But not one penny for property tax relief...

Not only is Tommy Merritt the most ineffective Republican in the Texas House, he consistently votes with liberal Democrats and against tax relief for families.

- Voted against protecting taxpayers from unfair property tax appraisals (79th Regular Session, Record Vote 277)
- Voted against increasing the homestead exemption resulting in higher property taxes for every homeowner (75th Regular Session, Record Vote 212)
- Tried to increase the tax on gasoline by an additional 10 cents per gallon (79th Regular Session, Record Vote 489)

And not one dime for a teacher pay raise.

Tommy Merritt voted for a massive increase in state spending but didn't give teachers a pay raise or provide enough funding for textbooks.

Tommy Merritt voted against taxpayers and shortchanged our schools. After ten years in office he has only passed eight bills, making him the least effective Republican in the Texas House.

Making sure our public schools have the funds they need and providing tax relief for Texas families should have been Tommy Merritt's top priorities — but they weren't.

**Vote NO on
Tommy Merritt**
After 10 years, it is time for a change.

Political Ad. Mark Williams

"D"

Tommy Merritt has Failed Our Communities and Voted for Higher Taxes.

Tommy Merritt failed taxpayers by repeatedly voting with liberal Democrats to raise taxes and increase state spending.

That's why he received an F on the Taxpayer Report Card from Americans for Prosperity-Texas.

F

Proposed a 2.8 Cent Sales Tax Increase (78th Regular Session, HB 3382)

Tommy Merritt proposed legislation to increase the sales tax on every taxable item in Texas, including automobiles and school supplies.

F

Voted to Raise Gas Tax (79th Regular Session, Record Vote 499)

As if East Texans don't pay enough at the pump already, Tommy Merritt thinks we should pay more. He voted alongside liberal politicians in Austin to raise the gas tax.

F

Voted Against Property Tax Relief (75th Regular Session, Record Vote 212)

Tommy Merritt joined the Democrats and voted against the property tax relief plan that would have lowered the property tax rate and allowed taxpayers to keep their hard earned money. East Texas needs tax relief - we can't afford to send Tommy Merritt back to Austin.

F

Voted for Largest State Spending Increase in Texas History (79th Regular Session, Record Vote 946)

State Representative Tommy Merritt doesn't know the meaning of fiscal restraint and accountability. Merritt voted to increase state spending by \$21.4 billion. He just can't say NO to higher taxes and increased spending.

F

Voted Against Protecting Homeowners from Unfair Appraisals (79th Regular Session, Record Vote 177)

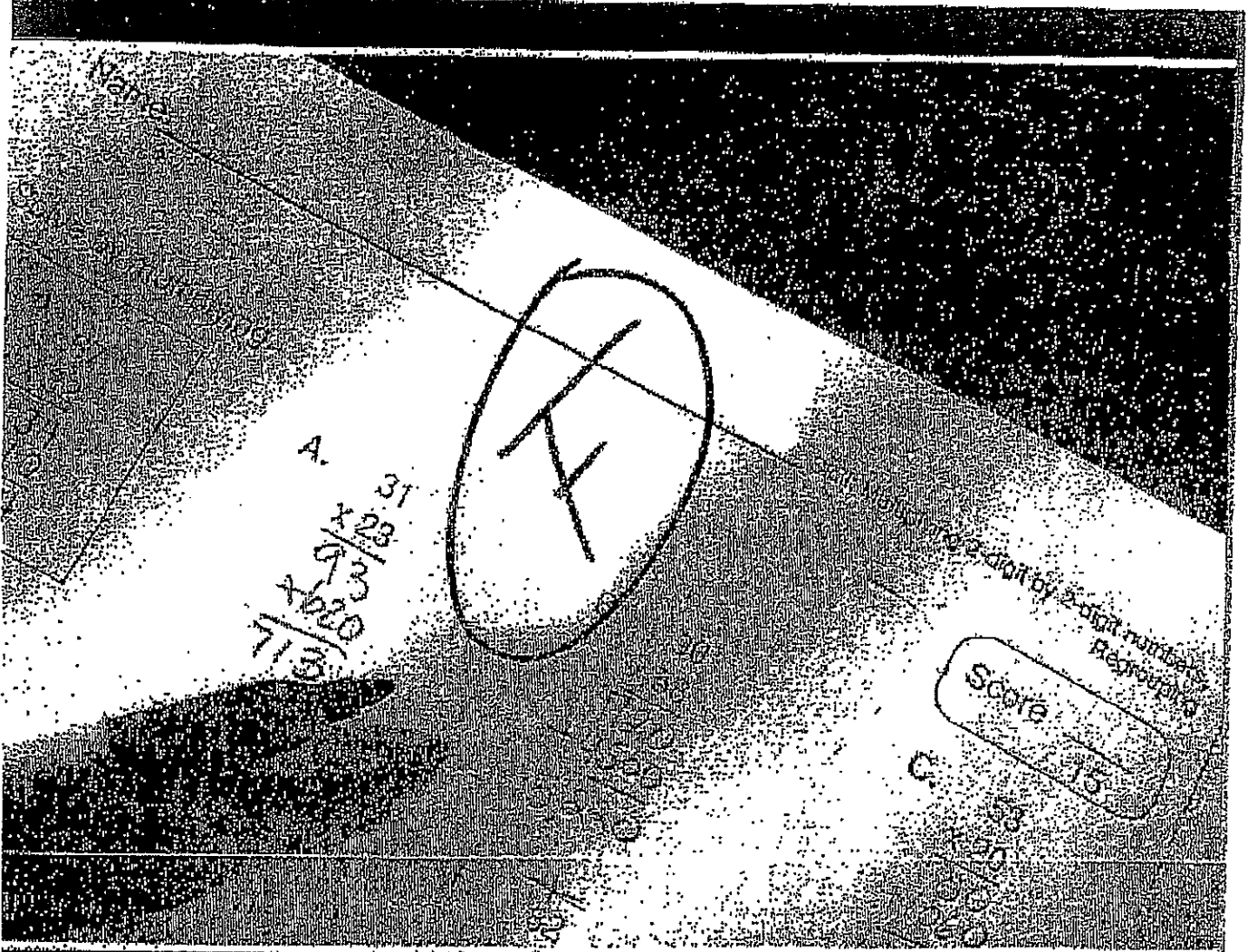
Tommy Merritt voted against protecting taxpayers from sky-rocketing appraisals that force homeowners to pay higher and higher property taxes.



He Votes Like a Tax-and-Spend Liberal.

Tommy Merritt received an "F" on the Taxpayer Report Card.

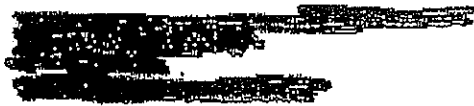
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F is for Failure

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From: Jeff Norwood [mailto:jeff@mail.anthemmedia.com]
Sent: Saturday, February 25, 2006 7:44 AM
To: Mark Williams
Subject: Re: lawsuit

From a legal standpoint this is absurd. There is still a First Amendment in the country. Political speech is protected.

Financially don't worry about the legal bills. It will be covered.

This is a political document and not a legal one.

We ahve a 30 percent positive message up now. It will be 50/540 on Moday with new spot and school zones.

:Lets talk later today in more detail.



From: Jeff Norwood [mailto:Jeff@AnthemMedia.com]
Sent: Sunday, February 26, 2006 9:33 PM
To: Mark Williams
Subject: <no subject>

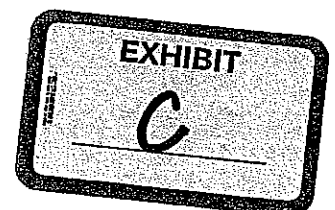
We will have a response to the wife ad in the morning. Ted is going to find out when it was produced. If it was before Friday that is one way to dismiss it. Produced before he even filed a lawsuit so it is proof that its part of a grand political scheme, etc

Let me know what kind of reaction you are getting. Putting you back on camera is an option but we might be OK with what we have planned.

On another note I confirmed all legal bills related to this, if any, will be taken care of by your many friends.

Keep up the good work. We are doing well but he will probably get pretty ugly before this is over with.

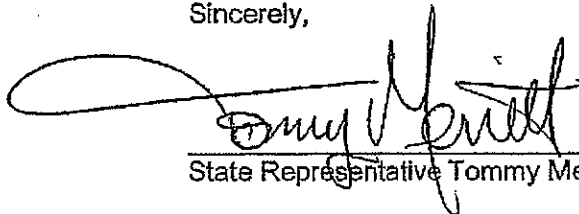
Jeff Norwood
Anthem Media
2700 Via Fortuna, Suite 400
Austin, TX 78746
512.542.9100
Jeff@AnthemMedia.com

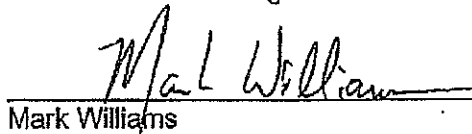


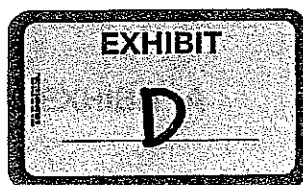
To the Voters of the Texas House District 7:

State Representative Tommy Merritt and Mark Williams shook hands and agreed to dismiss the lawsuit and their respective claims against each other. Both agree that the rhetoric of the 2006 Republican Primary campaign became unnecessarily overheated and negative. Both Representative Merritt and Mr. Williams believe that the suit was a distraction and its dismissal would best serve their respective commitments to those residing within Texas House District 7. The statements made in the Mark Williams campaign were based upon research conducted on his behalf, and to the extent any of those statements contain inadvertent mischaracterizations of Representative Merritt's record, Mr. Williams apologizes. Furthermore, Representative Merritt believes that Mr. Williams and his family are people of high principle.

Sincerely,


State Representative Tommy Merritt


Mark Williams



-----Original Message-----

From: Prather, Laura
Sent: Friday, November 10, 2006 4:08 PM
To: 'william.worthington@strasburger.com'
Subject: Re: Merritt v Williams; retainer

Bill,
Thanks for your email.

I understand your concern on the a/c priv and don't want you to feel as though you have to jeopardize that. If you need to redact portions to be more comfortable please do so.

My concern is that the representations about Dr. L.'s payment of fees never came directly from him. So, now, after the fact, he's being told he's responsible for sizeable legal fees for which he's not been involved in the process.

I now have a meeting at 4 on Tuesday but certainly understand the need to talk and to do so quickly (about the merits of the case as well). Can you do any time on Wed. early afternoon - say around 1:30?

Please let me know. Take care,
Laura

