

Cause No. 2014CV0000634D1

THE STATE OF TEXAS, *ex rel.*
MARCO A. MONTEMAYOR,

Plaintiff,

v.

KRISTOPHER MICHAEL
MONTEMAYOR,
WEBB COUNTY COMMISSIONER,
PRECINCT 1

Defendant.

IN THE 491A DISTRICT COURT

IN AND FOR

WEBB COUNTY, TEXAS

ESTHER DECOLLADU
CLERK OF THE DIST. COURTS
& COUNTY COURTS AT LAW
2014 APR -3 PM 4: 32
FILED
WEBB COUNTY, TEXAS
B. J. DEPUTY

ORIGINAL PETITION FOR REMOVAL OF OFFICER

TO THE HONORABLE JUDGE OF SAID COURT:

In accordance with article 5, section 24 of the Texas Constitution and subchapter B, chapter 87 of the Texas Local Government Code, THE STATE OF TEXAS, acting through and on the relation of MARCO A. MONTEMAYOR, the Webb County Attorney ("Plaintiff"), files this Original Petition for the removal of KRISTOPHER MICHAEL MONTEMAYOR from the office of Webb County Commissioner, Precinct 1, in support of which Plaintiff would respectfully show the Court as follows:

A. Statement Of Discovery Control Plan.

1. In accordance with TEX. R. CIV. P. 190.1, Plaintiff states its intent that discovery in this cause proceed under Level 3, as provided by TEX. R. CIV. P. 190.4.
2. Based upon the preceding statement of intent, Plaintiff respectfully requests that the Court order a discovery control plan tailored to the circumstances of this action.

B. Parties.

1. Plaintiff is THE STATE OF TEXAS, proceeding by and through the County Attorney of Webb County, Texas as provided by section 87.018(d) of the Texas Local Government Code.

2. In accordance with section 87.015(b) of the Texas Local Government Code, Plaintiff states that Relator MARCO A. MONTEMAYOR is a resident of the State of Texas, has lived in Webb County, Texas for at least six months prior to the filing of this petition, and is not currently under indictment in Webb County, Texas.

3. Defendant is KRISTOPHER MICHAEL MONTEMAYOR, who currently is the Webb County Commissioner for Precinct 1 and is subject to this action under section 87.012(4) of the Texas Local Government Code. Based on section 87.016 of the Texas Local Government Code, service of process upon Defendant will be obtained when this Court has issued an order requiring that citation and a certified copy of this petition be served upon Defendant.

C. Jurisdiction And Venue.

1. This Court has jurisdiction of the subject matter of this cause based upon article 5, section 24 of the Texas Constitution and sections 87.012 and 87.015 of the Texas Local Government Code. This Court has personal jurisdiction of Defendant for the reason that Defendant is a resident of Webb County, Texas.

2. Venue is proper in this Court in accordance with section 87.015(a) of the Texas Local Government Code for the reason that this Court is a district court in the county in which Defendant resides.

D. Assignment Of Out-Of-County Judge Required.

1. In accordance with section 74.059(c)(4) of the Texas Government Code, Plaintiff respectfully requests that the judge of this Court immediately request the presiding judge of the Fourth Administrative Judicial Region of Texas to assign a judge who is not a resident of Webb County to dispose of this action.

E. Underlying Facts.

1. The Defendant, Kristopher Michael Montemayor, ran for office in the 2012 election cycle and won the primary election on or about July 31, 2012. After winning the general election on or about November 6, 2012, MONTEMAYOR became County Commissioner-elect for Precinct 1. The Defendant's term of office as Webb County Commissioner, Precinct 1, began on January 1, 2013.

2. As a County Commissioner for Webb County, MONTEMAYOR was an agent of Webb County whose official duties included, but were not limited to:

- a. Adopting a budget and tax rate to fund the personnel, equipment, and infrastructure needs of the county;
- b. Conducting business on behalf of the county;
- c. Entering into contracts on behalf of the county;
- d. Establishing precinct boundaries for justices of the peace and commissioners;
- e. Determining the number of county employees and their compensation;
- f. Hiring and firing certain senior-level county employees; and

g. Acquiring property for rights of way or other public uses.

3. The Defendant, KRISTOPHER MICHAEL MONTEMAYOR, is under indictment in the United States District Court, Southern District of Texas and is charged with two counts of bribery in Cause No. 5:14-cr-00252, UNITED STATES OF AMERICA v. KRISTOPHER MICHAEL MONTEMAYOR. The General Allegations as expressed in the federal indictment are as follows:

COUNT ONE

Bribery

4. That in or about September 2012, after Montemayor won the primary election, Person A gave MONTEMAYOR a Ford truck, which person A purchased for approximately \$37,015. After accepting the truck, MONTEMAYOR began using the vehicle as a means of personal transportation and continued to do so after he took office in or about January, 2013. At no time did MONTEMAYOR compensate Person A for the purchase and use of the truck.

5. In or around January, 2013, in the Southern District of Texas and elsewhere, the defendant, KRISTOPHER MICHAEL MONTEMAYOR, being an agent of a local government, that is, a Webb County Commissioner in Webb County, Texas, which received benefits in excess of \$10,000 in the one-year period from January 1, 2013, to December 31, 2013, from federal programs involving a grant, contract, subsidy, loan, guarantee, insurance, and other forms of federal assistance, did corruptly solicit, demand, accept, and agree to accept something of value, that is, the use of a 2012 Ford truck, from Person A, intending to be influenced and rewarded in connection with the business, transactions, and series of transactions of Webb County, involving \$5,000 or more, that is,

in exchange for MONTEMAYOR's promised use of official action to secure government employment in Webb County for Person A and his spouse. (Title 18, United States Code, Section 666(a)(1)(B))

COUNT TWO

Bribery

5. From in or about July, 2013, through in or about October, 2013, in the Southern District of Texas and elsewhere, the defendant, KRISTOPHER MICHAEL MONTEMAYOR, being an agent of a local government, that is, a Webb County Commissioner in Webb County, Texas, which received benefits in excess of \$10,000 in the one-year period from January 1, 2013, to December 31, 2013, from federal programs involving a grant, contract, subsidy, loan, guarantee, insurance, and other forms of federal assistance, did corruptly solicit, demand, accept, and agree to accept something of value, that is, approximately \$11,000 in cash and approximately \$2,721.16 worth of electronics equipment, intending to be influenced and rewarded in connection with the business, transactions, and series of transactions of Webb County, involving \$5,000 or more, that is, in exchange for MONTEMAYOR'S promised use of official action and influence as a County Commissioner to promote the business interests of an undercover Special Agent of the Federal Bureau of Investigation in Webb County. (Title 18, United States Code, Section 666(a)(1)(B)).

SEE EXHIBIT A – EXEMPLIFICATION CERTIFICATE AND CERTIFIED COPY OF INDICTMENT

F. Grounds For Removal.

1. The underlying facts set forth above are specifically reincorporated here by reference.

a. Official Misconduct.

2. Defendant's conduct described in the underlying facts stated above singularly or in combination thereof constitutes official misconduct since those facts demonstrate that Defendant engaged in intentional, unlawful behavior relating to his official duties while he was entrusted with the Administration of Justice and the execution of the laws as set forth in Section 18, Article V of the Texas Constitution, and are grounds for removal from his elected position as Webb County Commissioner, Precinct 1.

b. Incompetency.

3. Additionally and/or alternatively, Defendant's conduct described in the underlying facts stated above singularly or in combination thereof constitutes incompetency in that Defendant's behavior of accepting bribes and promising official action on behalf of Webb County exhibits:

(a) Gross ignorance of his official duties;

(b) Gross carelessness in the discharge of Defendant's official duties.

4. Based upon Defendant's official misconduct and/or his incompetency, Defendant should be removed from office under authority of section 87.013(a) of the Texas Local Government Code upon trial of this action.

G. Request for Suspension And Appointment Of Temporary Officeholder.

1. Pursuant to section 87.017(a) of the Texas Local Government Code, and in order to protect the interests of the taxpayers of Webb County, Texas, and Webb County itself from further damage at the hands of Defendant, KRISTOPHER MICHAEL MONTEMAYOR, Plaintiff respectfully requests that the Court temporarily suspend Defendant from office, without pay, and temporarily appoint another qualified person to perform the duties of Webb County Commissioner, Precinct 1, pending trial. Furthermore, in connection with the above request, Plaintiff respectfully requests that this Court set a bond, which should include any conditions deemed necessary by the Court, to be executed by the person appointed to serve as temporary Webb County Commissioner, Precinct 1, prior to suspension of Defendant, as required by section 87.017(b) of the Texas Local Government Code.

H. Request for Injunctive Relief.

1. Defendant's conduct as described above has resulted and will continue to result in irreparable harm to the property and rights of Webb County and the taxpayers of Webb County, Texas citing:

- a. KRISTOPHER MICHAEL MONTEMAYOR is a Webb County Commissioner whose authority includes adopting a budget and tax rate to fund the personnel, equipment, and infrastructure needs of the county. Based on the Federal Indictment, in Cause No. 5:14-cr-00252, U.S. v. KRISTOPHER MICHAEL MONTEMAYOR, the defendant is alleged to have received a vehicle valued at \$37,015.00 dollars, in exchange for his promises for employment with Webb County. Thus, the County of Webb

and its taxpayer(s) have been harmed and will continue to be harmed in the future if the defendant is allowed to continue to serve as commissioner. The alleged official misconduct has jeopardized current federal grants and future federal grants he may vote on. It is tantamount to receiving money from the federal government that no illegal activity be connected to the use of federal funds. The government has the right to refuse to payout grant monies for criminal violations. This will leave Webb County tax payers with the burden of paying contracts and possibly even litigation for breach of contract.

- b. KRISTOPHER MICHAEL MONTEMAYOR is also empowered by the Texas Constitution as a Webb County Commissioner with the ability to conduct business on behalf of the county which includes entering into contracts. Any agreement to further the interest of a private person in exchange for financial remuneration is an illegal contract and subjects the tax payer to financing projects or completing projects without taking the tax payer's interest into consideration. The federal indictment specifically states that in exchange for \$11,000 cash and approximately \$2,721.16 worth of electronics, there was a promise by KRISTOPHER MICHAEL MONTEMAYOR to use official action and influence to promote business interests of an undercover Special Agent of the Federal Bureau of Investigation in Webb County.
- c. KRISTOPHER MICHAEL MONTEMAYOR has the power to enter into contracts on behalf of the county. There are projects that are being planned and undertaken in Webb County for the betterment of the community and will

eventually increase revenues. Commissioner Montemayor would be in a position to recommend and even vote on the businesses that will be awarded the contracts. Since he is currently under federal indictment for promising official action in exchange for remuneration, further federal funding would be difficult to procure if the KRISTOPHER MICHAEL MONTEMAYOR were to continue to serve as Commissioner and vote in favor or against how federal funding will be awarded to contractors.

- d. KRISTOPHER MICHAEL MONTEMAYOR has the authority to determine the number of county employees and their compensation through a vote. As stated in the federal indictment, Person A and his spouse were promised government employment in exchange for the use of a motor vehicle valued at \$37,015. The ability to award them a position that pays a large salary, provide for salary increases and budget increases is present. It is foreseeable that future harm will come from paying a biweekly check to individuals who have wrongfully obtained employment. This money will not likely be recovered nor is it likely that we will be told who the coconspirators are since KRISTOPHER MICHAEL MONTEMAYOR has a Fifth Amendment privilege not to incriminate himself.
- e. KRISTOPHER MICHAEL MONTEMAYOR has the authority to Hire and fire certain senior-level county employees by casting his vote in commissioner's court. This creates a future threat of harm for a wrongful termination lawsuit in which a disgruntled employee can point to the alternative motive by

KRISTOPHER MICHAEL MONTEMAYOR to fire them in order to make room for a promised position in Webb County.

- f. KRISTOPHER MICHAEL MONTEMAYOR has the authority to request that Webb County acquire property for rights of way. The future harm comes from many facets. The acquiring of rights of way creates an obligation to pave roads and control water runoff. This could effectively cause Webb County to have to pay for the taking of property for a parcel of property the general public has no interest in. The County would therefore be forced to cover the cost for a private citizen to get compensated for property they are not willing to develop themselves. In addition, the condemnation process could be used to gain a business advantage at the expense of the taxpayer.

a. Request for Temporary Injunction.

4. In order to preserve the status quo and the property of Plaintiff, Webb County and the taxpayers of Webb County during the pendency of this action, Defendant should be cited to appear and show cause as to why he should not be temporarily restrained, during the pendency of this action, from:

- (a) Going to or near any of the facilities of Webb County, including the Webb County Courthouse located at 1000 Houston Street, Laredo, Webb County, Texas; and participating and/or conducting business during Webb County Commissioner's Court.
- (b) Retrieving information from, altering information in any respect within or

otherwise obtaining access in any manner to the records of the Webb County Commissioner's, Precinct 1 office, the Webb County Auditor's office or the Webb County Treasurer's office, regardless of whether those records exist in tangible form or as electronic data stored on computer or computer-accessible media, except through discovery authorized by the Texas Rules of Civil Procedure, the Texas Code of Criminal Procedure or an order of this or another district court of Webb County, Texas;

- (c) Obtaining, exercising control over or directing the disposition of any money, property, thing of value or any other tangible thing received or held by the office of the Webb County Commissioner, Precinct 1; and
- (d) Communicating, either directly or through any agent, representative, courier, servant, employee or other person acting on behalf of Defendant, with the office, officers or employees of the Webb County Commissioner's, Precinct 1 office, except under subpoena or other court order;

b. Request for Temporary Restraining Order.

5. Based on the foregoing, it is essential that the Court immediately and temporarily restrain Defendant from continuing the conduct described in this petition. The need to act immediately, without prior notice to Defendant or a hearing, results from the fact that Defendant has undertaken a course of conduct that undermines the day to day operations of the Webb County Government, as well as the potential for the Defendant to continue his alleged criminal conduct further jeopardizing county business.

Therefore, Plaintiff respectfully requests that the Court immediately, and without notice or hearing, enjoin and restrain Plaintiff from:

- (a) Going to or near any of the facilities of the office of the Webb County Commissioner, Precinct 1, including the Webb County Courthouse located at 1000 Houston Street, Laredo, Webb County, Texas; and participating and/or conducting business during Webb County Commissioner's Court.
- (b) Retrieving information from, altering information in any respect within or otherwise obtaining access in any manner to the records of the Webb County Commissioner's, Precinct 1 office, the Webb County Auditor's office or the Webb County Treasurer's office, regardless of whether those records exist in tangible form or as electronic data stored on computer or computer-accessible media, except through discovery authorized by the Texas Rules of Civil Procedure, the Texas Code of Criminal Procedure or an order of this or another district court of Webb County, Texas;
- (c) Obtaining, exercising control over or directing the disposition of any money, property, thing of value or any other tangible thing received or held by the office of the Webb County Commissioner, Precinct 1; and
- (d) Communicating, either directly or through any agent, representative, courier, servant, employee or other person acting on behalf of Defendant, with the office, officers or employees of the Webb County Commissioner's office, Precinct 1 office, except under subpoena or other court order.

I. Jury Demand.

1. In accordance with section 87.018(a) of the Texas Local Government Code, Plaintiff respectfully demands a trial by jury.

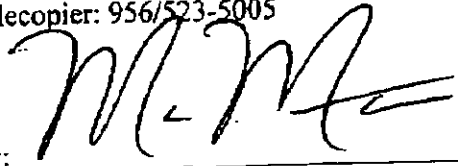
J. Prayer.

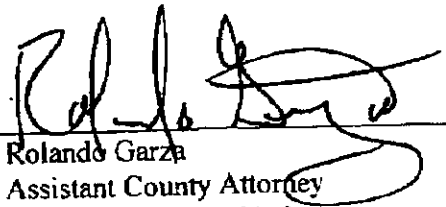
WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the judge of this Court request that the presiding judge of this administrative judicial region assign a judge who does not reside in Webb County to dispose of this action, and that, after the Court has ordered the service of citation, the Court:

1. Temporarily Suspend Defendant from office without pay;
2. Temporarily Appoint another qualified person to perform the duties of the office of Webb County Commissioner, Precinct 1, during the pendency of this action;
3. Set a bond for the Temporary Appointee to be executed as the Court directs;
4. Enter a temporary restraining order in conformity with the allegations of this petition;
5. After hearing, enter a temporary injunction in conformity with the allegations of this petition;
6. After trial by jury, enter judgment that Defendant be removed from office; and
7. Order that Plaintiff have such other and further relief to which it may be justly entitled.

Respectfully submitted,

WEBB COUNTY ATTORNEY'S OFFICE
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Telephone: 956/523-4044
Telecopier: 956/523-5005

By: 
Marco A. Montemayor
Webb County Attorney
State Bar No. 24025983

By: 
Rolando Garza
Assistant County Attorney
State Bar No. 07738070

ATTORNEYS FOR PLAINTIFF,
THE STATE OF TEXAS

VERIFICATION

STATE OF TEXAS '
COUNTY OF WEBB '

BEFORE ME, THE UNDERSIGNED OFFICIAL, on this day personally appeared MARCO A. MONTEMAYOR known to me to be the County Attorney of Webb County, Texas, and being by me duly sworn upon her oath deposed and stated that she personal knowledge of the allegations of the foregoing Original Petition for Removal of Officer and that those allegations are true and correct.

[Handwritten signature of Marco A. Montemayor]

MARCO A. MONTEMAYOR, Affiant

SUBSCRIBED AND SWORN TO before me by MARCO A. MONTEMAYOR on this 3 day of April, 2014.

[Handwritten signature of Notary Public]
Notary Public, State of Texas

