No. 04-16-00184-CV

IN THE COURT OF APPEALS FOR THE
FOURTH COURT OF APPEALS DISTRICT
SAN ANTONIO, TEXAS

RONALD F AVERY

APPELLANT / CROSS APPELLEE

VS.

DYLAN BADDOUR; HEARST COMMUNICATIONS, INC.

APPELLEES / CROSS APPELLANTS

ON APPEAL FROM THE 2ND 25TH
JUDICIAL DISTRICT COURT
GUADALUPE COUNTY, TEXAS
THE HONORABLE W. C. (BUD) KIRKENDALL, JUDGE PRESIDING

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Rule 38.1 (a) of the Texas Rules of Appellate Procedure, the Appellant, Ronald F. Avery, certifies to the best of his knowledge, the following is a complete list of all persons or entities with an interest in this appeal:

Appellant / Cross Appellee:

1. Ronald F. Avery.
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Appellees / Cross Appellants:

2. Dylan Baddour;

3. Hearst Communications, Inc.

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Cases

REFERENCE NOTATION

(C-15) Refers to the page number of the Clerk's Record at the Trial Court.
(R-12) Refers to the page number of the Reporter's Record at the Trial Court.
(A-13) Refers to the page number of the Appellant's Appendix.

STATEMENT OF THE CASE

Plaintiff / Appellant, Ronald Avery, sued Defendants for libel on the grounds that Defendant / Appellee, Dylan Baddour, a Houston Chronicle news reporter, falsely labeled Avery a *member* of the "Republic of Texas" and a "*secessionist*" **(C-87)** in order to connect a progression of more defamatory information. This connected information implied that secessionists will meet in Russia with "far-right fascists" and "neo-Nazis." Thus, secessionists are also far-right and part of the "Growing Right-Wing Terror Threat" which drew actual written expressions of ridicule and hatred from the public against Avery in their blog under their article **(C-103)**.

The Defendants Baddour, and Hearst Communications, Inc., owner of the Houston Chronicle, filed a Motion to Dismiss under the Texas Citizen Participation Act (TCPA) **(C-38)**. Plaintiff filed his Verified Response to Defendants' Motion to Dismiss under the TCPA **(C-283)**.

Plaintiff then filed a Motion for Recusal **(C-242)** on the grounds that Judge Kirkendall had not investigated or prosecuted sufficient evidence Avery had submitted of an illegal offer of architectural services to the City of Seguin but rather exposed Avery's confidential complaint to the entire City Hall. Appellees filed their Opposition to Avery's Motion for Recusal **(C-275)**. The Motion for Recusal was denied by a visiting judge after a hearing **(A-16)**.

Judge Kirkendall heard the Defendants' Motion to Dismiss and granted it **(A-2)**. Plaintiff filed his Outline of Oral Argument **(C-401)** due to being cut short in the hearing by both Defendants and Judge **(R-11&12)**. Defendants filed their Response to Plaintiff's Outline of Oral Argument **(C-422)**.

Plaintiff filed a Request for Findings of Fact and Conclusions of Law **(C-434)** which do not extend time for this mandated accelerated appeal. Defendants sent Judge Kirkendall a letter telling him he did not need to respond to Avery's Request **(C-440)**. Avery sent Judge Kirkendall a letter disagreeing with Defendants. Avery does not expect to receive said Findings of Fact and Conclusions of Law to Avery's injury **(A-13)** not to mention the extra work for appellate court justices.

REQUEST FOR ORAL ARGUMENT

Because Appellant Avery was cut short on his oral argument he intended to make to the Trial Court it seems only fair that he be granted a full hearing of his defense to Appellees Motion to Dismiss by talking to some living entity that will not stifle him in the very beginning of his presentation as happened in the Trial Court **(R-11 line 12 - R-12 line 3)**.

The Defendants' requested "about an hour" to make their argument in their Motion To Set they filed on February 19, 2016 **(A-14)**. Then on the day of the hearing the Defendants requested only 15 minutes. These actions by both Defendant / Appellees and the Trial Court Judge prevented Avery from making a full oral argument he had intended as shown by the outline **(C-401)** he had at the hearing which he had just begun to cover when he was cut short by the judge. Even those in attendance stated that the judge never interrupted the Defense as he interrupted Avery.

Avery was also deprived of findings of fact and conclusions of law as he requested in this very involved motion to dismiss injuring him by making him cover every element of his libel case as well as every defense brought up by the Defendant / Appellees in an accelerated

appeal. Avery should, at least, be granted an oral argument before the appellate panel. Appellees sent letter to Judge telling him not to respond to Avery's Request for Findings of Fact and Conclusions of Law **(C-440)**.

ISSUES PRESENTED

STATEMENT OF FACTS

On Saturday April 11, 2015, Appellee, Dylan Baddour, a reporter for the Houston Chronicle, attended an all day "spring session of congress" held by a group calling themselves the government for "The Republic of Texas" (RoT). This meeting or "session" was held in a building in McQueeney, Texas that was once a draft beer bar and dance hall. The building is partly owned by Appellant, Ronald Avery **(C-322)**.

Near the end of the meeting, Avery addressed the "RoT session of congress" by reading his paper **(C-330)** concerning the doctrine of governmental *dissolution* from within by those in government as explained by John Locke in his *Second Treatise of Government*. Avery read his paper applying the principles of *dissolution* to the "United States of America" and the "State of Texas" near the end of the meeting because Avery was not and is not a member of the RoT or of the congress of same, but had requested time to present this doctrine of *dissolution* to the group **(C-6¶17)**.

Five months later, on Patriots Day weekend, Sunday September 13, 2015, The Appellees published their article **(C-90)** about the meeting held in McQueeney on their website called "HoustonChronicle.com."

The next day, on Monday September 14, 2015 the Appellees published a very similar article on the front page of The Houston Chronicle **(C-87)**. The web version of Baddour's article contained several hyperlinks provided at various locations in his article to other journals, newspapers and government publications including the Department of Homeland Security **(C-93)**.

The Appellees' front page news article included a photograph of the back of a man wearing a blue jacket with a Gold star in the center with words circling the star that said "Republic of Texas" on top and "Texian Nationalist" on the bottom. The caption below the photograph said **(C-87)**:

> "All Texians have informally renounced their U.S. citizenship, as shown on Ronald Avery's jacket."

However, the man wearing the jacket was not Ronald Avery nor does Ronald Avery own a "Republic of Texas" jacket.

The same front page photo was used as the lead photo in the web article but with an expanded caption which said **(C-363) & (A-17)**:

> "All Texians have informally renounced their U.S. citizenship, as evident from Ronald Avery's jacket. Many members have formally renounced citizenship by filing Republic documents to Texas courts, which has no real effect. Most carry Texian identification. Some have

> landed briefly in jail for explaining to law enforcement officers that they don't have a Texas drivers' license because they are citizens of the Republic."

Avery has never informally renounced his U.S. citizenship.

The web article contained 10 color photographs of the meeting in McQueeney. The third photograph of Appellees web article shows a picture of Ronald Avery, the Appellant, at the microphone reading his paper on *dissolution* at the "joint session" of the "RoT" on April 11, 2015. The caption under that photograph said **(C-364 (A-18)**:

> "In April, the Texian congress assembled beneath the blue and yellow flag of the old Republic, on the dance floor of the shuttered Silver Eagle Taphouse near the banks of the Guadalupe River in McQueeney. They follow a speaker list and members take turns at the microphone. In this picture, Ronald Avery lists grievances with the U.S. including the 2008 bank bailout, NSA surveillance, the "police state" and "immoral wars.""

On September 14, 2015, Avery was first informed of the front page article by a friend who read the article at a news stand in the George Bush Intercontinental Airport. Avery's friend called from the airport to tell Avery about the front page article with Avery's name under a photo of someone else wearing a Republic of Texas jacket **(C-325¶28)**. As a result of this call, Avery searched the web and found the article on HoustonChronicle.com where he read the article and the links in it and the blog below it. He also wrote in the blog area that he

was thinking of filing a libel suit against Baddour and the Chronicle **(C-99)**. That comment by Avery in the blog generated an email from the Webmaster to Vernon Loeb, managing editor of the Chronicle. Loeb then forwarded the email to Baddour requesting him to contact Avery about his blog comment **(C-351)**.

Baddour sent Avery an email on Tuesday morning September 15th asking Avery to call him on the phone. Avery refused to talk to him on the phone but wanted to continue communicating by email. This began a 15 day exchange of emails wherein Avery explained to Baddour the mistakes and falsehoods he had written in his articles **(C-350)**. Avery also emailed his Request for Corrections, Clarifications and Retractions to Baddour and Vernon Loeb at the Chronicle on September 29, 2015 **(C-28-31) & (C-344)**. Avery also sent the same request to Vernon Loeb the same day by certified mail **(C-28-32)**. Baddour replied that the Chronicle had made a correction to their front page news story on Wednesday September 16, 2015 **(C-340)**.

Avery told Baddour that their correction was insufficient and Baddour replied:

> "Thanks for your input. The Houston Chronicle finds no need to take any further action regarding the article you mention. We have already run a retraction on September 16,

> correcting our error identifying you as the wearer of the jacket, and as a member of the Republic of Texas."

Avery has never seen a copy of any correction, clarification or retraction of any kind concerning the front page Houston Chronicle news article and it was not supplied at the Trial Court level. Avery filed suit against Appellees, Dylan Baddour, and Hearst Communications, Inc., owner of the Houston Chronicle, for libel on November 3, 2015 **(C-3)**.

On November 9, 2015, six days after Avery filed suit for libel, the web article on HoustonChronicle.com was "updated" for the first time removing Avery's name from the caption under the photo of the man with the blue jacket **(C-90) & (A-20 in color)** and his name was removed from the third photograph showing Avery standing at the microphone reading his paper on *dissolution* **(C-379) & (A-18)**. On the same date the Chronicle also added this note at the bottom of their web article:

> *"This article has been edited to reflect the following information: In a photo caption accompanying this article about the Republic of Texas, a secessionist organization, the Chronicle incorrectly identified a man wearing a Republic of Texas jacket as Ronald Avery. Avery is not a member of the organization and was not in the photograph."* **(C-96)**

The third photograph of the web article showing Avery at the microphone reading his paper on *dissolution* was never removed and is still there as of this filing. The caption under the photo at this time says:

> "In April, the Texian congress assembled beneath the blue-and-yellow flag of the old Republic, on the dance floor of the shuttered Silver Eagle Taphouse near the banks of the Guadalupe River in McQueeny. They follow a speaker list, and members take turns at the microphone. In this photo, an individual lists grievances with the U.S., including the 2008 bank bailout, NSA surveillance, the "police state" and "immoral wars."" **(C-379) & (A-19)**

Avery is not a member of the "Republic of Texas" even though he is shown standing at the microphone in the photograph.

The title to Baddour's front page article was "Secessionist hopeful despite odds" **(C-87)** and the title to Baddour's web article was "Ever hopeful and determined, Texas secessionists face long, long odds." **(C-90)**. The third paragraph of both the front page printed article and the web article say:

> "...a volunteer group called the Republic of Texas, whose members believe Texas never legally became part of the United States and, therefore, remains a sovereign nation." **(C-87&91).**

The "Republic of Texas" website says:

> "There is no need for the republic of Texas to secede from the United States. We never "ceded" the land of Texas to them or to anyone else. A fraudulent color-of-law

> annexation agreement was foisted on the elected officials in Texas, but no lawful treaty was ever ratified to allow the United States to take over our nation, which had already been established forever by international treaties. Those elected officials in Texas were never authorized to give up the sovereignty of the republic of Texas." **(C-129)**

The "Republic of Texas" does not seek, support nor advocate secession of any state from any union.

SUMMARY OF THE ARGUMENT

Appellees Published a False 9/11 Domestic Terrorist Alert Article on 9/11 Memorial Weekend Five Months After the Event

Appellees published two cold news stories, one for the front page of the Houston Chronicle and the other for their website, HoustonChronicle.com. The web article simply had a longer title and longer photograph captions and ten pictures instead of two. Mainly the web article had hyperlinks to other articles and information. The main theme of the cold stories covered an event that happened five months earlier that was freshened up with an irrelevant side story from about a month earlier.

The articles were based upon a false premise, that a group of people were "secessionists." Based upon this falsehood, the Appellees, included hyperlinks to other articles, and government documents that elevated the defamatory interpretation of their articles.

The Appellant, Ronald Avery, was falsely made a member of that group of people by a caption under the lead photograph on both the front page of the Houston Chronicle and on the web that said the person in the photograph was "Ronald Avery." He was not in that picture.

Dylan Baddour, was the Houston Chronicle reporter that attended the event and wrote the stories. Appellant, Ronald Avery, was, and still is, made a member of that group by written false statements of fact and photographic implication. Avery is shown in the third picture of the web article and the caption below that picture said the man at the microphone was Ronald Avery, which was correct. But the caption also said "members take turns at the microphone." They got the identity of the person right this time but described him as a "member." The Appellees removed Avery's name from the caption 6 days after they had been sued and 55 days after they had been notified of their errors.

Even though being falsely made a member of that group subjected Avery to the written expression of *public ridicule* in Appellee's blog under their web article, it is other material that Baddour linked to his article which was dependent upon the group being secessionists that enraged the readers to express actual written *public hatred* towards the group and Avery, as a named pictured member of it. This linked material progressed in seriousness to ultimately persuade some *average readers* of *average intelligence* to express their conclusion that the group consisted of terrorists equal to or worse than Muslim

terrorists that needed to be sent to "GITMO" and given the "enhanced interrogation."

The caption under the lead photograph on the front page of the Houston Chronicle falsely identified the man in the picture as Ronald Avery also said "all Texians have informally renounced their citizenship in the U.S. as shone on Ronald Avery's jacket." Avery has never "*informally renounced"* his citizenship in the "United States of America."

Appellant Avery, has one thing in common with the group or "Texians." Avery is opposed to secession and has spoken against it for a number of years with those who are secessionists. The "RoT" is also opposed to secession and have spoken against it often for years. The title to both articles claimed the group was a secessionist organization.

The hyperlinks in the web article imputed the character of secessionist that would go to Russia to meet with "far-right fascists" and "neo-Nazis" and become part of the "growing right-wing terrorists threat" worse than Muslim terrorist that would "drive violence at home, during travel, and in government facilities."

This false imputation derived from the juxtaposition of extrinsic material based upon the falsehood that the group was a secessionist

organization produced a highly defamatory gist. This intensely defamatory sting of the entirety of both articles applied to Avery as a pictured and named member of the Texians. Avery was falsely exposed to the written public expressions of a "gun freak malcontent, deluded, traitor, terrorist wanting to harm the U.S.A., just like the Muslim terrorists."

Avery's libel suit is not a SLAPP suit (Strategic Lawsuit Against Public Participation) because it was not designed and filed to "punish," hinder or prevent the Appellees from exercising their own right of free speech, petition and association to tell the public what they think secession is or why they think secession is the same as dissolution.

Avery sued Appellees because they published two articles on the 9/11 Memorial weekend falsely making the public think that Avery is a terrorist worse than Muslim terrorists. The false *gist* and *sting* of the articles exposed Avery to the expression of written public disgrace, ridicule and hatred on the internet. The published falsehood that Avery is a member of the "Republic of Texas," and the published falsehood that the "Republic of Texas" is a "secessionist organization" and the Appellees juxtaposition of inapplicable defamatory material

hyperlinked to their stories resulted in Avery's exposure to public ridicule and hatred constituting damage per se.

The Appellees revived a five month old cold news story and knowingly embellished it with falsehoods to create a domestic terror alert on the front page of the Houston Chronicle on the weekend of the 9/11 Memorial with the surrounding circumstances of the continuing U.S. "War on Terror." This is a showing of malice on its face.

The Appellees also have shown malice by refusing to correct their story when made aware of their errors by justifying their claim with one over simplified Webster definition of "secessionist" to make those who oppose it become secessionists. The Appellees' opinion is not a fact that cannot be challenged with the truth that both the "RoT" and Appellant are opposed to secession.

Their articles were statements of fact not opinion. The Appellees have made themselves *willfully blind* to the facts and truth to maintain their false and defamatory news articles. The Appellees have refused to correct the third photograph in their web article that still shows Avery as a member of the group. The Appellees have failed to show the court or the Appellant a copy of their so-called "correction" they say they ran in the Houston Chronicle. Appellant suspects it is because

even the partial so-called "correction" does not comply with §73.057 of the Civil Practice and Remedy Code.

The Appellees did not challenge the sufficiency of the Appellant's Request for Corrections, Clarifications and Retraction in a timely fashion under §73.058(c). The Appellees did not serve notice on the Appellant that they intended to rely on a timely and sufficient correction, clarification, or retraction and what correction, clarification or retraction they were going to rely upon in a timely fashion under §73.058(a). As a result the Appellees cannot assert that they have corrected any of their publications.

ARGUMENT

To cover all the issues involved in this TCPA dismissal on appeal it makes sense to go through all three steps of the Act. Therefore the argument must consider if the Appellees were really exercising their own personal right of free speech, petition and association for which they were sued. Then consider if the Appellant had established clear and specific evidence to support a prima facie libel case. If he has then consider if the Appellees established every element of a valid defense. However, it is also proper to consider the lawfulness of the Texas Citizen Participation Act under which the dismissal was achieved.

1. The TCPA Is Fatally Flawed

1.1. TCPA Violates Article 2 Section 1 Texas Constitution

The Texas Citizen Participation Act is fatally flawed under Article 2 Section 1 of the present Texas Constitution (A-10). No person , or collection of persons, being of one department, shall exercise any power properly attached to either of the others, except where expressly permitted in the Texas Constitution. Those in the Legislature cannot pass laws that tell the Judiciary how to handle causes of action brought by the people in a certain way under certain circumstances.

The courts cannot *legislate from the bench* and neither can the legislature *adjudicate from the podium*.

1.2. TCPA is Internally Flawed Working Against Its Purpose

The Texas Citizen Participation Act (TCPA) is flawed from within to not only thwart its purpose but to work against it. The act grants all news reporters the status of citizen participating in the exercise of their personal right of free speech, petition and association by merely, reporting on others doing the same. News reporters are not allowed to exercise their own personal right of free speech, petition and association in regard to news events they cover or the stories they write about them unless they are indeed editorialist (C-403-407) (C-397-400). News reporters can smear a person that this act is intended to protect without showing they are in fact exercising their rights of free speech, petition and association. All they have to say is "I wrote an article and I was sued for it." That is not the same threshold that others must show to use the Act as a short circuit form of adjudication.

The Act contains a global definition of the exercise of free speech that allows those who cannot exercise or participate in same utilize the

act to protect negligent and malicious falsification of facts by news reporters.

To avoid dismissal, Baddour had to prove he was exercising his own constitutional right of free speech, petition and association. There is no such evidence in the record anywhere. And his duty as a reporter prevented him from doing so and he was true to the profession and did not participate in the meeting of April 11, 2015 and his articles are not editorials but front page news with no warning or notice to readers that he was injecting his own opinions in regard to the topics he covered. He was not a citizen participant at any level relevant to the suit when sued for reporting falsehoods and defamatory material. Baddour is not a citizen participant but a reporter who knowingly falsified facts in a published news article and linked inapplicable material to further denigrate to create a 9/11 alarm piece for the 9/11 Memorial weekend.

2. Avery Established Every Element of a Prima Facie Case for Libel

The Trial Court should mainly consider the pleadings and affidavits and look for the elements even if they are not properly plead by Plaintiff / Appellant. The Judge should also weigh all unknowns and balanced questions in favor of the Plaintiff before dismissing the

case much as in an ordinary summary judgment. The Appellant was not required to argue case law at the Trial Court but to only show clear and specific evidence for every element of a libel case which he did.

2.1. Appellees Published Statements of Fact not Opinion

Avery showed first impression evidence that the news articles that were published contained statements of fact not opinion or editorial information. Avery plead that the published articles contained statements of fact not opinion (C-291) at ¶25.1.

Using the following test we can find that the statements made were statements of fact not opinion:

> " The author suggests the following test by which to distinguish statements of fact from comment, 'Where the statement alleged to be libelous can be reasonably construed by the reader as an expression of opinion only, on the basis of facts either already known to the reader or else reasonably assumed by the person writing the statement to be known to the reader, then it should be regarded as fair comment. Where, however, the statement alleged to be libelous, as reasonably construed, conveys to the reader not only an expression of the writer's opinion, but also certain supposed information, and this information conveyed does not accord with the true facts, it is not comment, but should be treated as a statement of fact.
>
> 'Under this test, whether a publication will be treated as a statement of fact and libelous, if untrue, will depend upon the surrounding circumstances of each particular case. Under such a guidance, even an imputation of crime might be held to be merely an expression of opinion and not

> actionable.' *The Associated Press v. Edwin A. Walker 393 S.W.2d at 679*.

The articles do not show language suggesting that Baddour suspected that Avery was a member of the "Republic of Texas" or that he simply thought the group to be a "secessionist organization." Baddour declared that Avery was wearing a "RoT" jacket and declared in the headline to both articles that the "RoT" were secessionist (C-87). He even asserted that declaration again in his so-called "correction" (C-96).

2.2. Appellees Published False Statements of Fact

The great weight of evidence in the record shows that Avery was falsely made a member of the "RoT." The Appellees have admitted and made some attempt to correct their error claiming Avery to be a member of the "RoT" (C-96).

The great weight of evidence shows that Appellees falsely said that Avery had informally renounced his citizenship in the U.S. (C-87), (A-17). Avery provided evidence and plead that he had never informally renounced his citizenship in the U.S. as shown in his Request for Corrections, Clarifications and Retraction (C-29 #5), (C-293) at ¶25.4.

The great weight of evidence also shows that Appellee, Baddour, also falsely claimed that the RoT was a "secessionist organization" in

order to justify the other inapplicable hyperlinks he made to other more defamatory articles which resulted in the entirety of the articles having a false highly defamatory *sting*.

The Appellees evidence shows the following information on the "RoT" website:

> "There is no need for the republic of Texas to secede from the United States. We never "ceded" the land of Texas to them or to anyone else. A fraudulent color-of-law annexation agreement was foisted on the elected officials in Texas, but no lawful treaty was ever ratified to allow the United States to take over our nation, which had already been established forever by international treaties. Those elected officials in Texas were never authorized to give up the sovereignty of the republic of Texas." **(C-129)**

Avery's evidence shows that the "Vice President" of the "RoT" says:

> "The RT does not promote seceding from anything. Please read the Annexation of the Date of Texas in 1845 and you will see that Texas retained all public lands. Therefore we cannot secede from something we never ceded." (C-361)

2.3. Appellees Willful Blindness to Truth Reveals Malice

The great weight of evidence in the record shows that the Appellees continue to insist that the "RoT" is a "secessionist organization" against all reason, principle and evidence in *willing blindness* revealing *malice* of the highest degree in news journalism:

> "It is equally well established that the standard of actual malice requires proof not merely that the defamatory

> publication was false, but that the defendant either knew the statement to be false or that the defendant "in fact entertained serious doubts as to the truth of his publication." ("For [the actual malice] standard to be met, the publisher must come close to willfully blinding itself to the falsity of its utterance.")" *Tavoulareas v. Washington Post Company 817 F.2d 762 at 776*.

The Appellees even now try to convince Avery that he is really a secessionist with their Googled one sentence definition of *secessionist* (C-218), even though Avery has provided the great weight of evidence showing that he has been for years, and is now, an outspoken opponent of secession. (C-323 at #9, #11); (C-353, 357). Avery nor the "RoT" fall into the definition of "secessionist" provided by Appellees.

The Appellees are even now blindly defending falsehood in face of the truth. The Appellees filed evidence into the record that should have revealed to them that the "RoT" was not a "secessionist organization." Even the articles they wrote and published contained evidence that the "RoT" did not believe in or advocate secession.

> "...a volunteer group called the Republic of Texas, whose members believe Texas never legally became part of the United States and, therefore, remains a sovereign nation." **(C-87&91).**

Who believes that sovereign nations, not part of a union, secede from anything?

The Appellees further showed malice by refusing to correct the false information when it was pointed out to them and requested of them by Appellant in his Request for Corrections, Clarifications and Retraction (C-28).

Avery showed Appellees evidence that they were wrong in declaring the "RoT" to be secessionists in a long 15 day string of emails (C-338-352) especially (C-345)

Appellees showed malice by failing to provide Avery with a requested copy of their so-called "correction" to the front page article (C-31). The Appellees failed to at least remove Avery's name from the photographs in the web article until 55 days after being informed of the error.

The Appellees show malice in that they have not yet removed the photographic implication from their web article that Avery is a member of the "RoT." The third photograph still shows a picture of Ronald Avery at the microphone with a caption under it that says, "...members take turn at the microphone." (C-379), (A-20 in color).

Appellees showed malice even in their so-called "correction" to take another opportunity to smear the "RoT." It was not necessary to remind the readers of the falsehood that the "RoT" is a "secessionist

organization" to remove the Appellant's name from the photographs and tell the readers that Avery is not a member of the "RoT:"

> *"This article has been edited to reflect the following information: In a photo caption accompanying this article about the Republic of Texas, a secessionist organization, the Chronicle incorrectly identified a man wearing a Republic of Texas jacket as Ronald Avery. Avery is not a member of the organization and was not in the photograph."* **(C-96)**

A re-publication of a falsehood even after being made aware of it shows actual malice. Appellant does not have to prove actual malice even though he has shown evidence of it. All he is required to show is negligence:

> " Affirming the trial court's judgment, the court of appeals concluded that McLemore was a private individual, and as such, he had to prove negligence, not actual malice, in his defamation case." *WFAA-TV, Inc. v. McLemore, 978 S.W.2d 568 at 570*.

Appellant has gone beyond that to show actual malice. The Appellees certainly showed reckless disregard for the truth and the consequences of any falsehood they would say even after they had been notified that their declaration that the "RoT" were a secessionist organization was false, they repeated the falsehood in their so-called "correction:"

2.4. Published False Facts Applied to Avery

As a matter of law the evidence on record shows that it was a false statement that Avery was in the lead photograph of both articles wearing a blue "RoT" jacket. The same can be said for the evidence on record that implies Avery is still a member of the "RoT" in the third photograph. As a matter of law the Appellees have admitted to their "error" in publishing the false fact that Avery was and is a member of the "RoT:"

> "We have already run a retraction on September 16, correcting our error in identifying you as the wearer of the jacket, and as a member of the Republic of Texas." (C-340)

The false gist of the entire web article of the "RoT" being a secessionist, far-right fascist, neo-Nazi, part of the growing right-wing terrorist threat applies to Avery as a member. The public disgrace, ridicule and hatred expressed in writing against the "RoT" in the blog under the web article applies to Avery who was and is presently shown as a member of the "RoT."

The "RoT" was libeled by juxtaposition of facts that did not apply to them through the hyperlinks Baddour provided.

> "As we stated earlier, a true account which does not create a false impression by omitting material facts or suggestively juxtaposing them is not actionable, regardless of the conclusions that people may draw from it. See Randall's, 891 S.W.2d at 646. But by omitting key facts and

> falsely juxtaposing others, the broadcast's misleading account cast more suspicion on Turner's conduct than a substantially true account would have done. Thus, it was both false and defamatory. See Re, 496 A.2d at 558; cf. McIlvain, 794 S.W.2d at 16 (stating rule but reaching opposite conclusion)." *Turner v. KTRK Television 38 S.W.3d 103 Sup Crt 2000 at 118*.

Then Avery was libeled by the same by him being falsely made a member of the "RoT:" (C-292 at 25.2): "A second principle recognizes a civil action if a defamatory statement applies to all members of a small group." *Arcand v. Evening Call Pub. Co., 567 F.2d 1163 (C.A.1 (Mass.), 1977)* And:

> "In contrast, if a statement refers to all members of a small group, then individuals within that group can maintain a defamation claim ****Harvest House,* 190 S.W.3d at 214 (holding defamatory statement directed at group of individuals is actionable when statement infers all members of group participated in activity forming basis of defamation claim)." *Levine v. Steve Scharn Custom Homes, Inc., 448 S.W.3d 637 (Tex. App., 2014)*

And:

> "Thus, in order for an alleged defamatory statement that is directed to an unidentified group of individuals to be actionable, it must create the inference that *all members* of the group have participated in the activity that forms the basis of the libel suit. If the statement refers to some, but not all members of the group, and does not identify to which members it refers, it is not a statement of and concerning the plaintiff." *Harvest House Publishers v. Local Church, 190 S.W.3d 204 (Tex. App., 2006)*

It makes no difference that the written expressions came from "anonymous" readers instead of known sources. In fact, it's worse that

the sources are unknown and could come from multiple unknown locations.

Avery can bring this libel suit even if he had not been mentioned in writing if the pictures and surrounding circumstances are such that friends and acquaintances of the Plaintiff recognize that the publication is about him. Avery showed evidence that he learned of the article from a friend in Houston (C-325 at #28).

> 'We conclude that the petition was sufficient to authorize the admission of legitimate testimony in libel. The plaintiff may call his friends, or those acquainted with the circumstances, to state that, on reading the libel, they concluded it was aimed at the plaintiff. *Gibler v. Houston Post Co., 310 S.W.2d 377 (Tex.Civ.App.-Houston, 1958)*

2.5. Published Articles Based Upon Falsehoods Were Defamatory

The record shows evidence, as a matter of law, that the articles actually produced written public expressions of disgrace, ridicule and hatred against the "RoT," and the Appellant as a pictured and named member of the small group constituting statutory defamation per se as it conforms to the statutory definition. See statute at §73.001 TCPRC (A-21):

> 'To be libelous a publication must be defamatory in its nature, and must tend to injure or impeach the reputation of the person claimed to have been libeled. The language used, taken in connection with the facts and circumstances

> alleged by way of innuendo, must be reasonably calculated to produce one or more of the results mentioned in the statutory definition; that is, it must have the effect of injuring or tending to injure the person to whom it refers to
> Page 682
> the extent of exposing him to public hatred, contempt, ridicule, or financial injury, or to impeach his honesty, integrity, or virtue.
>
> 'It is not necessary, however, that the language have all the injurious or pernicious tendencies enumerated in the statute; it is actionable if it has any of them. * * *
>
> 'A publication that tends to subject the plaintiff to public contempt, or that impeaches his integrity or reputation, is libelous though it does not charge him with a crime.
>
> 'The term 'public hatred,' as found in the statutory definition, signifies public or general dislike or antipathy.' 36 Tex.Jur.2d 285, § 6. *Associated Press v. Walker*

This also applies to Avery, a named and photographed person in the articles and he is still shown as member at this very time, six months after they were informed of their error. Certainly a statement is defamatory if it tends to injure a person's reputation and expose them to public hatred as these articles did.

The gist and sting of the web article taken as a whole exposed the Avery to written expressions of public hatred.

> The broadcaster next complains that there was no evidence or, alternatively, insufficient evidence to support certain of the jury findings. The jury found that the **broadcast taken as a whole** had the effect of causing ordinary persons to believe that Medlin was involved in the criminal activity of gun smuggling. It found further that the published

> statement was false, that the broadcasters knew or should have known the statement was false, that the subject matter would warn a prudent broadcaster of its defamatory potential, that the broadcasters failed to use ordinary care, that "from clear and convincing evidence" the broadcasters were motivated by malice, and that the broadcasts were made with gross indifference or reckless disregard amounting to willful conduct. The jury also found the broadcasts were not fair, true and impartial accounts of a matter of public concern. Specifically, the broadcaster questions the evidentiary support for the findings of falsity, malice and willful conduct. (Bolding added) *Outlet Co. v. International Sec. Group, Inc., 693 S.W.2d 621 (Tex.App.-San Antonio, 1985)*

2.6. Avery Was Damaged By Defamatory False Articles

Avery plead that he was damaged per se and suffered mental anguish (C-295) and mental anguish is a recognized damage when the defamation is considered to be per se:

> "Prior to 1901 there could be no recovery of damages for mental anguish, when the libel was not actionable per se, without proof of some other injury or damage. Hirshfield v. Fort Worth National Bank, 83 Tex. 452, 18 S.W. 743, 15 L.R.A. 639, 29 Am.St.Rep. 660. But it was held that if the publication was libelous per se the law would assume that the plaintiff, the person defamed, was injured in his reputation, and would permit the consideration of plaintiff's injured feelings, in connection with the injury to his reputation, as a proper item of damages. Belo v. Fuller, 84 Tex. 450, 19 S.W. 616, 31 Am.St.Rep. 75." *Renfro Drug Co. v. Lawson, 160 S.W.2d 246, 138 Tex. 434, 146 A.L.R. 732 (Tex., 1942)*

The record shows that Baddour falsely claimed the "RoT" were not only secessionist but in persistent pursuit of secession. The articles

claimed that secession was ruled to be illegal by the Supreme Court in 1869. The articles said any attempt to secede would result in the use of force by the U.S. to stop it.

The Appellees now claim that the advocacy of secession is not a crime but only the attempt to obtain secession is a crime. The *average reader* with *average intelligence* could not make such a distinction between pursuit and advocacy and which is a federal crime. Numerous readers concluded that secession is a crime that has failed in the past and violently threatens the people now. Such published allegations represent damage per se which presumes general damages. The "RoT," and Avery as a shown named member, were accused of pursuing the crime of secession in the same articles. This is considered common law per se damage.

> The letter also falsely accused Mr. Wechter of committing a criminal act by attempting to conspire with Leyendecker to file fraudulent insurance claims. See United States v. Becker, 569 F.2d 951 (5th Cir.), cert. denied, 439 U.S. 865, 99 S.Ct. 188, 58 L.Ed.2d 174 (1978). A false statement which charges a person with the commission of a crime is libelous per se. Christy v. Stauffer Publications, Inc., 437 S.W.2d 814 (Tex.1969). The law presumes a statement which is libelous per se defames a person and injures his reputation. Cotulla v. Kerr, 74 Tex. 89, 11 S.W. 1058, 1060 (1889). Because of this presumption of injury to reputation, Mr. Wechter may properly recover his general damages for mental anguish. The court of appeals properly affirmed the trial court's award of damages to Mr. Wechter

for libel. *Leyendecker & Associates, Inc. v. Wechter, 683 S.W.2d 369 (Tex., 1984)*

Baddour interviewed and quoted university professors as experts to bolster his allegation of the illegal nature of secession in the articles. As a result much of the public understood the charge of secession as a federal crime and expressed written repugnance and ridicule against the group's "sad, deluded, traitors" and products of "under-funded public education." (C-98-103) All this defamation applies to Avery as a shown and named member even now 6 months after the article came out and they were made aware of the errors.

The evidence also shows that Avery is due exemplary damages as a result of serving a Request for Corrections, Clarifications and Retraction on the Appellees prior to suit and that not even a partial "correction" was made to the web article until 6 days after the filing of the lawsuit and 41 days after the Appellees were served with the request. See the statutory requirements (A-23-25).

3. Appellees Did Not Establish Every Element of a Valid Defense

Appellees assert four main defenses at the Trial Court of which they have been unable to establish the necessary elements of any one of them.

3.1. Articles incapable of Defamatory Meaning

3.1.1. Articles not defamatory under the "Fair Comment" doctrine

Even though the Appellees say they did not assert the doctrine of "*Fair Comment*" they said they were not waiving any claim to it. The elements of this doctrine prevent their use by Appellees and impacts their other defenses using the doctrine of "*Substantial Truth*."

The doctrine of Fair Comment requires that the statements in question be of opinion not fact, and related to public issues, and that they are fair and reflective of the facts. The *willful blindness* to the facts that Avery and the RoT are not secessionists in spite of, at least, the great weight of the evidence in the record prevents Appellees from applying both the "Fair Comment" and "Substantial Truth" doctrine. The Substantial Truth doctrine does not overrule the Fair Comment doctrine but rather compliments it.

Baddour did not make a statement of opinion about what a secessionist was but rather falsely stated the fact that the "RoT" was a

"secessionist organization." Had Baddour reported that the RoT was a group who observe the un-perfected union between the Republic of Texas and the Republic of United States that oppose secession because they never were in the union and then commented on how he thought this is was really secession, he could at least assert the element of opinion. But since this hypothetical opinion is not a fair reflection of the facts, Baddour would still not have that element of "fair comment."

> 'The Press and the Law in Texas' by Norris G. Davis, University of Texas Press, Austin, 1956, it is stated that, '* * * the right of fair comment is a weak defense in most libel suits. It is subject to so many limitations that it is seldom completely applicable. There are three groups of limitations. First, the comment must be limited to matters of public concern. Second, the article must be a statement of opinion-or comment-rather than a statement of fact, a very difficult distinction to make. Finally, the comment must be reasonable and fair and made in good faith, and this limitation is also difficult to define.' (p. 65) *Associated Press v. Walker*

We only heard Baddour's opinion about why he thinks Avery and the "RoT" are secessionists after he was notified of the errors and then sued for that false statements of fact, one of which was used to falsely link other inapplicable material to describe the "RoT" and Avery as a shown member.

3.1.2. Defamatory statements are objective not subjective

Actual expressions in writing of public disgrace, ridicule and hatred as a result of a false written article is defamatory as a matter of law. A judicial determination of a statement's ability to defame is mute when there is evidence of the written expression of public disgrace, ridicule and hatred.

Regardless of Avery's *objectivity* or *subjectivity* regarding the defamatory nature of Appellees' articles, the articles certainly exposed him to public hatred, which is defamation if they were untrue or even if the gist of the whole article is untrue. The subjectivity of the defamed is irrelevant in the presence of actual written expression of public hatred towards them. It would be futile for a judge to rule that an article is *not capable of defamatory meaning as a matter of law* in the face of written evidence of public hatred expressed by more than one of the average readers of average intelligence.

The Appellees hide behind the uninformed person to set the standard for what they can get away with printing. This is not the correct use of the "average person" of "average intelligence." The Appellees cannot make or disregard distinctions for the uninformed. They must inform the average person and then express their own

personal opinion as to the proper distinctions to be made or disregarded which then can be made by the average reader using his average intelligence.

Appellees have asserted that Avery cannot show that the two articles were defamatory in spite of the fact that some "*average readers*" with "*average intelligence*" expressed ridicule and hatred towards him on Appellees' website. Avery was named and pictured in the articles, and recognized by a friend, therefore, any characterization of the group is descriptive of Avery as a stated and photographed member of the "RoT." See *Turner*

The Appellees assert that it is not what Avery believes secession is but what the "average reader" of "average intelligence" thinks secession is. They are really suggesting that Avery's opposition to secession based upon learned irrefutable principle is irrelevant and he is dependent upon what the less informed thinks he is if they actually heard Avery's views. How can the Appellees or a judge figure out what the average less informed reader would think about Avery's views if they have never heard them? Baddour did not tell these readers what Avery believes and advocates so how can he know what they will think upon hearing them?

3.1.3. Political Dissent is not Defamatory

Many average readers of Baddour's articles concluded that the RoT and Avery, as named and pictured member, were involved in more than routine *dissention* in a typical political controversy. There is no right to be an enemy of the U.S. "War on Terror" such as being in a "host of other groups and individuals who also use terror and violence against innocent civilians to pursue their political objectives." (A-11)(C-300).

Avery, as a member of the RoT, was further characterized as part of the "Growing Right-Wing Terror Threat" worse than Muslim terrorists because he is part of a movement of secessionists that went to Russia to associate with "far right fascists" and "neo-Nazis" to "rail against Western decadence." The language around the hyperlinks draw a *correlation* rather than a "*contrast*" as insisted by the Appellees (C-63). This correlation drew defamatory public written responses from many of the readers. (C-301)

The average reader also gleaned from the articles a characterization of the "RoT" and Avery as member that well exceeded the *exercise of one's rights*. Regardless of the *legality of advocating secession* that the average reader might perceive, no one has the right to "drive

violence at home, during travel, and in government facilities," or commit acts of right-wing terrorism. The *articles taken as a whole with their links* to other articles in light of the *surrounding circumstances* of the 9/11 Memorial weekend in the era of the continuing "U.S. War on Terror" resulted in the actual written expression of disgrace, ridicule and hatred towards the "RoT," of which Avery is still falsely shown as a member by pictures and written content on Appellees's website. The gist and sting of the articles in their entirety are defamatory.

One statement that the "*RoT forswears violence*" in a paragraph about a SWAT type raid on the "RoT" two months earlier and the seven-day standoff in 1997 that killed one person in a two page article linked to many other pages of descriptive alarming articles cannot prevent the average reader of average intelligence from gleaning the intended message that the "RoT" consist mainly of ignorant country folk who can't make it in the modern world who pursue an illegal dead dream of the past and associate with other secessionists who associate with far-right fascists and neo-Nazis in Russia and are a part of the growing right-wing terror threat.

3.2. Articles are Not Defamatory as a Matter of Law

As Avery has shown herein under his elements of libel that the opposite is true. The web article is defamatory as a matter of law because it actually exposed the named pictured Appellant to written expressions of public disgrace, ridicule and hatred which is the statutory definition of defamation per se.

3.2.1. Articles are not Defamatory by hyperlinks to Extrinsic facts & Avery's "admission" & no name reference

3.2.1.1. Articles not defamatory by reference to extrinsic facts as a matter of law

Appellees claim that the "linked articles are not defamatory as a matter of law because they accused Plaintiff "of absolutely nothing except what he had a [well-established and celebrated First Amendment] right to do." The record shows that the linked material was about acts of violence and terror (C-111, 116). There is no such 1st Amendment right to engage in those crimes.

The Appellees have asserted that they are not liable for any extrinsic material in their hyperlinks and that these links do not alter their web article. The Appellees have said

> "Accordingly, the only way these extrinsic materials can render the Web Article defamatory is if they cause statements actually in the Web Article to take on a defamatory meaning in the mind of the "average reasonable reader." See *Bingham v. Sw. Bell Yellow Pages, Inc., No. 2-*

*06-229-CV, 2008 WL 163551, at *4 (Tex. App.-Fort Worth Jan. 17, 2008, no pet.)* (C-62)

The Appellees admit above that extrinsic materials like hyperlinks to other material on the web can cause statements in their web article to take on a defamatory meaning in the mind of the average reader and they even cite the case for us. Avery agrees.

3.2.1.2. Avery's so-called "admission" that Defendants are not liable for publishing extrinsic links

The Appellees assert that Avery has admitted that the Appellees are not liable for the publication of the hyperlinks in their articles. (C-301 at 26.1.4). As one can clearly see the context of Avery's pleading was not about liability for libelous imputation but for copyright violation and or republishing of something that had been published already by the same people with libelous content which is what they were talking about in the case they provided dealing with "republication" liability at (C-62).

3.2.1.3. Hyperlinks cannot make articles defamatory because Avery is not named in them

Just because *Avery was not mentioned* by name in the linked articles does not mean the links were not used to impute a false defamatory character to him as a named pictured member of the "RoT"

and expose him to public hatred. The Appellees are certainly liable for that misuse of inapplicable extrinsic factual material. See *Turner*.

3.2.2. Articles are Substantially True as Matter of Law

3.2.2.1. The Gist and Sting of the Articles are Substantially True

The fact that the Appellees published two articles falsely making Avery a member of the "RoT" cannot be made substantially true. The Appellees agree that was an error but have not corrected it completely. Even now Avery is shown in the third photograph of their web article as a member at the microphone. (C-379), (A-20 in color).

The real gist and sting of the Appellees' articles are not at all what Appellees claim they are. Appellees want to establish the truth of their articles in blind defiance of the facts on record. The Appellees want to prove the "RoT" are secessionists to avoid the collapse of their articles in their entirety which they are based upon.

The Appellees have submitted evidence from the website of the "RoT" that says "secession is not needed" (C-129). Avery has entered evidence that the "Vice President" of the "RoT" says "they do not advocate secession from anything" (C-361) Avery has submitted two documents showing his opposition to secession (C-353, 357). The great weight of evidence is that the "RoT" and Avery are not

secessionists and are rather opposed to it and therefore the title of the articles convey a false message and several of the links Baddour attached to his web article are completely inapplicable and give the false gist and / or sting which are defamatory to Avery.

3.2.2.2. If Underlying Facts of the Gist are Undisputed Substantial Truth Can be Found as a Matter of Law

The Appellees assert that the facts or gist of the articles are undisputed, and as a result, the truth of the gist of the articles can be determined as a matter of law. Appellees list what they consider to be the undisputed facts to be only two: 1) Avery's political beliefs are those he alleges in his Original Petition and Affidavit; 2) Avery has not disputed that Exhibits A and B to the Bishop Declaration are true and correct copies of the Articles that are the subject of the Complaint. Accordingly, the Court can compare the content of the Articles to Plaintiff's professed beliefs and determine the gist of the Articles and their substantial truth as a matter of law.

The judge cannot find that Avery is a member of the "RoT" as a Substantial Truth. The Appellees agreed that Avery was not a member and took some steps to correct it. The judge cannot find that Avery is a secessionist. The judge cannot find that secession is the same thing as dissolution.

The doctrine of substantial truth based upon undisputed underlying facts relates to discrepancies in reports of facts that don't change the underlying factual nature of the truth. If the true facts show that a person has stolen 100 dollars, the gist is that they are a petty thief. A publication that the person stole 200 dollars does not alter the gist of the person being a petty thief.

The judge cannot find that being a member of the "RoT" and not being a member of the "RoT" is the same thing. The judge cannot find that being opposed to secession is the same as being a secessionist. The judge cannot find that believing that the Republic of Texas was never a lawful state of the Union is the same as being a secessionist.

Those who oppose secession cannot be said to be secessionist as that disputes the underlying factual nature of the truth. The true facts in this libel case do not support the notion that Avery is a secessionist, far-right fascist, or neo-Nazi or right-wing domestic terrorist or an extremist that will drive violence at home, during travel and in government facilities in any degree. And they cannot show that their article agrees with the underlying truth about Avery and that their article is only incorrect in a *secondary* sense that does not alter the gist of the truth about him. The underlying facts in this case are in

dispute. A judge cannot compare an opponent of secession to a secessionist and find the opponent a secessionist.

The Appellees published two articles falsely calling the "RoT" a secessionist organization and further describe them by a progression of inapplicable links to other articles implying ultimately that they are domestic terrorists. Avery disputes this and the underlying facts and evidence of record dispute this and show that the "RoT" is opposed to secession and cannot be further described by their links to other more inapplicable materials based upon the premise that the "RoT" is a "secessionist organization" (C-96).

The underlying facts are in dispute and the greater weight of evidence proves that the title and gist of the articles are false in their entirety. Therefore, a judge cannot find as a matter of law that the gist of the Appellees publications are substantially true against the great weight of evidence to the contrary and the disputed facts.

Appellees have claimed that Avery cannot show that the articles were false because they are *substantially true*. The Appellees narrow their argument about the truth of their articles to only their false statement that Avery is a secessionist, rather than an observer of dissolution. Appellees pretend that this is the only falsehood they

reported in their articles and that this is a distinction without a difference.

However, Appellees also reported that Avery was a member of the "RoT" and by being so named and shown he had "informally renounced" his "U.S. citizenship." Avery has not informally renounced his citizenship in the U.S. This alone exposed Avery to public disgrace and ridicule that was expressed in writing by numerous readers.

Further, this false statement about informally renouncing citizenship (C-87) was used by Baddour to justify adding a hyperlink to an "Intelligence Assessment" publication (C-116) issued by the Department of Homeland Security about the "Sovereign Citizen Extremists" who would "drive violence at home, during travel and at government facilities." This inapplicable link certainly exposed Avery to public hatred expressed on Appellees' website. Avery is still shown as a member of the "RoT" in the third photograph and its caption below in Appellees' web article.[1]

Appellees rely upon a Googled Merriam Webster definition of "secessionists" and claim it permits them to report to the world that

[1] http://www.houstonchronicle.com/news/houston-texas/houston/article/Ever-hopeful-and-determined-Texas-secessionists-6502332.php?t=63407b543c&cmpid=twitter-premium

the "RoT" and Avery, as a member, and an observer of dissolution, are secessionists because both think Texas should be separate from the United States and be independent. But this too is only the incorrect opinion of Appellees, not the real facts about what the RoT or Avery believe and advocate. Baddour cannot use the Substantial Truth doctrine because the underlying facts are disputed and contrary and unsupportive of his claim.

The "RoT" thinks they are the true government for the "Organic Republic of Texas" not that U.S. "chartered corporation" in Austin Texas. They also believe the true "Republic of Texas," whose government meets all over Texas, was never made a lawful state of the Union. They don't advocate the present "Corporate State of Texas" seceding from the Union. They also do not advocate that their real organic Republic of Texas secede from the Union. The website for the "RoT" says they do not need to secede from the union. The "RoT" continually argues against secession with other groups including the Texas Nationalist Movement, whose member was reported as having gone to Russia to meet with "far-right fascists" and "neo-Nazis" (C-106).

Avery believes the "United States" and the "State of Texas" is dissolved making secession an absurdity even though he is a citizen of both and due the same protection afforded to any other citizen. The RoT and Avery do not fit the Merriam Webster definition of secessionists. And the Appellees have no idea how the average reader with average intelligence is going to compare them if they knew the true facts and no judge can determine that as a matter of law. There needs to be a fact finder for this issue. The greater weight of evidence shows that the "RoT" and Avery are not secessionists.

Appellees have *willfully blinded* themselves to the truth that the RoT and Avery are not secessionists because they know that their whole article and most of its links would not make sense without the secessionists link. The great weight of evidence is in favor of the "RoT" and Avery being opponents of secession.

3.3. The Truth About Avery is Worse Than any Falsehoods in the Articles

3.3.1. Secessionist is not worse than Dissolutionist

Certainly the Appellees want to limit the label on Avery to that of only a secessionist. No one cares about any difference between a secessionist and an observer of dissolution. But they are alarmed about the difference between an observer of dissolution and a terrorist.

3.3.2. Avery's admitted beliefs are worse than falsehoods

The Appellees's assertion that Avery's admitted political beliefs render articles substantially true and non-actionable. The Appellees want to limit that comparison to Avery's observation of dissolution versus being a secessionist. If the people really knew the difference they would certainly prefer the Appellant's view as it requires nothing.

The Appellees claim that Avery's support of the Second Amendment right to form militias and keep and bear arms of all kinds is more reprehensible than being called a secessionist. But that comparison is not the totality of what the Appellees imputed to Avery. This would extend the comparison to a secessionist that would go to Russia to meet with far-right fascists and neo-Nazis and be part of the growing right-wing terror threat worse than Muslim terrorist. It is obvious which is worse in this true comparison.

3.3.3. Avery's support of 2nd Amendment worse than falsehoods

Appellees assert that what they published was no more damaging to Avery than what the truth about him is. The Appellees have attempted to characterize Avery's support of the 2nd Amendment right of the people to keep and bear arms of all kinds for defense of the State and the people according to the Federalist Letters and the U.S.

Constitution as a repugnant, disgraceful idea that the *average reader* would find more disgusting and reprehensible than Appellees' implication that Avery is a secessionist and part of the growing right-wing terror threat in America. This contrast is far different from publishing that a police search looking for a gun at a city water facility found liquor bottles instead, while the truth is that a search of an office found liquor but no gun. It would seem reasonable that a 2nd Amendment advocate would be less reprehensible than a terrorist.

4. No Damages

Appellees claim that the Avery has not plead or shown any damages or sufficient damages. But the record shows that he has plead and shown the great weight of evidence for damages per se as a result of being exposed to written expressions of public disgrace, ridicule and hatred as a matter of law (C-293 at 25.3), (C-328 at #48) (C-295 at 25.6).

Avery also plead mental anguish and exemplary damages (C-26-27) which he is entitled to as a result of the Appellees failure to correct his timely served Request for Correction, Clarifications and Retraction. The Appellees also failed to serve Avery notice that they intended to rely on their "correction" in a timely manner under

§73.058(a). The Appellees also failed to even partially correct their web article until 6 days after the suit was filed and 41 days after the Request for Corrections, Clarifications and Retraction was served on them.

PRAYER

Therefore Premises Considered, The Appellant, Ronald F. Avery, requests that the Trial Court Order to Dismiss on appeal herein be reversed and remanded for trial on the merits and that Avery be granted any other relief to which he may be entitled to.

Respectfully submitted,

_____

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CERTIFICATE OF SERVICE

I certify that on May 2, 2016, I served a copy of the foregoing Appellant's Brief on the Appellees / Cross Appellants listed below by Certified Mail RRR 7009 0960 0000 7721 9612:

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_____
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APPENDIX

FILED
10:17 M
MAR 18 2016
DEBRA CROW
Clerk, Dist. Court, Guadalupe Co. Tx

ENTERED

CAUSE NO. 15-2186-CV

RONALD AVERY,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff,	§	
	§	
vs.	§	**GUADALUPE COUNTY, TEXAS**
	§	
DYLAN BADDOUR, AND HEARST COMMUNICATIONS, INC.,	§	
	§	**2ND 25TH JUDICIAL DISTRICT**
Defendants.	§	

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PURSUANT TO THE TEXAS CITIZENS PARTICIPATION ACT

After considering Defendants Hearst Communications, Inc. and Dylan Baddour's, Motion to Dismiss Pursuant to the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.001, *et seq.*, the supporting declarations and exhibits thereto, the Plaintiff's response and supporting affidavit and supplements and exhibits thereto, the authorities cited, and the arguments made before the Court at the hearing held on March 10, 2016, the Court hereby GRANTS the motion.

Pursuant to the Court's letter dated March 16, 2016, it is hereby ORDERED that Plaintiff's Original Petition is DISMISSED with prejudice.

~~It is further ORDERED that Defendants are entitled to recover their court costs, reasonable attorney's fees, and other expenses incurred in defending against this action pursuant~~ to Section 17.009(a) ~~of the Texas Civil Practice and Remedies Code, and Defendants may move for an Order awarding such costs, fees, and expenses.~~

SIGNED this 18th day of March, 2016.

JUDGE PRESIDING

I, DEBRA CROW, Clerk of the District Courts, in Guadalupe County, Texas, certify this copy is true and correct as FILED & RECORDED in the Official Court Records of District Court. Given under my hand and seal of office in Seguin, Texas on the 18 day of March, 2016.
DEBRA CROW, District Clerk, Guadalupe County, Texas
By _____ Deputy

DISTRICT COURT OF GUADALUPE CO. TEXAS

A-2

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE B. TRIAL MATTERS

CHAPTER 27. ACTIONS INVOLVING THE EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS

Sec. 27.001. DEFINITIONS. In this chapter:

(1) "Communication" includes the making or submitting of a statement or document in any form or medium, including oral, visual, written, audiovisual, or electronic.

(2) "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests.

(3) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern.

(4) "Exercise of the right to petition" means any of the following:

(A) a communication in or pertaining to:

(i) a judicial proceeding;

(ii) an official proceeding, other than a judicial proceeding, to administer the law;

(iii) an executive or other proceeding before a department of the state or federal government or a subdivision of the state or federal government;

(iv) a legislative proceeding, including a proceeding of a legislative committee;

(v) a proceeding before an entity that requires by rule that public notice be given before proceedings of that entity;

(vi) a proceeding in or before a managing board of an educational or eleemosynary institution supported directly or indirectly from public revenue;

(vii) a proceeding of the governing body of any political subdivision of this state;

(viii) a report of or debate and statements made in a proceeding described by Subparagraph (iii), (iv), (v), (vi), or

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(vii); or

(ix) a public meeting dealing with a public purpose, including statements and discussions at the meeting or other matters of public concern occurring at the meeting;

(B) a communication in connection with an issue under consideration or review by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(C) a communication that is reasonably likely to encourage consideration or review of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding;

(D) a communication reasonably likely to enlist public participation in an effort to effect consideration of an issue by a legislative, executive, judicial, or other governmental body or in another governmental or official proceeding; and

(E) any other communication that falls within the protection of the right to petition government under the Constitution of the United States or the constitution of this state.

(5) "Governmental proceeding" means a proceeding, other than a judicial proceeding, by an officer, official, or body of this state or a political subdivision of this state, including a board or commission, or by an officer, official, or body of the federal government.

(6) "Legal action" means a lawsuit, cause of action, petition, complaint, cross-claim, or counterclaim or any other judicial pleading or filing that requests legal or equitable relief.

(7) "Matter of public concern" includes an issue related to:

(A) health or safety;

(B) environmental, economic, or community well-being;

(C) the government;

(D) a public official or public figure; or

(E) a good, product, or service in the marketplace.

(8) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.

(9) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following,

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even if the person has not yet qualified for office or assumed the person's duties:

(A) an officer, employee, or agent of government;

(B) a juror;

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy;

(D) an attorney or notary public when participating in the performance of a governmental function; or

(E) a person who is performing a governmental function under a claim of right but is not legally qualified to do so.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

Sec. 27.002. PURPOSE. The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

Sec. 27.003. MOTION TO DISMISS. (a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a motion to dismiss the legal action.

(b) A motion to dismiss a legal action under this section must be filed not later than the 60th day after the date of service of the legal action. The court may extend the time to file a motion under this section on a showing of good cause.

(c) Except as provided by Section 27.006(b), on the filing of a motion under this section, all discovery in the legal action is suspended until the court has ruled on the motion to dismiss.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

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Sec. 27.004. HEARING. (a) A hearing on a motion under Section 27.003 must be set not later than the 60th day after the date of service of the motion unless the docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(b) In the event that the court cannot hold a hearing in the time required by Subsection (a), the court may take judicial notice that the court's docket conditions required a hearing at a later date, but in no event shall the hearing occur more than 90 days after service of the motion under Section 27.003, except as provided by Subsection (c).

(c) If the court allows discovery under Section 27.006(b), the court may extend the hearing date to allow discovery under that subsection, but in no event shall the hearing occur more than 120 days after the service of the motion under Section 27.003.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1042 (H.B. 2935), Sec. 1, eff. June 14, 2013.

Sec. 27.005. RULING. (a) The court must rule on a motion under Section 27.003 not later than the 30th day following the date of the hearing on the motion.

(b) Except as provided by Subsection (c), on the motion of a party under Section 27.003, a court shall dismiss a legal action against the moving party if the moving party shows by a preponderance of the evidence that the legal action is based on, relates to, or is in response to the party's exercise of:

(1) the right of free speech;

(2) the right to petition; or

(3) the right of association.

(c) The court may not dismiss a legal action under this section if the party bringing the legal action establishes by clear and

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specific evidence a prima facie case for each essential element of the claim in question.

(d) Notwithstanding the provisions of Subsection (c), the court shall dismiss a legal action against the moving party if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the nonmovant's claim.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1042 (H.B. 2935), Sec. 2, eff. June 14, 2013.

Sec. 27.006. EVIDENCE. (a) In determining whether a legal action should be dismissed under this chapter, the court shall consider the pleadings and supporting and opposing affidavits stating the facts on which the liability or defense is based.

(b) On a motion by a party or on the court's own motion and on a showing of good cause, the court may allow specified and limited discovery relevant to the motion.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

Sec. 27.007. ADDITIONAL FINDINGS. (a) At the request of a party making a motion under Section 27.003, the court shall issue findings regarding whether the legal action was brought to deter or prevent the moving party from exercising constitutional rights and is brought for an improper purpose, including to harass or to cause unnecessary delay or to increase the cost of litigation.

(b) The court must issue findings under Subsection (a) not later than the 30th day after the date a request under that subsection is made.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

Sec. 27.008. APPEAL. (a) If a court does not rule on a motion to dismiss under Section 27.003 in the time prescribed by Section

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27.005, the motion is considered to have been denied by operation of law and the moving party may appeal.

(b) An appellate court shall expedite an appeal or other writ, whether interlocutory or not, from a trial court order on a motion to dismiss a legal action under Section 27.003 or from a trial court's failure to rule on that motion in the time prescribed by Section 27.005.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1042, Sec. 5, eff. June 14, 2013.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1042 (H.B. 2935), Sec. 5, eff. June 14, 2013.

Sec. 27.009. DAMAGES AND COSTS. (a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action as justice and equity may require; and

(2) sanctions against the party who brought the legal action as the court determines sufficient to deter the party who brought the legal action from bringing similar actions described in this chapter.

(b) If the court finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay, the court may award court costs and reasonable attorney's fees to the responding party.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

Sec. 27.010. EXEMPTIONS. (a) This chapter does not apply to an enforcement action that is brought in the name of this state or a political subdivision of this state by the attorney general, a district attorney, a criminal district attorney, or a county attorney.

(b) This chapter does not apply to a legal action brought

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against a person primarily engaged in the business of selling or leasing goods or services, if the statement or conduct arises out of the sale or lease of goods, services, or an insurance product, insurance services, or a commercial transaction in which the intended audience is an actual or potential buyer or customer.

(c) This chapter does not apply to a legal action seeking recovery for bodily injury, wrongful death, or survival or to statements made regarding that legal action.

(d) This chapter does not apply to a legal action brought under the Insurance Code or arising out of an insurance contract.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1042 (H.B. 2935), Sec. 3, eff. June 14, 2013.

Sec. 27.011. CONSTRUCTION. (a) This chapter does not abrogate or lessen any other defense, remedy, immunity, or privilege available under other constitutional, statutory, case, or common law or rule provisions.

(b) This chapter shall be construed liberally to effectuate its purpose and intent fully.

Added by Acts 2011, 82nd Leg., R.S., Ch. 341 (H.B. 2973), Sec. 2, eff. June 17, 2011.

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THE TEXAS CONSTITUTION

ARTICLE 2. THE POWERS OF GOVERNMENT

Sec. 1. DIVISION OF POWERS; THREE SEPARATE DEPARTMENTS; EXERCISE OF POWER PROPERLY ATTACHED TO OTHER DEPARTMENTS.

The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

Today's Era or the War On Terror:

Terrorism; Violence:

U.S. Department of State Jan 20, 2001 - Jan 20, 2009:

"Today's Terrorist Enemy:"

"In addition to this principal enemy, a host of other groups and individuals also use terror and violence against innocent civilians to pursue their political objectives. Though their motives and goals may be different, and often include secular and more narrow territorial aims, they threaten our interests and those of our partners as they attempt to overthrow civil order and replace freedom with conflict and intolerance. Their terrorist tactics ensure that they are enemies of humanity regardless of their goals and no matter where they operate."[1]

"Conclusion:"

"Since the September 11 attacks, America is safer, but we are not yet safe. We have done much to degrade al-Qaida and its affiliates and to undercut the perceived legitimacy of terrorism. Our Muslim partners are speaking out against those who seek to use their religion to justify violence and a totalitarian vision of the world. We have significantly expanded our counterterrorism coalition, transforming old adversaries into new and vital partners in the War on Terror. We have liberated more than 50 million Afghans and Iraqis from despotism, terrorism, and oppression, permitting the first free elections in recorded history for either nation. In addition, we have transformed our governmental institutions and framework to wage a generational struggle. There will continue to be challenges ahead, but along with our partners, we will attack terrorism and its ideology, and bring hope and freedom to the people of the world. This is how we will win the War on Terror."[2]

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[1] http://2001-2009.state.gov/s/ct/rls/wh/71803.htm#enemy

[2] Ibid

HEARST corporation

Jonathan R. Donnellan
Vice President
Deputy General Counsel

April 6, 2016

VIA EFILE AND FACSIMILIE (830-303-0847)

The Honorable W.C. Kirkendall
2nd 25th Judicial District Judge
211 West Court Street, Room 220
Seguin, Texas 78155-5779
(830) 303-8852, ext. 2

Re: ***Ronald Avery v. Dylan Baddour & Hearst Communications, Inc.,***
Cause No. 15-2186-CV

Dear Judge Kirkendall:

I write on behalf of Defendants Hearst Communications, Inc. and Dylan Baddour in the above-referenced matter (together, "Defendants") regarding Plaintiff's March 29, 2016 Request for Findings of Fact and Conclusions of Law ("Request") in support of this Court's March 18, 2016 Order, which granted Defendants' motion to dismiss this action pursuant to the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.001, *et seq.* ("TCPA"). Plaintiff's Request is not authorized by the TCPA or any Texas Rule of Civil Procedure. The TCPA authorizes only the ***movant***—here, Defendants—to request additional findings in support of a ruling on a motion to dismiss under that statute. Tex. Civ. Prac. & Rem. Code § 27.007. Likewise, the separate Rule of Civil Procedure addressing requests for findings and conclusions (Tex. R. Civ. P. 296) authorizes such requests only in cases that have been tried. Accordingly, the Court is not required to act on Plaintiff's Request.

Respectfully submitted,

/s/ Jonathan R. Donnellan
Jonathan R. Donnellan

CC: Ronald Avery, *pro se* Plaintiff (via Federal Express)
1933 Montclair Drive
Seguin, Texas 78155

300 West 57th Street
New York, NY 10019
T 212 649 2051
F 646 280 2051
Email: jdonnellan@hearst.com

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Ronald F. Avery
1933 Montclair Dr.
Seguin, Texas 78155
830/372-5534
Taphouse@SBCglobal.net

April 8, 2016

The Honorable W.C. Kirkendall
2nd 25th Judicial District Judge
211 West Court Street, Room 220
Seguin, Texas 78155-5779
830/303-8852 ext. 2
Via Fax: 830/303-0847

RE: Avery v. Hearst Cause No. 15-2186-CV

Dear Judge Kirkendall,

I regret that the Defendants in this case have resorted to writing you letters about what the Texas Rules of Civil Procedure mean and what the Texas Citizen Participation Act authorizes. But I must disagree with Mr. Donnellan regarding my most reasonable Request for Findings of Fact and Conclusions of Law. It is clear that TRCP 296 says "In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law." And its very clear from ***Liberty Mut. Fire Ins. v. Laca***, 243 S.W.3d 791, 794 (Tex.App.-El Paso 2007, no pet.) that a party "has been harmed if, under the circumstances of the case, he is forced to guess the reasons why the trial court ruled against him. If there is only a single ground of recovery or a single defense in the case, the record would show that the party has suffered no harm, because he is not forced to guess the reasons for the trial court's judgment. On the other hand, when there are multiple grounds for recovery or multiple defenses, the party is forced to guess what the trial court's findings were." This Motion was not a simple Motion for Summary Judgment where there are no facts involved, but rather, a complex statutory motion that requires three phases of findings and conclusions resulting in shifting burdens of proof supported by evidence and mixed with issues of both facts and law.

It is most difficult to address all the issues in this case, especially in an accelerated appeal, as my Request for Findings of Fact and Conclusions of Law clearly show, In fact, I will have been harmed without them.

Sincerely,

Ronald F. Avery

Ronald F. Avery
cc via email:
Jonathan Donnellan
Lead Attorney for Dylan Baddour; Hearst Communications, Inc.

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CAUSE NO. 15-2186-CV

RONALD AVERY,	§	**IN THE DISTRICT COURT OF**
	§	
Plaintiff,	§	
	§	
vs.	§	**GUADALUPE COUNTY, TEXAS**
	§	
DYLAN BADDOUR, AND HEARST COMMUNICATIONS, INC.,	§	
	§	
	§	**2ND 25TH JUDICIAL DISTRICT**
Defendants.	§	

MOTION TO SET HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendants Hearst Communications, Inc., publisher of the Houston Chronicle, and Dylan Baddour, a reporter for the Chronicle (collectively "the Chronicle" or "Defendants"), and file this Motion to Set a hearing on their Motion to Dismiss Pursuant to the Texas Citizens Participation Act, Tex. Civ. Prac. & Rem. Code § 27.001, *et seq.* (the "Hearing"), on March 10, 2016 at 9:00 a.m. In support of this motion, the Chronicle respectfully shows the Court as follows:

1. The Hearing is expected to take approximately one hour.

2. On February 18, 2016, *pro se* Plaintiff Ronald Avery informed counsel for Defendants that he has no objection to setting the Hearing for March 10, 2016.

3. Counsel for Defendants have consulted the Court's online calendar, which states that the Court is hearing civil non-jury matters in Guadalupe County on March 10, 2016.

4. Pursuant to Tex. Civ. Prac. & Rem. Code § 27.004, the Hearing on Defendants' Motion to Dismiss is generally required to be held within 60 days of service of that motion. However, the Court may conduct the Hearing after 60 days has passed if it takes "judicial notice

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that the court's docket conditions require[] a hearing at a later date," but "in no event shall the hearing occur more than 90 days after service," unless the Court orders discovery on the motion to dismiss. Tex. Civ. Prac. & Rem. Code § 27.004(b).

5. Defendants filed and served their motion to dismiss on Plaintiff on December 23, 2015.

6. Plaintiff's prior filing of his motion to recuse Judge Kirkendall, as well as the procedures required to be followed upon the filing of that motion under Texas Rule of Civil Procedure 18(a), constitute a "docket condition" sufficient to hold the Hearing more than 60 days after service of Defendants' motion to dismiss. *See Ramsey v. Lynch*, No. 10-12-00198-CV, 2013 WL 1846886, at *5 (Tex. App.—Waco May 2, 2013, no pet.).

WHEREFORE, PREMISES CONSIDERED, Defendants Hearst Communications, Inc. and Dylan Baddour pray the Court enters the attached Order setting the hearing on their motion to dismiss for March 10, 2016, at 9:00 a.m. and taking judicial notice that the Court's docket conditions require that such hearing be held more than 60 days after the filing of Defendants' motion to dismiss.

Dated: February 19, 2016

Respectfully Submitted,

/s/ Jonathan R. Donnellan

Jonathan R. Donnellan (State Bar No. 24063660)
Kristina E. Findikyan
Jennifer D. Bishop
THE HEARST CORPORATION
Office of General Counsel
300 W. 57th Street, 40th Floor
New York, NY 10019
(212) 841-7000
(212) 554-7000 (fax)
jdonnellan@hearst.com

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CAUSE NO. 15-2186-CV

RONALD AVERY	§	IN THE DISTRICT COURT
	§	
	§	
vs.	§	25th JUDICIAL DISTRICT
	§	
DYLAN BADDOUR, AND	§	
HEARST COMMUNICATIONS, INC.	§	GUADALUPE COUNTY, TEXAS

ORDER DENYING MOTION FOR RECUSAL

Came on to be heard on the 17th day of February, 2016, Plaintiff's Motion for Recusal. The parties appeared in person or by and through counsel of record. The Court, after hearing evidence and argument of counsel, is of the opinion that the motion should be, and hereby is, DENIED; and,

IT IS THEREFORE ORDERED that Plaintiff's Motion for Recusal is DENIED.

SIGNED THIS the 17th day of February 2016.

By: _____
PRESIDING JUDGE

FILED
10:50 aM
FEB 17 2016
DCROW
DEBRA CROW
Clerk, Dist. Court, Guadalupe Co. Tx.

I, DEBRA CROW, Clerk of the District Courts, in Guadalupe County, Texas, certify this copy is true and correct as FILED & RECORDED in the Official Court Records of District Court. Given under my hand and seal of office in Seguin, Texas on the 17 day of Feb, 20 16.
DEBRA CROW, District Clerk, Guadalupe County, Texas
By _____ Deputy

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HOUSTON

Ever hopeful and determined, Texas secessionists face long, long odds

By Dylan Baddour | September 13, 2015 | Updated: September 17, 2015 3:40pm

23

Photo: Pu Ying Huang

IMAGE 1 OF 10

All Texians have informally renounced their U.S. citizenship, as evident from Ronald Avery's jacket. Many members have formally renounced citizenship by filing Republic documents to Texas courts, which has no real effect. Most carry official Texian identification. Some have landed briefly in jail for explaining to law enforcement officers that they don't have a Texas drivers' license because they are citizens of the Republic.

EXHIBIT

F A-17

Ever hopeful and determined, Texas secessionists face long, long odds

By Dylan Baddour | September 13, 2015 | Updated: September 17, 2015 3:40pm

23

Photo: Pu Ying Huang

IMAGE 3 OF 10

In April, the Texian congress assembled beneath the blue-and-yellow flag of the old Republic, on the dance floor of the shuttered Silver Eagle Taphouse near the banks of the Guadalupe River in McQueeny. They follow a speaker list, and members take turns at the microphone. In this photo, Ronald Avery lists grievances with the U.S., including the 2008 bank bailout, NSA surveillance, the "police state" and "immoral wars."

EXHIBIT

GA-18

Ever hopeful and determined, Texas secessionists face long, long odds

By Dylan Baddour | September 13, 2015 | Updated: November 9, 2015 4:42pm

23

Photo: Pu Ying Huang

IMAGE 1 OF 10

All Texians have informally renounced their U.S. citizenship. Many members have formally renounced citizenship by filing Republic documents to Texas courts, which has no real effect. Most carry official Texian identification. Some have landed briefly in jail for explaining to law enforcement officers that they don't have a Texas drivers' license because they are citizens of the Republic. less

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Ever hopeful and determined, Texas secessionists face long, long odds

By Dylan Baddour | September 13, 2015 | Updated: November 9, 2015 4:42pm

23

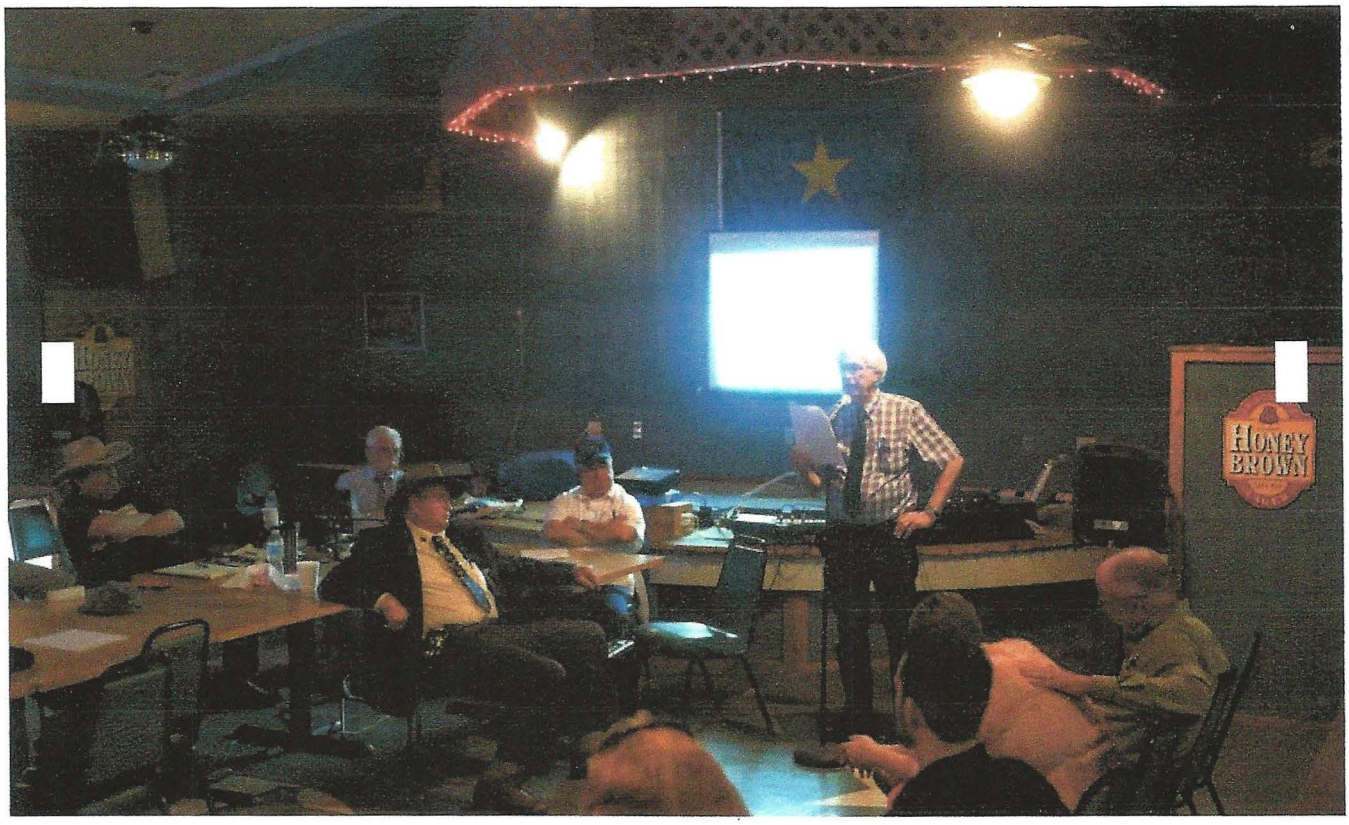

Photo: Pu Ying Huang

IMAGE 3 OF 10

In April, the Texian congress assembled beneath the blue-and-yellow flag of the old Republic, on the dance floor of the shuttered Silver Eagle Taphouse near the banks of the Guadalupe River in McQueeny. They follow a speaker list, and members take turns at the microphone. In this photo, an individual lists grievances with the U.S., including the 2008 bank bailout, NSA surveillance, the "police state" and "immoral wars." less

EXHIBIT I

Everyone has seen the bumper stickers: "Secede Texas." It's an age-old jest in the Lone Star State. But some people take it seriously.

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CIVIL PRACTICE AND REMEDIES CODE

TITLE 4. LIABILITY IN TORT

CHAPTER 73. LIBEL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 73.001. ELEMENTS OF LIBEL. A libel is a defamation expressed in written or other graphic form that tends to blacken the memory of the dead or that tends to injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury or to impeach any person's honesty, integrity, virtue, or reputation or to publish the natural defects of anyone and thereby expose the person to public hatred, ridicule, or financial injury.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 73.002. PRIVILEGED MATTERS. (a) The publication by a newspaper or other periodical of a matter covered by this section is privileged and is not a ground for a libel action. This privilege does not extend to the republication of a matter if it is proved that the matter was republished with actual malice after it had ceased to be of public concern.

(b) This section applies to:

(1) a fair, true, and impartial account of:

(A) a judicial proceeding, unless the court has prohibited publication of a matter because in its judgment the interests of justice demand that the matter not be published;

(B) an official proceeding, other than a judicial proceeding, to administer the law;

(C) an executive or legislative proceeding (including a proceeding of a legislative committee), a proceeding in or before a managing board of an educational or eleemosynary institution supported from the public revenue, of the governing body of a city or town, of a county commissioners court, and of a public school board or a report of or debate and statements made in any of those proceedings; or

(D) the proceedings of a public meeting dealing with a public purpose, including statements and discussion at the meeting or other matters of public concern occurring at the meeting; and

(2) reasonable and fair comment on or criticism of an official act of a public official or other matter of public concern published for general information.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 73.003. MITIGATING FACTORS. (a) To determine the extent and source of actual damages and to mitigate exemplary damages, the defendant in a libel action may give evidence of the following matters if they have been specially pleaded:

(1) all material facts and circumstances surrounding the claim for damages and defenses to the claim;

(2) all facts and circumstances under which the libelous publication was

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made; and

(3) any public apology, correction, or retraction of the libelous matter made and published by the defendant.

(b) To mitigate exemplary damages, the defendant in a libel action may give evidence of the intention with which the libelous publication was made if the matter has been specially pleaded.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 73.004. LIABILITY OF BROADCASTER. (a) A broadcaster is not liable in damages for a defamatory statement published or uttered in or as a part of a radio or television broadcast by one other than the broadcaster unless the complaining party proves that the broadcaster failed to exercise due care to prevent the publication or utterance of the statement in the broadcast.

(b) In this section, "broadcaster" means an owner, licensee, or operator of a radio or television station or network of stations and the agents and employees of the owner, licensee, or operator.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 73.005. TRUTH A DEFENSE. (a) The truth of the statement in the publication on which an action for libel is based is a defense to the action.

(b) In an action brought against a newspaper or other periodical or broadcaster, the defense described by Subsection (a) applies to an accurate reporting of allegations made by a third party regarding a matter of public concern.

(c) This section does not abrogate or lessen any other remedy, right, cause of action, defense, immunity, or privilege available under the Constitution of the United States or this state or as provided by any statute, case, or common law or rule.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 191 (S.B. 627), Sec. 1, eff. May 28, 2015.

Sec. 73.006. OTHER DEFENSES. This chapter does not affect the existence of common law, statutory law, or other defenses to libel.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

SUBCHAPTER B. CORRECTION, CLARIFICATION, OR RETRACTION BY PUBLISHER

Sec. 73.051. SHORT TITLE. This subchapter may be cited as the Defamation Mitigation Act. This subchapter shall be liberally construed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.052. PURPOSE. The purpose of this subchapter is to provide a method for a person who has been defamed by a publication or broadcast to mitigate any perceived damage or injury.

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Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.053. DEFINITION. In this subchapter, "person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.054. APPLICABILITY. (a) This subchapter applies to a claim for relief, however characterized, from damages arising out of harm to personal reputation caused by the false content of a publication.

(b) This subchapter applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.055. REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION. (a) A person may maintain an action for defamation only if:

(1) the person has made a timely and sufficient request for a correction, clarification, or retraction from the defendant; or

(2) the defendant has made a correction, clarification, or retraction.

(b) A request for a correction, clarification, or retraction is timely if made during the period of limitation for commencement of an action for defamation.

(c) If not later than the 90th day after receiving knowledge of the publication, the person does not request a correction, clarification, or retraction, the person may not recover exemplary damages.

(d) A request for a correction, clarification, or retraction is sufficient if it:

(1) is served on the publisher;

(2) is made in writing, reasonably identifies the person making the request, and is signed by the individual claiming to have been defamed or by the person's authorized attorney or agent;

(3) states with particularity the statement alleged to be false and defamatory and, to the extent known, the time and place of publication;

(4) alleges the defamatory meaning of the statement; and

(5) specifies the circumstances causing a defamatory meaning of the statement if it arises from something other than the express language of the publication.

(e) A period of limitation for commencement of an action under this section is tolled during the period allowed by Sections 73.056 and 73.057.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.056. DISCLOSURE OF EVIDENCE OF FALSITY. (a) A person who has been requested to make a correction, clarification, or retraction may ask the person making the request to provide reasonably available information regarding the falsity of the allegedly defamatory statement not later than the 30th day after the date the person receives the request. Any information requested under this section must be provided by

the person seeking the correction, clarification, or retraction not later than the 30th day after the date the person receives the request.

(b) If a correction, clarification, or retraction is not made, a person who, without good cause, fails to disclose the information requested under Subsection (a) may not recover exemplary damages, unless the publication was made with actual malice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.057. TIMELY AND SUFFICIENT CORRECTION, CLARIFICATION, OR RETRACTION. (a) A correction, clarification, or retraction is timely if it is made not later than the 30th day after receipt of:

(1) the request for the correction, clarification, or retraction; or

(2) the information requested under Section 73.056(a).

(b) A correction, clarification, or retraction is sufficient if it is published in the same manner and medium as the original publication or, if that is not possible, with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of and:

(1) is publication of an acknowledgment that the statement specified as false and defamatory is erroneous;

(2) is an allegation that the defamatory meaning arises from other than the express language of the publication and the publisher disclaims an intent to communicate that meaning or to assert its truth;

(3) is a statement attributed to another person whom the publisher identifies and the publisher disclaims an intent to assert the truth of the statement; or

(4) is publication of the requestor's statement of the facts, as set forth in a request for correction, clarification, or retraction, or a fair summary of the statement, exclusive of any portion that is defamatory of another, obscene, or otherwise improper for publication.

(c) If a request for correction, clarification, or retraction has specified two or more statements as false and defamatory, the correction, clarification, or retraction may deal with the statements individually in any manner provided by Subsection (b).

(d) Except as provided by Subsection (e), a correction, clarification, or retraction is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:

(1) it is published in a later issue, edition, or broadcast of the original publication;

(2) publication is in the next practicable issue, edition, or broadcast of the original publication because the publication will not be published within the time limits established for a timely correction, clarification, or retraction; or

(3) the original publication no longer exists and if the correction, clarification, or retraction is published in the newspaper with the largest general circulation in the region in which the original publication was distributed.

(e) If the original publication was on the Internet, a correction, clarification, or retraction is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if the publisher appends to the original publication the correction, clarification, or retraction.

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Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.058. CHALLENGES TO CORRECTION, CLARIFICATION, OR RETRACTION OR TO REQUEST FOR CORRECTION, CLARIFICATION, OR RETRACTION. (a) If a defendant in an action under this subchapter intends to rely on a timely and sufficient correction, clarification, or retraction, the defendant's intention to do so, and the correction, clarification, or retraction relied on, must be stated in a notice served on the plaintiff on the later of:

(1) the 60th day after service of the citation; or

(2) the 10th day after the date the correction, clarification, or retraction is made.

(b) A correction, clarification, or retraction is timely and sufficient unless the plaintiff challenges the timeliness or sufficiency not later than the 20th day after the date notice under Subsection (a) is served. If a plaintiff challenges the timeliness or sufficiency, the plaintiff must state the challenge in a motion to declare the correction, clarification, or retraction untimely or insufficient served not later than the 30th day after the date notice under Subsection (a) is served on the plaintiff or the 30th day after the date the correction, clarification, or retraction is made, whichever is later.

(c) If a defendant intends to challenge the sufficiency or timeliness of a request for a correction, clarification, or retraction, the defendant must state the challenge in a motion to declare the request insufficient or untimely served not later than the 60th day after the date of service of the citation.

(d) Unless there is a reasonable dispute regarding the actual contents of the request for correction, clarification, or retraction, the sufficiency and timeliness of a request for correction, clarification, or retraction is a question of law. At the earliest appropriate time before trial, the court shall rule, as a matter of law, whether the request for correction, clarification, or retraction meets the requirements of this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.059. EFFECT OF CORRECTION, CLARIFICATION, OR RETRACTION. If a correction, clarification, or retraction is made in accordance with this subchapter, regardless of whether the person claiming harm made a request, a person may not recover exemplary damages unless the publication was made with actual malice.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.060. SCOPE OF PROTECTION. A timely and sufficient correction, clarification, or retraction made by a person responsible for a publication constitutes a correction, clarification, or retraction made by all persons responsible for that publication but does not extend to an entity that republished the information.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.061. ADMISSIBILITY OF EVIDENCE OF CORRECTION, CLARIFICATION, OR RETRACTION. (a) A request for a correction, clarification, or retraction, the

contents of the request, and the acceptance or refusal of the request are not admissible evidence at a trial.

(b) The fact that a correction, clarification, or retraction was made and the contents of the correction, clarification, or retraction are not admissible in evidence at trial except in mitigation of damages under Section 73.003(a)(3). If a correction, clarification, or retraction is received into evidence, the request for the correction, clarification, or retraction may also be received into evidence.

(c) The fact that an offer of a correction, clarification, or retraction was made and the contents of the offer, and the fact that the correction, clarification, or retraction was refused, are not admissible in evidence at trial.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

Sec. 73.062. ABATEMENT. (a) A person against whom a suit is pending who does not receive a written request for a correction, clarification, or retraction, as required by Section 73.055, may file a plea in abatement not later than the 30th day after the date the person files an original answer in the court in which the suit is pending.

(b) A suit is automatically abated, in its entirety, without the order of the court, beginning on the 11th day after the date a plea in abatement is filed under Subsection (a) if the plea in abatement:

(1) is verified and alleges that the person against whom the suit is pending did not receive the written request as required by Section 73.055; and

(2) is not controverted in an affidavit filed by the person bringing the claim before the 11th day after the date on which the plea in abatement is filed.

(c) An abatement under Subsection (b) continues until the 60th day after the date that the written request is served or a later date agreed to by the parties. If a controverting affidavit is filed under Subsection (b)(2), a hearing on the plea in abatement will take place as soon as practical considering the court's docket.

(d) All statutory and judicial deadlines under the Texas Rules of Civil Procedure relating to a suit abated under Subsection (b), other than those provided in this section, will be stayed during the pendency of the abatement period under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 950 (H.B. 1759), Sec. 2, eff. June 14, 2013.

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